

LAWS FOR WOMEN IN INDIA: A CRITICAL PERSPECTIVE

Adv. Priyanka N. Matlane

Lawyer, Legal Firm, Pune, Maharashtra, India

Abstract: Women in India have been facing discrimination since ages. After independence our constitution makers and legislators have framed many enabling laws for women's equality, dignity and protection. There is no doubt that these laws have proved game changers to some extent. But, recently we have seen various misuses of these enacted laws from some of the part and women of the society. Such incidents have put question mark on the sanctity of such enacted laws. The present paper seeks to analyze the uses and misuses of such laws. The present paper tries to give some of the solutions to overcome the problem of discrimination on various level faced by women and men while dealing with these laws.

Keywords: Constitution, Independence, Laws, Misuse, Use, Women.

Introduction: 'When a woman uses law, she is accused of misuse; when an Indian woman uses law, she is labeled with bad character'- Indira Jaising (Former A.S.G. & Sr. Adv.)

Whenever a woman uses the law, she is told she is misusing it; shockingly, when an Indian woman accesses the law, she is often labeled as 'a woman of bad character'. But no one has gone to the reality and has not pointed about 'what is the truth'? It is a common scenario of general thinking of the members of the society that good women are bound by 'maryada' and so they doesn't go to the law. The court too looks at the woman who demands protection or files application under any of the provisions of Indian Penal Code, The protection of Women from Domestic violence Act or under any other provisions such as Criminal Procedure Code, etc. as: here comes another one who is misusing the law.

Women and Law: In a patriarchal society, where women are often subjected to violence, Section 498A as well as the provisions of the D.V. Act for the domestic violence against women was a great respite. In the majority of Indian families, it is a part of custom that a newly-wed couple lives in a joint family, where the 'bahu' i.e. daughter-in-law is living with her in-laws. If such a woman is tortured, physically or mentally, within the first two years of marriage and is thrown out of her matrimonial house, she is left with no option but to resort to legal action against her persecutors – including her parents-in-law – who at times connive with their son. Despite such ground realities, some people of the society are saying women are misusing the law by adding parents to the FIR. This ruling dilutes the very purpose of the law.

But the judiciary has pointed out that a large number of cases where elderly parents are being prosecuted are not bona fide.

The judiciary cannot go by numbers alone. It has to treat every individual case as per its merit. 'Misuse of law' is a sweeping generalization, which then becomes a benchmark, quoted in support of the next judgment. Rulings in such cases cannot be made based on **previous rulings, or mere police statements or general public opinions.**

Across the world, women are subjected to domestic violence. This is not unique to India. However, in India, dowry deaths take this violence leagues ahead of rest of the world, and therefore, particularly here we need strong laws.

Strong action must be taken against anyone who abuses law. No law should be misused by anyone. An allegation by a woman is not enough to make an arrest. The police must investigate the matter and then register a complaint, under the sections they deem fit.

The court should direct its anger against the police and law enforcement agencies. Here the court has found a cure worse than the disease. Police powers have been given to welfare committees, who will decide whether an offence has occurred and whether a woman has faced violence. The purpose of powerful laws is defeated.

To the some extent people thinks that mostly educated, working and independent women with high aspirations are the ones who are misusing the provisions these laws of such as Section 498A of IPC, provisions of the Domestic Violence Act.

But that is not the reality. If a woman has an unhappy marriage, she will file for a divorce. Educated women are not manipulating law: they are walking out of the marriage.

Section 498A comes into the picture when a woman is subjected to violence. If we condemn terrorists or arsonists, how can we not be moved by the plight of a persecuted woman, who works hard for the sake of her family, and tries in vain to come to terms with the violence she is subjected to?

Men and Law: In India and elsewhere in the world, there are no special laws for male. There is Dowry Prohibition Act, Section 498A in Indian Penal Code i.e. offence of cruelty by husband and relatives of husband; section 125 in Code of Criminal Procedure i.e. maintenance for wife; protection of women from domestic violence, in Statute books. But there is no protection of men in Domestic Violence Act, 2005, there is no provision like Section 498B in Indian Penal Code, there is no provision like Section 125A in Code of Criminal Procedure i.e. maintenance to husbands under the Act. Rather the specific laws for women are misused by errant women and police officers. The cry of victimized husbands and their relatives is not heard either in courts or in society. The practice says that real purpose of the women – related specifies laws are misused and thereby husbands suffer for no fault.

