

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 6 | Issue 4

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2023

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# Miscarriage of Justice by Battered Dowry Laws

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## ABSTRACT

*On agreement to anonymity, a District court judge in Delhi said that the ratio of false reported to true unreported dowry cases is two is to five i.e., majority of female victims refrain from reporting dowry related harassment and crimes in India. These are the two sides of a coin and are co-existing in the Indian society. The Dowry Prohibition Act, 1961 along with Sections 304B and 498A of the Indian Penal Code, 1860 provide against abuse by husband and his relatives in form of dowry related harassment, death and cruelty. It is seen that conviction rate in 2015 was merely 34.7%, while rest of the cases are pending, mediated, withdrawn or result in acquittal. Reasons for withdrawal and mediation include the social stigma attached, subjection to reputational harm and familial pressure. However, at times, this mediation, withdrawal and acquittal is interpreted otherwise and mistook for attempted misuse of anti-dowry laws by the victims. Nevertheless, misuse of these laws by victims is also observed wherein women complain against their husbands with false allegations arising out of ulterior motives. Herein, Section 498A of the Indian Penal Code, 1860 read with Section 41 of the Criminal Procedure Code, 1973 is seen to be used as a weapon rather than a protective shield by the women against their husbands and his relatives. Per these provisions, dowry related cruelty is a cognizable and non-bailable offence, whereby the accused can be arrested without warrant. This paper shall focus on analysing the efficiency of social welfare laws in protecting women's rights considering the socio-economic set up of Indian patriarchal households. This shall be done through analysis of case laws and viewpoints of different stakeholders involved.*

**Keywords:** Dowry, Familial pressure, Dowry related cruelty, Misuse of law, Under-reporting.

## I. INTRODUCTION

Indira Jaising, a prominent lawyer, and activist once opined that Indian women using the law are often judged to have a “bad character” as they go beyond their “maryada” (“Indira Jaising: ‘When a women’”, 2017). This is observed to be especially true in case they try to access the social welfare laws, that were brought to protect their rights and were aimed at bringing gender

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equality in Indian matrimonial homes. Indian homes have been conventionally joint family set ups; husband's parents and other relatives play a major role in implementation of these welfare laws (Ghosh, 2013). At the global level, Sustainable Development Goal 5 (Achieve gender equality and empower all women and girls) aims at eradicating violence against women and girls throughout the world, however, this is still seen to be a far-fetched idea for married Indian women. It's corroborated by the fact that suicide death rate for Indian women (comprising mainly of housewives) is twofold the world's women's suicide death rate (Dandona R. et al., 2022).

Traditionally, patriarchal Indian societal set up has asked its women to conceal horrific offences including domestic violence, dowry related cruelty and dowry death among others, faced by them within the walls that are supposed to be their haven. Dowry, a regressive custom (prohibited by Indian legal system), revolves around monetary gains given by bride's family on marriage to bridegroom's family. Expressing displeasure on insufficient monetary gains being brought in marriage or demanding additional assets after marriage through voluntary actions of husband or his relatives is a common sight and involves infliction of grave injury, danger to mental or physical being, or harassment on wives (Gajmer et al.,2021). Thus, matrimonial cruelty is often accompanied by domestic violence in terms of recurring beatings; mental, emotional, and physical torture, which is endured by women due to social stigma, lack of - education, financial independence, and social support. At times, these criminal actions result in major injuries, suicide or even death and it is often only then that such cases see the light of day in eyes of law (Gajmer et al.,2021).

Such cultural practices of Indian households by normalising criminal behaviour have encouraged violation of women's human rights, caused under-reporting of offences, and reduced women's status in society, thereby promoting under-use of legal provisions like Section 498A, 304B of the Indian Penal Code, 1860 (IPC) which were brought forth to protect married women in Indian households (Ghosh, 2013). Further, justice is still a far-fetched hope, and constant amendments to the law due to widely appreciated men's rights activist's notion of increased misuse of law by woman, has diluted its very purpose (Doddahatti, 2017).

This paper seeks to critically analyse the incapacity of social welfare laws brought to protect Indian married women from matrimonial cruelty and curb dowry death, considering the two sides of the same coin: underuse and misuse of this law and its evolution as seen in the socio-legal context of Indian patriarchal society. It further aims to discuss and highlight the need for a fresh perspective of this issue given the different stakeholder's outlook analysed herein.

