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**BEYOND BARS: A LEGAL DISSECTION OF GENDERED NORMS AND  
BIASED LEGISLATION**

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**ABSTRACT**

Gender skewed laws evaluations and analysis has emerged as a distinct and innovative topic for discussion, where if we see, on one side of the coin extensive favour for females is shown by some while on the other side they were only portrayed as victims and the remaining others refuse to acknowledge gender variability. The aim of this paper is one of such feature, dowry laws, where strong presumption against men is there. Now this has led to the misuse and to relieve personal vengeance as it is a non-bailable offence. But this cannot be generalised and become a reason to strike down a law as the fact that any law can be misused and this very law has helped in reducing the evil of dowries. Thus the aim of this paper is to establish the necessary safeguards against its misuse and to introduce gender neutrality into the said section by substituting the word “wife” with “spouse”.

**Revisit: Dowry Laws in India**

“The Shawshank Redemption” the iconic movie on examining reveals not only the priceless lessons about friendship, hope, freedom and perseverance but also depicts the troubling case of a banker, Andy Duffrene who was found guilty of killing his wife and her lover based solely on video evidence, though it did not appear that he would be the kind of person that would kill someone in a fit of rage.<sup>2</sup> The abuse he receives from the jail authorities, turmoil caused by a group of persecutors, none of this stopped him from hoping for freedom. That is this hope which keeps him calm, despite being miles away from freedom.<sup>3</sup>

An analogy to the modern world can be drawn from the same example, that is through the phrase “dowry death” that creates a vivid imagination where women are being harassed and ridiculed to the extent where they ultimately choose to hang themselves in the closed four corners of their homes according to Section 304B of IPC.<sup>4</sup> This section when read with Section 498A of IPC which is about cruelty against women that could abet the wife’s death or harm her physical or mental well-being.<sup>5</sup> This results in a discourse that claims that the juxtaposition of these facts is being used to target husbands for revenge and to make false

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<sup>2</sup> Indian Express, [shorturl.at/bjP15](https://www.indianexpress.com/article/india/shorturl.at/bjP15) (last visited January 9, 2024).

<sup>3</sup> *Id.*

<sup>4</sup> Indian Penal Code, 1860, Section 304B, No.45, Acts of Parliament, 1860 (India).

<sup>5</sup> Indian Penal Code, 1860, Section 498A, No.45, Acts of Parliament, 1860 (India).

accusations against them. This claims that a law intended to guarantee gender equality encourages legal terrorism because the presumption primarily disadvantages men, regardless of whether there is molestation or death involved.

## HISTORY

Women were viewed as the better half of men and as symbols of strength, patience and wisdom which can be found in our Vedic traditions that became the origin of gender inequality. But the, as the imperial rule took hold and the society developed, women were relegated to domestic duties and were viewed as having subservient roles that is the gap between the sexes grew. Now the kind of environment that developed made the women to face abuse from their husbands and his relatives and were also required to pay large dowries so that they could be accepted into the family.<sup>6</sup> Where this had a terrible effect on women's condition as they were forced to spend all of their savings and even mortgage assets. Women continued to face unimaginable persecution as well as gave up their lives in large numbers in order to defend their families. To comprehend through the lens of reason, the above two sections were incorporated into Indian Penal Code to combat this disaster.<sup>7</sup>

According to Section 304B of the IPC that was introduced under the Dowry Prohibition (Amendment) Act, 1986,<sup>8</sup> if women dies within the span of 7 years of marriage suffering from burns, physical harm or other unusual circumstances, where provided that she has been subjected to cruel torture by her husband or any of his parents or relatives then they will be punished by at least 7 years in prison that can extend to life imprisonment and fine.<sup>9</sup> Through the Criminal Law (Second) Amendment Act, 1983,<sup>10</sup> Section 498A of IPC was added and this needed to be qualified in this situation where it stipulates that a husband or his relatives may face a sentence of 3 years in prison and fine if a women is subject to cruelty that is including things like forcing her to commit suicide or cause serious injury and where cruelty that involves molestation of women in order to compel her to comply with illegal demands for dowry, property etc.<sup>11</sup>

