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THE PITFALLS OF OVERREACH: THE ABUSE OF LEGAL PROTECTIONS MEANT FOR WOMEN*

AUTHORED BY - DR. RASHIMA PRABHAKAR & KAVISH MEHRA

“Law without justice is a wound without a cure”¹

William Scott Downey

Abstract

Gender inequality has been a major social problem of Indian society. Women has faced lot of harassment and torture due to discriminatory approach of society since ancient times. It is beyond any doubt that they have enjoyed a very respectful and dignified status in early ancient period. But their position in society deteriorated with the coming of Mauryans, Guptas, and the Muslim rule. During the British era, efforts were being made by many social reformers including Gandhiji to uplift the women community. Their efforts proved fruitful in changing the societal framework. Gradually, after independence, special legislations for the benefit of women were framed which are in existence till date. But in the contemporary period, it is seen that the women have started misusing these special laws for satisfaction of ego and fulfilment of undue needs. It is in a way creating the environment of harassment and torture for the husband and his relative against whom false litigation is instituted. An effort has been made through this paper to highlight the misuse of women-centric laws in India. Various women-centric provisions have been discussed. Moreover, the judicial attitude towards this misuse has been discussed. The paper has also suggested the measures to combat this menace.

Keywords: Women, Discrimination, Sati System, Child Marriage, Fundamental Rights, Fundamental Duties, Directive Principles of State Policy.

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¹ Retrieved from http://www.notable-quotes.com/l/law_quotes.html (last visited on January 21, 2022).

INTRODUCTION

It is beyond any doubt that women enjoyed a highly cherished status in ancient India. They were well respected and were given due freedom to achieve excellence both in academics as well as spiritual arena. But the discrimination against them with regard to their rights and entitlements started in later period of Rig Vedic Society. Their position in society faced further deterioration in Mauryan and Gupta reign. The practices like child marriage, sati, female infanticide, prostitution, devadasi system etc further ramshackle their much-revered status in Indian society. With the end of Vedic era, women were dispossessed of their social and religious liberties. Slowly and slowly, things changed to such an extent that birth of male child was considered as a blessing whereas birth of a female child was considered as misfortune.²

The medieval period, primarily Muslim rule, has witnessed drastic change in women position in society. Women were denied social, political and economic rights in society. Other practices like child marriage, polygamy, sati system, pardah system, female infanticide etc further added to woes of female gender in society. Undoubtedly, during the Vedic society, stridhan (Dowry) was regarded as a security for women but in the medieval period it acquired new interpretation. As a result, the menace of dowry was regarded as essential custom by Hindus and Muslims.³

During the era of east India company, the status of women was inferior to men in society and were treated as slaves. They were completely dependent upon men for all their needs. During British rule, comprehensive efforts were made by social reformers like Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, Jyotibai Phule etc for improving the sorry state of women status in society. They succeeded in introducing system of widow remarriage and abolishing sati system.⁴ These reforms improved the status of women in society. In early 20th century, the national movement under the leadership of mahatma Gandhi primarily focused on elimination of disparities and discrimination relating to women status in society. Gandhiji motivated the women, that constituted half of total population, to participate in freedom struggle at same footing with men. It is undoubted that women played significant role in country's freedom

² Dr Radhika Kapur, Status of Women in Ancient India. Retrieved from https://www.researchgate.net/publication/330220793_Status_of_Women_in_Ancient_India#:~:text=In%20ancient%20times%2C%20the%20women.of%20decisions%20and%20administrative%20functions (last visited on January 18, 2022).

³ P. Srivastava, Status of Women in India: Ancient, Medieval and Modern. Retrieved from <https://www.sociologydiscussion.com/status-of-women/status-of-women-in-india-ancient-medieval-and-modern-sociology/13526> (last visited on January 21, 2022).

