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A Critical Study on Misuse of Women Protection Law in India

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ABSTRACT

“Kanyadan” is not complete until the bridegroom is given a “Varadakshina.” The presents given to the daughter on the occasion of marriage by her parents, relations, or friends constituted her “Stridhan.” Both Varadakshina” and “Stridhan” were given out of love and affection. These two aspects got entangled and in due course assumed the frightening name of dowry. Demand for dowry has resulted in cruelty, domestic violence, and death by homicide or suicide. Originally it intended just to give a support and security to new couples that start their married life. But in today’s scenario, women do not understand the ideology behind the money and presents given to her own family and if there is some misunderstanding between the spouse’s, women take the advantage of the laws which is basically to protect their rights in all difficult situation. In general women are misusing the law which is protecting them from social evil of demand of dowry and domestic violence.

Keywords: Dowry, Misuse, Domestic Violence.

I. INTRODUCTION

The rapid globalization of the world’s economy has brought in its wake structural adjustment programs for women to empower their position in the society. Women have struggled in every historical epoch and in every part of the world for equal treatment. In the early part of the century, the right of women to receive an education, to obtain paid employment, to enter professions, to vote and to stand for elections were all highly contested issues.

India is known for a humanism and decent culture. It shall be the duty of every citizens of India to renounce practices derogatory to the dignity of women. Women shall live with dignity and contributing as equal partners in development of the Nation. Women face many political, socio-economic, ideological and psychological obstacles. Government has removed certain obstacles for their equal participation in all spheres of life. Women's economic empowerment refers to the ability for women to enjoy their right to control and benefit from the resources, assets, income and their own time, as well as the ability to manage risk and improve their economic

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status and well-being.

The impact of the women empowerment can be seen in rural and urban India, although women's empowerment in rural India is much less visible than in urban areas. Rural women, as opposed to women in urban settings, face inequality at much higher rates, and in all spheres of life. Urban women and, in particular, urban educated women enjoy relatively higher access to economic opportunities. Women (both urban and rural) who have some level of education have higher decision-making power in the household and the community. Furthermore, the level of women's education also has a direct implication on maternal problems faced by the family as well as women herself.

However, at the present scenario women are in par with men in all means to achieve their goals and dreams. Women have become independent and are able to take their own decisions without consulting any one and which may be right or wrong. Eventually women are looking forward to accomplish their day to day needs and requirements by misusing the women protection laws for their benefits which is adversely affecting the family, institution, society and also workplaces. When the matters relating to the marriage and divorce including the maintenance is concerned women is being protected against the various wrongdoing of the men, but there can be seen instances of the torture of the men by the women.

The women being vested with the weapon by providing laws supporting them, but still courts finding instances of false accusation of the husbands, relative of the husband and also men at workplace. As such, though the laws are provided to protect the women. The law on the other hand has not changed proportionately. The society has progressed to such an extent that criminality amongst women have achieved a higher stand in society and certainly have become influential but with respect to law is still where it was in olden times. Freedom of education, job opportunities, economic independence and social attitude have brought tremendous change in the status of women. The balance of scales has tilted reversely in favour of women. Protection and safe guard to women depicts only one side of the picture. The other side is completely overlooked.

(A) Methodology

To write this paper, mainly secondary data have been used .The research is both analytical and descriptive in nature. The researcher for the purpose of the above study has relied more on various sources of information which includes textbooks, articles published in various journals, reports from National Crime Records Bureau Ministry of Home Affairs statistics, case laws, commentaries and also from websites.

II. MISUSE OF SECTION 498A AND 304B OF INDIAN PENAL CODE 1860

For safeguarding the interest of woman against the cruelty they face behind the four walls of their matrimonial home, the Indian Penal Code 1860, was amended in 1983 and inserted Sec 498A which deals with ‘Matrimonial Cruelty’ to a woman.

Sec 498A IPC -Husband or relative of husband of a woman subjecting her to cruelty. Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation. For the purpose of this section, “cruelty” means:

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

304B. Dowry death. —

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

The sections are unilateral and undefeatable weapon in the hands of married women, who can use it whenever they like. A mere assertion from the women’s family, relatives or women herself that a she was subjected to cruelty or torture, has far-reaching assumption because the guilt of the husband and any or all his relatives is presumed. It is very painful that such a heinous crime is presumed to be committed by the husband or husband’s family members (mother, father, brother and sister) whether they resided with them or elsewhere.

It is known fact that the Dowry laws have failed to stop the deaths of women which is happening almost every day in India and other countries due to the demand of dowry. The moment a women complaint stating in a police station about dowry demand or torture or harassment, death by burning or suicide, the husband and his family members becomes a culprit in the eyes of law

& the society. In these related matters the husbands do not get bail as the act comes under the ambit of non-bailable offence. Many at times there would be no prima-facie evidence to connect the act with the alleged crime, and reject the bail application on the sole ground that the offence is serious. If there is no prima facie evidence to connect the act with the crime, seriousness of the offense has no meaning or significance. This view is held by various H C and SC of India.

Sec 498A, 304B and Sec 113-A³ has been added to the Indian Evidence Act with a view to raise presumption regarding abetment of suicide by married woman are enacted for providing protection to innocent victim girls who are really harassed, tortured and killed for dowry, in majority of the cases the law is being used for ulterior motives to grab the hard-earned money and property of the husbands and in-laws. Due to the misuse of Sec 498A and 304B many husbands have been arrested and have been facing criminal cases against them and almost all parts of the country men are suffering in their day to day life and some are mentally tortured by women.

