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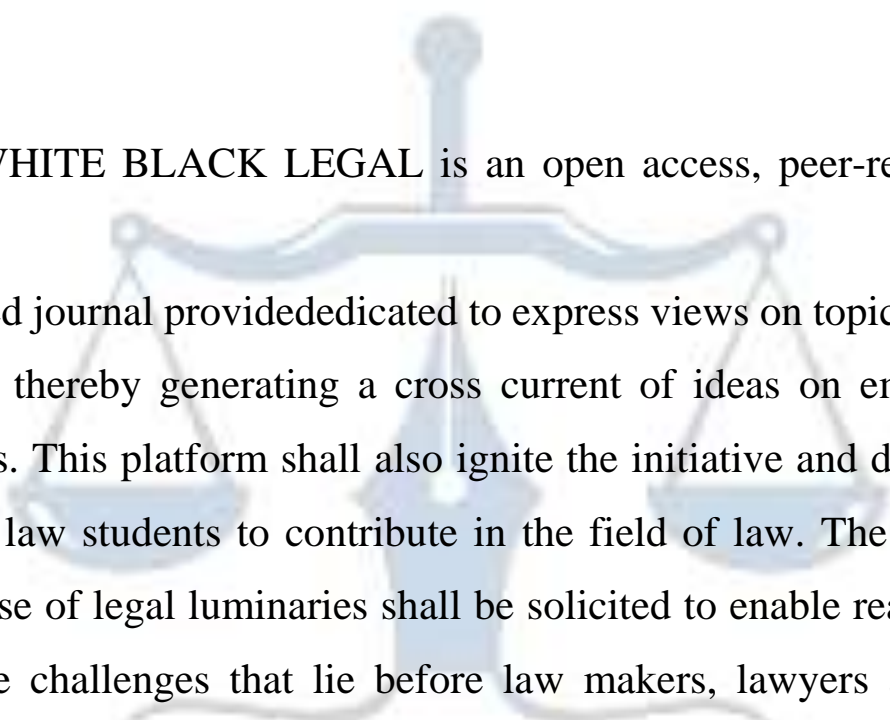


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With this thought, we hereby present to you

WHEN PROTECTION BECOMES PERSECUTION: ADDRESSING THE MISUSE OF WOMEN-CENTRIC LAWS IN INDIA

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ABSTRACT

Women-centric legislation in India was established with the commendable aim of empowering and safeguarding women from various forms of discrimination, violence, and injustice. Nevertheless, over time, concerns have emerged regarding the potential for these laws to be misused. This abstract examines the intricate social dynamics associated with the misuse of women-centric laws in India, exploring the contributing factors, consequences, and possible remedies. The issue of misuse is complex and cannot be easily defined. It is crucial to recognize that while there are authentic instances of gender-based violence and discrimination, there have also been cases where these laws have been manipulated for personal advantage, revenge, or to resolve familial conflicts. Factors such as power dynamics, socio-cultural influences, and a lack of awareness and sensitivity towards gender issues exacerbate this situation. The repercussions of misusing women-centric laws are extensive. Innocent individuals, including men and their families, may face false accusations, legal harassment, social stigma, and financial strain. Furthermore, the integrity and credibility of these laws are compromised, fostering skepticism and diminishing trust in the justice system. Such misuse can inadvertently reinforce gender biases and obstruct the advancement of gender equality within society. In India, legislation is often gender-specific, resulting in certain laws that safeguard women's rights while lacking equivalent protections for men. This imbalance can lead to the misuse of protective laws by women, occasionally resulting in innocent men being wrongfully deemed guilty. However, the situation has evolved, as violence is no longer an issue faced solely by women. Men, too, experience physical, emotional, and sexual abuse, yet many do not report such incidents due to the perception that Indian laws predominantly favor women. This paper primarily examines the implications of gender-specific legal provisions and their consequences.

