

NEED TO CHANGE THE DRACONIAN LAWS AGAINST MEN IN INDIA

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Abstract

India is a male dominating society irrespective of religious norms. Therefore Indian women were subjected ill-treatments, and tortures by the male. Therefore it was felt to educate women, and make them independent. Introduction of various laws, enactments, amendments were provided and women were encouraged to use laws as a weapon for protection, education and self-development of women. Unfortunately this weapon is being used like a dragon against men. Now the helpless husband or a colleague is crushed under the false complaints to satisfy an ego of a woman according to which 'she is victim of the conspiracy'. Within a few months of marriage women's start creating issues, and demanding huge compensations for divorce. Men do not report abuses against them by their wives or of any female relatives as they will be ashamed of, thus they suffer silently the miserable situation though they are victims of violence. Through this article the author is trying to focus on the misuse of gender-specific statutory provisions in India. The findings are disturbing if one study the cases decided by the Hon'ble Supreme Court and High Courts of various States. Thus one has to recommend scrapping off the laws making men miserable. We have to do away with the draconian laws. Are we going to stop this dragon or let it kill millions of the innocent men?

Keywords-Feminist laws, Misuse of gender, Frivolous cases, Legal Terrorism, Cruelty

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Introduction

Men and women are two basic constituents of our human society. India has been a male dominated country for decades but women's rights and protection were the need of the hour, therefore number of legislation were enacted in India the result is women are enjoying the topmost supremacy and they have won over intelligence and mental capacity and handling responsibilities without fear. Still in this developed era violence against women is a serious issue but at the same time it should be underlined that these laws for protection are also misused by the women. Section 498-A of the Indian Penal Code aims to protect a married woman from the mental and physical abuse from her husband and in-laws, but today in general 98% of cases are false and same section is used to defame her husband, parents, siblings.

It is well known that the marriages are fixed in heaven and performs on the earth with consents but actually women select a boy who is from (a) good family (who is) earning well, move to marry him, make life hell for a couple of years (some time months), ensure no child is born, walk out, and shoot multiple cases under women centric law for cruelty, divorce and maintenance. Some greedy and vengeful woman's grossly misusing anti-men law. In this process how do we stop marriage from becoming a money making extortion racket and protect women who are real victims.

A man is always thought to be the offender. But, due to the recent social and economic changes affecting the societal structure, violence is no longer confined to women. Even men are verbally, physically, emotionally, psychologically, and sexually assaulted. Men do not report these abusive behaviors and thus suffer in silence as victims of violence, because our laws favor women. These helpless men do not seek redress or get justice for their miserable situation in family and society.

This article is prepared to focus the misuse of gender-specific statutory provisions in India. It attempts to explore the extent of this problem and finally states why it is extremely important to have gender-neutral legislation. The objective of this article is to change women-centric legislations in India.

Women-centric legislation in India- Indian law assumes that a woman is a weak and she needs protection. But the present age is the age of gender equality. Today women have occupied the high positions due to their intelligent and performances but whether they are really safe at home, in public, or at workplace? Due to the increasing ratio of crimes against women, specifically certain laws have been enacted in India to protect women's. There are a few legislations for the protection of women's rights in India i.e. Indian Penal Code, 1860, Constitution of India 1950, Hindu Marriage Act, 1955, The Hindu Adoption and Maintenance Act, 1956, Immoral Traffic (Prevention) Act, 1956, The Dowry Prohibition Act, 1961, Criminal Procedure Code, 1973, The Indecent Representation of Women (Prohibition) Act, 1986, Protection of Women from Domestic Violence Act, 2005, The Sexual Harassment of Women in the Workplace (Prevention, Prohibition and Redressal) Act, 2013, these laws were made with very noble intentions, but a law that was made to save lives, has taken many lives.