An astonishing fact is that Sec 498A and 304B laws are enacted to protect women from “cruelty, torture and harassment” but at the same time the husband’s mother and sister being women are subject to cruelty, torture and harassment for demanding dowry. As per India Today News report-

*“Delhi has hit the high-growth lane in registration of dowry cases, and already crowded Tihar is getting choked by the onslaught. From nearly 1,500 cases in 2011, the number of dowry cases registered went on to cross the 3,000 mark in 2013. In 2014, the Delhi Police has already registered more than 1,275 cases of dowry; police officials expect the annual total to go higher than last year.”*⁴

Such dowry cases are in the thousands, but the conviction rate in these cases is as low as 15%. The national conviction rate is between 12-15 %, according to the NCRB

“The Delhi Police prepared appropriate guidelines that in such dowry demand cases the victim's husband would be treated as prime accused, and permission will have to be taken from Deputy Commissioner of Police to arrest the victim's in laws, and from the area Assistant Commissioner of Police for arresting the husband.”

³ Sec.113-A of Indian Evidence Act,1872- Presumption as to abetment of suicide by a married woman .When the question is whether commission of suicide by a woman has been abetted by her husband or any relatives of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or any relatives of her husband had subjected her to cruelty, the court may presume, that suicide had been abetted by her husband or any relatives of her husband. Explanation - ‘Cruelty’ as the same meaning as in S.498A of IPC., Inserted by Act 43 of 1986

⁴ India Today News -July 7, 2014- Dowry law cases pack Tihar jail barracks

Former Additional Advocate General of Punjab and Haryana High Court, Rajinder Goyal, says false cases are clogging up India's legal system. An offence under Section 498A is cognizable, which means that the police are duty-bound to register and investigate it such cases. It is non-bailable which means that bail can only be sought-and refused by a magistrate-when the case comes up in court. It is non-compoundable, which means that the complainant cannot withdraw the case. No wonder then that the way the law is used has been described as "legal terrorism" by the Supreme Court.

According to Orissa's State Commission for Women dozens of cases of husbands and in-laws getting punished on the basis of mere accusations of torture for dowry and a complaint under Sec 498A of the IPC have come to light in the state.

"Many women are using 498A of the IPC to terrorise their husbands and husbands' families. A large number of cases filed under the dowry laws are fake. It's a cruel and wicked design to blackmail husbands and in-laws," chairperson of State Commission for Women Namita Panda gave the statement⁵.

The Law Commission in its 154th Report, the Malimath Committee Report (on Reforms of Criminal Justice System, 2003) and the 111th Report of the Parliamentary Standing Committee on Home Affairs, have all acknowledged that Sec 498A is being widely misused. Once a complaint or FIR is lodged under section 498A IPC, it becomes easy a tool in the hands of the police to arrest or threaten to arrest the husband and his family members and relatives named in FIR without even considering the intrinsic worth of allegations and making a preliminary investigation. According to World Health Organization, in its Report of India clearly cited sec 498A as one of the major reasons for growing elder abuse in India⁶. This clearly shows the fact that due to false case under sec 498 A and 304 B elderly persons are put behind bars and the daughter-in-law is reporting about cruelty.

The Center for Social Research India, in a study on implications of Sec 498A IPC stated that "educated and independent minded women misuse the section". The behavior of women is changing day by day as they are becoming independent. The decisions taken by them about their own family members is not correct and due to such hasty decision's men are facing problems not in India even in wester countries men are facing problems under sec 498A and 304B IPC.

⁵ The Times of India Sep 19, 2007 -Men at the receiving end of anti-dowry law in Orissa

¹ https://www.who.int/ageing/projects/elder_abuse/alc_ea_ind.pdf, visited on 10-04-2019

In a news article India-West⁷ has drawn the issue into public eye that the victims of dowry fraud are mobilizing in greater number in America. Indian men are being victimized by their brides and bride's families, who falsely accuse them of demanding dowry. As per Sec 498A of IPC demanding dowry is a crime and men falsely accused are been thrown into Indian jails when they visit India, though they may be American citizens.

In India courts have also acknowledged the fact that women are misusing women protection laws for their own benefit and harassing innocent men and his family members. Supreme Court in the case of **Jamuna Chaudhary and Others vs. State of Bihar**, reported that

“legislative intent of providing succor to genuinely harassed and tormented women cannot be permitted to become a tool/instrument in the hands of a woman out to satisfy her ego by harassing and tormenting her in-laws when her marriage has failed for reasons extraneous to the relevant provisions of law”⁸.

Under the above circumstance's women are satisfying their ego and taking a revenge on her husband and in -laws of her failure about the marriage. In another case **G.C. Rao vs. L.H.V. Prasad and Others**, the SC observed that-

"There has been an outburst of matrimonial disputes in recent times. The marriage is a sacred ceremony, the main purpose of which is to enable young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of family are also involved with the result that those who could have Counseled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case"⁹

The random arrest of mother-in-law and sister-in-law in the name of cruelty under this section has proved that to protect one woman it has put in danger and made vulnerable two more women.

In **Sushil Kumar Sharma vs. U.O. I and others**¹⁰ the SC held that any misuse of this provision of law amounts to unleashing “Legal Terrorism”. This acknowledges that there are growing instances of women filing false charge. It is now evident from the fact that we have a whole lot of wicked women who misuse their legal weapon."