Keywords: Misuse, Gender-based bias, skepticism, repercussions, extensive

INTRODUCTION

No country is entirely free from gender bias, but some have made significant progress in promoting gender equality through various laws and initiatives. Norway, Sweden, and Canada are notable examples, having enacted legislation aimed at ensuring gender equality and reducing workplace and societal bias. In India, however, there are instances where women exploit protective laws. For instance, Section 498A¹ of the Indian Penal Code, designed to safeguard against domestic violence, has been misused by some women to file false allegations against their husbands and in-laws, often to gain an advantage in divorce cases or for financial extortion. Similarly, the Protection of Women from Domestic Violence Act of 2005 can be misapplied to unfairly influence divorce proceedings or to intimidate husbands and in-laws. Additionally, Section 354A² of the IPC, which addresses sexual harassment, may also be misused to falsely accuse husbands. It is crucial to recognize that these laws are intended to protect women from genuine abuse and harassment. Discriminatory practices involve actions or behaviors that unjustly treat individuals or groups differently based on attributes such as race, gender, sexuality, age, religion, disability, or other characteristics. These practices can manifest in various ways, including exclusion from opportunities, unequal treatment, harassment, and stereotyping. They can be found in numerous aspects of life, such as education, employment, housing, healthcare, and the legal system. Addressing these practices is essential to fostering equality and fairness for everyone, irrespective of their background or identity. Legal professionals have a vital role in challenging and eradicating discriminatory practices within the legal framework and society as a whole. In a significant ruling, the esteemed Supreme Court stated that women are engaging in legal terrorism within India. A recent survey revealed that over 66% of participants believe that laws designed to protect women are being misapplied. This survey, conducted by students from St. Xavier's College, aimed to investigate the social discrimination faced by men. The objective of the survey was to identify the challenges men encounter, such as discrimination and harassment. The underlying goal was to raise awareness about men, who are frequently perceived as the proponents of patriarchy in society. Notably, 58.95% of respondents indicated that men feel threatened by laws intended for the protection of women. The Constitution of India permits the government to establish special provisions for women under Article 15(3)³. It is essential to recognize that while laws may be enacted to protect women, there should also be corresponding laws that safeguard the

¹ The Indian Penal Code, 1860, §498A, No. 45, Acts of Parliament, 1860 (India).

² The Indian Penal Code, 1860, §354A, No. 45, Acts of Parliament, 1860 (India).

³ INDIA CONST. art. 15, cl. 3.

rights of men. This ensures that men can seek legal recourse in the event of false accusations. In contemporary society, men may be viewed as one of the most disadvantaged groups due to the prevalence of women-centric legislation. Lawmakers must acknowledge that although women are often perceived as more vulnerable than men, this does not imply that men do not require protection. It is imperative for society to have laws that defend all individuals against any form of abuse or inequality.

HISTORY OF WOMEN LAWS

India is a nation where the status and role of women have experienced significant fluctuations throughout history. In earlier times, women were often viewed as dependent on their fathers or, following marriage, on their husbands. In matriarchal societies, women were perceived as physically stronger than men. However, the challenges of pregnancy, childbirth, and menstruation diminished their physical capabilities, leading to increased reliance on men for sustenance and protection. The societal status of women has been a highly contentious issue; they were revered as Devi or Goddess in some contexts, while simultaneously being denied fundamental rights. During the Rigvedic era, women held respectable positions within the family structure. They were permitted to study the Vedas and pursue education. Both wives and husbands participated in various rituals together. Notable educated women from this period, such as Ghosa and Apala, exemplified this empowerment, as they had the autonomy to choose their spouses and inherit their father's property. However, with the emergence of the caste system in the later Vedic period, the status of women began to decline. Many rights were stripped away, and the ideal of a wife shifted to one of submission, expected to remain silent and obedient to her husband. The birth of a daughter was often met with disfavor, seen as a burden. Educational opportunities for women diminished, and the acceptable age for marriage gradually decreased, with instances of men in their thirties marrying girls as young as twelve being considered socially acceptable. In the post-Vedic era, the legal text Manusmriti had a detrimental impact on the conditions and status of women for many years. Manusmriti diminished the standing of women, asserting that they should venerate their husbands, comply with their directives, and regard them as deities. The laws established by Manusmriti relegated women to a lower social status compared to other societal groups. During the British colonial period, the status of women underwent significant changes due to the influence of Western culture on Indian society, leading to a further decline in their position. Women were perceived as inferior to men in all respects, and initiatives aimed at promoting female education were minimal. In

