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THE PROBLEM WITH ANTI-DOWRY LAWS OF INDIA

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Abstract

Marriages in India are considered a highly revered union, which is believed to unite together not just two individuals, but two families as well. But unfortunately, due to the rise of materialistic mindsets among the people of today, this sacred bond is getting tarnished. Just to fulfil their greed or take revenge or fulfil ulterior motives, some people have fallen to such an extent that they do not hesitate even for a moment to file any frivolous case against someone. Shockingly, a significant chunk of this originates from those laws which were made for the protection of the women who have to face unjust treatment or unreasonable demands from their in-laws or even her husband as well. Although there is a pressing need for such laws, but because of the presence of loopholes accompanied by several other external factors, have raised doubts in the minds of general public as to whether we should actually protect that section of society which is filing such false cases. Due to the actions of a few people, many genuine victims still continue to suffer. Therefore, it is crucial to understand and admit that there exists a problem in our country dowry laws and they have to be amended as soon as possible.

Keywords

1. Dowry
2. Cruelty
3. Domestic violence
4. Marriage customs
5. Bride price

Introduction

According to some news sources, in the span of 5 years, i.e., from 2016 to 2021, around 22.8 lakh cases of crime against women were recorded in India, out of which 30% of these cases were only under Section 498A, which talks about “cruelty” against women by her husband or his relatives¹. But at the same time, for the same section, the 243rd Law Commission Report (which came in 2012) shows that the conviction rate in such cases is only around 21.2%, as per the data of NCRB². And now some sources even say that this rate has reduced to around 13% (in the year 2018)³.

Another interesting point to consider is that, as per Article 20(2)⁴ of the Indian Constitution⁵, which talks about double jeopardy, which means that no individual shall be arrested or punished twice for the same offence, but our Indian legal system has itself provided a loophole by providing different provisions for the same act. An example of this is can be taken for the act of cruelty, i.e., if a woman is having some ulterior motives, she can fulfil them by filing different complaints under different sections like Section 498A⁶, 406⁷, 507⁸, 377⁹, 384¹⁰ of the IPC¹¹, then Section 125¹² of the CrPC¹³, then under the Domestic Violence Act¹⁴, and in last divorce. And to aggravate all this, she can even choose to file different cases in different courts of different jurisdictions.

So, the question which will be tried to be resolved through this article is that, in spite of the existence of various dowry prohibition laws, the cases related to dowry have not shown any signs of reduction. Additionally, it has come to light that the laws, which were originally made to protect and safeguard women’s rights, have been misused as a means to cause misery to innocent

¹ Nikhil Rampal, *Cruelty by husbands and their relatives makes up one-third of crimes against women in India: MoSPI*, THEPRINT (Jan. 15, 2024, 1:07 PM), <https://theprint.in/india/cruelty-by-husbands-and-their-relatives-makes-up-one-third-of-crimes-against-women-in-india-mospi/1470481/>.

² INDIAN KANOON, <https://indiankanoon.org/doc/174997460/> (last visited Jan. 15, 2024).

³ *Conviction Ratio in 498A Case*, MAHESH TIWARI & ASSOCIATES <https://www.maheshitiwarilegal.com/498a/conviction-ratio-in-498a-case> (last visited Jan. 15, 2024).

⁴ INDIA CONST. art. 20, cl. 2.

⁵ INDIA CONST. 1950.

⁶ The Indian Penal Code, 1860, § 498A, No. 45, Acts of Parliament, 1860 (India).

⁷ The Indian Penal Code, 1860, § 406, No. 45, Acts of Parliament, 1860 (India).

⁸ The Indian Penal Code, 1860, § 507, No. 45, Acts of Parliament, 1860 (India).

⁹ The Indian Penal Code, 1860, § 377, No. 45, Acts of Parliament, 1860 (India).

¹⁰ The Indian Penal Code, 1860, § 384, No. 45, Acts of Parliament, 1860 (India).

