

WOMEN AND CRIME: LAWS FOR WOMEN'S SAFETY

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ABSTRACT

Nowadays women have entered in all the fields allied to the overall development of the nation except the field of politics. Political field provided the people the platform to participate in government affairs and implement the policy and laws which endow the safety and security to all the people of the country. But this is an irony that large numbers of women are not taking interest to enter in this field due to major security constraint. India is not only the biggest democracy but also unfortunately the biggest criminalized democracy in the world where the future of our country is mostly in those hands which are already coloured with the blood of several murders, bribes, kidnapping, extortion, rapes, harassment so on and so forth. It is a universal truth that women always prefer to work in safe environment. Her family never encourage to work in unsafe and hazardous atmosphere. On the other side political parties prefer to give tickets to males have criminal background instead of women who never wants to indulge in an illegal or immoral politics. So it's the prime responsibility of the government to provide the safety and security to the women especially those, are taking part in the politics and becomes the whistle blower against the unethical practices. Main objective of this research paper is to critically evaluate the Indian laws which is being made for women safety. Is there any need to bring amendments in the laws or strict implementation is sufficient to provide the safety to the women as a whistle blower.

INTRODUCTION

In the wake of increasing crime against women, there is an incessant discussion about the laws that deal with offences against women. The marital offences against women include bigamy, adultery, and criminal elopement among others. The one that is probably most common offence is cruelty. Over time, courts have expanded the ambit of the definition to include within it different instances. There are offences that are understood to outrage the modesty of a woman. These include gestures, words, etc. that violate the privacy of the

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woman. Of the more serious offences against women are dowry death and rape. Dowry is a curse upon our society and many innocent women lose their lives because of illegitimate demands for dowry. The provisions dealing with dowry death have been framed in a way that raise a presumption against the accused if certain minimum requirements are met. Rape is another heinous offence that violates the integrity of a woman. In the wake of the 16 December gang rape case, the provisions relating to rape and its punishment have been strengthened to deter this crime. However, there are still some loopholes that need to be addressed.”

In our old, great nation a woman is the personification of a goddess, a symbol of respect and devotion to the gods. We have all been brought up in a way that commands the highest honour and respect for the fairer sex. Yet, unfortunately the latest statistics do not reflect this but in fact, demand introspection. Today, there is a rape every 29 minutes, a case of molestation every 15 minutes and a dowry death every 4 hours.³ This is, inhuman for a nation that prides itself for all the dignity it gives to its women as part of its culture and traditions. Therefore, it is only necessary that we look into details of the various offences under the IPC against women and the laws that guard them. This project covers all those offences against women, for which only a male specifically can be charged.

OFFENCES RELATING TO MARRIAGE

Chapter XX (section 493- 498), IPC, deals with offences relating to marriage. All these offences deal with infidelity within the institution of marriage in one way or another. Chapter XX-A, containing only one section (s 498A) dealing with cruelty to a woman by her husband or his relatives to coerce her and her parents to meet the material greed of dowry, was added to the IPC by the Criminal Law (Second Amendment) Act 1983.⁴

The following are the main offences under this chapter:

- Mock or invalid marriages (s 493 and 496);
- Bigamy (s 494 and 495);
- Adultery (s 497);
- Criminal elopement (s 498);

³A.S. Anand, Justice for Women: Concerns and Expressions, (2002), pp.1-3.

⁴Act No. 46 of 1983

- Cruelty by husband or relatives of husband (s 498A)

SECTION 493 - COHABITATION CAUSED BY A MAN DECEITFULLY INDUCING A BELIEF OF LAWFUL MARRIAGE

Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

SECTION 496 - MARRIAGE CEREMONY FRAUDULENTLY GONE THROUGH WITHOUT LAWFUL MARRIAGE

Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The essential elements of both the sections i.e. 493 and 496, is that the accused should have practiced deception on the woman, as a consequence of which she is led to believe that she is lawfully married to him, though in reality she is not. In s 493, the word used is 'deceit' and in s 496, the words 'dishonestly' and 'fraudulent intention' have been used.

