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Domestic violence act 2005 and section 498 A of Indian penal code: New trend to misuse and its remedy

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Abstract

Background: Domestic violence Act and section 498A has been heavily being misused. The Supreme Court has termed it "Legal Terrorism. Abuse at home is perceived in gender-specific terms. In India only women are seen as victims. Men who complain of being attacked at home or harassed by their wives are often ignored. This is violation of basic human rights also. Aims: To study the misuse of Domestic Violence Act 2005 and Section 498 A of India.

Methodology: Literature search of both electronic databases including PubMed and manual searches.

Conclusion: Nowadays, especially in cities, wives torture their spouses and in-laws mentally and physically. This law is misguided attempt to enact legislation to grant women legal supremacy over men and to create a society where men are deprived of their rights. It needs immediate amendment in Parliament for the sake of justice and equity as well as protection from violation of basic human rights of men, his relatives and elderly.

Keywords: Domestic violence, penal code

Introduction

Marriage is an important social institution since Vedic period. The Sanskrit word 'Vivaha' literally means the ceremony of 'carrying away' the bride to the groom's house. It was regarded as the alliance between body and soul of two people (husband and wife). The Vedas hold marriage to be one of the important sacraments sanctifying the body. She has been pronounced and honored as Dharamsagni, Ardhansh, Lakhmi, Maatrishakti, Devi etc since Indian Vedic culture. Yatra naryastu pujuryante ramante tatra Devata, yatra itaastu na pujuryante sarvaastatrafalaahkriyaah" is an often-quoted Manu's saying. Manusmriti (3.56) - which translated reads, 'wherever women are given their due respect, even the deities like to reside there and where they are not respected, all actions remain unfruitful'. But, the great Indian culture has been deteriorated gradually. The traditional concept of marriage has greatly changed. Hindu marriage is considered to be of dual nature. i.e. of both religious sacrament and contract. That creates a new social pathology. Marital discard, divorce and separation become common social phenomena. All the courts of this country are flooded with matrimonial cases. This clearly destroys the family life of a large number of people of the society. In 2005, Supreme Court of India used the term "Legal Terrorism" to describe misuse of this law. In India among the 58319 dowry cases that were registered, 10,491 cases were not charged sheet because they were based on frivolous grounds. In the same year (2013), 134757 people underwent arrest for 58319 complaints under sanction 498-A and dowry prohibition act. Among these 4,744 people that were accused, were above 60 years of age and arrested without any verification of the veracity of the complaint [5]. The National Crime Record Bureau (NCRB) data, which the supreme court referred to while pronouncing the judgment on 498a, reveals that in 2013 around 93 percent cases of crimes against women was booked under section 498a. Among them, the accused were convicted of only 15% cases [1]. The safety of Women from Domestic Violence Act was enacted to shield married women from being abused in the confines of their homes. But it is increasingly being used by devious women with extortionist tendencies to torment their husbands and in-laws. This is badly formulated and gender biased law, which grossly violates the liberty and dignity of an average man and his family members. Elderly parents have no protection against this Act. In a bench headed by

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Having this horrible incidents and reverse suicide rate, Supreme Court has given judgment to stop sudden arresting of husband as well as his family members. But, the rut of 498A is so deep. This is right timing that the government intervenes and amends the law to punish anyone who misuses it for personal gains.

Violtion of Fundamental Rights

Articles 14 mention that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. An article 15 of the constitution prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. Article 19 (1) says that all citizen shall have the right to freedom of speech and expression. It means the right to express one’s convictions and opinions freely by words of mouth, writing, printing, pictures and any others mode. Article 21 reads “No person shall be deprived of his life or personal liberty except according to the procedure established by law. Most of the fundamental rights, especially the right of equality (Art 14), Freedom of speech and expression (Art 19(1)a) and the right to life and personal liberty (Art 21) have been converted into a regime of” positive human rights “. There are some fundamental rights under Article 21 like right to dignity, right to livelihood, right to against torture, right to legal aid. But the legal provision like 498a and domestic violence act are scragging the fundamental rights. Such kinds of legal provision, which exploit the individual fundamental rights have become a big obstacle for healthy society.

It has been widely reported that this provision (Section 498A IPC) has been misused and is also harsh as it is non-compoundable." Delivered by the Hon’ble Justice J.D. Kapoor the judgment discusses section 498A extensively. The honorable judge “feel(s) constrained to comment” upon it as it “hits at the foundation of marriage itself and has not proved to be so good for the health of the society at large. Justice Kapoor prefers to focus on how section 498A results in the “social catastrophe (sic)” of thousands of divorce cases, due

to arrest of members of the family and the subsequent reduction of chances of salvaging or surviving the marriage.⁵