Some sections of the Indian Penal Code, 1860 are important which deal with dowry deaths², cruelty³, rape⁴, Assault or criminal force to woman with intent to outrage her modesty⁵,

² 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. Explanation.—For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

abduction⁶, etc., and some provision Code of Criminal Procedure, 1973 includes maintenance of wife⁷, the arrest of a woman⁸ by female police personnel only, medical examination of rape victims by registered medical practitioner/female doctor⁹.

Cruelty a weapon for married women- The women centric laws as aforementioned are indispensable to protect the interests of women; frequently these laws have been misused by women for their own benefits, the result is an innocent man might get punished. In many cases Hon'ble Supreme Court and different High Courts declared that women have misused the laws

(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.

³ Sec.498-A.(IPC,1860) 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 punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

⁴ Section 375 of the Indian Penal Code defines rape as "sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation or fraud or at a time when she has been intoxicated or duped, or is of unsound mental health and in any case if she is under 18 years of age."

⁵ Sec. 354 A-D, Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, but section was enforced to protect women from any kind of sexual harassment, assault or use of criminal force to woman with intent to disrobe, voyeurism and stalking, this law is being persecuted by some women skillfully.

⁶ Sec.362. Abduction-Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

⁷ Section 125 of the Cr. P C, 1973 provides for giving maintenance to the neglected wife, child etc. The object is to prevent starvation and vagrancy by compelling the person to perform the obligation which he owes in respect of his wife, child, father or mother who is unable to support themselves.

⁸ Section 46 (4) of Code of Criminal Procedure, 1973 a woman shall not be arrested after sunset and before sunrise. However this rule is subject to exceptions, as that provision starts with the phrase "save in exceptional circumstances", every law is enacted with a legislative intent. Likewise the reason behind enacting this law is to safeguard the modesty of women and to protect them from alleged unnecessary harassments by the police. Even if a woman has to be arrested under exceptional circumstances, such arrest shall be made by woman Police Officer and prior to such arrest permission needs to be obtained from local Judicial Magistrate First Class.

⁹ Section 164A

specifically made for them to satisfy their ego and their needs. Sec. 498-A¹⁰ was introduced in 1983 to safeguard the rights and empowerment of women. Whereas by different verdict it is proved that how the greedy/egoistic women's are taking benefit and violating the women centric laws. In *Manju Ram Kalita v. State of Assam*¹¹ the wife alleged that her marital relationship was not cordial as her husband used to torture her mentally and physically. She left her matrimonial home and started residing with her father but later got to know that her husband has remarried a lady. The husband was charged under Section 498A of IPC, 1860. The court relying on several precedents observed that the meaning of "Cruelty" differs in each statutory provision and hence must be established in the context of Section 498A of IPC. The petty arguments would not come under the purview of "cruelty" there must be cleared and specific allegations against the accused persons to come within the ambit Sec. 498-A¹².

Acceleration of Frivolous cases- Marriage is sacrament in Hindu and contract in Muslim. Now a day, women start arguments and walk out, shoot multiple cases under Domestic violence Act, Indian Penal Code, Criminal Procedure Code for maintenance and demanding huge compensations for divorce. On such situation for many years, there is a heated debate on 498-A of IPC. In *Arnesh Kumar v State of Bihar*¹³ The wife alleged that her in-laws demanded 8 lakh Rupees, a Maruti car, an air-conditioner etc. from her family. It was also alleged that she was driven out of the matrimonial home. In this case the law is being abused to an extreme extent and the husband and his family is arrested on the false complaint of their wife, without any investigation, or without evidence. Only it is misused to avenge any other dispute because of the momentary anger, such cases were settled, but the lives of many were ruined forever.