Basically both the sections denote the fact that the woman is cheated by the man into believing that she is legally wedded to him, whereas the man is fully aware that the same is not true. The deceit and fraudulent intention should exist at the time of the marriage⁵ Thus *mensrea* is an essential element of an offence under this section.

SECTION 494 - MARRYING AGAIN DURING LIFETIME OF HUSBAND OR WIFE

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

⁵KAN Subrahmanyam v. J Ramalakshmi (1971) Mad LJ(Cr) 604

Exception.-This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

The important ingredients are:

- deceit or fraudulent intention
- causing of false belief
- cohabit or have sexual intercourse

SECTION 495 - SAME OFFENCE WITH CONCEALMENT OF FORMER MARRIAGE FROM PERSON WITH WHOM SUBSEQUENT MARRIAGE IS CONTRACTED

Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The essential ingredients are:

- existence of a previous marriage
- second marriage to be valid
- second marriage to be void by reason of first husband or wife living

SECTION 497 - ADULTERY

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.

Before the IPC was enacted, adultery was not an offence in India either for men or women. It was also not included in the first draft of the penal code. However, the second Law Commission did it. The Law Commissioner noted that the then prevalent social infrastructure and the secondary and economically dependent position of women were not conducive to punish adulterous men. Further, they noted, that a wife was socially conditioned to accept her husband's adulterous relationship as polygamy was an everyday affair. Thus they incorporated adultery as an offence punishing only adulterous men.

In *Kashuri v. Ramaswamy*⁶ was held that the proof of sexual intercourse has to be inferred from the facts and circumstance of a case as direct evidence can rarely be proved.

The essential ingredients are:

- sexual intercourse
- woman must be married
- knowledge
- consent or connivance of husband
- should not constitute rape

SECTION 498 - ENTICING OR TAKING AWAY OR DETAINING WITH CRIMINAL INTENT A MARRIED WOMAN

Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The essential ingredients are:

- takes or entices away

⁶(1979) CrLJ 741 (Mad)

- woman to be a married woman
- knowledge
- taken from control of husband or person having care of her on behalf of her husband
- intention to have illicit intercourse
- conceals or detains such women

In *Alamgir v. State of Bihar*⁷, it was observed that if a man knowingly goes away with the wife of another in such a way to deprive the husband of his control over her, with the intent to have illicit intercourse, then it would constitute an offence within the meaning of the section.

SECTION 498A - CRUELTY

Matrimonial Cruelty in India is a cognizable, non bailable and non-compoundable offence. It is defined in Chapter XXA of I.P.C. under Section 498A as

Husband or relative of husband of a woman subjecting her to cruelty – Whoever being the husband or the relative of the husband of a woman, subjects her to cruelty shall be punished with imprisonment for a term, which may extend to three years and shall also be liable to a fine.

Explanation – for the purpose of this section, “cruelty” means:

- a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demands for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

For safeguarding the interest of a woman against the cruelty they face behind the four walls of their matrimonial home, the Indian Penal Code, 1860 was amended in 1983 and S.498A was inserted which deals with ‘Matrimonial Cruelty’ to a woman. The section was enacted to combat the menace of dowry deaths. It was introduced in the code by the Criminal Law

⁷AIR 1969 SC 436.

Amendment Act, 1983 (Act 46 of 1983). By the same Act section 113-A was been added to the Indian Evidence Act to raise presumption regarding abetment of suicide by married woman. The main objective of section 498-A of I.P.C is to protect a woman who is being harassed by her husband or relatives of husband.

Section 113-A of Indian Evidence Act, reads as follows:

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation- For the purpose of this section ‘dowry death’ shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860).

The object with which section 498A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting Criminal Law (Second Amendment) Act No. 46 of 1983. As clearly stated therein, the increase in number of dowry deaths was a matter of serious concern. The extent of the evil was commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some of cases, cruelty of the husband and the relatives of the husband culminated in suicide by or murder of the helpless woman concerned. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short ‘the Cr.P.C’) and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-law’s and relatives. The avowed object was to combat the menace of dowry death and cruelty⁸.

