

A CRITICAL STUDY ON LAW RELATING TO CRUELTY TO WOMEN

ABHISHEK CHAUHAN* and DR. VIVEK KUMAR**

ABSTRACT

India is a country which has a very rich heritage full of diversity and women has been an important and sacred pillar in this pious place. In Ancient time every woman was worshipped and considered as epitome of a goddess. But due to the deteriorating wisdom and values of the people the status of women in the society degraded gradually. In India Women has been subjected to a lot of crimes and have suffered a lot.

The Criminal Justice System of India has evolved gradually with time and been subject to several changes and amendments in the enactments in order to safeguard them from becoming victims to crimes. Earlier there were no proper laws to protect the interest and dignity of women but now there are several legislations that protect the interest and dignity of women in different places and circumstances. The better execution of laws has thus improved the approach for the women to get justice for the crimes done against them.

For instance, the inclusion of Section 498A and other provisions related to cruelty in Indian Penal Code has provided the adequate resort to the women and resulted in decrease in the no. of crimes against women. But in current scenario there are plethora of instances which depict the misuse of laws and enactment as the people are falsely implicated, charged with false and malicious accusations, wrongful convictions specially in cases of crimes against women like domestic violence, dowry, cruelty, sexual offences, workplace abuse, etc.

In many cases the police officers and politicians are responsible for the false accusations, fake cases and wrongful convictions of innocent people and their families in order to fulfil their own greed or for other filthy motives like corruption. The guilty person is released and instead of him an innocent person is charged with false accusations.

The Criminal Justice System of India works on a famous principle that “Hundreds of Guilty may be acquitted but a single innocent person shall not be punished.” But sometimes the court fails to render justice due to the inclined legislations towards the women and practical aspects of criminal justice system of India. Hence there is a need to amend the provisions and suggest measures for proper administration of justice so that the misuse of cruelty laws and other such laws by women can be prevented thus safeguarding the

* Student, B.A.LL.B. (Hons), Law college Dehradun, Uttarakhand University, Dehradun.

** Assistant Professor, Law college Dehradun, Uttarakhand University, Dehradun.

interest of innocent males, husbands and their families by protecting them from false accusations and wrongful convictions in cases of cruelty and other crimes against women.

KEY WORDS: Cruelty, inclined legislations, false accusations, wrongful convictions, misuse

INTRODUCTION

“I am the banner and the head, a mighty arbitress am I: I am victorious, and my Lord shall be submissive to my will.” -Rig Veda (Book 10)

India has an incredible history and heritage to claim about. A major part of this has been expanded upon the position of the women; though, the status has often been oscillating. Initially women of Vedic era were cherished with love and affection but the countless invasions destroyed the culture. In India family has always been prime priority and marriage being a pious social institution since ancient period. It was regarded as the sacrament between body and soul of two people (husband and wife). There was a considerable degradation in the socio-cultural and legal status of women. In the modern era few attempts to limit the cruel attitude were made, but the initiative was not welcomed. Though, 72 years after the independence scenarios altogether different. Sexual Discrimination has become disgraceful and punishable. The reforms have been possible only because of the legal initiatives. Various legislations and laws passed in the recent years have been influential in firming the position of women in society. Not only provisions favourable to women were incorporated in the Constitution when it was framed but various legislations like Dowry Prohibition Act, 1961, The Muslim Women (Protection of Rights on Divorce) Act, 1986, The Equal Remuneration Act, 1986, The Commission of Sati (Prevention) Act, 1987, Protection of the Women from Domestic Violence Act, 2005 have been introduced from time to time as required. Distinct sections have been included in the Indian Penal Code, which deal with the offences committed against women. Though, such attempts have often been condemned and complained as being gender biased and violative to the right to equality; but, the truth is that even such specious arguments cannot justify why daily newspapers are highlighted with articles on crimes committed against women, or why every another day dignity and integrity of a woman is sacrificed to meet a limitless demand of the patriarchal society. Had the laws already implemented been executed in their letter and spirit, India would have been a different place to live in. Thus, it is much evident that the need of the hour is the stricter execution not the abolition of gender biased laws.