¹¹ The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

¹² The Code of Criminal Procedure, 1973, § 125, No. 2, Acts of Parliament, 1973 (India).

¹³ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India).

¹⁴ The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

individuals, specifically men.

Definition and Laws in relation to Dowry

1. The Dowry Prohibition Act, 1961

The most prevalent definition of the word 'dowry' that is used in our legal justice system is of Section 2¹⁵ of the "Dowry Prohibition Act"¹⁶, which means '*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, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies'.

This Act prescribes penalties for various things; for instance, the penalty for giving or taking dowry (as per Section 3¹⁷) is imprisonment for not less than 5 years, with a fine not less than Rs. 15,000 or the amount of value of dowry, whichever is more. Similarly, there is a penalty for even demanding the dowry, either directly or indirectly (as per Section 4¹⁸).

2. The Indian Penal Code (IPC), 1860

Apart from this Act, if someone (woman or her relatives) wants to file a case in relation to dowry harassment, they can approach the courts under 'Section 498A of the IPC' also, as explanation (b) of it deals with the same issue along with the essence of cruelty in it. And the punishment prescribed under this provision is imprisonment for a maximum of 3 years along with fine.

Similarly, there's another provision in the law that specifically deals with dowry, which is 'Section 304-B of the IPC¹⁹', which deals with the death of a woman in connection with a demand for dowry. The punishment under this provision is imprisonment for a term which shall not be less than 7 years and which may be extended to life imprisonment.

¹⁵ The Dowry Prohibition Act, 1961, § 2, No. 28, Acts of Parliament, 1961 (India).

¹⁶ The Dowry Prohibition Act, 1961, No. 28, Acts of Parliament, 1961 (India).

¹⁷ The Dowry Prohibition Act, 1961, § 3, No. 28, Acts of Parliament, 1961 (India).

¹⁸ The Dowry Prohibition Act, 1961, § 4, No. 28, Acts of Parliament, 1961 (India).

¹⁹ The Indian Penal Code, 1860, § 304B, No. 45, Acts of Parliament, 1860 (India).

3. The Indian Evidence Act, 1872

Along with the above Section of 304-B of the IPC, 'Section 113-B²⁰ of the Indian Evidence Act²¹' provides that if a woman dies and any connection between her death and demand for dowry is found, it shall be presumed that the person who subjected her to cruelty for dowry had caused that dowry death.

4. The Protection of Women from Domestic Violence Act, 2005

Another provision that directly deals with this concept of dowry is the 'Protection of Women from Domestic Violence Act' whose Section 3²² defines the term domestic violence and clause (b) of the same considers harassing, injuring or endangering the aggrieved person so as to meet any unlawful demand of dowry within its ambit.

Now there's no debate on this point that all of these laws and Acts along with similar other provisions were brought to safeguard the women from the harassment or torture by her husband or relatives of the husband. And there's no doubt that there is still a need for such laws to protect the women from such acts of cruelty. But the problem which persists is that why even after having so many legal safeguards, the purpose for which they were made is still not achieved. And moreover, has led to the creation of new problems. Now if an answer is to be made in one line only, which connects these laws and problems, it would be that these laws are not at all gender-neutral. In order to protect one gender (women), the Indian legal system has become somewhat biased, thus violating many of the fundamental guarantees provided under other laws to the rest of its citizens. And what else has led to reaching to such a situation will be discussed in detail in later part of this article.

Thoughts of Higher Bodies

- POSITIVE THOUGHTS-

After the unfortunate incidence of Nirbhaya gang rape in 2012, a committee was formed to bring some stringent and necessary changes to the criminal law. Thus, the "Justice Verma Committee" was the outcome of this incident, and this Committee provided a

²⁰ The Indian Evidence Act, 1872, § 113B, No. 1, Acts of Parliament, 1872 (India).

²¹ The Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).