¹⁰ Supra note 2

¹¹ (2009) 13 SCC 330

¹² Indian Penal Code, 1860

¹³ (2014) 8 SCC 273, see also

Justice K. G. Balakrishnan (the then CJI), stated that Section 498-A is “grossly misused” and the innocent relatives are unfairly implicated¹⁴ it is cruel and wicked design to blackmail husbands and in-laws. In *Savitri Devi v Ramesh Chand & Ors*¹⁵ Hon’ble Delhi High Court held women’s are filing a case against 10-15 people at once, when the cruelty or an offence was committed by only the husband or the in-laws or both, Hon’ble Court directed that the case should be filed against those people alone and not the whole family of the accused, “*The abuse of 498-A is undermining the very fabric of marriage, and the law is unsuitable for social health*”. In *Sushil Kumar Sharma v. Union of India and others*¹⁶ Hon’ble Supreme Court held “The purpose of 498-A is to stop dowry, but many types have been uncovered, in which complaints have been made with this evil mind to terrorize their husbands and his families. The court stated that, “*By the misuse of the provision, a new legal terrorism is unleashed. The provision is intended to be used as a shield and not an assassin’s weapon.*” In *Rajesh Sharma and Others v. State of Bihar*¹⁷, the court gave a few directions to avoid the misuse of Section 498-A of IPC. In another case it is clearly appears to be as a pressure tactic to harass the husband from filing and pursuing divorce against the respondent¹⁸.

Such false cases under section 498-A, 304-B, 306 and 34 of IPC, 1860 are filed to cover up the mistakes made by the married woman to take advantage of divorce by mutual consent; large amount of alimony, but due to this frivolous/fabricated cases men are losing faith in the judiciary and the institution of marriage. Now a day certain cases came to the notice of the court

¹⁴ on January 31, 2009 addressing India's National Commission for Women.

¹⁵ 2003 Cri. L.J. 2759, 104 (2003) DLT 824, II (2003) DMC 328, 2003 (69) DRJ 6

¹⁶ Writ Petition (civil) 141 of 2005 order on 19 July, 2005,(JT 2005(6) 266) see also Kanaraj vs. State of Punjab (2000 CriLJ 2993), Saritha v R. Ramachandran (I (2003) DMC 37 [DB]), Jasbir Kaur vs. State of Haryana ([1990]2 Rec Cri R 243)

¹⁷ (Cri.) No. 2013 of 2017

¹⁸ *Major Singh & Anothers v. Sarabjit Kaur* CRM-M-34824-2015, Punjab High Court on 6 September, 2018

and awarding punishment U/Sec. 191, Sec. 193, 340 of IPC, 1860, the result is number of verdicts increased and only the number of false cases against men's are decrease.

Sec. 493 & 495 IPC- Draconian Laws against Men-

Indian laws always protect the chastity of women, when a married man hides the fact that he is married and has an immoral relationship with a woman, that woman cannot file rape case against him, but such a person can be punished when same women files a suit for dishonestly cohabiting with her.

On the contrary in *Sahab Singh v. State Of Rajasthan And Ors*¹⁹ Hon'ble Rajasthan High Court has ruled- "*It is improper to pass an order to hand over an unwilling married woman to her husband with whom she does not want to stay, if a wife wants to leave her husband and go to a lover there is nothing wrong, a wife if she wants to live with a foreign man*". Court also directed to the petitioner to approach the Family Court for decree of divorce as his wife has left him and is living with another. Adultery²⁰, though not a criminal offence today, is a civil one; a divorce petition can be filed in court on the grounds of adultery, instead of punishment to such women. But the procedure is when the husband wants a divorce from his adulterous wife; the law does not allow him to get it easily. Because family laws are on the side of women, most of the time, bad women use the existing laws to extort money from her husbands. Such feminist Indian law is in fact the root cause of crimes. These laws give the freedom for women/wife to make any accusations against her husband without any evidence and by abuse them. So the straightforward man is in order to be disappointed because of these cases some husband committed suicide also.

¹⁹ 2007 RLW 2008 (1) Raj 567 on 13 February, 2007

²⁰ In *Joseph Shine v. Union of India*, on 27 September, 2018 The Supreme Court pronounced struck down Section 497 of the Indian Penal Code, as unconstitutional.