Two judges of S C Justices C K Prasad and P C Ghose, said that Sec 498A is a cognizable and

⁷ India -West, February 3, 2006

⁸ (1974) Vol. 3 SCC 774

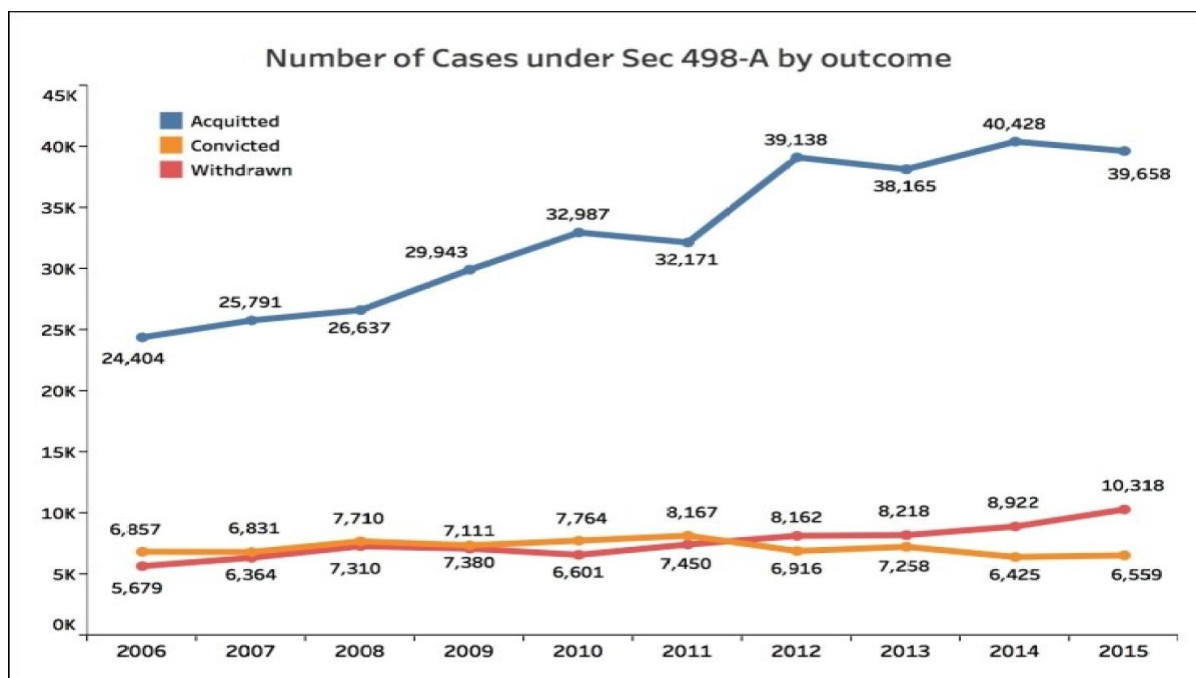
⁹ (2000) DMC 38 (SC) AIR 2000 2474

¹⁰ JT 2005(6) 266

non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives.

Rajinder Goyal, said that the vast majority cases end up being acquitted by the courts. “In India, I can say that after the case is put to trial under Section 498A, 80 per cent is the acquittal rate. That means, it is found that the case is not proved.”

Table1-



Source: NCRB

The above table-1 shows that in 2006 the acquittals are 24,404, this number went up to 39,658 in 2015, an increase of more than 60 % which shows that there are as many false cases registered under sec 498A IPC. Since 2012, the number of withdrawn cases has been more than the number of convictions each year. For every case that is resulting in conviction, five other cases are resulting in an acquittal and one case is withdrawn.¹¹

The abuse of this section is rapidly increasing and the women often well- educated know that this section is both cognizable and non-bailable and impromptu works on the complaint of the woman and placing the man behind bars. Like in the case of *Savitri Devi v Ramesh Chand & Ors*,¹² the court held clearly that there was a misuse and exploitation of the provisions to such an extent that it was hitting at the foundation of marriage itself and proved to be not so good for health of society at large. The court believed that authorities and lawmakers had to review the

¹¹ Statistics from the NRBC on cases under sec 498A of the IPC

¹² 2003 CriLJ 2759, 104 (2003) DLT 824, II (2003) DMC 328, 2003 (69) DRJ 6

situation and legal provisions to prevent such from taking place.

A number of false complaints are registered whereby all the family members including the sister-in-law, the brother-in-law, the old parents and the married sisters, they are all being implicated,” and sec 498A does not require women to provide evidence of abuse, and there’s a presumption of guilt until innocence can be proven. In some of the cases, directions were given by the High Courts for regulating the power of arrest and for taking necessary steps to initiate conciliatory effort at the earliest point of time.

III. MISUSE OF DOWRY PROHIBITION ACT 1961

India is a unique land with its diverse customs and tradition. In India “Dowry” is a custom in Hindu marriage since time immemorial. According to Dharmashastra, the meritorious act of “kanyadan” is not complete until the bridegroom is given a “Varadakshina.”¹³ After decking the daughter with costly garments and ornaments and honoring her with presents of jewels, the father should gift the daughter a bridegroom whom he himself has invited and who is learned in Vedas and is of good conduct. The presents given to the daughter on the occasion of marriage by her parents, relations, or friends constituted her “Stridhan.” Both Varadakshina” and “Stridhan” were given out of love and affection. These two aspects got entangled and in due course assumed the frightening name of dowry. For obtaining dowry compulsion, coercion and occasionally force had to be exercised. Ultimately most marriages became a bargain. Surprisingly, it has spread to other communities, which were traditionally non-dowry receiving communities. Demand for dowry has resulted in cruelty, domestic violence, and death by homicide or suicide.

Originally it intended just to give a support and security to new couples that start their married life. It also signified an alternative to inheritance for woman. In course of time it got distorted as people began demanding dowry and started harassing brides, in case they did not bring sufficient dowry. The issue of women’s rights and family law reform has been increasingly entangled within the polemics of politics and minority rights. It is true that the hardships and the sufferings experienced by woman of all communities, minorities as well as majority, cannot be overlooked.