²² The Protection of Women from Domestic Violence Act, 2005, § 3, No. 43, Acts of Parliament, 2005 (India).

report²³ in which it accepted that out of several crimes that are committed, many of them have a specific gender dimension in India, in regard to women, and especially in relation to dowry, such as acid attacks on women for denying dowry (*page 146 of this report; point 4*); or committing bride burning or murder for the sake of extracting dowry again or to marry another woman (*page 241; point 35(b)*). And to deal with such instances, several changes are talked about in the existing laws and processes only. In those changes themselves, some were in regard to the dowry also specifically, such as:

- a) as per two circulars of the Delhi Police in 2011 and 2012, information is to be provided by the investigation officer to the complainant or victim of dowry cases whenever the accused tries to apply for a bail, so that the victim can oppose that bail application on time (*pages 306-307; point 29*);
- b) recommendations made by the Election Commission of India to the Government in 1998 and 2004 that if any charges are framed against any candidate for any offence whose punishment is imprisonment for a term of 5 years or more, that candidate should be disqualified from contesting the elections. Unfortunately, these proposals were ignored by the Parliament at that time (*pages 340-343; point 1-4*);
- c) recommended amendment by the Election Commission to Section 8²⁴ of the Representation of People Act, 1951²⁵, suggesting disqualification on conviction for certain offences, including the provisions of the Dowry Prohibition Act, from contesting elections if a charge sheet has been filed and court has taken cognizance for the same (*page 343-345; point 5*) and same has been recommended by the Verma Committee also (*page 454-456; point 5*); and
- d) recommendation has been made by the Verma Committee itself that all marriages in India should be registered in the presence of a magistrate who will ensure that both parties have full and free consent for the marriage and that the marriage has been solemnised without any demand for dowry having been made (*page 415; point 2*).

²³ REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW, SPUWAC 1, (2013), <https://spuwac.in/pdf/jsvermacommittereport.pdf>.

²⁴ The Representation of the People Act, 1951, § 8, No. 43, Acts of Parliament, 1951 (India).

²⁵ The Representation of the People Act, 1951, No. 43, Acts of Parliament, 1951 (India).

- NEGATIVE THOUGHTS-

1. In the year 2000, “The Malimath Committee” was formed with the aim of reforming India’s criminal justice system, and in 2003, a report²⁶ was provided by the said committee. This report has discussed a few instances that communicate the shortcomings of some provisions of the law related to offences against women and has also made some recommendations for the same, such as in order to deal with the complaints regarding misuse of Section 498A of the IPC by the wife, through which she can get the husband and his relatives arrested immediately and then send them behind bars, which can even sometimes result in losing his job, it was recommended that offences under this section be made bailable and compoundable. But till date this step has not been taken due to one or another reason (*page 290-291; point 16*).
2. In the year 2005, in a landmark case named *Sushil Kumar Sharma vs Union of India and Ors.*²⁷, the Supreme Court of India observed the misuse of Section 498A of the IPC as a ‘legal terrorism’. It was said that “by misuse of the provision (Section 498A), a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not an assassin’s weapon”.
3. In the year 2015, the then Minister of State for Home, Kiren Rijiju, said in the Rajya Sabha that “Section 498A is very stringent, so stringent that it is being misused”²⁸. He makes this statement while favouring the stand that this section should be made a compoundable, which is still non-bailable and non-compoundable as of now. Although he assured that there would be no compromise in the protection of women who are harassed, when some women MPs protested against that point.
4. In the year 2023, the Calcutta High Court in the case of *Swapan Kumar Das @ Swapan Das vs State of West Bengal*²⁹, made a similar observation regarding Section 498A that misuse of it unleashed a new legal terrorism.

²⁶ *Committee on Reforms of Criminal Justice System*, 1 Ministry of Home Affairs 1, (2003), https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf.

²⁷ *Sushil Kumar Sharma v. Union of India and Ors.*, AIR 2005 SUPREME COURT 3100.

²⁸ Deepptiman Tiwary, *Anti-dowry law to be amended, will allow room for compromise*, THE TIMES OF INDIA (Jan. 15, 2024, 1:58 PM), <https://m.timesofindia.com/india/anti-dowry-law-to-be-amended-will-allow-room-for-compromise/articleshow/47276715.cms>.

