MARITAL RAPE AND DOWRY-RELATED CRUELTY: A CRITICAL STUDY OF GAPS IN INDIAN CRIMINAL LAW

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ABSTRACT

This working paper offers a critical doctrinal critique of subsisting gaping deficits in Indian criminal law in two of the most prominent realities of gendered sexual violence: not recognizing marital rape as an offence and problematic application of laws prohibiting cruelty for dowry. In the present paper, we posit that they do not stand alone as legal disjunctions but rather are mutually supportive deficiencies that altogether have made it possible to have a regime of impunity in the private sphere of marriage, which is an anathema to the constitutional safeguards of equality, dignity and the right to privacy of the married person.

We also look closely at the legislative intent and the operational weaknesses of Chapter 498A of the Indian Penal Code (IPC), as well as the Dowry Prohibition Act, 1961, and point out how procedural slack, an evidentiary burden, and ostracism against those suspected have rendered their efforts ineffective. At the same time, it mounts a forceful challenge to Exception 2 to Section 375 IPC that provides immunity from prosecution for non-consensual sexual intercourse by a husband as being an archaic infringement of universal human rights standards and national constitutional values.

Most importantly, this analysis confirms the lived experience of intersectionality and illustrates how marital rape is often instrumentalized as a mechanism of a particular kind of dowry violence, a reality that the disjointed legal edifice does not truly recognize or punish. The paper argues that far-reaching, comprehensive reform is a crucial one, which involves the clear criminalization of marital rape and a victim-focused overhaul of the implementation of dowry law in a legal system that purports to deliver justice.

Keywords: Marital Rape, Dowry Cruelty, Gender-Based Violence, Legal Impunity, Intersectionality.

INTRODUCTION: THE PARADOX OF PROTECTION IN INDIAN DOMESTIC LAW.

The manner in which the laws in India are applied to the issues concerning women and their rights within the family is quite perplexing. In the simplest form, the country has enacted some quite modern and progressive legislation that makes attempts at addressing domestic abuse, due to the vigorous feminist lobbying and several agonizing truths of continued violence. It is simultaneously stuck to a former colonial government that, in fact, lets husbands dominate their wives sexually.

In this paper, it is contended that the simultaneous presence of the two, which puts the cruelty related to dowry in the nature of crime punished under Section 498A of the Indian Penal Code and yet continues to give a blanket exemption to marital rape under the Exception 2 to the Indian Penal Code, not only offers two lines of justice but presents a completely fragmented and disjointed justice system. These contradictions are some of the analytical, practical, and philosophical ones, as they demonstrate that the legal system will intervene to prevent only certain types of marital oppression but not others and, therefore, cannot address the complicated, interrelated nature of intimate partner violence.

Although dowry is a criminal act, it is still a severe social issue as the reason behind endless harassment, financial mistreatment and even dowry killings. Section 498A was established as a strong weapon in combating this, but its discourse has been overwhelmed by arguments of its misuse rather than the effectiveness of such a law in guarding the victims properly. In a highly contrasting act, the law provides that as long as a woman marrying consents to having sex, it is automatically included in the matrimonial contract, and hence, she can be the victim of a form of violence that does not even qualify as rape in the eyes of the law.

This paper is written in a critical legal studies approach and will first deconstruct the rules about dowry-related cruelty in understanding why they were written, the way they are in practice and the social backlash they have generated. Second, it will examine the constitutional and rights-based issues of the marital rape exception, give its background, propose that it should be abolished and refute some arguments that justify it. Third, and the most crucial one, it will be arguing in favor of intersectionality, how these loopholes of the law confuse the lives of real people and build a cacophony of injustice.

I. THE CONTROVERSIAL GROUND OF DOWRY-RELATED CRUELTY: SECTION 498 IPC

In the current year, during our legal studies, we have studied the enactment of Section 498A IPC in 1983 and how this was based on a turning point that was set to address the problems of dowry-related deaths and the inefficiencies of the Dowry Prohibition Act, 1961. According to the law, the term cruelty has two general provisions (a) any action that knowingly causes a woman to commit suicide or, with high probability, seriously endangers her gangsta or mental safety (b) any harassment intent to force a woman, or a person close to her, to fulfill illegal requests of property or valuables, or as a result of her uncooperative behaviour.

Areas of law with an ordinary quality are categorized as those embodying the intent and the original promise of the law enforcer. The discussion in the class emphasized the radicalness of this provision during that period. According to the classification of cruelty into cognizable, non-bailable and non-compoundable, the law-givers tried to ensure that the protection of the victim was given priority over just a familial reconciliation. It sought to eliminate the age-old belief that the home is the so-called private space that is beyond the reach of the law. In the first instance ever, the law provided an explicit criminal solution not just to the husband but also to his family, since dowry persecution is commonly a family matter. According to early determinations, this protective position was reargued, with a wide purposive approach being propounded against this social abomination.