the late 19th century, as India approached independence, numerous prominent social reformers emerged to advocate for the enhancement of women's status, initiating movements across various regions of India; however, these efforts primarily engaged the upper middle class. Following India's independence, numerous legal reforms were introduced to elevate the status of women and ensure equality with men. For instance, Article 15(3) of the Indian Constitution empowers Parliament to enact special provisions for the protection of women's rights. Article 16 guarantees equal opportunity for all citizens in employment and appointments within the state. Legislative measures such as the Special Marriage Act of 1956⁴, the Hindu Marriage Act of 1955⁵, the Immoral Traffic (Prevention) Act of 1956⁶, the Dowry Prohibition Act of 1961⁷, and the Domestic Violence Act of 2005⁸ were established to uphold the dignity and status of women in Indian society. With independence, women were granted equal status alongside men, prompting the government to implement various provisions and amendments aimed at enhancing women's standing, including laws specifically designed to benefit them. The historical marginalization of women prompted legislators to establish specific laws and provisions aimed at improving their status.

LAWS THAT ARE GENERALLY MISUSED

Domestic Violence Act, 2005

The Domestic Violence Act, established in 2005, is a civil law designed to offer protection and relief to women who are victims of violence within the context of marriage, specifically from their husbands or in-laws. This legislation has successfully provided justice to numerous married women. However, over time, there have been instances where some women have misused this Act, filing false domestic violence claims against their husbands and in-laws. Such actions often stem from personal motives, including extramarital relationships or the desire to obtain their husbands' property. While it is essential to recognize the significance of these laws in safeguarding women who genuinely experience domestic violence and cruelty, it is equally important to acknowledge the adverse effects on innocent men who suffer reputational damage and, in some cases, job loss due to unfounded allegations. According to data from the National Crime Records Bureau (NCRB) spanning six years (2017 to 2022), the number of women who died by suicide due to marriage-related issues (25,197) exceeded that of men (21,579). Notably,

⁴ The Special Marriage Act of 1956, Acts of Parliament, 1956 (India).

⁵ The Hindu Marriage Act of 1955, Acts of Parliament, 1955 (India).

⁶ The Immoral Traffic (Prevention) Act of 1956, Acts of Parliament, 1956 (India).

⁷ The Dowry Prohibition Act of 1961, Acts of Parliament, 1961 (India).

⁸ The Domestic Violence Act of 2005, Acts of Parliament, 2005 (India).

in 2022, 52.5% of all female suicide victims in India were housewives. There are claims that a higher number of married men die by suicide as a result of false domestic violence (DV) allegations; however, the NCRB does not categorize suicides attributed to false DV cases. The category of marriage-related issues encompasses factors such as unresolved marital disputes, extramarital relationships, dowry-related concerns, and divorce. Furthermore, family problems unrelated to marriage emerged as the leading cause of suicide among men in India during the same period, accounting for 30.8% of total male suicides, in stark contrast to the 3.4% attributed to marriage-related issues. According to the findings of the National Family Health Survey (NFHS) 5, 31.9% of married women aged 18 to 49 report experiencing domestic violence—whether emotional, physical, or sexual—at the hands of their spouses. Data from the National Crime Records Bureau (NCRB) indicates a significant rise in the number of cases registered under IPC Section 498A and the Dowry Prohibition Act, 1961, with increases of 33.9% and 32.3%, respectively, from 2017 to 2022. It is important to note that these statistics likely represent only a fraction of the actual occurrences, as domestic violence is frequently under-reported. The NFHS-5 reveals that 80.1% of women who experienced violence from their current husbands did not disclose their situation to anyone, and merely 11.3% sought assistance from any source. Among those who did seek help, only 6.3% approached the police. In addition to the challenges posed by unreliable data stemming from under-reporting, there exists a significant gap in the availability of public data compilations regarding civil matters. This includes various petitions filed under the Protection of Women from Domestic Violence Act, 2005, as well as cases related to divorce and child custody. In *Preeti Gupta v. State of Jharkhand* (2010)⁹, courts must exercise caution when handling complaints, especially in matrimonial cases, considering practical realities. Allegations of harassment from the husband's distant relatives, who seldom visited the complainant's location, should be viewed differently. The complainant's claims need thorough and careful examination.

