

## **DOMESTIC VIOLENCE**

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### **ABSTRACT**

*Crime is any illegal action that is punishable under the statute and is debarred by law. Crime of domestic violence is any filthy conduct by any of the consort to another which may typically involve annoyance or mistreatment, such an illegal act may be done physically or mentally. Generally, sufferers of domestic violence do not publish about it for the sake of traditions of society which leads to desertion of divorce and judicial separation as they believe marriage is a sacrament and union of two souls. The practice of domestic violence is witnessed since ancient times. Indian has always been a male dominating society and the most regretful fact is that Indian women accepts this gender inequality and male domination. In accordance with this society, beating up a women reflects man's masculine.*

### **Main objective**

The aim of the current research is to study the workability of domestic violence in the society and the practice that is in contraventions to the law. In the present society fake declarations for meaningful purpose on domestic violence are more usual than we think.

Our Indian law provide strong system of protection and justice for the plaintiff. But it has other side as well, that is, the defendant's side. The study have shown that there are countless number of false allegations that are reported. These false allegations ruin not only the life of defendant but also his family and career.

In the present research we will study how Indian society deals with the issue of fake declarations on domestic violence.

### **INTRODUCTION**

Today, crime against women is a matter of grave concern and is the centralised problem in the society since yonks, it is identified as an infringement of human rights of females and also bane on their freedom. Cases regarding this are almost reported every single day, there is not a single village in India where this problem is not found. Indian society lays down number of grounds on which differences are made among men and women, regardless of provision of

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equality contained in the Indian constitution. The downcast factor is that most of the victims do not publish about it, reason being rigid traditions that considers male superior. It is sad to know that most victims are not aware of the law or do not have access to it. Violence against women is that bug to the society that has eaten it up from its root.

The word “domestic” means relating to home or family and the word “violence” means causing harm. Therefore, domestic violence is any harm that is caused by one of the parties to marriage to another. Act covers any threat or danger to the life of a woman or pressurizing her for dowry. Sexual assault, mental torture, molestation, harassment, physical abuse, depriving person from financial resources all are covered under domestic violence. Most of the women have been a victim of domestic violence once in their household.

**Physical torture** may be explained as infliction of serious pain or injury to a person. The act includes beating, hitting, causing threats or actual bodily harm.

**Sexual assault** may be defined as any act of sexual natures that humiliates, dishonour and causes disgrace to the majesty of a person. Sexual abuse rings having sexual intercourse without the will of the partner forcefully.

**Mental and emotional abuse** covers acts like forcing a girl to marry without her will, pressurizing to give birth to a male child, insulting her, name calling, false charges on her character, pressing her for dowry.

**Economical harassment** is where husband deprives his wife from providing her basic necessities of life. The Hindu Adoption and Maintenance Act, 1956 provides provision where husband is bound to maintain her wife. It is the duty of Hindu husband to maintain his wife during the period of her life. This covers not providing basic necessities like food, shelter, cloth, medication.

The main purpose behind this research is to lay down the practicality of the society with regard to misuse of statutes enforced for the protection to women under domestic violence. The object of the paper is to show how the laws made for social welfare of women are being misused by them. The rate of false declarations of domestic violence on male to gain advantage by females is more often than we think.

## **POSITION OF WOMEN IN SOCEITY**

Women in India have faced an underlined setting in the society since ancient days. Women are both economically and socially discriminated. According to the words of Smritis, a woman under the control and supervision of her father during her childhood, under her

husband after marriage and after husband her son. She is never set free. However, in Mahabharata, it is said that by adoring a woman, one actually honours goddess of prosperity. A major portion of women population are victims of domestic violence, they are mentally or physically tortured. The same could be witnessed from the fact that around 144 countries have enacted legislation on domestic violence.

As noted by National Crime Records Bureau 2013 in its annual report, in 2012, 24923 cases of rape were registered, 24470 out of 24923 were done by close one of victims, that is, about 98%.

Majorly sexual harassments are experienced by the intimate partner of the victims which is observable by depression, abortions done by women, HIV. It is observed that the close are more toxic than the outsiders.