²⁹ *Swapan Kumar Das v. State of West Bengal & Ors.*, (2023) SCC Online Cal 2427.

Problems or Loopholes in our laws

Before going into the problematic parts of these anti-dowry laws, one thing that needs to be admitted is that there is actually a problem. And that problem is actually leading to severe consequences. It is true that no law is perfect in itself, but here, the points (problems) which will be discussed are the ones that can be understood and accepted by a common man also with a basic understanding and knowledge of law. Some of these points are admitted by the judiciary itself to be loopholes which are often misused, but because of having limited power in bringing about changes in the laws, they have to be dependent on the mercy of the legislature for the changes.

Following are some of the problems or loopholes which have transformed the tool originally designed for a shield into a weapon, which is now being misused for harassing the innocent ones:

1. Not Gender Neutrality in Laws

Specifically considering the laws which were made for the protection of women, for example, rape or dowry, they were and till date, because of their wording, affected the other genders adversely. No doubt Article 15(3)³⁰ of the Indian Constitution allows the State to make special provisions for women, but making special provisions does not in any way mean that the other genders (men and LGBTQ+) are to be neglected. The laws should be made in such a manner that, on one hand, they provide protection to all their citizens, and on the other hand, they prevent its misuse by and upon any other citizen. The initial step to deal with it can be to replace the words 'women' and 'men' with "people" and 'wife' and 'husband' with "spouse", wherever possible, through which some of the problems of even the LGBTQ+ community can be sort out.

2. No Strict Implementation

The biggest example of this can be seen in the violation of anti-dowry laws itself. According to some researches, the cases of dowry demand have increased over the year, where before the year 1940, dowry was given in 35-40% of the marriages; this number

³⁰ INDIA CONST. art. 15, cl. 3.

grew to nearly 90% by the year 1999³¹³². These numbers clearly show that the give and take of dowry is being conducted without any fear of law or by using loopholes, like in the form of “presents” (last proviso of Section 3 of the Dowry Prohibition Act).

3. No Time Frame to Complete Trial

This point acts as a double-edged sword in legal battles. For instance, due to the long dates given by the judges in cases and the over-burden of other cases as well, these types of cases get stretched over a long period of time, and the phrase ‘*justice delayed is justice denied*’ becomes the reality for many women. But on the other hand, this same long process of trial completion is used as a tool by many women to harass the opposite party so as to meet their unlawful demands. Thus, a particular time frame needs to be fixed not only for this but for every case, which can be extended only when it is required.

4. Ineffective Follow-up of Procedure

In 2003, the state of Andhra Pradesh made Section 498A compoundable, which is a major legal provision to deal with dowry related cases, but whenever the same change is demanded at the central level, the foremost argument which is raised is that this will lessen the fear among the culprits and they might force the victim to take back their complaint. This happens because unfortunately, today, a common man does not feel himself safe in front of the police, and many times it is seen that the victim (usually woman’s and/or their family) bribes the police to insert those legal provisions in their chargesheet, which are not at all true, just to harass the opposite party, and on the other side the accused party (usually husband’s and/or their family) bribes the police to delay the process of law. This can be corrected a bit by having a strict check on the working of the police officials.

5. No Proper Remedy Once Released Innocent

The belief of people in our legal system is still prevalent even after many problems, but one thing of which very little is talked about is that whenever any false or frivolous case

³¹ Gaurav Chiplunkar and Jeffrey Weaver, *Dowry in India: evolution, prevalence, and policy responses*, GLOBALDEV BLOG (Jan. 15, 2024, 2:18 PM), <https://globaldev.blog/dowry-india-evolution-prevalence-and-policy-responses/#:~:text=Dowry%20was%20paid%20only%20in,of%20dowry%20payments%20also%20increased.>