Traditionally, dowry has been broadly defined to include the totality of assets transferred to the groom’s family from the bride’s family at the time of marriage. It has played two roles, that of a vehicle for property transfer to the woman, and that of a marriage payment (Basu 1996).

¹³ Diwan P. Modern Hindu Law. Allahabad: Allahabad Law Agency; 2008

Authors such as Sanmbrani and Sambrani (1983), Narayan (1993) and Oldenburg (1993) have argued that in a patrilineal society, with women prohibited from directly inheriting parental property the primary role of dowry was to provide a vehicle whereby part of a woman's parental property could be transferred to her affinal home, thereby increasing her own standard of living. Therefore, they claim, the woman's parents in essence gave dowry voluntarily.

One of the ancient and respected customs in India often referred to as a putatively positive original form of contemporary dowry is the idea of "stridhanam", gifts at marriage, which were regarded as bride's own property. Stridhan, as per Hindu customary practice, is that portion of wealth, which is the exclusive property of women and passes from mother to daughter. It includes gifts of money, property, jewellery or a share in a family business given to a woman as a daughter, sister, and wife or daughter-in-law.

Dowry is not unique to Hindus in India but has been prevailed all over the world. A dowry in the form of money or property wherein a bride brings to her husband's house at marriage- was common throughout much of the ancient world, and also flourished in medieval Europe. In many places around the world, weddings were formal occasions, accompanied by much gift giving and ritual. The practice of dowries apparently originated when a bride's parents gave her presents. The concept "dowry" is related to "Varadakshina" (a token of gift given to the bridegroom by the bride's father) and "Kanyadan" (gift of bride given to the bridegroom's father by the bride's father). The Dharamshastras, has laid down the detailed qualifications and qualities that the bridegroom must possess and to whom the presents in cash or kind to be given. Both Kanyadan and Varadakshina were considered as meritorious acts.

According to the present scenario the word "dowry" has been emphasized as a tool to suppress the protection given to women and taking advantage of the concept and triggering the institution of marriage. Marriage is unique bond of two young life's to be happy with some hurdles here and there. The presents and money given to a girl in marriage is to benefit her for her life with her partner, wherein she can utilize the same money to support her family in difficult situations. But in today's scenario women do not understand the ideology behind the money and presents given to her own family and if there is some misunderstanding between the spouse's, women take the advantage of the laws which is basically to protect their rights in all difficult situation. The Dowry Prohibition Act 1961 was enacted with an objective to prevent the giving or receiving of a dowry. The first and the foremost is that the Act,1961 defines the concept of dowry and lays down various provisions to eradicate the evil of dowry system in society.

The Act defines "dowry" as any property or valuable security given or agreed to be given either

directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before [or any time after the marriage] [in connection with the marriage of the said parties.

Sec 3 of the Act talks about penalty for giving or taking dowry- If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable [with imprisonment for a term which shall not be less than [five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more]

The law was meant to protect women from this pernicious practice that denigrates them and assesses their value in monetary terms. In spite of the law that criminalizes the custom in no uncertain terms, the giving and taking of dowry continues to be a part of contemporary reality.

The SC has virtually endorsed and legitimized the stereotype that women exaggerate and fabricate stories of violence in order to seek vengeance against their husbands and matrimonial families.

The Nisha Sharma dowry case was an anti-dowry lawsuit in India. It began in 2003 when Nisha Sharma accused her prospective groom, Munish Dalal, of demanding dowry. The case got much coverage from Indian and international media. Nisha Sharma was portrayed as a youth icon and a role model for other women. The case ended in 2012, after the court acquitted all accused. The Chief Justice Magistrate observed that Nisha was in a relationship with another person Navneet, who she really wanted to marry.¹⁴

In general women are misusing the law which is protecting them from social evil of demand of dowry. Women are using the same law for harassing their husband and husband's family members for demand of dowry. Largely, cases are registered firstly when some marriage dispute occurs due to various reasons and all the disputes termed as Dowry dispute. Surprisingly, in most of these cases, the matter is not even brought up or looked down initially and this way both giving and taking dowry is justified.

Two-judge bench of the SC, headed by Justice Chandramauli Kumar Prasad, stated that the anti-dowry law introduced in 1983 was originally designed to safeguard women from abuse and sometimes death in the hands of relatives and ruled the act was now being “used as weapons”

¹⁴ MP HC M.Cr.C. No. 3921/12

by “disgruntled wives.” And the simplest way to harass is to get the husband and his relatives arrested. In some cases, “bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested¹⁵. Justice A.K. Rajan observed that –

“It is true that demand of dowry, which originally prevailed among a small sect of people, has not pervaded the entire society due to the educational advancement. Further, due to the constant attempts by various organizations women started complaining about dowry harassment to the police. Of course, it is a healthy sign. But at the same time, it is not uncommon that while such complaints of dowry harassment are made, even innocent in-laws are arrayed as accused.”¹⁶

The law of Dowry Prohibition has no doubt provided great protection to women who are tortured by their in laws resulting in to Divorces, Separations, Mental Instability, Depression and sometimes Death, but the law fails to provide any provision on what happens when the law is misused and is used to frame false case against the husband and his family to have wrongful gains of husband’s property, income etc. The makers of the law focused only on providing protection to females who were affected by the concept of dowry but they completely left out that if the women ever misuse such strict provision against husband what remedy does the husband have in such a case.