Section 498A of the Indian Penal Code

Section 498-A of the Indian Penal Code delineates the concept of "Cruelty" and offers protection to wives against any form of mistreatment by their husbands or their husbands' relatives. This provision was introduced to empower women in addressing the threats associated with dowry-related deaths. It is important to note that this section exclusively provides remedies for wives, without extending similar protections to husbands. The

⁹ *Preeti Gupta v. State of Jharkhand*, 2010 (7) SCC 667.

introduction of this section was essential, as a significant number of married women were enduring cruelty within their marital households. However, it has been observed that many women are not utilizing this provision for their protection; instead, it is often employed as a means of retaliation against their husbands, to extract financial gain, or to inflict suffering upon their in-laws. Instances of false accusations against husbands have been reported. Investigations into the application of this section have revealed that the rate of acquittals surpasses that of convictions. Such misuse undermines the genuine credibility of Section 498-A. It is imperative that this section not only serves the interests of women but also acknowledges the experiences of men, as the incidence of husbands facing cruelty has risen and should be addressed within the legal framework. Cruelty is articulated in Section 86¹⁰ of the BNS as follows:

- Any intentional behavior that is likely to compel a woman to take her own life or to inflict serious harm or pose a threat to her life, physical well-being, or mental health; or
- Harassment directed at the woman with the intent to coerce her or any individual associated with her into fulfilling an unlawful demand for property or valuable security, or stemming from her or her associate's failure to comply with such a demand.

Furthermore, Section 85¹¹ of the BNS stipulates that any husband or relative of a husband who subjects a woman to cruelty shall face imprisonment for a term that may extend to three years, in addition to being subject to a monetary fine.

In the case of *Arnesh Kumar v. State of Bihar* (2014)¹², the Court established key arrest guidelines:

Arrest Protocol for Police: Officers should not automatically detain individuals accused under Section 498-A IPC. Arrests should be necessary, following Section 41¹³ of CrPC, and based on a situation assessment.

Checklist and Documentation: Police are required to fill out a checklist justifying the arrest and present it with reasons and evidence to the Magistrate during the accused's detention.

¹⁰ The Bharatiya Nyaya Sanhita, 2023, §86, No. 45, Acts of Parliament, 2023 (India).

¹¹ The Bharatiya Nyaya Sanhita, 2023, §85, No. 45, Acts of Parliament, 2023 (India).

¹² *Arnesh Kumar v. State of Bihar*, AIR 2014 SC 2756

¹³ The Code of Criminal Procedure, 1973, §41, Acts of Parliament, 1973 (India).

Magistrates' Responsibilities: Magistrates must examine the police report, confirm the arrest's validity, and document their approval before allowing detention. Unjustified decisions may lead to disciplinary measures.

Consequences for Non-Compliance: Failure to adhere to these guidelines by police or Magistrates can result in departmental actions or contempt proceedings initiated by the High Court.

In *Rajesh Sharma & Others v. State of UP & Anr* (2017)¹⁴, the Court examined the need for measures to curb the misuse of Section 498A of IPC. The Court established these guidelines:

Family Welfare Committees: District Legal Services Authorities will create committees to assess complaints under Section 498A IPC, with regular reviews by the District and Sessions Judge.

Designated Investigating Officers: Only specially trained officers will manage complaints, completing their training within four months.

Case Handling and Bail: Senior judicial officers can close cases through settlements. Bail should be granted fairly, not solely based on dowry recovery, considering individual circumstances and justice.

Special Provisions: NRIs' passports should not be routinely seized. Trials should permit video appearances for family members when possible, except in cases involving physical harm or death.