⁴ Radhika Kapur, Status of women in Pre-independence India. Retrieved from https://www.researchgate.net/publication/330221015_Status_of_Women_in_Pre-Independence_India (last visited on January 19, 2022).

struggle.⁵

WOMEN-CENTRIC LEGISLATIONS

After the country became independent, efforts started for drafting of Indian Constitution – Grund norm. The whole process of drafting of Indian Constitution was completed in 2 years, 11 months and 18 days. Indian Constitution is one of the voluminous written documents of governance. The framers kept in mind the pitiable status of women and numerous special provisions are made in favour of women. The Indian Constitution talks of gender equality in preamble, fundamental rights and fundamental duties. Article 14, 15, 16, 19, 21, 39(a), 39 (d), 42, 46, 47, 51-A are some of the provisions relating to upliftment of women. Furthermore, State has been empowered to make special provisions in favour of women under Article 15(3). Keeping in mind the atrocities faced by the women since ancient times, different legislations addressing the women issues were framed in post-independent period. For instance, The Hindu Marriage Act, 1955, lays down the condition and formalities of valid Hindu marriage. It enlists grounds of divorce but four additional grounds are provided to women. Further, it has the provision of interim and final maintenance for women during and after divorce proceedings. The Hindu Adoption and Maintenance Act, 1956, gives the right of adoption and maintenance to women. The Dowry Prohibition Act was enacted in 1961 to combat the menace of dowry. It criminalises giving and taking of dowry. To regulate the employment of women in certain establishments for certain period before and after child delivery, The Maternity Benefit Act, was enacted in 1961. This Act was amended in 2017 wherein the paid maternity leave has been increased to 26 weeks from 12 weeks as provided earlier. To ensure that there is no discrimination in matters of remuneration among both male and female workers, The Equal Remuneration Act was enacted in 1976.⁶ In 1983, Section 498-A was added in Indian Penal Code, 1860, which provides protection to women against the cruelty and harassment committed by husband and his relatives on wife (woman). Further, in 1986, Section 304-B was added to Indian Penal Code, 1860, which primarily deals dowry death. It punishes the death of women within seven years of marriage for the want of dowry and in unnatural circumstances. To save the women from abuse of mental and physical cruelty and torture at the hands of violent husband and his relative in domestic arena, the Domestic Violence Act was enacted in 2005.

⁵ Retrieved from <https://www.yourarticlelibrary.com/women/status-of-women-during-british-period/47393> (last visited on January 20, 2022).

⁶ Retrieved from <https://www.legalserviceindia.com/legal/article-5790-women-centric-laws-in-india-beneficial-or-detrimental-.html> (last visited on January 18, 2022).

Further, in 2006 The Prohibition of Child Marriage Act was enacted to combat the menace of early child marriage which primarily affect girls and women. To ensure that the women have safe working environment and are not subjected to sexual harassment at workplace, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) was enacted in 2013. The Indian Penal Code, 1860, was once again amended in 2013 and Sections 354A, 354B, 354C and 354D were added to Section 354. These Sections punishes different acts that can outrage the modesty of women. It extends protection to women against assault and criminal force.⁷ It is well evident from above that numerous legislative efforts have been undertaken to strike a balance in society. Women feel themselves equal and at par with male community in different arena of life. We find that women stand at equal footing with male counterparts in education, employment, politics etc. These laws helped women to feel more safe and secure in society.

JUDICIAL APPROACH TOWARDS ABUSE OF WOMEN-CENTRIC LAWS

In contemporary era women empowerment is loud call of society. But these women specific laws are being used as double-edged weapons. On one hand, no doubt it protects women rights but on the other side, its misuse as is common practice nowadays, is fatal to men rights.⁸ It is a common sight these days in newspaper and on social media that the husband and in laws are often seen accusing the girl and her family of false implications against them. No doubt, these laws were the need of society at one point of time but its misuse has become another issue these days. Mostly, false cases relating to domestic violence, dowry are filed by the women to harass and extort money from the husband and his family. It is important to mention that there is no time limit for dowry prosecution and as a consequences false cases are even sometimes instituted after 15-20 years of marriage. The certain loopholes that exist in these stringent women centric legislations have harsh impact on male rights in society. It is common thinking of masses that whenever woman is victim, she is genuine and faultless and it is the husband who is the culprit whether his culpability has been proved or not. Sometimes, the husband who is falsely implicated on the false complaints filled by his wife commits suicide, in order, to avoid harassment and insult in the hands of society.⁹

⁷ Retrieved from <https://www.hellocounsel.com/misuse-of-women-centric-laws-in-india/> (last visited on January 21, 2022).