According to the UN WOMEN report-

1. 35% of women across the world are sufferers of domestic violence or sexual abuse. Some national reports have studied, about 70% of women are victims of harassment by their intimate partner.
2. According to estimation 87000 women were purposely killed in the year 2017 out of which 50000 – 58 per cent were slaughtered by their intimate partner.
3. 51% of adult women are victims of human trafficking across the globe. About 650 million women account for child marriage. However, in past years the rate of child remarriage has gone down. However, Marriage of girls at an early age arises the problem of pregnancy, breakdown in education, restricts growth of independent girls, limits occasion to develop, and also the rate of domestic violence increases.

### **WOMEN AND CONSTITUTION:**

At the time our Indian constitution was being drafted the position of women in society was penniless and poor. Women faced a situation where they were maltreated. Dr. B. R. Ambedkar while modelling our constitution took into consideration these issues and added some special provision to upgrade the position of women. Witnessing the situation, it was necessary to come up with laws that makes change in position of a woman and make them independent. And today we can see a rising change, as the whole world today talks about women empowerment. Women are occupying that place in society where once only men were seen and have equal status as men. Although women in many parts in are still facing a bad situation and are mentally and physically tortured. They are still struggling for their

rights and freedom. What I feel is if women are educated and made aware of their rights will help them to strengthen their situation. Our Indian constitution provides lot of provisions that will help women to overcome from these problems.

Rights available to women can be categorized into three parts – legal rights, constitutional rights and rights that are available from religion. As women are considered very imperative part of society, in different personal laws that apply to their particular religion they have been given some special rights. When it comes to rights property has always been considered strong element. Earlier the rights of women in the property were negligible but with growing world, modernisation and coming into force statues like HINDU SUCCESSION ACT 2005 daughters were given equal rights as son. Also, a married Hindu woman is a sole owner of the property she has earned, inherited to her or has been gifted to her. Both under Hindu and Islamic personal law women enjoys right to get maintained by her husband after marriage and before marriage by her father.

Legal rights are those rights that are made available to individuals through various statutes passed by the central and state legislature. The rights that are guaranteed to women under Indian constitution are termed as constitutional rights of a woman. Provisions that are incorporated under Indian constitution to safeguard the dignity and social rights of women are provided under article 14, 15, 16, 39, 42, 243.

#### **LEGISLATION FOR PROTECTION OF WOMEN:**

There are different laws enacted for the purpose to protect women from such violence. They are as follows: -

##### **1. THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 -**

The domestic violence act of 2005 came into force when exiting statues were not sufficient to provide justice to victim women suffering from domestic violence. Meaning of the term “Domestic violence” was first introduced in the Indian law through this act. It gave a broader scope of domestic violence and explained all its scope widely. Any woman who claims to be a victim of domestic violence by the offender can complain under the act. The sufferer women may complain about the offender to police officer, magistrate or protection officer. Section - 8 of the act lays down provision to appoint protecting officer in every district by the state government.

The act circles all the women suffering from domestic violence. Any women living in the shared household can complain like wife, daughter, sister except mother of the convicted

husband, mother-in-law cannot complain against her daughter-in-law. The act empowers child of the household to get justice under the act. In cases where child is minor, the mother of the child can complain on child's behalf in the court of law where child will be treated as co-applicant.

In the matter of *D. Velusamy v. D. Patchaiammal* (2010) 10 SCC 469 the honourable apex court gave more broader meaning to the expression "aggrieved person" under section 2(a) of Domestic Violence Act, 2005 and said that the aggrieved women will also include women in live in relationship, laying down ingredients of live in relationship.

**2. THE DOWRY PROHIBITION ACT 1961** – Dowry system in India has been practised over a long period of time since ancient days. Dower refers to offering precious and valuable gifts from bride's family to the groom's family for condition of marriage. This system has led to the out of serious crimes like raging women, emotional abuse, torture and even death of women. For prevention of such system in India, Dowry Prohibition Act 1961 came into existence. The act came into force from May 1, 1961 with the aim to prevent the tradition of dowry in India. The act is applicable on all the religions in India. Article 3 of the act made both giving and taking dowry a crime. But the criticism lies in the fact that these laws are ineffective. There are different types of dowry crime that are prevalent. Crimes like cruelty, abetment to suicide, dowry death and murder are still taking place in many parts of the India. The crimes may also include female foeticide and selective sex abortion. Dowry death and murder is killing by husband and family of husband due disappointment and frustration from dowry. Statues for prohibition of dowry are also provided in Indian Penal Code and Code of criminal Procedure.