In the last 20 years of criminal law reform a common argument made against laws relating to violence against women in India has been that women misuse these laws. The police, civil society, politicians and even judges of the High Courts and Supreme Court have offered these arguments of the ‘misuse’ of laws

vehemently¹. The allegation of misuse is made particularly against Sec 498A of the IPC and against the offence of dowry death in Sec 304B. One such view was expressed by former Justice K T Thomas in his article titled 'Women and the Law', which appeared in The Hindu²¹ The 2003 Mali math Committee report on reforms in the criminal justice system also notes, significantly, that there is a "general complaint" that Sec 498A of the IPC is subject to gross misuse; it uses this as justification to suggest an amendment to the provision, but provides no data to indicate how frequently the section is being misused. It is important therefore that such "arguments" are responded to, so as to put forth a clearer picture of the present factual status of the effect of several criminal laws enacted to protect women.

STATUS OF WOMEN POST INDEPENDENCE

"Some women are indeed better (than men). Bring her up, O Lord of men. There are women who are wise, virtuous, who have high regard for mother-in-law, and who are chaste. To such noble wife may be born a valiant son, a Lord of Realms, who will rule a kingdom²." In India, during the ancient time women had been given the status of a goddess and were worshipped in a very sacred manner but with passage of time and deteriorating values of people the status of women in society has faced immense downfall.

With the passage of time the traditional concepts have significantly changed. Even Hindu marriage is now considered to be of dual nature i.e. of both religious sacrament and contract, where mutual consent and benefit of both the parties are duly aided by different legal provisions. There are various changes made in the laws with an attempts to bring about changes in the status of women but all this can achieve little success without a simultaneous movement to stop the misuse of the laws by the women's.

It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including Supreme Court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.³ The main reason for unrest in the family life is issues related to demand for dowry and domestic violence they are the biggest social evils facing our society, and no civilized society should tolerate this and every effort should be made to eradicate this evil, people giving and demanding dowry and doing domestic violence 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 create disaster on husband and family and misuse of these laws endanger the institution of marriage. It feels restricted to comment upon the misuse of the provisions to such an extent that it is hitting at the foundation of marriage 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

¹ [http://www.legalserviceindia.com/article/I79-498-\(A\)-A-Critical-Analysis.html](http://www.legalserviceindia.com/article/I79-498-(A)-A-Critical-Analysis.html)

² <http://www.drplegal.in/2016/11/status-of-women-in-ancient-and-medieval.html>

³ Preeti Gupta vs. State of Jharkhand and Another criminal appeal no. 1512 of 2010.

misuse of the section 498-A of IPC. Legislatures and social scientists worldwide have started taking serious note of it and therefore, various legislations and acts are being formulated to counter charges of cruelty and domestic violence⁴.

CONCEPT OF CRUELTY IN INDIA AND LAWS RELATING TO CRUELTY

Cruelty is one of the grounds for a divorce petition under Hindu Marriage Act, 1955 and various other matrimonial laws of India. The Supreme Court of India through various decisions has explained the concept of cruelty. Cruelty is a common essential in offences under both the sections 304B and 498A of IPC⁵, that. The two sections are not mutually inclusive but both are distinct offences and persons acquitted under section 304B for the offence of dowry death can be convicted for an offence under sec.498A of IPC. The meaning of cruelty is given in explanation to section 498A. Section 304B does not contain its meaning but the meaning of cruelty or harassment as given in section 498-A applies in section 304-B as well. Under section 498-A of IPC cruelty by itself amounts to an offence whereas under section 304-B the offence is of dowry death and the death must have occurred during the course of seven years of marriage. But no such period is mentioned in section 498-A.

