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GENERALISED DIFFERENCE BETWEEN DOMESTIC VIOLENCE, DOWRY DEATH AND THE INJUSTICE IN THE MARITAL RAPE CASES

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Abstract

For the times indefinite, elders in every Indian household have reinforced the importance and the sanctity of marriage. The historical and religious need for matrimony is important for the legal recognition and protection it provides in the legal realm. More of times, it seems stands forgotten that the essential ingredient of marriage is the peaceful and cordial relation of the partners of marriage, which leads to the case of domestic violence against the wife or in the case of dowry death.

Introduction

domestic violence has been defined in Section 3 of 'Protection of women against the domestic violence act, 2005'¹⁷⁸, which clearly states that any harm to the health, safety, life, limb or well-being either physical or mental, harasses, harms, injures, or endangers an individual with any unreasonable demand (e.g., dowry, property) would be termed as domestic violence. The abuse could be mental, physical, sexual, verbal, emotional and economic abuse. Unfortunately, the same privilege for filing a case against domestic violence has been restricted to women in India. Section 498A of the Indian Penal Code states that only a man can be held liable for cruelty to his wife. There is no section or act that provides relief to the 'males' from the domestic violence against their partner or anyone from their house for that matter, once he becomes a 'major'. Due to this,

several cases are left unreported, and justice seems undelivered¹⁷⁹.

Section 498A of the Indian Penal Code¹⁸⁰ reads of cruelty against women, any act which leads to driving a woman to commit suicide, or to cause grievous danger to life, limb, or the health of herself, also protects against harassment to meet any unreasonable demand. Section 307B of the Indian Penal Code states that if any woman dies within seven years of marriage due to physical injury or burns or any unnatural death. And if it has been revealed that the husband or any other relative demanded dowry and subjected her to cruelty. The provisions regarding the dowry death are taken seriously and hence, there was a need for a separate section in the Indian Penal Code.

In a country where women's rights are taken with utmost importance, the rights of the married woman against rape by her husband have been left in the darkness. While females do try to seek protection under Section 498A of the Indian Penal Code, the provision does not stretch to cover marital rape and mere remedies such as fines and warnings are provided.

Global analysis of the provisions of domestic violence

According to the statistics around thirty-five to seventy per cent of women around the world are victims of domestic violence. And it is

¹⁷⁸https://www.indiacode.nic.in/bitstream/123456789/15436/1/protection_of_women_from_domestic_violence_act%2C_2005.pdf

¹⁷⁹ <https://blog.ipleaders.in/domestic-violence-men-india/#:~:text=According%20to%20Section%20498A%20of,woman%20liab le%20for%20domestic%20violence.>

¹⁸⁰ Retrieved on: [https://indiankanoon.org/doc/538436/.](https://indiankanoon.org/doc/538436/)

appalling that according to the World Bank¹⁸¹, even in the twenty-first century, there are countries in which women do not have any protection against domestic violence as there are no laws against it. The countries of Sudan, Yemen, Chad, Iraq, Iran, Ivory coast, Syria, Myanmar, Morocco, Libya, Estonia and many more countries have no laws for the protection of women, mainly because most of these nations are still in a state of war with other regional countries or have internal disturbances which do not even provide for the fulfilment of basic human rights let alone, the woman's rights.

But it is ghastly, that even a country like Russia¹⁸², which calls itself a first-world country and is supposed to be a "developed country" does not have any laws on the protection of women. While there are racks of books on the rights of women the actual implementation of the laws is absent which drags the country further from the tag of 'developed'. While on the other hand, other nations set examples of the right track which include¹⁸³;

- ❖ Kyrgyzstan- in which new law such as 'Safeguarding and Protecting Against Domestic Violence' makes it easy for victims of either sex to report freely. There are provisions for an intensive check-up and follow-up by the police, which reinforces the law.
- ❖ Tunisia-the leading party won the elections with the propaganda to introduce laws for women's protection, back in 2017.
- ❖ In Jordan, Lebanon and Tunisia, a historical change had been made in which the law stated that the punishment for the offenders who committed the offence of rape would be pardoned if he marries the victim.

- ❖ Liberia also passed many laws which increased the protection of domestic violence victims.

While according to the UN report from sixty countries that passed laws against domestic violence in 2006 to one hundred and twenty-five in 2011, there a still one hundred twenty-six countries which are still silent about this.