**3. SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT, 2013** –The act came into existence from December 3, 2013. Vishaka judgement is said to be outset for this act because the guidelines laid down in the judgement were not being followed leading to increasing molestation of women, before enactment of this act the honourable apex court of India in 1997 in the matter of *Vishaka and Others Vs. State of Rajasthan* laid down certain principles prohibiting harassment of women at workplace and made it mandatory for the employers to provide proper redressal and relief to women from such harassment. Sexual harassment is any act of sexual nature that is unwanted and humiliates a woman. It violates fundamental rights of women provided in article 14 and 15. The objective of the act is to save

the rights of women provided under article 21 of Indian constitution to live with dignity. The act makes it binding to have a committee called internal complaints committee (ICC) to hear the case of victim women from sexual harassment. Head of internal complaint committee shall be a woman and also more than half of its member shall be women. The same shall have same powers as civil courts under code of civil procedure,1908. The body have power to summon the person in question, examine him under oath and can also ask for production of documents.

**4. THE PROHIBITION OF CHILD MARRIAGE ACT,2006** – Earlier child marriage was very familiar. Hindu sages favoured early marriage of girls. THE CHILD MARRIAGE RESTRAINT ACT ,1929 introduced under British rule set minimum age limit of girl to 14 years and boys to 18 year but this was questioned by Muslim and allowed child’s marriage with the consent of the bride’s guardian. After 1950 many changes were made in minimum age limit for marriage but since 1978 the legal age for men is 21 and for women is 18. There were many states in India who were not on favour of early marriage. However, Haryana came up with programme “*apni beti, apna dhan*” which supported delay marriages. The concept of child marriage traces its origin from invasion of Muslims. According to dharmasutras a girl should get married after attaining the age of puberty. It is expressed in manusmriti that it is father’s duty to get a girl married within 3 years of attaining puberty. THE CHILD MARRIAGE RESTRAIANT ACT 1929 was enforced to prevent child marriage, which was also called Sharda act. The object of the act was to cut down the stress and overburden at a young age and also early death.

**5. IMMORAL TRAFFIC (PREVENTION) ACT, 1956** - The act was foremost act enacted with objective to prevent trafficking in women. The act was revised and renamed to **IMMORAL TRAFFIC (PREVENTION) ACT, 1986**. The word trafficking must not be confused with prostitution. Trafficking is brutal arrangement where women are treated as commercial element. They are hired and contracted for sale that leads to **commercial** sexual exploitation. These trafficking is done for pornography, sex tourism and massage parlours.

**6. INDIAN PENAL CODE.**

- RAPE (SECTION-375)
- MOLESTATION (SECTION-354)

- SEXUAL HARASSMENT (SECTION-509)
- KIDNAPPING AND ABDUCTION (SECTION 363-373)
- CRUELTY BY MALE SPOUSE AND RELATIVES OF MALE SPOUSE (SECTION-498A)
- DOWRY DEATH (SECTION-304)

### **ABUSE OF THE LAW**

Laws are made for the welfare of the people and to treat justice, providing equality to all. But people with evil intention obtain wrongful advantage over it.

The following are maltreatments: -

**1. SECTION 498A OF INDIAN PENAL CODE (IPC)** - The section was incorporated in the official criminal code of India to save the women from amplified cruelty of husband and relatives. Also, amendments were made in INDIAN EVIDENCE ACT, where the *onus probandi* was shifted on the accused. Within the definition of the section, cruelty is an act in which offender induces women to suicide or causing serious harm or damage to the women and also injuring women, whereby making unlawful demand of goods, property or valuables. In *SHOBHA RANI VS. MEDHUKAR REDDI* (1988) 1 SCC 105, the SUPREME COURT explained the concept within section 489A. The court also laid down, evidence is mandatory to prove guilty of cruelty within the section, causing any harm to women with intention to unlawful demand.

