

## **HARASSED MEN: MISUSE OF LAW BY WOMEN AND FOR WOMEN, A TRUTH OR A PERCEPTION**

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### **Brief Introduction:**

For most of the people whenever the question of harassment comes, an image of a woman being harassed comes to their mind. It is perfectly normal for a society like ours where women from centuries have been subjected to different types of harassment, be it public place or her home. Harassing someone is against one's human rights and should not be tolerated. Still the women in our country were tolerating the same and no one was there to put a stop to it. Women themselves believed that this was the right way in which they should be treated. India has and always had a high rate of illiteracy which further worsens the condition of women to a level that a girl child is killed merely on the basis of her gender.

This mindset was and is still prevailing from a very long time in our Indian society. Some of our political leaders like Raja Ram Mohan Roy worked for abolishing sati, Ishwar Chandra Vidyasagar helped in introducing widow remarriage etc. It was because of people like these that this perspective changed and things started to get better for women in our country. After Independence, it was even in the manifesto of some governments to empower women and give them the rights they deserve.

To uplift the condition of women and their status in the society, various laws and policies are enacted by the Government. These laws and policies aim at reducing the gap of social and legal justice between the genders. These laws and policies gave a voice to women and aimed at changing social realities.

They were welcomed at first, but the mood of the discourse has changed in the recent times. Persons aggrieved by the laws, when women make use of it, are calling the use as foul. The

recent narrative in the discourse is that women misuse the laws provided for their betterment and that several laws are biased against men and leave them out of the arena of equality.

### **Adultery**

The Section 479 of The Indian penal Code, 1870 relating to Adultery laws states that:

*"Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor. <sup>1</sup>*

Since its origin, the law on Adultery in India has been subject to controversy concerning a few crucial issues. One of the major issues that also arise in class discussions is that why only men are charged with adultery. Why are females not charged of adultery? Is there not a harassment of a man when he is charged for adultery by the wife through her husband? The reason why this offence has been chosen for close inspection is because majority of men and women in the Research Study by P.N Murkey related to Adultery, where a group of 200 students from colleges with different disciplines were asked whether both partners should be <sup>2</sup>punished under this law and if they consider that the law is biased towards men, 96% of the subjects answered that, this provision is a harassment of men and misuse of law to benefit women.

The Law Commission of India in its Forty-Second Report recommended that women should also be punished under this Section. If this is carried out, then it will be a law blind to<sup>3</sup> the plight of women. Even if women are given significant attention in this era, still they are not treated equally in all aspects at the social level. This will only lead to a haven for husbands and in-laws to rid themselves of the woman. Understanding a woman's social standing, even an allegation of adultery or illicit relation can create a havoc in a woman's life and reduce her

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<sup>1</sup> Section 479, Indian Penal Code, 1890

<sup>2</sup> *Adultery as viewed by future generation- A study and discussion*, P.N.Murkey, B.H.Tirpude, Alope Mazumder, V.G.Pawar, S.Bhowate & Sumit Shende, *J Indian Acad Forensic Med*, 31(4)

<sup>3</sup> *Law Commission of India, Report no. 42, 1971*

standing in the society. Amending the law in a way that it will criminalise the wife, will only reduce her social life and her dignity.

To answer whether this law is a harassment of men as it is biased against men, will be answered when we look at the jurisprudential aspect of the offence.

Ahuja Naysa, in her book titled *Feminist Jurisprudence: The need to understand the Woman's Question and its implications on women in the Indian Patriarchal Society*, helps to provide the Feminist Jurisprudence of this section. It will lead us to consider that only the husband of the wife can file a case. This leaves the married woman to be looked as victims or sufferers at the hand of the other man on violated them. The husband has the sole right over her wife's sexuality and becomes the protector of it, when infringed by another man<sup>4</sup>. Also, there is no remedy given to a wife, whose husband commits adultery. The remedy is only given to the husband of the wife, who is involved in an adulterous relationship, against the other man.

If we try to analyse this section through the Positive School, Subbarao Venkata in his book *Jurisprudence and Legal theory* puts laws as what is given in the section. He limits the understanding of law to what is given and provides for no interpretation. If he put his understanding into our problem, we will realise that to achieve a fair and just society, this section's objective should be preventing adulterous relationships<sup>5</sup>. By letting the wife go free of any charge, it compromises the objective of the Section. Yet nothing can be done as it is what the law is and law cannot be challenged according to the Positive School of jurisprudence.