⁸ Retrieved from <https://www.lawgicstratum.com/post/women-centric-laws-in-india-beneficial-or-detrimental> (last visited on January 20, 2022).

⁹ Retrieved from [https://www.legalserviceindia.com/legal/article-3390-women-centric-laws-consequences-faced-bymales.html#:~:text=Hindu%20Marriage%20Act%20\(1955\)%2C,sexual%20offences%20against%20women%20etc.](https://www.legalserviceindia.com/legal/article-3390-women-centric-laws-consequences-faced-bymales.html#:~:text=Hindu%20Marriage%20Act%20(1955)%2C,sexual%20offences%20against%20women%20etc.) (last visited on January 21, 2022).

Even the judiciary has shown its concern over misuse of women centric laws by the women themselves. Number of times, women just to satisfy ego and needs often institute false prosecutions. The judicial acknowledgement of ongoing corrupt practice of misusing women favouring laws started way back in 1987 wherein the case of **Balbir Singh v. State of Punjab**¹⁰, the Hon'ble Court has observed that no doubt effort of legislature in the form of amendments being made in Indian Penal Code, 1860, to eradicate menace of cruelty and dowry is appreciable but wrong trend of false implication is torture and harassment for spouse and his relatives. The need to stop this practice has been quoted in the words of the court as, "*It is the time to stop this unhealthy trend which results in unnecessary misery and torture to numerous effected persons*".¹¹ In **Sejalben Tejasbhai Chovatiya v. State of Gujarat**¹², the petitioner wife was held liable for perjury as she adduced false evidence against the husband. The Gujrat High Court dismissed her petition stating that women are misusing the laws made specifically for them. In **Savitri Devi v. Ramesh Chand & Ors**¹³, the judge observed that the laws that were made to protect the women from domestic violence are being misused by them by dragging the farthest of relatives of the husband. The Karnataka High Court in the case of **State v. Srikanth**¹⁴, has observed that the practice of roping down all the relatives of the spouse has to be minimised until and unless specific material is available against the relatives and in that case, police must arrest them outrightly. The Delhi High Court, in **Savitri Devi v. Ramesh Chand**¹⁵ has categorically stated "*These provisions were though made with good intentions but the implementation has left a very bad taste and the move has been counterproductive. There is a growing tendency amongst the women which is further perpetuated by their parents and relatives to rope in each and every relative including minors and even school going kids nearer or distant relatives and in some cases against every person of the family of the husband whether living away or in other town or abroad and married, unmarried sisters, sisters-in-law, unmarried brothers, married uncles and in some cases grandparents or as many as 10 or 15 or even more relatives of the husband*".¹⁶ It is quite surprising that way back in 1975 the wife i.e. Sucheta Narayan Dastane was held guilty of cruelty against the husband in the case of **Narayan Ganesh Dastane v. Sucheta Narayan Dastane**¹⁷. To combat the misuse of Section 498-A

¹⁰ 1987 (1) CRIMES 76.

¹¹ Retrieved from <http://www.legalservicesindia.com/article/147/Misuse-of-Anti-Dowry-Laws.html> (last visited on January 22, 2022).

¹² (MANU/GJ/3099/2016).

¹³ (II (2003) DMC 328).

¹⁴ 2002 CRLJ 3605.

¹⁵ 2003 CRLJ 2759.

¹⁶ Retrieved from <http://www.legalservicesindia.com/article/147/Misuse-of-Anti-Dowry-Laws.html> (last visited on January 22, 2022).

¹⁷ (1975 AIR 1534).