## **II. EVOLUTION OR DILUTION OF THE LAW?**

The Dowry Prohibition Act, 1961 was brought to curb the social evil of bridegroom's family demanding dowry, whether directly or indirectly from the bride's family punishable by law. However, overtime the law proved to be a 'toothless paper tiger' with no legal cases being reported under the law for nearly 20 years (Ghosh, 2013). Despite multiple amendments brought in 1983-1986, the law's ineffectiveness became evident (Ghosh, 2013). Subsequently, Section 498A, Indian Penal Code, 1860 was added through the Criminal Law (Second Amendment) Act, 1983 to address associated increased crimes including cruelty, harassment, suicide and dowry death amongst women (*Brij Lal v. Prem Chand and another*, 1989). Hence, while Dowry Prohibition Act, 1961 renders the act of demand of dowry punishable by law, cruelty against married women performed by the husband or his family during this process wasn't analysed. But with the introduction of Section 498-A, IPC, emphasis has also been placed on the act of cruelty which often accompanies this social evil.

Section 498A, IPC defines Cruelty to include wilful conduct of husband or his relatives involving subjecting the wife to harassment (mental or physical) or compelling her to committing suicide or resulting in grave injury or danger to her life, limb or health. This cruelty includes actions undertaken - with the purpose of coercing her or her relation to fulfil any unlawful demand for property or valuable security; or at time of failure to meet such unlawful demand (Indian Penal Code, 1850). Matrimonial cruelty is observed to be a continuing offence, limitation for getting legal redressal in such matters is renewed on every subsequent event involving subjection to cruelty (*Arun Vyas v. Anita Vyas*, 1999). Section 498A providing for the offence of matrimonial cruelty faced by Indian wives for dowry extraction at the hands of their husbands and his relatives, is non-compoundable, non-bailable and cognizable and involves punishment of maximum three years and fine (Indian Penal Code, 1850). Non-compoundable nature acknowledges the offence to be grave and against the society not just the victim; non-bailable offences disallow accused to be release on bail before the trial ends; and cognizable offences allow police to arrest the accused without warrant.

Further, Section 304B, IPC states punishment for dowry related death of a married woman within seven years of her marriage occurred due to burns or bodily injury or under normal circumstances. This shall be supplemented with proof that prior to her death, she was subjected to cruelty as provided for in Section 498A, IPC (Indian Penal Code, 1850). Application of Section 304B, IPC is often accompanied by Section 306, IPC which provides punishment for abetment to suicide for a term that may extend to ten years and fine (Indian Penal Code, 1850).

Section 113A, Evidence Act, 1872 is attracted herein where the woman commits suicide within seven years of her marriage, the burden of proving innocence shifts onto the accused (The Indian Evidence Act, 1872).

Domestic violence (usually goes hand in hand with matrimonial cruelty) inclusive of differing forms of abuse (mental, physical or sexual), when faced by married women in a domestic setting, further attracts civil remedy under The Protection of Women from Domestic Violence Act, 2005.

Despite the existence of above-mentioned legal provisions, the persistent question remaining is whether the amendments to these laws over time have diluted their very purpose of protecting women's interests? This shall be discussed in the subsequent segment through the lens of various stakeholders involved and their outlook to this concern.

### **III. INCAPACITY OF THE SYSTEM: STAKEHOLDERS SAY OVERPOWERING WOMAN'S RIGHTS**

Whenever a woman tries to complain about dowry related cruelty, she faces obstacles from the society (considered a familial/ private matter), police (refusal to file First Information Reports (FIR)), judiciary (delayed justice, regular misuse judgements nearly revising the punishment prescribed), lawyers (incorrect advice) and this incapacitates the law (Namboothiri 2022). Additionally, the unending waiting, dragged trials and low conviction rates inhibits women from approaching courts.

**Society:** The Indian patriarchal society demands married Indian women to hide their injuries and suffer silently in their domestic households. It's a complex situation for the victim's (bride's) family requiring them to prove in court – dowry and coercion in a societal set up where dowry is given in the garb of gifts and coercion takes place of custom. (Ghosh, 2013) It is observed that dowry practice is prevalent in India, despite the social background of the parties. Given such widespread commonality, the bride's family has no option left than to give in to this practice (Ghosh, 2013). Hence, there's a need for collective social change by the community towards this social evil.

**Police:** Police plays a major role in this fight against dowry, as court takes cognizance and action only on the basis of police report filed under Section 498A describing the facts of the offence committed (Pandit T, 2018). Herein, police is seen to act as a social broker rather than facilitator of justice as it is subject to corruption from influential powers (political or economic) (Ghosh, 2013). It grapples with corruption which causes victims (married women) to fight for

their rights, maintenance and even safety (Ghosh, 2013).