Laws Related to Maintenance

According to Section 125¹⁵ of the Code of Criminal Procedure, 1973, individuals are obligated to provide support for their spouses, children, and parents who are unable to sustain themselves. In situations where the wife is employed but her income is inadequate for her needs, the husband is still responsible for her financial support. Section 37¹⁶ of the Special Marriage Act stipulates that a husband must continue to support his wife from his assets following a divorce,

¹⁴ *Rajesh Sharma & Othrs v. State of UP & Anr*, AIR 2017 SC 3869.

¹⁵ The Code of Criminal Procedure, 1973, §125, Acts of Parliament, 1973 (India).

¹⁶ The Special Marriage Act, 1954, §16, Acts of Parliament, 1954 (India).

until her circumstances change, such as through remarriage or engaging in immoral conduct. Furthermore, Section 18¹⁷ of the Hindu Adoption and Maintenance Act grants a Hindu wife the right to receive lifelong support from her husband. Under Section 3¹⁸ of the Muslim Women (Protection of Rights on Divorce) Act, 1986, a divorced Muslim woman is entitled to support from her former husband during the iddat period. Additionally, Section 37¹⁹ of the Divorce Act of 1869 mandates that if a decree of dissolution or judicial separation is granted, the husband must provide for his wife's support for the rest of her life. While these laws emphasize the husband's duty to support his wife, they do not address the possibility of a husband needing support from his wife. There may be circumstances where a husband requires maintenance, yet the aforementioned statutes do not acknowledge this need. In matters of divorce and maintenance, family law primarily focuses on the support of women. Under Section 125 of the Criminal Procedure Code, a recovery warrant can be issued against a husband who fails to provide for his wife. Additionally, in child custody cases, it is generally preferred that the wife is awarded custody, particularly for children under five years of age. Furthermore, a single man is prohibited from adopting a female child. These legal provisions exhibit significant shortcomings that adversely affect men.

Laws Related to Rape

Rape is delineated in section 375²⁰ of the Indian Penal Code, where the term "Rape" is understood to signify the forceful taking of another. It refers to engaging in sexual intercourse with a woman without her consent or through coercive means. This legal provision is essential for safeguarding the dignity of women; however, it is crucial to acknowledge that false allegations of rape can occur, potentially damaging the reputation of men. While not all women engage in such behavior, a significant number may resort to false claims to tarnish a man's standing in society or to seek financial gain. Furthermore, section 375 of the IPC may exhibit gender bias, as men and transgender individuals can also be victims of sexual violence. It is imperative that individuals accused of rape are afforded a fair opportunity to present their case, and that courts employ rigorous standards of evidence before rendering judgments in these sensitive matters, given the profound implications for a man's life and reputation. This is exemplified in the case of Vishnu Tiwari vs. the State of UP, where Tiwari was wrongfully

¹⁷ The Hindu Adoption and Maintenance Act, 1956, §18, No. 78, Acts of the Parliament, 1956 (India).

¹⁸ The Muslim Women (Protection of Rights on Divorce) Act, 1986, §3, No. 25, Acts of Parliament, 1968 (India).

¹⁹ The Divorce Act, 1869, §37, No. 4, Acts of Parliament, 1869, (India).

²⁰ The Indian Penal Code, 1860, §375, No. 45, Acts of Parliament, 1860 (India).

convicted of rape and spent nearly 17 years in prison before being exonerated.

Other Laws Include

In addition to various legal frameworks, the The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act²¹, 2013, also known as the POSH Act, stands as a pivotal measure designed to foster a secure and respectful workplace environment for women. Unfortunately, there have been numerous occasions where women encountered challenges with colleagues or superiors in their professional settings. Over time, some have misused this legislation, leading to unfounded allegations of molestation against men, which have tarnished their reputations and jeopardized their careers. The case of Independent Thought v. Union of India (2017)²² addressed the improper application of the Protection of Children from Sexual Offences (POCSO) Act. The Supreme Court determined that consensual sexual relationships between minors, provided that both individuals are of similar age, should not be classified as criminal offenses under the act.