³² Soutik Biswas, *How prosperity fuels dowry demand in India*, BBC NEWS (Jan. 15, 2024, 2:22 PM), <https://www.bbc.com/news/world-asia-india-65682796.amp>.

is filed against anyone, and after years when it comes out that the case was filed with ill motives, our courts most of the time only declare the accused party as “innocent” and/or “not guilty”. It is considered that freedom itself is a big remedy, but unfortunately, the time, money and energy spent in those years fighting for their rights cannot be compensated just by these few words. Although the falsely accused party can file counter-cases like those of defamation and presentation of false evidences, but the court should themselves also try to give a proper remedy to the innocent party by at least punishing the party who filed false cases.

6. Publication of Identity Needs to be Regulated

Section 228-A³³ of the IPC is a legal provision that deals with the disclosure of identity of the “victim” of certain offences. This section prevents disclosing the identity of the victim in certain cases, but unfortunately, this provision nowhere talks about the one who is accused, because of which many times it is seen that in many cases the name of the victim (who alleged a false case) is kept secret initially, but the person who is falsely accused by her, his name is openly circulated everywhere. News portals and social media do not wait for the completion of the trial, and as soon as they get any updates, they keep on publishing them. And many times, when it comes out that the person who was accused is actually innocent, he had already suffered a lot, and a few times it is reported that they have committed suicide as they were not able to handle the false allegations and comments³⁴³⁵³⁶. And a report also states that due to the alleged misuse of Section 498A of IPC, every nine minutes a married man commits suicide in India, resulting in around 64,000 suicides every year³⁷.

³³ The Indian Penal Code, 1860, § 228A, No. 45, Acts of Parliament, 1860 (India).

³⁴ Sneha Agarwal, *Man commits suicide, wife files dowry harassment case against him*, INDIA TODAY (Jan. 15, 2024, 2:26 PM), <https://www.indiatoday.in/mail-today/story/man-commits-suicide-wife-files-dowry-harassment-case-against-him-325137-2016-05-24>.

³⁵ Team VFMI, *Sonipat Man, His Parents, Die By Suicide After Getting Bail In Alleged False Dowry Harassment Case*, VOICE FOR MEN (Jan. 15, 2024, 2:33 PM), <https://voiceformenindia.com/sonipat-man-his-parents-die-by-suicide-after-getting-bail-in-alleged-false-dowry-harassment-case/>.

³⁶ Bharat Khanna, *Punjab: Man facing dowry charges commits suicide*, THE TIMES OF INDIA (Jan. 15, 2024, 2:39 PM) <https://timesofindia.indiatimes.com/city/chandigarh/man-facing-dowry-charges-commits-suicide/articleshow/74052004.cms>.

³⁷ PTI, *Cases of married men committing suicide on the rise: Report*, DECCAN HERALD (Jan. 15, 2024, 2:45 PM), <https://www.deccanherald.com/india/cases-married-men-committing-suicide-2286341>.

Conclusion

The Justice Verma Committee Report has mentioned a UN study called the “In-depth Study on all forms of Violence against Women,” which finds that *‘non-implementation or ineffective implementation of existing domestic laws in most countries was the single most important reason for continued immunity to perpetrators of violence against women particularly in intimate relationship’* (page 67-68; point 30). Although this point was provided only with respect to women, but today the condition of society shows that it is applicable equally to both men and women. Effective implementation is not just to punish the wrongdoer correctly; it must first be to identify who’s the real wrongdoer. There must be no straight-jacket rule or preconceived notion to consider any specific gender guilty right from the beginning of the trial.

The advocates prime duty is to protect the interests of their clients, but this should not be stretched to such an extent that the advocates, just for greed of more money, willingly fight a false case or assist their clients in making their case strong by putting those legal provisions which are in reality not required. And most importantly, no law or court decision or strict implementation will work to solve these societal issues until and unless the people themselves don’t understand that their moral values should be above anything else, and this is because, even today, people sometimes tend to follow either their inner voice or the voice of society, forgetting what is actually right for them and their loved ones.

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