In matter of *SUSHIL KUMAR SHARMA VS. UNION OF INDIA* (2005) 6 SCC 281, the SUPREME COURT delivered the objective to incorporate the provision in the code. There are many cases in which *mala fide* intention of the petitioner have come up. In such cases remission of the party charged with false declaration can't help disgracing. The regretful segment at times are gossiping and media. However, it becomes necessary to overcome such loophole, whereby making apt law to deal with such guileful.

**FALSE CHARGES UNDER SECTION 498A** – In early matter of *MRS. CHRISTINE LAZARUS MENEZES VS. MR. LAZARUS PETER MENEZES*, the court held that in cases where false criminal complaint is registered by a woman, the result of which the accused is taken under custody, it will amount to a matter of cruelty by wife to her husband.

In the above matter, family court accepted the prayer of respondent (husband) for dissolution of the marriage. However, the BOMBAY HIGH COURT set aside the appeal of appellant wife refusing to interfere in family court's decision and permitting dissolution of marriage. The order by BOMBAY HIGH COURT was made on the ground of cruelty. The court during

the investigation of the case found that the appellant had confessed that she has registered a FIR in Kherwadi police station in Mumbai against the respondent. The complaint was made under section 498A (cruelty by husband or relatives of husband) and section 406 (criminal breach of trust) of INDIAN PENAL CODE, 1860. Also discovered that the complainant accepts that she had lodged a criminal complaint to get back the respondent (her husband) back to marital status.

Therefore, malicious complaints filed by reprobate attacks directly to the roots of the accused. This causes decline in repudiation of the person and also people related to him. The misuse of the law unlocks door of crime. Actual reason behind these scams is corrupt judicial system. Although in legal sense the crime under section 498a is cognizable, non-bailable and non-compoundable but what happens? Police arrests the family to make financial gains from both parties, the court may allow a party to withdraw the case if they agree to settle, corrupt judges play imperative role in this. Hence the legislation must enhance the framework of the law. When charges are filed against the husband for harassment or cruelty, whole family have to undergo investigation from little children to old parents causing disgrace and humiliation. In the curtain of these malpractices the law fails to provide justness to real victims and put the culprits behind bars.

**DIRECTION OF SUPREME COURT TO AVERT ABUSE OF SECTION 498A OF INDIAN PENAL CODE** – The apex court in the case of **RAJESH SHARMA & ORS. V. STATE OF U.P** 4 AIR 2017 SC 3869 : 2017 (8) SCALE 313 delivered the guidelines to check the declaration made by women under section 498A of IPC to ring all the member in marital settlement. For the purpose, Additional Solicitor General, Shri A.S. Nadkarni and Senior Advocate Sri S.S. Giri was appointed by the court. The guidance was made that section- 14 of PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 is compulsory before filing case under section 498a of INDIAN PENAL CODE. The court acknowledged that the provision was incorporated aiming to protect women especially to from cruelty of the husband and the relatives to such a extent that results in suicide and murder.

**2. SECTION 376 OF INDIAN PENAL CODE (IPC)** – Using this section women may incriminate men for several selfish motives which is contrary to the objective of provision laid down in the section. The section provides rigorous punishments for the convicts. The motive of the accuser may be -

- To gain material benefit – Monetary advantage, valuable property or goods, etc.

- Creation of defence – Fake declaration may be made to escape from liability.
- Attraction – To gain positive or negative attraction.
- Counter back – To take revenge.

**DATTATRAY @ KASHINATH BABASO KHATAL VS. THE STATE OF MAHARASTRA** – In the above case Bombay high court have set aside aborted the charges of rape under section 376 of IPC on 45 years old man by a sales girl in advertising company. Women made a complaint at the local police station in august, 2008 affirming that when she was on her way back, the old man offered lift to the girl on his motorbike and she accepted the offer. Women claimed that man said he would take by another road as there is quarrel in the town. On their way he stabbed her with a knife and took her to a deserted place and raped her. Learned Additional Session Judge, Satara convicted the man of the offences and punished convicted under section 376 and 506 of INDIAN PENAL CODE.