B. The Gaps and Criticisms: Protection to the "Legal Terrorism".

The major part of group discussions was devoted to the fact that, even with good intentions, Section 498A created serious gaps in its operations. Even those attributes which were meant to make the victim powerful, such as non-bailability and non-compoundability, were a point of attack. We have heard of claims of weaponization of the law to settle personal scores in bitter divorce cases. Media attention and occasional judicial comments were the boosts behind a story of misuse by aggrieved wives. Eventually, the law itself began to be considered a bigger challenge than the violence it was meant to reduce.

The case of Arnesh Kumar v. Supreme Court of 2014, Such a change was depicted in the State of Bihar. In order to reduce cases of abuse of Section 498A, the court ordered that such arrests should be non-automatic and police should explain the rationale for making arrests. Yet, others also said that these administrations unintentionally increased the barriers to the true victims,

the most disadvantaged ones being of marginalized backgrounds that no longer had the means to find their way through an increasingly wary world. The formation of the temporary body, Family Welfare Committees, to investigate the complaint and then issue an arrest (but later ruled unconstitutional) was indicative of a judiciary bias to assume the cases of abuse, and that the protection of a family of the accused was more important than the immediate safety of a woman being abused.

C. Evidentiary and Systemic Hurdles

There exist deeper gaps that are not directly related to the misuse debate. It is challenging in itself to prove a course of conduct of harassment, which is presented in the law. Masculine brutality is usually presented in the form of psychological torture, economic oppression, verbal insults and social estrangements, ways of violence that cause no bruises but destroy the mental well-being of a woman. Courts typically require certain instances and corroborative evidence, a criterion that is difficult with respect to those crimes that have occurred under the carpet. Its prolonged trial process, which can take as long as ten years, exposes the victims to extreme secondary victimization, during which such victims repeatedly relive the trauma and endure tremendous family and social pressure to do so at the expense of such life-altering experiences. This, as a result, has rendered the presence of law on the statute book substantially ineffective in the prosecution of timely justice and meaningful deterrence and has posed a disjunctive difference between the law as promised and as experienced in reality.

II. A CONSTITUTIONAL ANOMALY AND VIOLATION OF RIGHTS THE MARITAL RAPE EXEMPTION.

Where the effort under Section 498A is invalid in an attempt to provide protection, then the Exception 2 to the Section 375 IPC should be a clear one wherein protection is denied.

It provides that sexual intercourse or sexual acts with a man considered to be his wife, the wife who is not under the age of eighteen, being the partner is not rape. This is a direct derivation of the doctrine of 17th-century English jurist Matthew Hale, who believed that a husband could not be guilty of forcibly raping his own wife, since the wife themselves had relinquished themselves in this regard to their husbands, which they could no longer do.

A. Historical Anachronism and Patriarchal Foundations:

The doctrine has its roots in the archaic legal fiction of coverture of the law, where the legal

identity of a wife was subsumed under the identity of a husband, and she was his property. It propagates the notion that marriage is an indissoluble and permanent agreement to have sex, which abolishes the entitlement to bodily autonomy and sexual self- determination by a wife. This is essentially opposed to the nature of modern constitutional democracy and of modern human-rights conceptions, which place individual dignity and bodily integrity in the first place as opposed to ancient marital statuses.

B. The Constitutional Test:

The exception has been tested over and over again as being in violation of Articles 14, 15, 19, and 21 of the Constitution. Article 14 (the right to equality) is violated by establishing an arbitrary category of women, those who are married and have no protection against rape, just as the unmarried women do. It is discriminatory based on marital status, which is classified under the proscription against discrimination in Article 15. More importantly, it violates the guarantee of life and personal liberty contained in Article 21, which, as understood by the Supreme Court, extends to the right to dignity, to privacy, to bodily integrity and to sexual autonomy. In precedent cases, such as Justice K.S. Puttaswamy v. Union of India (2017) and Joseph Shine v.

The Court ruled that the right to privacy and dignity revolves around bodily autonomy and therefore affirmed that the Union of India (2018). This autonomy is confronted by the marital rape exception.