Trend to register false case of molestation or outraged the modesty- Now a day it is came to know that some women's file frivolous complaints under Sections 354, 354A, 354B, 354C, 354D IPC, 1860 etc. only for an ulterior purpose. The Delhi High Court has recently imposed fine on petitioner on February 23, 2021 in a landmark decision *Laishram Premila Devi & Ors. v. The State & Ors*²¹ The complaint was registered under Sections 323, 341, 354, 354-A 506, 509 and 34 IPC, the neighbor outraged her modesty and also committed act of sexual harassment. Later on relatives and family members settled same dispute; but court imposed a cost of Rs. 30,000 on the petitioners with a warning not to file false and frivolous cases. In another case at Amity, Noida, where two girls not only asked a gang of 25-30 goons to beat up the victims brutally over a lame parking argument but filed a false molestation case on them, whereas one of the victim has been declared dead²².

On July 30, 2021 *Priyadarshini Narayan Yadav*, accused of slapping a cab driver more than 20 times at Lucknow, Uttar Pradesh. She allegedly also broke his phone during the incident and hit bystanders nearby who tried to intervene, furthermore; she also misbehaved with a person standing nearby.

Knockback on Ulterior motive of complainant under POSH Act, 2013- The Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment, and right to practice any profession or a safe environment free from sexual harassment²³. The law is clear about the difference between an accusation that is

²¹ CrI. M.C. 533/2021 and CrI. M.C. 534/2021 on 23.02.2021

²² Riya Mishra , September 05, 2019,

<https://timesofindia.indiatimes.com/readersblog/riyable/the-gender-advantage-women-who-misuse-it-men-who-bears-it-5475/>

²³ includes the use of language with sexual overtones, invasion of private space with a male colleague hovering too close for comfort, subtle touches, and innuendos

not proved and a complaint that is false or maliciously filed, such complainant is liable to severe punishment.

In *Anita Suresh v. Union of India & Others*²⁴, The Hon'ble High Court of Delhi ruled that the complaint appeared to be false and seemed to have been filed with “*some ulterior motive.*” The court examined the petitioner’s past service record and noted that she had been subject to disciplinary action on work-related issues on two occasions, by significant attention to it. The court dismissed the complaint and has passed an order directing the petitioner/complainant to pay a fine of INR 50,000 for filing a false complaint and misusing the provisions of the POSH Act, 2013.

In *Rashi v The Union of India*²⁵ Hon’ble High Court of Delhi in this case observed “*on several occasions in the past, the Petitioner was orally instructed to come to the office on time but she is irregular and no punctual in the office*” This petition is the misuse of the gross process of law only with mala fide intentions to secure her job and frivolous allegations against Chairperson.

No provision in Domestic Violence Act 2005 for husband to proceed against the wife- the legislation came in existence and ratio of false cases is increased, the Act is directed towards providing relief to the aggrieved party; where the woman who faces violence at home, but on the contrary numbers of cases which prove that there is a misuse of same Act. In *Dr. P. Shashikumar v. The Director, Animal Husbandry and Veterinary Services, Chennai others*²⁶ a false case is filed by wife only to harass the Petitioner, on such false complaint, Respondent No.1 has suspended the petitioner from service. Hon’ble Madras High Court has observed that

²⁴ P (C) 5114/2015, on 9 July, 2019

²⁵ W.P. (C) 10544/2018 & CM APPL. 41135-41136/2018 on 17 July, 2019.

²⁶ W.P.No.1613 of 2021 on 31.03.2021

“Protection of Women from Domestic Violence Act, 2005 suffers from inherent flaws which tempt women to misuse their provisions and men to dread being prosecuted under the law without any rhyme or reason”. The court also said that a similar trend of misuse was observed in the case of Section 498-A of the Indian Penal Code.

In *Anoop and others v. Vani Shree*²⁷, it was observed that law with regard to Protection of Women from Domestic Violence Act is being used to terrorise the husbands, their families and distant relatives and this phenomenon has now acquired the name of 'Legal Terrorism'

Hon'ble Justice S. Vaidhyanathan observed in his order, *"The present generation must understand that marriage is not a contract, but a sacramental one. Husbands and wife must realize that, 'ego' and 'intolerance' are like footwear and should be left out of their house when they enter the home, else, the child/children will have to face a miserable life*²⁸."