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<sup>6</sup> Ray, Suryasikha, "The Debate of 498A IPC and the Allegations of It Being Gender Biased," *YL Cube*, January 9, 2024. <https://ylcube.com/c/blogs/debate-498a-ipc-and-allegation-it-being-gender-biased/>

<sup>7</sup> Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

<sup>8</sup> Dowry Prohibition Act, 1986, No. 28, Acts of Parliament, 1986 (India).

<sup>9</sup> *Supra* note 3.

<sup>10</sup> The Criminal Law (Second) Amendment Act, 1983, No. 46, Acts of Parliament, 1983 (India).

<sup>11</sup> *Supra* note 4.

When these two cases are compared, it becomes clear that the crimes claimed in both are non-cognisable and non-bailable. There is a male bias in both cases that can be seen where it stems from the belief that men cannot be the targets of false accusations, torture or molestation at the hands of their spouse or the legal system. This gender biased legislation has made the discrimination possible on two fronts that is, firstly, by permitting a large number of false cases and consequently resulted in ignoring men's rights to prevent such torture, that is no place in law thus resulting in a lack of legal obligation, secondly, by the way of interpretation of term "cruelty" broad enough to result in disproportionate punishments against the accused.

Through this analysis, it can be inferred that in recent years although women's rights have gained traction and people are more aware of them, that does not stop the instances where these rights are violated.<sup>12</sup> From then the crime escalated to a significant level which resulted in the husband and his family being arrested and imprisoned as well as women abusing their position to extract collateral values and property from their in-laws.<sup>13</sup> The cases like *Bibi Parwana Khatoon v. State of Bihar*, depicts the instances where insufficient evidence to establish the appellant's intent to commit crime which resulted in no charges against them, is the case involving dowry deaths.<sup>14</sup> The other one is *Rajesh Sharma v. State of Uttar Pradesh*, the Family Welfare Commission was established by the court to distinguish between legitimate and fraudulent cases that will in turn safeguard the rights of innocent parties. But later on the judiciary repealed the Commission due to its abuse of power, granting the legislator the authority to enact appropriate legislation in this regard.<sup>15</sup> The situations in which these laws can be abused and misapplied is clearly depicted through these two cases.

#### **ANOTHER ASPECT OF CRUELTY: FALSE CASES**

"Woman defending men's rights" is how Deepika Bhardwaj commonly referred as, she who is a Delhi based journalist has written extensively about how the end of a marriage leads to the misapplication of laws in form of gender discrimination where the husband and his family are charged of dowry harassment. She also spoke about the situations she personally

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<sup>12</sup> Supra note 5.

<sup>13</sup> Supra note 5.

<sup>14</sup> *Bibi Parwana Khatoon v. State of Bihar*, (2017) 6 SCC 792.

<sup>15</sup> *Rajesh Sharma v. State of U.P.*, (2018) 10 SCC 472.

witnessed where incompatibility of marriage being turned into dowry complaints.<sup>16</sup> This can be understood with the instance in 2008 where Pushkar Singh left a suicide note that revealed the cause of his death was due to him suffering financially and psychologically that resulted due to filing of false complaints and other kind of vexation from his wife.<sup>17</sup> These premises prove the implications of the regulations.