Deepika Mahale¹⁷ writes that whenever any problem arises in a matrimony certain woman take the advantage of the anti-dowry laws to harass her husband and in-laws, and also that now-a-days most of the cases that are filed against the husband and his family are false. In the year 2011- 10,193 false cases were registered in 2012- 10,235 false cases and in 2013 the number went up to 10,964 false cases against the husband and his family, in 2015- 10,000 false cases were filed by women against their in-laws. Many times, women try to rope in all the related members of the family of the husband during a complained under the Anti- Dowry laws.

Supreme Court observed that, close relations of the husband cannot be roped in the offense only on the ground that they were relatives of the husband, in this case the court found that the fault of the husband, in-laws and other relatives cannot be held to be involved in the demand of dowry. Women have gone too far to establish their say even if their grounds are false. The desperation to prove their upper hand on her husband and in- laws have today taken an evil turn and so the criminality of women mind has entered the society.¹⁸

¹⁵ India Real Time Jul 3, 2014 -Women Misusing India’s Anti-Dowry Law, Supreme Court visited on 14-04-2019

¹⁶ The Hindu, 14th December 2004.

¹⁷ <http://www.lawof.in/dowry-laws-loopholes-possibilities-misuse-dipika-mahale-ils-law-college-pune/>, visited on 11-04-2019

¹⁸ Kans Raj Vs. State of Punjab and others SC 2000

Today more persons are committing suicide for fearing harassment on the basis of false complaints under Dowry Prohibition Act. It is submitted that punitive punishment should be imposed on those responsible for giving false complaints besides awarding costs and damages to the victims. There are many cases throughout the country where the fact of false allegation on the husband and his family against cruelty because of want of dowry is filed. There is no doubt that most of the complaints are filed in the heat of the moment over trifling fights and ego clashes. It is also a matter of common knowledge that in their tussle and ongoing hostility, the hapless children are the worst victims.

IV. MISUSE OF DOMESTIC VIOLENCE ACT 2005

From very early period women were subjected to domestic violence. According to studies, women enjoyed equal status and rights during the early Vedic period. However, later the status of women began to decline with her freedom and rights.

The Indian woman's position in the society further deteriorated during the medieval period. Sati, child marriages and ban on widow remarriages became part of social life in India. The foreigner's conquest in the Indian subcontinent brought the purdah practice in the Indian society. In some parts of India, the Devadasis or the temple women were sexually exploited. Polygamy was widely practiced.

Hence there was need felt by the legislature to make such legislation which protect women from violence. Domestic violence usually features a repeating pattern of behavior with the dominant purpose of controlling the other person. The major impact is fear in the minds of the weaker sections of the society. Domestic violence is predominately perpetrated by men against women. It occurs in every country, in families of all races, cultures, religions, and income levels. It can happen to people of all ages, genders, and sexual orientations. In the U.S., nearly 1 in 4 women reports experiencing violence by a current or former spouse or boyfriend at some point in her life. Globally, the United Nations reported that up to 70% of women experience violence in their lifetime.

There are International instruments which are established to curb violence against women.

- 1) The U.N. declared the 1980-1990 Decade of a Decade for women. Art. 55 and 56 of the U.N. Charter cast a legal obligation on the UNO to promote principle of equality and observance of human rights.¹⁹

¹⁹ United Nation Charter, chapter IX: International Economic and Social Co-Operation, <http://www.cirp.org/library>

- 2) Art. 5 of Universal Declaration of Human Rights states that “no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment”²⁰.

During 2005, the Protection of Women from Domestic Violence Act, 2005 came into effect in 2006. The Act promotes the protection to victims of domestic violence by widening the definition of “domestic violence”. Under the Act, "domestic violence" covers any abuse or threat thereof that is physical, sexual, verbal, emotional or economic.²¹

The definition of 'domestic violence' attributes to' all categories of violence suffered by women within their families, which includes all forms of physical, sexual, verbal, emotional or economic abuse and violence.

The main objective of PWDV Act is to provide more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto". The latest legislation was enacted in consonance with several International Accords and Conventions under the norms and principles adopted by the United Nations for protection of women.

Unfortunately, the Domestic Violence Act is being subjected to extreme unlawful use especially by women. The act is introduced for the benefit of the women but regrettably, it is being extremely misused by the women themselves.

It is very clear that the, rights are given only to women and nothing in this act is dealing with the rights of men under domestic violence, though it can easily be seen that men were also victimized of domestic violence.

One need to see the fact that the complaint by a woman will be treated, prima facie, as “true and genuine” opens up a whole new realm of possibilities where innocent men will be accused and implicated in false cases. There is no investigation done on the complaints received, nor any evidences are verified before registering a case and arbitrarily arresting people. Because of such malpractices, a greater number of married men are losing their jobs and committing suicides as well.

Very recently Honorable Chief Justice of India Shri. K.G. Balakrishnan has expressed serious concern over the growing misuse at a Seminar organized by the National Commission for Women. Honorable Chief Justice of Karnataka Shri P.D. Dinakaran had also voiced the problems that men face when false cases under Domestic Violence Act are lodged against them.

/ethics/UN-charter/, <http://www.un.org/en/documents/charter/chapter9.shtml> visited on 10-04-2019

²⁰ <http://www.un.org/en/documents/udhr/index.shtml> , as visited on 10-04-2019

²¹ Indira Jaising and Monica Sakhrani (ed.), *Law of Domestic Violence*, (2nd ed.), New Delhi: Universal law publishing Co.Pvt.Ltd., 2007, pp.125

Even Honorable President of India Smt. Pratibha Patil has agreed in a recent speech, that there is widespread misuse of the dowry laws by women in the country. Time and again various judges of the High Court and Supreme Court have repeatedly expressed displeasure on the misuse of dowry laws and Domestic Violence Act and have recommended several corrective measures which have fallen on deaf ears so far.