Concept of Equality and Equal Rights: Article 14 of Indian Constitution provides for equality before Law and equal protection of law. Similarly article 7 of Universal Declaration of Human rights, 1948 provides that all are equal before law and are entitled without any discrimination to equal protection of law. Article 3 of the Covenant on Economic Social and Cultural Rights 1966 and the Covenant in Civil and Political Rights 1966, provides that State parties to these covenants undertake to ensure equal rights for men and women, given under these covenants. Article 15(3) of Indian Constitution is considered as an exception to general rule of Article 14. If there is discrimination in favor of particular sex, it is permissible provided that the classification is the result of other considerations beside the fact that the persons belonging to that class are of a particular sex. Analyzing the constitutional validity of the sec 498 A of I.P.C. it can be viewed that the section is ultra virus to Art. 14 of constitution of India, the concept of equality and equal protection of law guaranteed by Art 14 in its proper spectrum encompasses social and economic justice in a political democracy. It is a pledge of protection of or guarantee of equal rights within the territorial jurisdiction of the Union to the enjoyment of rights and privileges without favoritism or discrimination. If a wife has a law to protect herself against the cruelty of her husband, why doesn't husband have it? Against Every 100 male suicides there are almost 45 married males, and against every 100 women suicide there are 25 married women. Married women suicides have default arrests of the in-laws under presumed dowry death. Married men suicide entitle wife for a 50% share in the property. What kind of equality is this? Equality is a dynamic concept which goes on changing with changing times and social contexts and must be understood in that sense. There is no prohibition clause in the section 498A that would stop women to misuse it against the men is growing day by day and most apparently some Indian Urban educated women have turned the tables and are using these laws as weapon to unleash personal vendetta on their husbands and innocent relatives and there are certain grounds on which cruelty against husband can be proved:

- Misuse of Dowry Laws, Domestic Violence Act and 'Sec: 498-A' of IPC by wife against husband and in-laws of husband through lodging false complaints.
- Desertion by wife which means wife deliberately intending for separation and to bring cohabitation permanently to an end.
- Adultery by the wife means wife having sexual relationship with some other person during the lifetime of marriage and there must be strict law to punish wife who has committed adultery.
- Wife opting out for second marriage without applying for the divorce proceedings.
- Threatening to leave husband's home and threat to commit suicide by the Misuse of Legal Protection by wife.
- Cruel behavior of wife where wife tearing the shirt of the husband, refusing to cook food properly or on time and breaking of the mangalsutra in the presence of husband's relatives.
- Abusing and accusing husband by way of insulting in presence of in-laws and in some cases wife abusing husband in front of office staff members.

- Wife refusing to have sex with husband without any sufficient reasons which can be considered as a ground of cruelty and husband can file a divorce petition.
- Lowering reputation of the husband by using derogatory words in presence of family members and elders.
- Lodging FIR against husband and in-laws which has later proved as false report.
- Conduct and misbehavior of the wife against husband i.e. pressuring husband to leave his home, insisting for the separate residence, mentally torture and disrespectful behavior towards husband and in-laws as well.
- Some other grounds of cruelty i.e. mental disorder and unsoundness of wife, Impotency of wife, illicit relationship of wife with some other person and Wife suffering from the filarial.
- Extra-marital affairs of wife can also be a ground of cruelty against the husband.
- Initiating criminal proceedings against husband and in-laws of husband with mala-fide intention by the wife.

What government can do to make the balance?

There should be enactment of uniform civil code in case of matrimonial laws.

There should be an equal provisions for both men & women for the violence done against them.

Conclusion: Cruelty in human behavior is as old as human civilization itself is. Human by nature is cruel. As and when one gets an opportunity, be it a male or female, one perpetuate cruelty upon other. In the ancient days the human being practices cruelties towards animals. After some development of human race, the subject of cruelty changed from animal to other human being. The perpetuator of cruelty always remains to be the powerful one and the one upon whom the cruelty was perpetuated always remains to be weaker one. With the concept in mind human being started perpetuating cruelty in order to gain strength and show their power. Though it is the duty of the court to decide the case based on facts and circumstances but what amounts to cruelty is an important aspect as misuse of Laws by the wife against husband in society.

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