C. Counter-Arguments and their Fallacy:

The proponents of the exception usually present three major arguments, all of which are grossly flawed. The first one is the argument of the sanctity of marriage, where the instability of criminalizing the institution would make the institution more fragile. This makes the abstract institution take precedence over the physical well-being and self-esteem of the person in it, and therefore asserts that the right to rape is an essential element of unification in marriage. Second, the misuse point is the same as that in the case of Section 498A. It is based on the assumption that women will make claims in numbers, which is not substantiated by the data, which shows that the criminalization of marital rape has not diminished in countries where such an offence is already criminalized, and it is a fundamental lack of trust in women's testimonies. Third is the "remedial alternatives" argument, which is that other clauses (Section 498A on cruelty, Section 377 that talks of unnatural acts, or the Domestic Violence Act) are adequate. This is a

fallacy; this happens to suggest that a non-consensual and violent act of sex becomes not so serious when done by a husband, and that no one deserves the same label of a rapist that the whole society would be condemning and punishing. These loopholes of the law towards married women are not alien but an outright denial of personhood.

III. INTERSECTIONALITY: MEETINGS OF THE GAPS OF LIVE.

The analytical contribution to the present paper is the most crucial as it shifts the paradigm of analyzing these laws on a separate basis to the intersectional mode of operation. Dowry demands, and sexual violence in the real-world dynamics of an abusive marriage are not distinct sets of abuse; they are strands of a single rope used to tie, bind and abuse the wife.

A. Marital Rape as a Coercive Dowry -Related Coercion:

The available empirical data and survivor accounts are consistent in increasing cases of sexual violence in tandem with dowry conflict.

Under the conditions where demands are not fulfilled, or when it is time to pressure for more payments, forced sex turns out to be the weapon of punishment, humiliation, and domination. It is employed to deliver a lesson, defy stubbornness, and cement the role of a woman as chattel in whom the property of marriage transactions includes their bodies.

The message of the abuser is also straightforward; similarly to how his family property belongs to him, so does her body. The aim of this cruelty is solely the introduction of the deep process of psychological and emotional trauma, which increases the anxiety and fear caused by the financial extortion.

B. The Legal Invisibility of the Nexus:

This is the disastrous breakdown of the existing legal framework. The compounded violence caused to a woman has to be legally broken by her own, disunited into parts. The dowry harassment can constitute a case under Section 498A. The acts of force are, however, eliminated in the case of rape. She can, at worst, attempt to place it in the category of an act of cruelty under the former part of the version 498A when it involves severe mental damage, but this will entail overcoming a substantial judicial hesitation to accept psychological damage which lacks a tangible foundation. Alternatively, she can demand a civil remedy under the Domestic Violence Act. The very crime in question, which is a breach of her sexual freedom

with force, goes unnoticed. This judicial dichotomy is killing the victim twice. First, it never even refers to the crime per se, which is rape, and second, it is preventing the courts from looking at the horrors of the crime, which is what must be done to sentence well, and to actually comprehend the methods of the perpetrator.

C. Little Light, Big Misses:

This connection was to some degree noted in a few court opinions. In **Independent Thought v. Exception of Union of India** (2017), the Supreme Court observed that Exception 2 made an unfair, unreasonable and unjust differentiation.

Even some judges who have adjudicated cases on Section 498A took the forced sex to be a part of a wider scheme of mental cruelty, but that is as occasional and very inconsistent, particularly given that the statute essentially precludes the term rape.

IV. BRIDGING THE GAP: A REAL CHANGE PLAN.

A. Primary Legislative Reform:

The first and most urgent step should be to abolish Exception2 to Section 375 of the IPC. The issue of Marital rape should be made illegal, and it should be loud and clear that a woman can just say no to sex. We should also plunge deep into the way evidence is managed, such that the reality of the proving non-consent in a relationship is subjected, and strict measures are put within an environment that would restrict false claims, as is the case with other major offenses.

B. Repairing Dowry and Cruelty Laws:

While we are fixing 498A and the like laws, we should make them victim centred. That includes:

• ***Special Academies:*** The organization of all-women police departments and rapid response courts where the personnel have training on domestic violence and trauma treatment.

• ***Procedural Protections to Accused, as well as the Victims***: In-camera Trial, Hard Cross-examination Prevention and Witness Protection to make the Courtroom a Less Scary Place.

C. Broadening the Concept of Cruelty:

Training judges to see through signs of coercive dominance, financial exploitation, as well as mental torture as qualified evidence of cruelty, other than physical harm or actual dowry

demands.

D. Integrative Adjudication and Sentencing:

The system should be able to perceive the entire picture. Prosecutors need to learn to provide evidence on how various abuses, such as sexual ones, are interwoven.

The aggravating factors in the dowry-cruelty or domestic-violence case under the sentencing guidelines should include sexual violence, and how bad that aggravated trauma actually is.

E. Beyond Criminal Law:

There should be a full support squad, crisis centers, shelters, long-term counselling and legal aid. Attitude change and combating the culture of dowry insistence and the notion that a husband possesses the right over the body of a wife are the main functions of the public awareness campaigns.