In the western world, the domestic violence laws are gender neutral and provide protection to the victims, both men and women. The fact that the Indian version explicitly prohibits any male victim to seek relief under this law defies all logic and is beyond comprehension.

The Madurai bench of Madras high court imposed a cost of Rs 5,000 on a woman who was found to be harassing her father-in-law, a government school teacher, and warned people against filing “petty and frivolous cases” under the DV Act. the judge said, “Nowadays, filing cases under the DV Act by female members has become common. A neutral and unprejudiced law is needed to protect the genuine victims of domestic violence, irrespective of gender.

The judge observed that it was no doubt true that the perpetrators of domestic violence need to be appropriately punished and dealt with, but at the same time protection could not be withheld from the real victims for any reason whatsoever, least of all their gender. “The notable flaw in this law is that it lends itself to such easy misuse that women will find it hard to resist the temptation to teach a lesson to their male relatives and will file frivolous and false cases .²²

There are many cases where there is a property dispute between parties and allegations are levelled through women. Such allegations tarnish the image of a man and are one of the most commonly used weapons during rivalries.

In *Rukmani vs Manonmani* ²³, the petitioners and the respondent were not related by way of consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. Further there was absolutely no material to show that the petitioners and the respondent are having any domestic relationship and they are living in a shared household and that they have committed any act necessitating the initiation of proceedings against them under the DV Act. It is clear that the provisions of the DV Act had been misused. The court held “*that there is no material to make out a prima facie case of domestic violence, however, an attempt has been made by the first respondent to misuse the provisions of the Domestic Violence Act, which was enacted with laudable object to provide for remedies, such as, protection to the affected women.*

²² <https://timesofindia.indiatimes.com> visited on 17-04-2019

²³ CrI.O.P.No.27548 of 2012

The DV Act is primarily meant to provide protection to the wife or female live-in partner from violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women who are sisters, widows or mothers. Domestic violence under the act includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. It has become unfortunate that in order to wreck vengeance or as a counter blast the educated women are misusing the DV Act for their benefits and to teach a lesson.

At the present situation women are highly educated and are independently working. At times when there is a small misunderstanding between the husband, they just for no reason go to their matrimonial house or live separately. This is not the end or solution but unfortunately with their parents support or relatives file a case under DV Act on their husband either to revenge or torture the husband and his family members.

The PWDA has not been promulgated so as to misuse the same but it has to be used only in genuine cases and when the complainant herself is residing separately with her parents, then the provisions of the PWDA do not apply²⁴.

V. MISUSE OF SEXUAL HARASSMENT AND PREVENTION OF SEXUAL HARASSMENT AT WORKPLACE

Long bygone are the days when men used to be the sole bread-winners of a family. Globalization has brought a radical change in the status of women worldwide. Today women are economically, socially and politically empowered to walk together with the changing world. However, with the larger influx of women in the mainstream workforce of India, sexual harassment at workplace has assumed greater dimensions. Workplace sexual harassment is a form of gender discrimination which violates a woman's fundamental right to equality and right to life, guaranteed under Articles 14, 15 and 21 of the Constitution of India. Workplace sexual harassment not only creates an insecure and hostile working environment for women but also impedes their ability to deliver in today's competing world. Apart from interfering with their performance at work, it also adversely affects their social and economic growth.

The principle of gender equality is enshrined in the Constitution, in its Preamble, fundamental rights, fundamental duties and Directive Principles. However, workplace sexual harassment in India, was for the very first time recognized by the Supreme Court of India in its landmark judgment of *Vishaka v. State of Rajasthan*²⁵ wherein the Supreme Court framed certain guidelines and issued directions to the Union of India to enact an appropriate law for combating

²⁴ Mukesh Pal vs Smt. Ganga Pal, MCRC.4292/2017

²⁵ Id.

workplace sexual harassment. Nothing less of an irony, the POSH Act and the POSH Rules was enacted 16 years after the Vishaka Judgement.

In the absence of a specific law in India, the S C, in the Vishaka Judgment, laid down certain guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment which were being followed by employers until the enactment of the POSH Act.

Finally, India's first legislation specifically addressing the issue of workplace sexual harassment; the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted by the Ministry of Women and Child Development, India in 2013. The Government also subsequently notified the rules under the POSH Act titled the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013. In framing guidelines, the SC placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979.

The POSH Act has been enacted with the objective of preventing and protecting women against workplace sexual harassment and to ensure effective redressal of complaints of sexual harassment. While the statute aims at providing every woman (irrespective of her age or employment status) a safe, secure and dignified working environment, free from all forms of harassment, proper implementation of the provisions of the statute remains a challenge.

The POSH Act defines 'sexual harassment' in line with the Supreme Court's definition of 'sexual harassment' in the Vishaka Judgment. As per the POSH Act, 'sexual harassment' includes unwelcome sexually tinted behaviour, whether directly or by implication, such as-

- (i) physical contact and advances,
- (ii) demand or request for sexual favours,
- (iii) making sexually coloured remarks,
- (iv) showing pornography, or
- (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

The following circumstances, among other circumstances, if they occur or are present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:

- implied or explicit promise of preferential treatment in employment;

- implied or explicit threat of detrimental treatment in employment;
- implied or explicit threat about present or future employment status;
- interference with work or creating an intimidating or offensive or hostile work environment; or
- humiliating treatment likely to affect the lady employee's health or safety.