The purpose of these laws is to provide protection and not to be used as weapons was reiterated by the Supreme Court in **Sushil Kumar v. Union of India**.<sup>18</sup> The groom and his family must participate in the recovery of claims on their assets as it can be seen from the above instances that how it leads to situations where such gender biased laws are used to extract financial benefits from the family. The consequences of losing their reputation and the costs of the legal proceedings as well as the torture by police authorities as the rule of innocent until proven guilty reverses here are all the things that the defendant has to go through even if they were to be found not guilty at the end of the day.<sup>19</sup>

The problem precisely lies in our minds as it was imbibed into our brains that “mard ko dard nahi hota” and make us not to even consider the situation where the men might be the victim. This way of thinking also makes us see women as weak and can only be victim.<sup>20</sup> While it is true that challenges faced by women are significant, they must also contend with persistent social and economic pressure to submit to their husbands, as well as the intransigence of the police apparatus but that must not leave the men’s rights from taking into consideration, given that, at least morally, women are presumed to be more inferior to men.

The Supreme Court in **Rajesh Sharma v. Uttar Pradesh**, ruled that criminal provisions had been abused and declared that the original intent of the legislation to be reinstated in order to protect men’s human rights.<sup>21</sup> To prevent such abuse fast track courts were established

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<sup>16</sup> Sakshi, “Misuse of Dowry Laws,” India Law Portal. (last visited January 9, 2024)

<https://indianlawportal.co.in/misuse-of-dowry-laws/>

<sup>17</sup> Harshkumar, “Gender Biased Laws in India,” Legal Service India, January 9, 2024.

<https://www.legalserviceindia.com/legal/article-3358-gender-biased-laws-inindia.html#:~:text=Section%20354%20deals%20with%20assault,protect%20men%20from%20such%20crimes>

<sup>18</sup> Sushil Kumar Sharma v. Union of India, (2005) 6 SCC 281.

<sup>19</sup> S Bhambri & Associates (Advocates).

[https://www.sbhambriadvocates.coM/post/misuse-of-dowry-laws-in-india#:~:text=Section%20304B%20\(1\)%5Bixseven%20years%20to%20life%20imprisonment](https://www.sbhambriadvocates.coM/post/misuse-of-dowry-laws-in-india#:~:text=Section%20304B%20(1)%5Bixseven%20years%20to%20life%20imprisonment) (last visited January 9, 2024).

<sup>20</sup> Avinash Kumar, “Men Cry Too! Discriminatory Statutes and Need of Developing Gender Neutral Laws,” 3 International Journal of Law Management & Humanities (2020): 776-778.

<sup>21</sup> Supra note 15.

following Nirbhaya, which was of to no avail as humiliations, professional loss makes the procedure extremely traumatic.<sup>22</sup>

The Non-bailable nature of the crime also becomes a tricky part sometimes as we can see through a case in Bombay where a court granted bail to a two-month old baby girl named Zoya Khan as the entire family was put behind bars and this leads to ruining the families which is the opposite of intentions behind the introduction of such provisions.<sup>23</sup> It is necessary to import this section in a way that establishes a framework which balance the interests of both the genders without any discrimination according to the interpretation of Article 14 of the Constitution that states individuals must be treated equally and cannot be subjected to arbitrary discrimination as has been demonstrated in cases of male harassment.<sup>24</sup>

### THE END: LEGAL WORK

In the end, the topic cannot be concluded without considering the judgments and legal aspects surrounding the concept.

Comparing to other gender skewed laws like domestic violence, rape/outraging modesty, the judicial development in this area is on a good footing. From **Kahkashan Kausar and Ors. v. State of Bihar and Ors.** The misuse of the laws to implicate the husband and his family, relatives in daily arguments without considering how it was going was increasing.<sup>25</sup>

When this is compared with **Savitri Devi v. Ramesh Chand** case in which the court upheld the need for strict guidelines to counteract the legal implications of misuse and advised extra caution to be used throughout the process to prevent the social structure of families from being destroyed.<sup>26</sup> In the similar way in **Sushil Kumar Sharma v. Union of India (UOI) and Ors.** Case, the term “Legal Terrorism” was coined and was held that though there is misuse of anti dowry laws that does not make it ultra vires and further held that constitutional validity of these laws should not be used to justify personal vendetta.<sup>27</sup>

In **Arnesh Kumar v. State of Bihar** case, it was reiterated that arrest for non-bailable offence must take place under Section 41 of CrPC that is the previous guidelines issued at the

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<sup>22</sup> Supra note 19.