The accused reached high court, and claimed that the allegations are falsely charged on him in order to extract money from him. However, the lower court passed the decision in favour of the women. After thorough investigation high court challenged the decision of the lower court and set aside all declarations on him. The court also considered the recording of women's father whereof he was demanding money from the accused man for saving him from the trail.

The court observed the impact of false charged and said the evidence and claims made by the complainant must be honoured by the prosecution. In any matter of rape, the burden of proof is on the prosecution to prove the guilty and in no case, it can be shifted upon the accused. The offence of rape causes disquiet and embarrassment to the accused therefore before passing any decision it must be properly examined.

**3. THE DOWRY PROHIBITION ACT, 1961** – The custom of offering gifts, valuables, money have prevailed in Indian society over a long period of time. The act was introduced with the objective to prohibit this practice. The law forbids both demanding and receiving of the dowry. Women in society have to meet with many crimes in case of failure to meet unlawful demand. Dowry death was one of the serious crimes that was accomplished by husband and relatives of husband. Despite strict laws prohibiting dowry, many districts of the country still practice dowry. However, immoral acts of the women have created criticism on dowry laws. Women claims false charges of demanding dowry to obtain advantage. NATIONAL CRIME RECORDS BUREAU reports, in 2012, approximately 200000 people

who were accused of dowry crime, only 15% of this were convicted. Statistics show that the rate of conviction is decreasing as the number of cases registered under section 489A is increasing. The conviction was found in 5000 cases out of 50000 cases during 2014 – 2016.

**NISHA SHARMA DOWRY CASE** – In this case women falsely accused her groom, Munish Dalal for demanding dowry at the time of arrival of groom's procession. She claimed that mother of Dalal demanded Rs.1200000 cash and Maruti Esteem car. When mother of Nisha communicated that she will be unable to fulfil their demand, the family of the groom started verbal abuse. The case was widespread in the media. But when the case came to an end in 2012, the court discharged all the declaration on Munish Dalal and set him free. It was observed that Nisha filed false cases of dowry to bail out from her marriage with Munish Dalal as she in relationship with some other person.

### **CONCLUSION**

The criticism lays where domestic violence, dowry law, etc are not argued with regard to gender equality. Any gender male or female may be victim under any law by the offender. Legislature made laws to protect women from maltreatment of men and also from long-practised unjustified traditions. On the contrary, women seek dominance over these laws. Malicious motives are fulfilled by women in support of these laws. Corrupt judicial system, over burden of cases, inactive police contribute to the objective of unscrupulous person. The glaring slit in the laws enacted for the protection of women head to make path itself for women to take malicious gains over it. These rights give good opportunity to female society to redress male society. Therefore, society requires proper framework of protection of both the gender and abstain any gender to take advantage over the other.

Marriage which is considered as an unbreakable bond between two souls. Marriage is a sacrament which is accompanied with evil side, DOWRY. The problem of dowry is deep rooted in the Indian society and is practised over a long period of time. The position of women is rapidly changing with the time. It has so changed that the laws legislated for them have to undergo study due to increasing rate of their misuse by women. One may come across many cases where false allegations are made on husband by women for dowry. Laws against dowry are very harsh in India. On simple complain by women, police may arrest the accused without warrant and put him jail. Of course, the law was made for the protection of women but over the time women have become so updated with their rights that they make dominance over it and have made criminal mind. These laws are manipulated by women to

make money. However, state must soon come up with provisions which provide innocent men protection against mala fide intention of women. State shall provide same punishment to women for lodging false cases of dowry or domestic violence as the convicted may be sentenced. Crime under section 498a must be made bailable and non-cognizable. Free counselling must be provided to husband or relatives of husband who are victims of such harassment. The legislation must see to add some special provision to protect innocent males and also take action against corrupt judicial and police officers.

It is heart-breaking to see women who are compared with goddess and are believed to possess characteristics like innocent, soft heart, loving nature, kind have come up with this face.

### **REFERENES**

#### **ACTS**

1. INDIAN PENAL CODE, 1860
2. DOWRY PROHIBITION ACT, 1961
3. DOMESTIC VIOLENCE ACT, 2005

#### **WEBSITE**

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