Subsequently there are other laws protecting women at work place. Unfortunately, the powers provided by the new law is been used lethally by ill-willed women to destroy careers and hard-earned reputation by men.

A lot of men are scared of what can happen if women resort to abusing this power and using the law in malicious ways. Given that there are several instances of misuse of women-friendly provisions in criminal law, especially in cases of souring marital relationships, men fear that the same applies to anti-sexual harassment laws.

A recent news from Belagavi says that an honest officer T. B Majjagi was hounded due to a false sexual harassment complaint filed against him. However, he was able to come clean in all enquiries and it was found that the complaints against him were filed with malicious intentions²⁶.The Purush Adhikar Sangh condemns use of sexual harassment law as a tool to settle scores, pull down political or organizational rivals, or simply to bring down an honest person whose work and propriety cannot otherwise be under any question.

The NWC admits that 53% of sexual harassment cases registered against men are false, while Delhi police says it's up to 90%. Sexual violence can happen to anybody, no matter what your age is, your sexual attitude, or your gender identity. We usually perceive and see harassment or cruelty related cases to females only and this is the reason that legislations are made only for the women victims.

An individual's interpretation of sexual harassment is framed by various kinds of societal factors like religion, education and past experiences with sexual harassment. It is also very awkward to investigate the malleability of how an individual expresses sexual harassment act.

A cab driver Ramesh was accused of rape by one of his passengers. She accused him of forced oral sex, and sexual intercourse. It was only six months, and hours of investigations later that Ramesh was officially not a rapist. Medical as well as forensic evidence established that there was no rape committed upon the woman, and it was all because the woman refused to give the

²⁶ Times of India newspaper, August 22,2016

man his fare of Rs.500²⁷.

Another instance where a practicing advocate Pankaj Chavda, was harassed with imprisonment and visits to courts during the nine-year legal battle, an insurance agent studied law to fight rape charges levelled by his wife. Acquitted by courts, later slapped a Rs 50 lakh defamation suit against his wife for implicating him and a friend in a false rape case. Chavda, who lives in Krishnanagar, was acquitted of rape charges by city sessions court as well as by Gujarat HC both observing how the woman became a puppet in the hands of her relatives, who wanted to separate the couple.

One more instant speaks about Santosh Raj whose world came crashing down when three months into his marriage, his wife hired goons, who not only attacked him, but also beat up his parents, brothers and sister. As told to times of India news, "his wife accused him of impotency and demanded money. The question raised was that if he was impotent, then she would have come to know on the first night itself; why did she have to wait for three months. She demanded 1 crore for a divorce. My father somehow brought this amount down to 35 lakhs. As per the arrangement, 15 lakhs were paid and the remaining amount was to be paid after the divorce was finalized. But they soon started asking for the remaining amount. He knew that they wouldn't stop harassing him if he gave them 20 lakhs, so he went underground for some time." This kind of situation are pathetic as men have to hide some where for no mistake of there's and this is because women are misusing the POSH Act and harassing men from all means of cruelty.

According to Roberta Chinsky Matuson²⁸ "Many people mistakenly believe that harassment is limited to females," Also the perpetrators against the victims are using physical force, psychological force or many other emotional coercion tactics.

Due to the current workplace culture and the rise of women in hierarchy positions in the companies has yielded validity of argument has to sexual harassment at work place and women taking advantage of the new law. Many at time false allegations of sexual assault are levelled against men.

The Delhi court observed ²⁹ in a case where a woman employer was found "lying" about sexual harassment charges on her employer. The court considered the growing trend of false FIRs of rape and other sexual crimes, the court noted that stereotyping women as "innocent gullible victims" in all scenarios is not correct and such false cases should be dealt with sternly.

²⁷ <https://www.indiatimes.com/news/india/these-cases-highlight-the-pathetic-state-of-male-sexual-harassment-laws-in-the-country-247504.html> visited on 17-04-2019

²⁸ A human resource expert, Florida, United states.

²⁹ The Economic Times, 16 July 2018

According to the report, the woman had alleged sexual harassment by her employer as she was the only employee left in the company. However, the employer, refuted the charges and claimed that the woman was trying to extort money.

While deposing before court, the woman had claimed that she had not lodged any complaint against the accused. She also denied giving statements, bearing her signatures, either before the police or under 164 Cr.PC before the court. But when court asked her to sign on a blank sheet to compare it to the earlier statements having her signatures, the court found the woman had "deliberately" signed in a "shaky writing" to turn hostile. Calling it disregard of legal process, the court said evasive replies of the complainant show she is deliberately lying before the court. The court went on to say the it can't shut eyes to the reality of false FIRs. It said that the court should not stand as a mute spectator on these actions of subversion of judicial process and judicial process can't be overturned by witnesses who do somersaults in court.

In another case of Indian Hotels Company (IHCL) fully exonerated and cleared Ginger CEO Rahul Pandit on charges of harassment based on a complaint by a women employee, A female employee had filed a complaint against Rahul Pandit, the CEO of Roots Corporation citing inappropriate behavior in March 2017. Roots runs the Ginger brand of budget hotels and is an IHCL subsidiary. The case was filed by the female employee who reported directly to Pandit. People close to the situation said that the complaint was later found to be false and motivated by the female employee as she was not performing well. Pandit was subsequently cleared on these charges.