<sup>23</sup> Supra note 21.

<sup>24</sup> INDIA CONST. Art. 14.

<sup>25</sup> Kahkashan Kausar v. State of Bihar, (2022) 6 SCC 599.

<sup>26</sup> Savitri Devi v. Ramesh Chand, (2003) SCC OnLine Del 483.

<sup>27</sup> Sushil Kumar Sharma v. Union of India, (2005) 6 SCC 281.

police request during an arrest must only happen on reasonable grounds, violation of which shall subject police or judicial magistrate to strict judicial inquiry.<sup>28</sup> Under Section 498A provisions for settlement and relaxation of physical presence of family members of the accused were made in **Rajesh Sharma and Ors. v. State of U.P.**<sup>29</sup>

Making Section 498A a compoundable offence was recommendation made by both Malimath Committee Report, 2003<sup>30</sup> and 237th Law Commission of India Report.<sup>31</sup> Out of court settlements and less severity of crimes that do not carry severe penalties will therefore be possible. However in case of dowry deaths care should be taken to avoid applying the same analysis as it would violate the wife's rights. However, court-established guidelines may be enforced here due to the delicate nature of this part.

## CONCLUSION

The concept of dowry has deep historical roots in our societies and is viewed as a social threat. Even at present after legal restrictions on open dowry and the regulation of coercion regarding valuables, social pressure and the potential for unmarried daughters still force the parents of the bride to provide the expensive valuables to the groom's family. The victims of the men whose torture is so pervasive that the courts are never able to get to these places. Which is why we cannot accept the NCRB data or any other data in this regard per se because this kind of data reflect the patriarchal nature of our society, as this kind of society prevents abused women to voice out their grievances and from pursuing their cases till the end or due to improper police investigation the whole truth would never come to light.<sup>32</sup> The central idea of feminism which promotes the acceptance of women's rights as equal to those of men, must be understood in the context of this but it does not mean feminism supports rights and protection given to only women rather to promote, protect the rights of all genders and create a gender neutral society. A society where every gender is treated as equal and given equal rights and protection.

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<sup>28</sup> Armesh Kumar v. State of Bihar, (2014) 8 SCC 273.

<sup>29</sup> Supranote 23.

<sup>30</sup> J. Malimath Committee, Reforms of Criminal Justice System (March 31, 2003).

<sup>31</sup> Law Commission of India, Report on Compounding of (IPC) Offences, Report No. 237, December 2011.

<sup>32</sup> Vaibhav Pasi, "Rajesh Sharma v State of UP - Case Analysis on Dowry Death and Section 498A of the Indian Penal Code," ipleaders, January 20, 2024, 5:11 p.m.  
<https://blog.ipleaders.in/rajesh-sharma-v-state-of-up-case-analysis/>

Anti-dowry laws pragmatic complexities resulted in a law approved to counter a historical threat but also created a new threat that resulted in numerous false cases. The desire for a law that is gender neutral could be seen through the suicide of Sushil Kumar as a result of domestic violence. The main focus of this paper is on right to equality rather than gender and the readers should be aware of the fact that any right can be abused and cannot be used as justification to repeal laws that have shielded and effectively reduced the harassment of dowry giving women. Even while the courts have made excellent rulings restricting arrests to legitimate reasons, given guidance to the enforcement authorities, and granted appropriate relief, suitable legislation is still needed because the majority of dowry laws are still in the implementation stage at the hands of law enforcement officials and police, in addition to experience, attest to the noncompliance with the aforementioned directives. “Rome was not built in a day” in the same way the paper concludes on a positive note as the government is now considering amending anti dowry legislation and implementing Malimath Committee and 237th Law Commission Report recommendations.