The punishment for Domestic Violence in India

- Under section 498A of the Indian penal code¹⁸⁴ the offender who does domestic violence would be punished with imprisonment up to three years or a fine or both. This section also punishes the offender in cases of abetment to commit suicide under dowry death.
- Section 125 of Code of Criminal Procedure¹⁸⁵ helps in providing maintenance to the wives in cases of divorce from the husband committing domestic violence.
- In a case where the victim dies of domestic violence then he would be charged with the Section 302of Indian Penal code¹⁸⁶ which defines the punishment for the murder i.e., imprisoned for life with a fine or both. The crime is deemed heinous in nature, and they may be prosecuted with the death penalty.

An analysis of the laws regarding Dowry Death

In India, the punishment for dowry death is imprisonment for a minimum period of seven years and a maximum period of life imprisonment. The essential ingredients of dowry death include;

- ✓ Death should be caused due to bodily injury or burns or any other unnatural offence.
- ✓ Death must occur within seven years of marriage.

¹⁸¹ <https://www.worldbank.org/en/news/press-release/2018/02/01/more-than-1-billion-women-lack-legal-protection-against-domestic-sexual-violence-finds-world-bank-study>

¹⁸² <https://www.hrw.org/news/2019/07/29/chilling-inaction-domestic-violence-russia-endangering-womens-lives>

¹⁸³ <https://www.losangelescriminaldefenseattorneyblog.com/domestic-violence-around-the-world-how-other-countries-address-dv/>

¹⁸⁴ https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=562#:~:text=India%20Code%3A%20Section%20Details&text=%5BWhoever%2C%20being%20the%20husband%20or,also%20be%20liable%20to%20fine.

¹⁸⁵ <https://indiankanoon.org/doc/1056396/>

¹⁸⁶ https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=338#:~:text=Whoever%20commits%20murder%20shall%20be,1%2D1%2D1956

- ✓ The cruelty or harassment should be in connection with the demand for dowry.
- ✓ There is a provision of 'soon before' that the victim must be exposed to cruelty of any form from their husband or any other relative 'just before' her death.

The provision of "soon before": the presumption of 'soon before' raises presumption under section 113 of the Indian Evidence act and suffices the proof in favour of the victim. The burden of the proof lies on the victim. In the case of *Keshava Chandra Panday v. State*¹⁸⁷, the couple fought due to dowry daily, one day, the husband hit the wife with an iron rod due to which she went home. But after a point of time, the two families resolved the issue and the wife went back to her matrimonial home within two days of her return, she was found dead. The provision of 'soon before' was declared in this but not the dowry death as the death was due to dowry was not proved.

Similarly in the case of *Chakraborty v. State of West Bengal*¹⁸⁸, the couple had been fighting for a period of two years after which the body of the wife was found burnt, in this case as well the provision of soon before was held. It is important to note that the statutory obligation on a court to presume that the accused has committed dowry death when; a. the death of the wife has occurred otherwise than normal circumstances. b. soon before her death, the victim was subjected to cruelty.

Dowry death is of three types; a. Homicidal dowry death b. Accidental death and c. Suicidal death. Let's take an example to understand these if the husband or the relatives demands the wife to give him a wagoner car as a gift, but they provide with a nano and after some time the wife was found burnt, then they would be held for homicidal death. If the mother-in-law of the victim just to 'teach her a lesson' pours water on the stairs or causes the victim to fall just because she did not bring dowry and this causes the death of the victim, then the

mother-in-law would be held liable for the accidental death of the victim because she did not want to cause the death of the victim but to 'teach her a lesson'. Accidental deaths are generally practised in the case of female foeticides in which the permission of the mother is not taken but the foeticide leads to the weakened health of the mother who may have to face future health repercussions, for the greed of the husband and his relatives.

Suicide due to Dowry Death

In cases where the wife commits suicide due to the torture and the abuse caused by the husband and the relatives, the suspect would be charged with the abetment to commit suicide under Section 306 of the Indian Penal Code; in which anyone who abets the conduct of suicide intentionally and with knowledge, shall be punishable till the term of ten years with fine. It is also a non-bailable offence. In the case of *Gangadevi v. State*¹⁸⁹, the court held that there shall be instigation, co-operation, or intentional assistance when it comes to abetment to suicide. It can be better explained with an example, if the husband or the relatives demanded a dowry from the wife for a continuous period and the wife commits suicide to end her sufferings, then the offender would be liable under dowry death.