In the case of 'Inder Raj Malik vs. Sunita Malik'⁶, it was held that the word 'cruelty' is defined in the explanation which inter alia says that harassment of a woman with a view to coerce her or any related persons to meet any unlawful demand for any property or any valuable security is cruelty. The presumption of cruelty within the meaning of section 113-A, Evidence Act, 1872 also arose making the husband guilty of abetment of suicide within the meaning of section 306 where the husband had illicit relationship with another woman and used to beat his wife making it a persistent cruelty within the meaning of Explanation (a) of section 498-A.⁷

498A. 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.

Explanation. -For the purpose of this section, "cruelty" means-

(a) any wilful 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 woman; or

⁴ Aruna Parmod Shah vs. Union of India (UOI) on 7 April, 2008

⁵ Kaliyaperumal vs. State of Tamil Nadu, AIR 2003 SC 3828.

⁶ 1986 RLR 220.

⁷ Section 113 A, Indian Evidence Act, 1872

(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.”⁸

The Constitutionality of Section 498A plays an important role in the today’s scenario as the laws itself provide the base of its misuse.

CONSTITUTIONALITY OF SECTION 498A IPC

In ‘Inder Raj Malik and others vs. Mrs. Sumita Malik ’,⁹ it was contended that this section is ultra vires Article 14 and Article 20 (2) of the Constitution. There is the Dowry Prohibition Act which also deals with similar types of cases; therefore, both statutes together create a situation commonly known as double jeopardy. But Delhi High Court negatives this contention and held that this section does not create situation for double jeopardy. Article 15 of the Constitution prohibits discrimination on grounds of religion, race, caste, sex or place of birth. However, it allows special provisions for women and children.

This section tries to maintain that every married woman needs to be given due respect and treated with care. It reinforces the fact that a woman is not a toy to be played with, to be thrown away at one’s whims and fancies and treated as inferior to any other. It inherently asks for husbands to treat their wives well and not misbehave or demand unjustly which in a way sends forth a message that a woman is commodity for sale. What section 498A IPC tries to do is prevent and punish the above act and re-assert a woman’s right to live a peaceful and happy life. Section 498-A is distinguishable from section 4 of the Dowry Prohibition Act because in the latter mere demand of dowry is punishable and existence of element of cruelty is not necessary, whereas section 498-A deals with aggravated form of the offence. It punishes such demands of property or valuable security from the wife or her relatives as are coupled with cruelty to her. Hence a person can be prosecuted in respect of both the offences punishable under section 4 of the Dowry Prohibition Act and this section.

This section gives wide discretion to the courts in the matters of interpretation of the words occurring in the laws and also in matters of awarding punishment. This provision is not ultra vires. It does not confer arbitrary powers on courts. In the leading case of ‘Wazir Chand vs. State of Haryana ’¹⁰, involving the death by burning of a newly married woman, the circumstances did not establish either murder or an abetted suicide and thus in-laws escaped the jaws of section 300 and 306, but they were caught in the web of this newly enacted section for prevention of harassment for dowry. Not to speak of the things they are

⁸ Section 498 –A, Indian Penal Code,1860

⁹ Supra Note 6

¹⁰ AIR 1989 SC 378

persistently demanding from the girl's side, the fact that a large number of articles were taken by her father after her death from her matrimonial abode showed that there was pressure being exerted on-in laws and continued to be exerted till death for more money and articles.

With the rise in modernisation, education, financial security and the new found independence the radical feminist has made 498A a weapon in her hands. Many a hapless husbands and in laws have become victims of their vengeful daughter-in-laws. Most cases where Sec 498A is invoked turn out to be false (as repeatedly accepted by High Courts and Supreme Court in India) as they are mere blackmail attempts by the wife (or her close relatives) when faced with a strained marriage. In most cases 498A complaint is followed by the demand of huge amount of money (extortion) to settle the case out of the court.

LEGISLATIONS TURNED INTO LEGAL TERRORISM – MISUSE OF LAWS

Due to rapid growth and development of the society and as a result of liberalization, post modernization and globalization, the stability of institution of marriage has weakened. The new concepts like live-in relationships, gay and lesbian marriages have eroded the traditional concept of marriage. At the same time matrimonial offences are rising high in our country. There are real victims of these offences. At the same time, there are persons who are falsely implicated in these cases. They are accused but they are 'innocent victims' of matrimonial offences. Because, they have to face trial for no guilt. Their only guilt is that they are relatives of husband. The cases of false implication in cruelty and dowry related matter has reached on the alarming level¹¹.