**National Crime Records Bureau (NCRB):** The underusage, less reporting of matrimonial cruelty incidences and its subsequent dealing so highlighted in numbers in the National Crime Records Bureau's (NCRB) 2021 report on Crime in India - reflects on the society's, police's, lawyer's, and court's incapacity in protecting women's rights. According to the said report, in 2021, 1,36,234 matrimonial cruelty incidents were brought before the police under this section, out of which 21,010 were disposed for reasons like false final report, mistake of fact/law, being a civil dispute and insufficiency of evidence/ non-traceability among others. Out of the cases brought before courts, 11,263 cases were disposed without conducting trial for reasons like quashing, settlements, withdrawals. The acquittals were 19,851 while conviction was merely 4,315 and the conviction rate was 17.2%. These high arrests and low conviction rates are often interpreted by men's rights activists to - indicate misutilisation of this provision at the hands of disgruntled wives; influence institutions like courts and law committees into taking cognizance of its increased misuse (Doddahatti, 2017). But low conviction is also seen to be due to settlements, case withdrawals, and unsuccessful investigations (Law Commission of India, 2012). It is thus observed that NCRB Crime data reports (as cited above) are subject to constraints as they draw information from police's database, which needs a robust approach (Dandona R. et al., 2022). A Bangalore based study by Vimochana, women's rights organisation highlighted the exploitation of NCRB data by men's rights activists, as though the provision is non-bailable, yet beyond 70% of the accused were granted anticipatory bail conveniently, while mere 24% were arrested (Doddahatti, 2017).

**Indian Courts:** The trend of misuse of Section 498A, IPC and need for legislative introspection was emphasised by Supreme Court in *Sushil Kumar Sharma v. Union of India* wherein the constitutionality of this section was questioned. Despite holding the section to be constitutional and valid, it highlighted the adverse effects of abuse of this section on the lives of the accused (husband and his relatives) and the possibility of potential legal terrorism and increased corrupt practices. To restrict unnecessary and casual arrests under this section, additional checklist was brought for Police and guidelines for Magistrates by the Supreme Court (*Arnesh Kumar v. State of Bihar*, 2014). For cases other than involving tangible physical injuries or death under this provision, Supreme Court gave directions regarding – quashing of proceedings under law if settlement has been reached, consideration of bail application, impounding of passports of Indians ordinarily residing out of India but were accused under cases within India, formulation of Family Welfare Committees consisting of legal volunteers, social workers among others who shall prepare a report based on which arrests were to be made (*Rajesh Sharma v. State of U.P.*,

2017). This was opposed by many, including Indira Jaising when she opined police power being granted to Family Welfare committees in terms of determination of infliction of offence against women has thwarted the intent of law (“Indira Jaising: ‘When a women”, 2017). Finally, the Supreme Court reconsidered its above-mentioned judgement, and Family Welfare Committees were held to be beyond the scope of law. Regarding non-bailable nature of this section, it was highlighted that the legislature’s intent at time of formulation was bonafide, however it’s the investigative agency which abuses the law and is at fault. In fact, the guidelines previously laid down by the courts were sufficient to curb such non-application of mind by these agencies (Social Action Forum for Manav Adhikar v. Union of India And Ors., 2018).

**Law Committees:** Various committees on reviewing the law have given their suggestions. Malimath Committee’s report discusses on how non-bailable, and non-compoundable nature of the section makes reunion and return to stay together difficult. Its stringent and rigid nature closes the doors for returning to a normal cohabitation forever. Furthermore, the indifference shown by Police at time of arrest of husband and his relatives adds fuel to this fire and thereby causes bitterness. Hence, observing the issue from a holistic familial point of view, it suggested to make the provision bailable and compoundable (Committee on Reforms of Criminal Justice System, 2003). In its 243<sup>rd</sup> report, the Law Commission taking note that misuse doesn’t originate from the section rather its implementation by indifferent police & callous lawyers, observed three major problems hindering functioning of provision: (1) police’s non-application of mind in arrest (police action), (2) police’s insensitive approach to women’s concerns (police inaction), and (3) wives attempting to seek revenge by complaining against husband’s relatives on being influenced by her emotions or incorrect guidance. In its view, the section should become compoundable on Court’s permission, remain non-bailable. It also stated that police must have a reasonable belief supported by complaint, information or suspicion to arrest and shouldn’t be negligent as it acts as the origin of misuse and becomes counter-productive. It further noted that possibility of abuse of the section shouldn’t be allowed to negate the objective behind the section. Emphasizing on the other side of the coin i.e. under-use, the Commission observed the existence of lack of factual evidence as to the degree of misuse. Urban women are raising voices to the cruelty, but rural women who are the most vulnerable out of all, rarely come forward (Law Commission of India, 2012).