Two people with direct knowledge of the matter said that Roots Corporation immediately had set up a POSH committee and launched an investigation with internal and external members. The committee cleared Pandit of all charges.³⁰

Sexual harassment at workplace remains a highly sensitive issue in the entire world. Being the first of its kind, the enactment of the POSH Act led to an increased awareness on the do's and don'ts in terms of workplace conduct. However, despite the awareness and the measures being taken by the government to ensure effective implementation of the law, sexual harassment at workplace remains a highly sensitive issue. The Act is enacted for the protection of women at work place and subsequently other place, women are taking undue advantage to harass men on various occasions and the innocent men end up in facing the consequence either facing depression, mental torturer or losing their job which indirectly effects their reputation and health.

³⁰ The Economic Times, 09 Apr, 2018

VI. CONCLUSION

India has a great history about women and a major part of this has been expatiated upon the position of the women, though, the status has often been vacillating. Initially daughters of Vedic era were nurtured with love and affection but the innumerable invasions obliterated the culture. In India family has always been prime importance marriage being an important social institution.

Some of the reforms has encouraged women empowerment in fields like economic, social, cultural and political, education, jobs and other empowerments. Certain reforms have been possible only because of the legal initiatives. Various legislations and laws passed in the recent years have been instrumental in strengthening the position of women in society. Not only provisions favorable to women were incorporated in the Constitution when it was framed but various legislations like Dowry prohibition Act, 1961, Protection of the Women from Domestic Violence Act, 2005, sec 498A and sec 304B and Prevention of Sexual Harassment at workplace have been introduced from time to time as required. Separate sections have been incorporated in the Indian Penal Code, which deal with the offences committed against women. All these laws are enacted to protect women only and they are called 'rights' of women.

With the passage of time family life of a women and men are going to toss as demand for dowry ,domestic violence ,dowry death , sexual harassment etc are the biggest social evils facing by our society, and no civilized society should tolerate this and every effort should be made to eradicate this evil, people indulging in such crime should be punished severely, but other side of coin, often unlooked upon should not be ignored. And this side of the coin is the misuse of these provisions by some unscrupulous wives to wreak havoc on husband and family and misuse of these laws endanger the relationship of husband and wife. It feels constrained to comment upon the misuse of the provisions to such an extent that it is hitting at the foundation of family itself and has proved to be not so good for the welfare of the society at large so there is great need felt for stopping the misuse of the women protection laws in India.

Misusing of women protection laws is become common to harass husband and his family members. It is a matter of common experience that most of the complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

The Madras High Court in the case of **Tr. Ramaiah Vs. State case**³¹, it was observed that “*there is no iota of doubt that most of the complaints are filed in the heat of the moment over trifling fights and ego clashes. It is also a matter of common knowledge that in their tussle and ongoing hostility, the hapless children are the worst victims*”.

Justice B.S.A Swamy, H C judge expressed his view that, “for nothing the educated women are approaching the courts for divorce and resorting to proceedings against their in-laws under 498A IPC implicating not only the husbands but also their family members, whether they are in India or abroad. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

The judicial recognition of blatant misuse of these laws is not new. In **Balbir Singh vs. The State of Punjab** court had said that the amendments introduced in the penal code are with the laudable object of eradicating the evil of dowry, such provisions cannot be allowed to be misused by the parents and the relatives of a psychopath wife who may have chosen to end her life for reason which may be many other than cruelty. The glaring reality cannot be ignored that the ugly trend of false implications in view to harass and blackmail an innocent spouse and his relative's i.e. fast emerging. It is the time to stop the unhealthy trend which results in unnecessary misery and torture to numerous effected persons and sometimes not just ruined their life but also social status of the family.

The misuse of women protection laws can lead insurmountable harassment agony and pain to the complaint accused and his close relations. So, it's very necessary that allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protected criminal trials lead to rancor, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the

³¹ CrI. O.P. No.10896 of 2008

complainant if the husband or the husband's relatives had to remain in jail even for some time it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful and due to this kind of false allegation the social status the family concerned is damaged. The other main issue regarding the misuse of the provision is that it does just not add to the suffering but it is also the violation of individual fundamentals rights against whom these laws are used with bad motive.

There are many instances when the member of Parliament has been raising questions in the parliament at regular interval regarding the heavy misuse of IPC Sections 498-A, 304-B, Dowry Prohibition Act, DV Act, and related laws. A Right to Information application directed to the Ministry of Home Affairs in 2005³² revealed some shocking figures. In 2005, among the 58,319 dowry cases that were registered, 10,491 cases were not charge-sheeted because they were based on frivolous grounds. In the same year, 134,757 people underwent arrest for 58,319 complaints under Section 498-A and Dowry Prohibition Act. Among these, 4,744 people who were accused were above 60 years of age and arrested without any verification of the veracity of the complaint.³³

We know it is always said that law is the instrument of social change and every act of society has an impact on law and every law had an impact on the society but due to the misuse of these laws there is great negative impact on the society.

Due to misuse of these laws many marriages are at the verge of end and many numbers of marriage already ended in the past by way of seeking divorce. Ones there is a divorce between two parties we find that small children are thrown to live with a single parent either mother or father and that's effects there social and moral development.

The POSH Act is also considerably misused by women works on their co-works as well is filing false allegation of sexual harassment on men. The law is to help the women in need but the abuse of the law is becoming more day by day. Men are the victims of such allegations and tend to take revenge on such stereotype women and the society once again blame the men for the crime on women.

The laws are made to protect women form the torture but it has left a very bad taste because women not just use the laws for their protection but also use it as a weapon to harass their husband and his family and also co-workers. So, the misuse of these laws leads to a great negative impact on the society and social welfare. The most common and extreme form of

³² Ministry of Home Affairs, RTI No. 24013/20/2006-SC/ST-W.

³³ www.498a.org.in visited on 18-04-2019

exploitation of women protection laws.

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