Historical school of law and its piece of work in this section is that this concept of adultery in customs has been affecting the notion of adultery in law. As the Hindu scriptures did not give any right to a woman to contest her husband's fidelity but gave punishment to a woman on her infidelity, one can see only a slight change from the custom. A woman indulging in an act of adultery is denied any agency and so does the wife of an adulterer. Just as in the past, a wife

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<sup>4</sup> Ahuja Naysa, *Feminist Jurisprudence: The need to understand the Woman's Question and its implications on women in the Indian Patriarchal Society*, University of Delhi, 2010

<sup>5</sup> Subbarao Venkata G.C., *Jurisprudence and Legal Theory*, Eatsern book Company, 9th Edition, pg. 51

had no recourse against an adulterous husband, in the present too, she has no recourse or any say in the offence of adultery. She is just a property of her husband

If one looks at the offence of Adultery in the above light, one will realise that it does not benefit women nor does it harass men or can be used as a tool to harass man. All it does is satisfy the ego of a wounded husband and yet again raise a foul cry of misuse and “manscriminstion”.

### **Section 498-A: Cruelty**

The Section of 498-A deals with cruelty. It includes in its definition both mental and physical cruelty. Dowry Prohibition Act and Domestic Violence Act, both did not have any provision related to cruelty which lead to this Section added in Indian Penal Code. But this Section and its use is not strictly limited to the above two laws only.<sup>6</sup>

There has always been a huge hue and cry about this Section. The Section makes the offence of cruelty non-bailable, non-compoundable and husband, husband’s family members as well as husband’s distant relatives can be booked under this Section.

In the report of Mallimath Committee on Reforms of Criminal Justice System, 2003<sup>7</sup>, Government of India it was recommended that this offence should be made compoundable and bailable. it recommended so as it stated that if the offence will be non-bailable, then the husband will lose his job and the woman will not get maintenance which will further worsen the condition of the woman as she will rarely have any support from the society. it stated that the wife and the husband may reconcile their issues but its non-compoundable nature renders any possibility of settlement and reconciliation defeated.

The Committee of Petitions, a committee at work in Lok Sabha<sup>8</sup>, headed by Shri Bhagat Singh Koshiayri, suggested that this Section should only be made non-compoundable and not bailable. It was suggested so taking in view that the non-compoundable nature of the Section leaves any reconciliation between the spouses in vain.

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<sup>6</sup> Section 498-A, Indian Penal Code, 1870

<sup>7</sup> Mallimath Committee Report, 2003, Government of India, Ministry of Home Affairs

The Law Commission of India in its Two Hundred and Thirty-Seventh Report<sup>9</sup>, gave a para regarding 498-A and recommended the need of it to be made a compoundable offence. The Law Commission stated that the Section should not come between any reconciliation between the spouses. It stated that the objective of the Section is not to punish the accused but to empower the women and provide her with justice. If the issue is resolved between the spouses then the court should not go on with the proceedings. The Law Commission hence recommended that the offence should be made compoundable but with the permission of the court.

The Judiciary also in various judgments made comments about the misuse of the Section. In *Preeti Gupta vs State of Jharkhand*, court commented that women make exaggerated versions of the incidents and pull those relatives also who are not involved to be booked. The court used the phrase “Legal Terrorism is unleashed”. The Supreme Court in *Ramgopal vs State of Madhya Pradesh*, made an observation that this Section should be made compoundable. The court in the case of *Chandrabhan Vs. State*, observed that “there is no iota of doubt that most of the complaints are filed in the heat of the moment over trifling fights and ego clashes. It is also a matter of common knowledge that in their tussle and ongoing hostility, the hapless children are the worst victims<sup>10</sup>

All the above observations by various Courts set the mood for its recent judgment in *Radhe Sharma vs Union of India*. The judgment laid down a different procedure to arrest and formation of Family Welfare Committees to look into matter of 498-A. Arrests will be now made on the recommendation of these Committees.<sup>11</sup>

All of this only added fuel and maybe an inch of power to the discourse that “Women Misuse Laws and harass men”, “this law is made to harass men” etc.

The Law Commission of India in its Two Hundred and Forty-Third Report<sup>12</sup>, state that though there are false cases filed and more acquittals and fewer conviction under this Section, yet it

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<sup>9</sup> *Law Commission of India, Report no. 237, August, 2011*

<sup>10</sup> *Chandrabhan Vs. State (order dated 4.8.2008 in Bail application No.1627/2008)*

<sup>11</sup> *Radhe Sharma vs Union of India, 2017*

<sup>12</sup> *Law Commission of India, Report no. 2012*

does not provide as an empirical data on misuse of this Section. It did recommend to make it compoundable though.