Indian Penal Code, 1860, certain directives were issued by the court in the year 2017 in the case of *Rajesh Sharma and Ors. v. State of Bihar*¹⁸. The court ordered that welfare committees should be established in every district which will look into cases of Section 498-A and would submit their report to the authorities. Even the court observed that arrest of the accused should be put on hold until the committee submits its report. The court has in *Saritha v. R. Ramachandran*¹⁹ observed that when an educated woman seeks divorce from her husband, she files false cruelty case against the relatives of husband. Further, the court observed that “*This is nothing but abuse of beneficial provisions intended to save the women from unscrupulous husbands*”. Justice J.D Kapoor of Delhi High Court observed in 2003 that “*the misuse of these laws is hitting the very foundation of marriage and is not good for the society as a whole*”.²⁰ It is important to mention the observation of the Hon’ble Supreme Court in *Sushil Kumar Sharma v. Union of India and others*²¹, as “*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.*”²² The Supreme Court has in *Arnesh Kumar v. State of Bihar*²³, laid down guidelines to be adopted before making any arrest under Section 498-A or Section 304-B of Indian Penal Code, 1860. The court has observed that due to immediate arrest, this provision has become prone to be misused in the hands of unhappy wives. Innocent persons were arrested immediately on the receipt of complaint by the police. To combat this menace, certain directives were issued like the state government should instruct police not to go for immediate arrest on receipt of complaint, all police officers should be given the checklist as specified under Section 41 (1) (b) (ii) of Criminal Procedure Code, 1973, this duly filled checklist should be presented before the magistrate when taking accused for further detention, further detention should only be ordered by magistrate on being duly satisfied of the reasons specified in police report etc.²⁴ The Punjab and Haryana High Court in *Hardev Singh & Ors. v. State of Punjab*²⁵ has ordered quashing of frivolous FIR filed under Section 498-A of Indian Penal Code, 1860, stating that the investigating agencies register criminal cases under Section 498-A, especially cases involving NRI’s, without any preliminary inquiry in the charges levelled. It is sad reality

¹⁸ [(CrL.) No. 2013 of 2017].

¹⁹ (2003) DMC 37 [DB]

²⁰ Retrieved from <http://www.legalservicesindia.com/article/147/Misuse-of-Anti-Dowry-Laws.html> (last visited on January 22, 2022).

²¹ JT 2005(6) 266.

²² Retrieved from <https://www.hellocounsel.com/misuse-of-women-centric-laws-in-india/> (last visited on January 21, 2022).

²³ (2014) 8 SCC273.

²⁴ Retrieved from <https://www.legalserviceindia.com/legal/article-6196-arnesh-kumar-v-state-of-bihar-2014-8-scc-273-landmark-ruling-on-misuse-of-section-498-a-of-the-indian-penal-code.html#:~:text=Arnesh%20Kumar%20was%20arrested%20under,requested%2F%20demanded%20dowry%20from%20her.&text=Aggrieved%20from%20the%20order%20rejecting,appealed%20to%20the%20Supreme%20Court> (last visited on January 21, 2022).

²⁵ CRM-M No. 53467-2019.

that the provisions which were made to protect the women from harassment and torture is being grossly misused today.²⁶ Thus, it is amply clear from the above observation that even justice delivering authority is also well aware of the misuse of these women centric laws and its consequences on male rights.

CONCLUSION & SUGGESTIONS

It is concluded that no doubt women have suffered a lot in society but now women are making the society suffer with the misuse of women favouring laws. It is need of an hour that laws should be changed keeping in mind the dynamic social environment. Laws must cope up with changing social norms. Law and society must move hand in hand, thereby, if one changes then other must also change. There is a need to bring out the amendments in women-centric laws to combat its misuse in future. Strict penal provisions must be made and implemented strictly to combat the misusing these laws. It is important to mention here the recommendation of Malimath Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs (2003). It has observed that in present times, women are intolerant and file a complaint even on trifling acts. The acts complained of are usually are of non-compoundable and non-bailable. The husband and his relatives are immediately taken in custody. Another claim of maintenance by the women adds to the woes of the family. Later on, if women realise to go back and start afresh and the husband is also ready to forgive but they cannot unite owing to legal hurdles as the acts are non-compoundable. The women live at the mercy of parental family. This is shacking the foundation of institution of marriage in society. Moreover, the rural women need to be sensitised about these laws and these educated urban women need to be restricted to use these laws as double-edged weapon.²⁷

In the end, I would conclude in the words of Bryan Stevenson²⁸,

“WE ALL HAVE A RESPONSIBILITY TO CREATE A JUST SOCIETY.”

²⁶ Retrieved from <https://indiankanoon.org/doc/125948820/> (last visited on January 21, 2022).

²⁷ Retrieved from <http://www.legalservicesindia.com/article/147/Misuse-of-Anti-Dowry-Laws.html> (last visited on January 22, 2022).

²⁸ Retrieved from <https://www.quotemaster.org/just+society> (last visited on January 22, 2022).