V. THE SOCIOLOGICAL BARRIER: FAKING DOWN THE “MISUSE”: DEBATE.

The major impediment towards reform is a dominant judicial or social discourse on how women misuse Section 498A in harassing their in-laws. This paper holds the view that this story is frequently employed to find an excuse so as not to notice the realities of life that have been lived by victims.

A. The Gendered Prejudice of the "Legal Terrorism" Narratives.

The legal terrorism term is very common when addressing Section 498A. It is an institutional lack of trust towards female complainants. The implication of this bias is that safeguarding the patriarchal family structure is more significant than safeguarding the individual security of a woman.

- **The Doctrine of Matrimonial Peace above Justice:** The argument is usually on the side of reconciling the family over criminal responsibility.
- **Institutional Distrust:** The reports in the media and the remarks by courts have contributed to a campaign that portrays the aggrieved wives as the champions, as opposed to victims.
- **Impact on Legal Evolution:** Through this story, the emphasis has moved on to the violence that women go through, to the possibility of the accused family being unsure.

B. Information vs. Imagery: Statistical Reality of Violence.

Although there are a few misuse cases, they are less significant than the rippling case of dowry cruelty and marital rapes that go unheard. By focusing on misuse, there is a slack in the processes that puts at risk real victims due to marginalized backgrounds.

- **The Dark Figure of Crime:** Many domestic and sexual offences remain unreported due to societal ostracism and owing to fear of being victimized a second time.
- **The Assumption of Malice in a Court of Law:** Creation of family welfare committees in front of the law constitution presupposed the judicial bias, which presupposes that cases are abusive by default.
- **Obstacles to the Underprivileged:** Practical modification, i.e. non-automatic arrest training, has accidentally overloaded victims who do not have access to legal assistance.

C. The Scorned Woman Reasoning in Judicial Reasoning.

When the legal system considers women as a party in domestic disputes, the legal system has an obsolete archetype that considers the testimony of women.

- **Cynicism of Retarded News:** Those complaints that take time to be filed in the courts are perceived as fabricated since the victims are under intense family and social pressure.
- **The Burden of "Mental Safety":** Psychological torture is hard to prove since only physical bruises are required by the court, and not evidence of mental injury.
- **Normalization of Marital Sex:** The law considers marital sex as a contract, and therefore, a woman voicing force is usually considered as an effort to use the law to divorce.

D. Systematic Hurdle and the drawdown of Justice

The perceived failure of dowry and sexual violence laws is also caused by the structural inefficiencies of the criminal justice system in India.

- **Delayed Victimization Secondary:** Criminal trials, which are as long as ten years, compel the victim to be subjected to severe trauma, and this leads them to drop complaints when they are subjected to pressure.
- **The ineffectiveness of Deterrence:** The law in the statute book is mostly not effective in that they bring justice after long periods of trial, which is not timely and also in deterring

criminals.

- **Invisibility of the Nexus:** The distinction of the financial cruelty and sexual violence prevents the law from realizing the techniques used by the wrongdoer to commit the crime, literally killing the victim two times.

E. The Financial Aspect of Inhumanity and Domination.

The conflux of economic dependency and sexual autonomy is the reason why the laws are viewed as abused.

- **The Economics of Economic Oppression:** Economic exploitation should be an acceptable kind of cruelty in the modern legal interpretation, but this is not done due to judicial reluctance.
- **Chattel-hood and Property:** In most abusive relationships, the body of a woman is perceived as property exchanged in the marriage, where the sexual coercion is a tool of economic blackmail.
- **Barriers to the impoverished procedurally:** As much as the law can be accused of being weaponized by the rich, the poorest of the poor have little time and money to navigate a legal system that they are afraid of.

CONCLUSION:

From Gaps to Wholeness in the Pursuit of Justice, the inability to address marital rape and dowry cruelty in the Indian criminal law is not just the failure to remember; it is actually the chosen gaps that demonstrate that the law continues to be hesitant in supporting the equality of women within families. The present situation resembles a divided brain. It states that a husband is allowed to mistreat his wife in respect of her wealth, but it claims that he is not allowed to mistreat her in the area that is closest to all mankind. That is absurd to a constitution that was meant to be dignified and free.

In simple terms, it is important to move towards justice by ensuring that these loopholes are eliminated not in individual projects but as a single alteration to point out the legal boundaries of marriage. We must drop the notion that marriage is where one can afford to put the fundamental rights on hold. Marital rape and dowry-cruelty legislation are like touching one and the other side of the same coin, bodily integrity and personal autonomy.

A system that continues to be half-baked and half-cracked in its attempts to assist, until we

resolve this, the Indian justice system is going to be a place where married women trek through a maze through which women are violated most intimately and where harassment is most frequently met with no help in due time. The house must come to an end as a lawless place and become a place where the promise of a dignified life presented in the Constitution actually is.