Sanjay Ghose in his article, *Domestic Violence Law Harms Rather Than Protects Women*<sup>13</sup>, addresses the claims of this law to be made gender neutral and criticizes the Supreme Court judgment. He states that the law is made to protect a woman who suffers at the hand of her husband and his family members. By making the law as gender neutral and giving the power to husband, we are overlooking the social reality that husbands have more financial independence and power and it will not take much time for them to quash the litigation of the wife with financial resources.

Indira Jaising in her article, *Without sympathy or suspicion*<sup>14</sup>, says that the court by relying on the statistics of acquittal as a prove of the law being misused by women is ignoring the possibility of acquittal resulted by low quality investigation and high burden of proof on the prosecution. She states that by having a lenient outlook in cases of emotional cruelty and other minor physical cruelty and a strict outlook in the cases of dowry death and grave physical cruelty, the court is giving more preference and respect to the dead than to the living.

When judiciary decides to go by the numbers of false cases or acquittals, it fails to treat every case on its individual merit. It clubs together all kinds of cases coming under this law and terms it as one. The judgments and order in these cases should not depend on previous rulings or what the police reports say. There was no data from any expert or appointed committee on the misuse of this law.

Furthermore, the court has failed to look into ground realities. This Section was introduced as a relief for a bride who is subjected to cruelty. By looking at a few false court cases, the court turned a blind eye to those women who are clutched in the social realm. The rural women, the women with no education, the women with no economical bargaining power. It has, with the recent judgment, taken away the very last resort a bride had against cruelty while focussing on a 'truth' which was established by a repeated rhetoric of bias.

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<sup>13</sup> Sanjay Ghose, *Domestic Violence Law Harms Rather Than Protects Women*

<sup>14</sup> Indira Jaising, *Without sympathy or suspicion*

Also, when looking at the statistics of false reports, one comes to a conclusion that these are mainly the complaints filed under Dowry Protection Act. Cruelty is not limited to these Acts and hence it defeats its individual purpose and relief granted by it anymore.

To end the discussion on misuse of 498-A, the last observation to be made should be through the much-celebrated Statistics.

In a statical study conducted by Rukmini S., named, *Dowry: what the data says and what it doesn't*,<sup>15</sup> if we look at the numbers from 2013, 2003 and 1993, one will see that there is a big increase in cases filed, a 300% in cases related to Dowry Protection and 135% increase in cases related to Section 498-A. But on the other hand, there is only a 30% increase in cases of dowry death. Increase in all Cognisable Cases is only 21%. When looking at arrests made in these cases, the arrests made in dowry related cases increase 250% but under Section 498-A it has more than doubled whereas in other cognisable cases, it is only increased by 16%. Now none of this shows whether the actual number is increasing or only the extent of reporting has increased or the number of cases that are false is increasing. The Court has referred to the Police Force as a part of the problem when they do not deem enough cases as false at the chargesheet level. Still if we look at cases found false by police, 498-A is three times more likely to be found as false than all the other cognisable crimes on an average. Maybe this is where data and statistics do not help the case. Crimes against women are more likely to be termed as false and thrown away by police and more likely to end in acquittals. The same statistical pattern emerged for rape also. There is indeed a part of the Section which is misused, but numbers will not help us in reaching to it or justifying it.

Lastly, one needs to ponder upon whether an acquittal means 'not guilty' or 'not been proved guilty'.

**Conclusion:**

Violence against women is a global problem which each and every country faces no matter how much developed it is, laws relating to the protection of women are indispensable when it comes to proper administration of a society or a country. Law is multidimensional. It has social, economic, and historical dimensions in addition to legal dimension. It is not always just,

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<sup>15</sup> Rukmini S., named, *Dowry: what the data says and what it doesn't*, 2014

reasonable or rational. The laws which were reasonable in the previous few centuries are not reasonable today, it needs to be looked freshly upon periodically, it needs to be changed as per the needs of a society and its members.

Considering the question of misuse of laws by women, this is totally a myth, as if we look upon the other laws there is not a single law that has not been misused or is not being misused in the present scenario, this does not mean that that law is bad or it should be repealed, yes while making a law the lawmakers can reasonably foresee the developments which they may have to face and draft a law accordingly but still there is always something which by virtue of being a human being the law makers cannot see and the people can not abstain from doing. There is no solid statistics of a misuse on large scale, every law is misused and will continue to do so.

People claiming that there is a large scale misuse of the laws protecting women, are a prey to the orthodoxical and patriarchal mindset and need to be shown the truth and understand several other perspective except their own. This is mainly due to the literacy level in our country, people are ignorant enough to not know enough to judge properly.

A lot of things need to be changed in order to change this reality which mostly not everyone can see. All these news articles judgements and people commenting shows us that this reality needs to be focused upon more than the myth they try portray as reality.