Hindu Marriage Act, 1955- The Hindu Marriage Act 1955 not aware of the changing social situation, the law still considers the young wife frail, and favors her although her side is lame. This law further encourages stubborn wives to inflict unbearable mental anguish on their husbands. Sec. 24 of same Act is always misuse by wife when Maintenance Pendente lite and expenses of proceedings is not deposited by husband due to poverty and inability. Many times non bailable warrant also issued against husband. This atrocities, terrorists and barbaric ruling should be stopped.

Custody of the Children's- The custody of the children always goes to the wife. If she refuses, goes to her husband. After the divorce, the children should be handed over to the mother,

²⁷ 2015(2) RCR(Civil) 1035

²⁸ *Dr. P. Shashikumar v. The Director, Animal Husbandry and Veterinary Services, Chennai* others, Supra 21

as the mother is better suited than the father in caring for the children. The question is whether father is reckless towards his child as much as a mother does? In *Kamla Devi v. State of H.P.*²⁹ court observed that Child's welfare is supreme consideration, irrespective of right and wrong. Some women's have strongly violated the court's norms based on traditional beliefs. *Indrani Mukherjee* from Mumbai, who killed her own 23-year-old daughter for fear of exposing her false face, and *Rakhi Balpande* from Pune who locked her 13-year-old son in the house for several days and starved him to death. Chetan Balpande (son of Rakhi Balpande) was telling his father, "Dad, I want to be with you," while *Sheena Bora* wrote in a letter to her father, "*My life is full of despair. I want to meet you to clear my mind.*" These cruel women have brought to the fore the insensitive and grim face of the changing social mindset.

Conclusion- Indian culture is full of respect; women have the place of goddess, our laws and society are prime examples of this. Feminist Indian law is in fact are the root causes of crimes, certain laws, which are in existence for easy access to women, lend itself to easy to "teach a lesson" to the male members and file frivolous and false cases. Women, especially upper-middle-class or middle-class women, appear to be using this clause only as a threat against men. It is sometimes seen that a woman is abused by threatening to file a police case and sometime filing inaccurate claims of domestic violence also. Taking advantage of 'gender' some women misuse it against men tolerates it. There are a number of things that can hinder marital life, making it difficult to sustain the world. The only way to stop these false cases is to work towards rigorous prosecution of all false cases and false pieces of evidence, including the wrong

²⁹ AIR 1987 HP 34

investigation by police. Whereas *Laishram Premila Devi & Ors. vs The State & Ors*³⁰ the case is compromised, but police spend time in investigating frivolous case.

Recently Chief Justice of India Mr. N.V. Ramana (on 25 Sept. 2021 at Odisha State Legal Service Authority in Cuttack) in his speech said that, “Legislature to revisit laws and reform them to suit the needs of the times and our laws must match with our practical realities”.

Suggestions-

1. Provide helpline for the male victims of violence; education, awareness, and legal safeguards.
2. In PWDVA, 2005 wife is unnecessarily harassing the husband and in-laws, but unfortunately there is no provision in legislation for husband to proceed against the wife, amendment in same act is necessary for protection of husband.
3. There must be a specific provision to punish women who file complaints for extraneous reasons. In false case and false evidence there must be strict implementation of the existing provisions, viz. Sec.182, 211 of IPC and Sec.250 of Cr. P. C can take care of malicious accusations etc., apart from Section 358 Cr. P.C. 1973
4. Men have started sharing their agony, torture, and harassment by women/spouses. Now it is need of time to help the male victims of violence; and legal awareness by legal literacy camp through NGO or Para legal volunteers.
5. Court, lawyers and academician to advise citizen soundly, and prevent gross injustice.
6. The government should actually repeal gender-based laws and punish gross violator of feminist law.

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