In order to prevent illegal arrest or threats of the section 498A accused, the Supreme Court in its latest judgment on 2nd july 2014 has enforced a ^[9] point checklist for police under section 41 of the Criminal Procedure Code. The checklist prescribes Do’s and Don’t, to be referred to by the police before arresting the accused. Further, in case the arrest is made, then the magistrate should allow the detention only if the checklist validates so, or else he can authorize the release of the accused. The Madurai bench of Madras high court (Justice Vaidyanathan, January b,2015) imposed a cost of Rs 5,000 on a woman who was found to be harassing her father-in-law, a government school teacher, and warned people against filing "petty and frivolous cases" under the Domestic Violence Act ^[6]. Husband is also not bound to maintain a well qualified wife who is sitting idle and not working:: Looking at the burden on the husband to provide maintenance to his wife even in cases where the wife is well educated and capable enough to earn for her living, a bench of S.A. Morey J (Family Court, Mumbai,2015) gave a landmark judgment in favour of husband to curb the misuse of the provision of maintenance, and held that a wife who is well qualified and is capable to earn cannot sit idle and claim maintenance from her husband ^[7].

Bombay High Court observes that a wife who deserts her husband without any sufficient cause is not entitled to maintenance. The HC cited a case involving an Aurangabad couple. When the wife still refused to return home, the husband filed another petition for divorce on the ground of cruelty. On March 16, 2009, the family court ruled in favor of the husband’s call for divorce.

Remedy of This Legal Terriorms

(I) Government should take action, make a plan/scheme to aware these people, non government organization, government organization/institution mainly police, school, colleges, universities, judiciary and other officers.(II)Women

organization should also take responsibly of not allowing false complaint. (III) Government should also conduct survey and research on the misuse of this act and should educate people about its harmful consequences. (IV) The investigation into these offences was carried out by civil authorities and only after his / her finding as to the commission of this offence, cognizance should be taken. (V) Urgent need to create family counseling centers across the country to help individual/his family member. (VI) Mental cruelty has been vague defined in the act, which leaves scope of misuse. This should be clearly elaborated loopholes in the law. (VII) Time bound investigation and trial is needed. A speedy trial of these cases will not only ensure justice for the innocents that have been implicated in false charges, it will lead to prompt redressal of the grievances of real dowry victims. The reduction in false cases will also reduce the burden on judiciary and expedites the processing of the real cases. (VIII) This section should be made bailable to prevent innocent old parents, pregnant sisters and school going children from languishing in custody for weeks without any fault of them. (IX) This should be made compoundable for the save holy marriage institution. (X) Arrest warrant should be issued only against the main accused and only after cognizance has been taken. Husband family member should not be arrested. (XI) Penalty For making false accusation: This would discourage persons from coming to courts with unclean hands and ulterior motives. (XII) This should be made compulsory that after the marriage ceremony couple to make a joint declaration of the gifts exchanged. (XIII) There is urgent requirement to make strict dowry prohibition act. If the complainant admits giving dowry in the complaint, the court should take cognizance of the same and initiate proceedings against them under the relevant sections of dowry prohibition act (XVI) Penalize corrupt investigation officers: If it is apparent to the court that a fair investigation has not been conducted by the Investigation Officer (IO). The husband and his family member have been charge-sheeted without proper verification of the complaint, the IO should be penalized for gross negligence of duty. (XV) Law should not be gender biased. There should be similar laws to protect harassed husband and his family members from an unscrupulous wife. A resents case *Dr Pradeep Kuamr vs State of Haryana* (CrI.Misc.No.M-31139 of 2015) was very sensitive and interesting “his wife and her parents pray to the court for dowry recovery, While the court asked them about dowry articles :- they could not produce single photographs nor a list the dowry”. It was mentioned in last page on FIR No.367 dated 16.7.2015 that she will produce dowry list after filing FIR, but she could not submit after 10 months of filed FIR. The decision on Punjab and Haryana high court on 12 May 2016 in the case of *Dr Pradeep Kuamr vs State of Haryana* (CrI.Misc.No.M-31139 of 2015) also mentioned that no bills or photographs was handed over the police. The real story explains that how easy to misuse the law^[9].

The verdict given by the High Court of Bombay in the case of *Shri Mangesh Balkrushna Bhoir v. Sau. Leena Mangesh Bhoir* decided on 23rd December, 2015 provided some relief to the husband in such cases of false complaints. The Court held that whenever a wife make a false complaint against her husband and his family members and the husband and his family members gets acquitted, and no case is made out against them, then such an act of wife would constitute cruelty. The judgment was delivered by Justice R.D. Dhanuka wherein he said that on such a ground, the husband is entitled to file a petition for divorce from her wife^[10].

Conclusion

It is demand for being peaceful society that this Act should be gender-neutral so that harassed husbands can also use this Act. The Domestic Violence Act and section 498a are totally biased in favour of the wife. This Act considers husbands as violent and perpetrators of violence in the household. Elderly in-laws has no protection under this Act which has become a tool for the extortion of money from husbands and in-laws. This law is misguided attempt to enact legislation to grant women legal supremacy over men and to create a society where men are deprived of their rights. It needs immediate amendment in Parliament for the sake of justice and equity as well as protection from violation of basic human rights of men, his relatives and elderly.

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