THE SOCIETAL STAND OF THESE LAWS

A significant portion of our society has consistently supported the empowerment of women. Presently, women enjoy considerable advantages in legislation that prioritizes their rights. The societal landscape has evolved from an era when women were marginalized and perceived as weak to a contemporary context where they are respected and recognized for their strength. Nevertheless, the prevailing culture often interprets incidents related to laws favoring women in a manner that casts men as perpetrators, rather than seeking to understand the broader context. When a girl is subjected to rape, there is a collective expression of sorrow for the victim and concern for her future, which is entirely appropriate. It is essential for individuals coexisting in society to demonstrate this level of empathy. However, what happens to a man who is wrongfully accused of rape but later exonerated? Does society maintain the same perception of him as it did prior to his involvement in a false allegation? The answer is no. Even after proving their innocence, those who had previously labeled them as offenders often continue to regard them with disdain, denying them the dignity of living without stigma. The rise of social media platforms has exacerbated this issue, as they facilitate the swift tarnishing of an individual's reputation. This reflects a societal interpretation of laws that favor women,

²¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India).

²² Independent Thought v. Union of India, 2017 WRIT PETITION (CIVIL) NO. 382 OF 2013.

which tends to perpetuate the notion that women are invariably victims and men are invariably offenders, irrespective of the actual circumstances surrounding each case. In the case of *Dr. N.G. Dastane v S Dastane*²³, the Supreme Court determined that, despite the assumption that the physically stronger individual is likely to inflict abuse upon the weaker individual—specifically, a husband towards his wife—both men and women possess the capacity to engage in mental cruelty within their relationships.

REMEDIES THAT CAN BE BROUGHT

The legislation that is inflexible and focused on women's issues requires careful examination to identify and address any existing deficiencies. While laws designed to protect women are undoubtedly important, it is crucial to ensure that such measures do not inadvertently jeopardize the safety of innocent men. When formulating legislation, the rights of both genders must be duly considered. Despite the stringent enforcement of dowry laws against the groom's family, instances of dowry practices persist. This issue arises because the Dowry Prohibition Act renders the provision of dowry by the bride's family illegal as well, with penalties imposed solely on those who accept dowries. Typically, those who demand dowries are also the ones who provide them. Therefore, it is vital that these laws are implemented effectively.

CONCLUSION

The improper application of legal provisions by women in India infringes upon the constitutional rights of men and their families, necessitating urgent attention. The government ought to implement measures to prevent the misuse of such laws and to guarantee that men and their families have a fair opportunity to defend their rights. Furthermore, it is essential to raise awareness regarding the misuse of legal frameworks by women in India to safeguard the rights of men and their families. Gender bias remains a significant concern within our society. It is crucial to recognize the ways in which we may inadvertently contribute to this issue and to actively work towards fostering a more just society. Gender bias adversely affects both men and women, resulting in unequal opportunities and outcomes. Acknowledging the necessity of confronting and addressing gender bias is vital for establishing a fair and equitable society. We must cultivate an environment that honors every individual, irrespective of their gender or identity. Additionally, it is imperative to ensure that all individuals have equal access to participate in every facet of society. Collaborative efforts are essential to guarantee that

²³ *Dr. N.G. Dastane v S Dastane*, AIR 1975 SC 1534, (1975) 2 SCC 326, 1975 3 SCR 967.

everyone is treated with dignity and respect, and that their opportunities are not constrained by gender. Ultimately, we should aspire to build a society that embraces and values each person for their true self, regardless of gender. The existence of misuse should not undermine the importance of laws designed to protect women; it is essential to recognize that such instances of misuse constitute a small fraction of overall cases. The focus must be on creating a fair and just legal framework that upholds the rights of both women and men while effectively addressing genuine cases of abuse and harassment. Legislation aimed at women's rights was established to shield them from societal injustices, a necessity that remains relevant today. Nonetheless, it is equally important to ensure that these laws do not inadvertently harm innocent individuals in any conflict. Furthermore, judges face the challenging task of delivering impartial judgments, free from societal biases that portray women solely as victims of laws intended to protect them.