Commenting upon the situation in our country, Hon'ble Apex Court in *Sushil Kumar Sharma v. Union of India*¹² has observed that by misuse of the provision a New Legal Terrorism can be unleashed. This observation of Hon'ble Apex Court came in year 2005; now six more years have passed. The question is does a provision of law have become synonymous of a very negative thought like terrorism? It is an arguable question and needs a close examination of prevailing socio-legal position. Law is always to protect its subjects and to ensure justice, which is its end. But if the situation arrives when a 'piece of legislation' becomes a 'symbol of terror' for the subjects, it's horrible. Imagine the plight of unmarried girl, whose life and future prospects are ruined due to arrest and detention and frequent visits to courts, the sufferings of old aged persons, who went to jail, the pain of married sister, and other in-laws, falsely implicated, who never lived with the victim of 498 A and 304 B, of I.P.C. All these are terrorized in the hands of the law. The cases of false implications in cruelty and dowry related matter has reached to such level that almost every married male persons and his relatives are fearful of it every time. Thanks to the Protection of Women from

¹¹ Kiran Singh, "Protection of 'Innocent Victims' of Matrimonial "Cri. LJ, Vol:116, September, p.243, (2012)

¹² AIR 2005 SC 3100.

Domestic Violence Act, 2005, this has added one more lethal weapon in the armoury of unscrupulous litigants¹³.

The Hon'ble Apex Court observed in *Preeti Gupta v. State of Jharkhand*¹⁴ that “Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society”, clearly shows that these provisions are causing extreme fear in the society, therefore, synonymous with New-Legal Terrorism, perhaps has now been unleashed. Like terrorism it is the nationwide, rampant in every religion, in every social stratum. No age group is exempted of it.

SUGGESTIVE MEASURES

No arrest before final Judgment/Order in case of a complaint under 498A

Implement recommendations of Law Commission and “Mali math Committee” to make 498-A bailable.

Pass necessary orders to stop arbitrary arrest of elderly persons, children and pregnant sisters.

Punishment for those filing false cases under 498-A, 304-B, Dowry Prohibition Act and related laws.

Direct the Union Government to bring in amendments to make IPC 498-A “Gender Neutral” so that those husbands and in-laws who are harassed can also make complaint under this IPC section.

CONCLUSION

There are several researches and surveys which has been done in this subject matter but they lack in suggesting some effective solutions to protect the innocent people from being exploited and there is still a need to suggest some measures or provisions to safeguard the interest of innocent people who are dragged in fake or malicious cases which ruin their lives and affect their families too. Anyone who has been awake the last two decades knows how section 498-A of IPC has been heavily misused, dragging innocent men and women into police stations, lock-ups and courts, thus depriving many young children of a happy childhood, many youth of productive careers and many senior citizens of mental peace in the last leg of their lives. The main objective of section 498-A of I.P.C is to protect a woman who is being harassed by her husband or relatives of husband but after going through all the above cases I have come to the conclusion that section 498 -A of IPC is heavenly misused and there are clear instances when this law which is meant to protect the women is used like them as a weapon to harass their husbands and their family. And there is no doubt that there is great need to protect our society from the misuse of these laws and following are few steps that will help to stop the misuse of these laws. We still have a huge responsibility to appraise, the still ignorant large section of the society, of the misery it possesses. Gender biased laws have relevance and need to be upheld till the journey to an equalitarian society is successfully accomplished. “Yathra, Narayanthya Pujyathe Raman the Tatra Devatha”, has been the culture of our society and the girls have been worshipped and held in high esteem, so, the laws which establish the same, are germane and should be upheld.

¹³ Ibid

¹⁴ AIR 2010 SC 3363