**Married Indian women:** Though, encouraging environment is being created for urban women to come forward, in male dominated set ups of rural India, women’s unawareness to their rights, low self-esteem, economic dependence on husband, and normalisation of daily emotional and physical cruelty has rendered it acceptable. Additionally, in case of disputes, rural women prefer

reaching out to conventional customary institutions which though cheaper and easier to access (financially, geographically) than legal courts, tend to have a patriarchal attitude in their judgements. These incidences go unreported as well and our system struggles with absence of empirical data to corroborate these concerns (Sharma P., 2022).

#### **IV. INCESSANT LEGAL BATTLE**

On the other hand, husbands when claim misuse of law by their wives file defamation cases in accordance with Section 500 of the IPC, and Section 182 of the IPC and seek remedy from court. Section 500, IPC provides punishment for defamation to be imprisonment extending upto two years or fine or both (Indian Penal Code, 1850). Section 182, IPC mentions punishment for giving false information to a public servant (Indian Penal Code, 1850).

##### **Other side of the coin: Misuse of the law**

**Society:** Husband and his family on being accused in such offences, at times become prey to social stigma, unemployment, and even police harassment. Society's judgement makes it difficult for the couple to cohabit peacefully even if they wish to reconcile.

**Police:** The non-bailable nature of this offence allows police to make arrests without warrant. At instances, this is seen to be misused by women who intend to extort monetary gains from the accused through legal route. In such cases, FIRs are filed by women which tend to rope in husband and his family who then face social stigma, mental harassment at the hands of society. Thus, it is essential to critically analyse complaints before making arrests.

**Indian courts:** The apex court in *Sushil Kumar Sharma v. Union of India*, 2005 highlighted that many complaints brought under this section are filed with malafide intent to fulfil personal vendettas, cause harassment which holds the potential of resulting in "Legal terrorism".

In *Kahkashan Kausar alias Sonam versus The State of Bihar* 2022, the Supreme Court analysing the issue of misuse of Section 498A, IPC emphasised on the need to check if a prima facie case is made out against husband's relatives and in-laws. Only in such circumstances, the courts are to entertain cases against the relatives and in-laws as there is an enhanced inclination of false implication.

#### **V. WAY FORWARD**

- Enhancing the information quality collected at grassroots: Information drawn by police which is then relied upon by NCRB, that further acts as the primary data source for Law Committees to act upon. (Dandona R. et al., 2022)



- Insight from World Health Organization's (WHO) injury surveillance guidelines and adapting them to Indian scenario: Need to analyse the policy and social context of these issues whilst simultaneously drawing insights from international guidelines on data collection regarding domestic violence. (Dandona R. et al., 2022)
- Capacity building at grassroots of implementation system: Training sessions for police to sensitise about gender centric violence and need for improvisation in data collection. (Dandona R. et al., 2022) Further, efficiency in analysing facts and filing of complaints in genuine cases is the need of the hour.
- Sensitizing need for collective action: Need to appreciate significance of collective action and support from families, society and thereby giving way to environment supportive of improved policies for women's socio-economic upliftment in society.
- Bringing awareness to sensitiveness of these matters: Police being a major stakeholder in upholding of justice, needs to be sensitized to gravity of its actions and consequent repercussions. Callousness of police may result in destroying mental peace in households and lives of many women.
- There is a need for fresh perspective to be brought in application of social welfare laws in modern India's context.
- Improved literature and awareness about these social welfare laws and their reality is needed for Courts and Law Committees to act upon.

## VI. CONCLUSION

Quoting Indira Jaising here, "*Judiciary can't go by numbers alone. Has to treat every individual case as per its merit. Misuse of law is a sweeping generalisation, which then becomes a benchmark and is quoted in next judgement. If judges want to establish that women misuse law, should call for data from experts. Should have analysed at least a thousand cases of violence and then come to a rational conclusion.*" ("Indira Jaising: 'When a women'", 2017). Mere enactment of stringent social welfare laws for protection of women's human rights is insufficient. Rather, focus needs to be brought to investigating agencies and their functioning, making the law more accessible, providing an enabling and supportive ecosystem for underrepresented and ignored vulnerable sect of the society i.e., married women, especially in rural India.

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