The difference between Dowry and Stridhan

The concept of Stridhan has emerged from the concept of the 'Vara Dakshina' which is associated with the Hindu rituals of the 'Kanyadaan' which is the gift of the bride in the marriage. So, the father of the bride has to provide gifts to the groom, which according to ancient times were considered meritorious in nature. The Stridhan is considered to be 'women's property', which includes all the gifts which the wife receives from her own family as well as from other relatives, it may be jewellery, property, or other items. And the intention behind this was that the woman or the wife had

¹⁸⁷ <https://indiankanoon.org/doc/35987540/>

¹⁸⁸ https://www.livelaw.in/pdf_upload/67-usha-chakraborty-v-state-of-west-bengal-30-jan-2023-456437.pdf

¹⁸⁹ <https://indiankanoon.org/doc/715321/>

the right to dispose of the stridhan or use it according to her discretion.

However, this tradition has been turned and twisted and the new concept of 'dowry' emerged in which the bridegroom or the relatives of the bridegroom demand, coerce or pressure the bride's family for the "gifts" and this is unlawful in nature. In the case of *Kailashvati v. Ayodhya Prakash*¹⁹⁰, the court recognised the distinction between the Stridhan and the dowry, used both words interchangeably, which is unlawful in nature and said that the 'presents or 'dowry' is not included in the status of the 'Stridhan'. The court further said that the 'gifts' that the wife receives can be shared by her with her husband and family only at her discretion and must not be coerced into it.

In the case of *Pratibha Rani v. Suraj Kumar*¹⁹¹, the supreme court held that the following would be held under the provision of Stridhan;

- A. gifts are given before the nuptial fire,
- B. gifts are given at the bridal procession (when the bride is being led from her natal home to her matrimonial home),
- C. gifts which are given with love by the father-in-law or the mother-in-law or
- D. given at the time when the bride is touching the feet of elders.
- E. gifts are given by the parents of the bride.
- F. also, the gifts are given by the brother of the bride.

The Question of Marital Rape

While there are still countries at large where the motto of 'marry-your-rapist' is practised such as Russia, Thailand, and Venezuela, where the punishment of the offender is laid off when he agrees to marry the victim and the choice, and the will of the victim is not taken into consideration. The same was true in the case of Morocco, but this changed when a girl committed suicide when she was asked to marry the rapist.

¹⁹⁰ <https://www.lawweb.in/2012/12/distinction-between-dowry-and-stridhan.html>

¹⁹¹ <https://indiankanoon.org/doc/1684706/>

Rape is a heinous, brutal, and monstrous crime. The laws in India take this with the utmost seriousness and the punishment even extends to include any minor who commits such a crime. Section 375 of the Indian Penal code defines 'Rape' as an act of sexual intercourse by a man on a woman without her consent or will. The penetration may be physical, digital or even the penetration of an object into the body of the woman without her consent is termed to be 'rape'. Even when the consent is with coercion, undue influence, fear of death, intoxication or during unsoundness of mind, it would still be considered as 'rape.'

- Section 376A of the Indian Penal Code provides punishment for rape which has a minimum period of ten years and a maximum period of life imprisonment.
- The offender in cases of minors (both male and female children), will be imprisoned for a minimum period of five years with a fine or a maximum period of ten years.
- Section 376B criminalises forceful sexual intercourse by husband or wife during separation. The punishment for this is minimum imprisonment of up to two years or a maximum of seven years.

The law is silent in the case of the 'men', there is a law or provision which states the punishment for rape against men and it is a matter of discrimination and biasedness in a nation known for upholding fundamental rights. Although section 377 of the Indian Penal Code generally opts, but that provision is applied in the cases of sexual intercourse against nature i.e., if the sexual intercourse is committed by;

- A. man against man,
- B. woman against woman,
- C. man against animal or
- D. woman against animal

So, this provision also is not specifically for a man and also it does not specify unwanted rape or sexual intercourse by a woman with a man, without his consent. According to them, only the modesty of a woman is being abrogated which is not the same in the case of



men. Not only this but the law is also silent about marital rape as according to them it is difficult to distinguish, a. whether the wife was involved in voluntary or involuntary cohabitation with her husband. b. it is difficult to identify whether the wife has been raped or not when she was in voluntary cohabitation just before the rape (within a year). Also by the parliament, marital rape is contradictory as, in India, marriage is considered sacred.

Conclusion

Although the courts in India are dealing very hard to provide justice for all, new dimensions have arrived with time which also needs new laws for a better system of justice. Just by following draconian laws India would be drawn backwards in time. The laws regarding domestic violence and dowry death have made a significant distinction in that matter. The same cannot be said in the case of male members of society who have to deal with partiality and biasedness against females. Females are indeed more victims of these crimes but it cannot be said that there is no single male who has not been a victim of these either. And as it is famously said that 'even one innocent person should not be left without justice as justice is our birthright'.