MEANING OF CRUELTY

Cruelty includes both physical and mental torture. Wilful conduct in Explanation (a) to section 498A, I.P.C. can be inferred from direct and indirect evidence. The word cruelty in the Explanation clause attached to the section has been given a wider meaning. It was held in *Kaliyaperumal vs. State of Tamil Nadu*⁹, that cruelty is a common essential in offences under both the sections 304B and 498A of IPC. The two sections are not mutually inclusive but

⁸ Sushil Kumar Sharma vs. Union of India; JT 2005(6) SC266.

⁹ 2004 (9) SCC 157

both are distinct offences and persons acquitted under section 304B for the offence of dowry death can be convicted for an offence under sec.498A of IPC. The meaning of cruelty is given in explanation to section 498A. Section 304B does not contain its meaning but the meaning of cruelty or harassment as given in section 498-A applies in section 304-B as well.

In the case of *Inder Raj Malik vs. Sunita Malik*¹⁰, it was held that the word ‘cruelty’ is defined in the explanation which *inter alia* says that harassment of a woman with a view to coerce her or any related persons to meet any unlawful demand for any property or any valuable security is cruelty. The Supreme Court in *Mohd. Hoshan vs. State of Andhra Pradesh*¹¹ observed: “Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusation or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of the sensitivity, degree of courage and endurance to withstand such cruelty. Each case has to be decided on its own facts whether mental cruelty is made out”

CONSTITUTION VALIDITY OF SECTION 498A

In *Inder Raj Malik and others vs. Sunita Malik*¹², it was contended that this section is *ultra vires* Article 14 and Article 20 (2) of the Constitution. There is the Dowry Prohibition Act, 1961 which also deals with similar types of cases; therefore, both statutes together create a situation commonly known as double jeopardy. But Delhi High Court negated this contention and held that this section does not create situation for double jeopardy. Section 498-A is distinguishable from Section 4 of the Dowry Prohibition Act because in the latter mere demand of dowry is punishable and existence of the element of cruelty is not necessary, whereas section 498-A deals with an aggravated form of the offence. It punishes such demands of property or valuable security from the wife or her relatives as are coupled with cruelty to her.

Hence a person can be prosecuted in respect of both the offences punishable under section 4 of the Dowry Prohibition Act and this section. It was thus held that though, this section gives wide discretion to the courts in the matters of interpretation of the words occurring in the

¹⁰ 1986 (2) Crimes 435.

¹¹ 2002 Cr.L.J 4124

¹² Supra note

laws and also in matters of awarding punishment. Similarly, its constitutionality was challenged in the case of *Polavarpu Satyanarayana v. Soundaravalli*¹³ where it was again held that 498A is not *ultra vires* of constitution.

In the case of *Surajmal Banthia v. State of West Bengal*¹⁴, the deceased was ill-treated and tortured for several days and not given food several times. The court acknowledging that this is the treatment that several young brides face when they move out of their parents' home and into the house of her in-laws, held the husband and his father liable under 498A.

In *Vijai Ratna Sharma v. State of Uttar Pradesh*¹⁵ the Allahabad High Court took a pragmatic view in a criminal proceeding initiated by a dowry victim, by doing away with jurisdictional technicalities in the matter. The court brushed aside the argument of lack of jurisdiction on technical grounds and held that since from the very beginning, the dowry demand had been present and subsequent behaviour was an ensuing consequence, all the offences can be tried together. In *Bhagwant Singh v. Commissioner of Police*¹⁶, Supreme Court held that the greed for dowry and the dowry system as an institution calls for the severest condemnation by all sections.

SECTION 498A AND THE ALLEGATION OF MISUSE

In the last 20 years of criminal law reform a common argument made against laws relating to violence against women in India has been that women misuse these laws. The police, civil society, politicians and even judges of the High Courts and Supreme Court have offered these arguments of the misuse of laws vehemently. The allegation of misuse is made particularly against Sec 498A and against the offence of dowry death in Sec 304B. One such view was expressed by former Justice K T Thomas in his article titled 'Women and the Law', which appeared in *The Hindu*. The 2003 Malimath Committee report on reforms in the criminal justice system also noted, significantly, that there is a "general complaint" that Sec 498A of the IPC is subject to gross misuse; it used this as justification to suggest an amendment to the provision, but provided no data to indicate how frequently the section is being misused.

¹³ 1988 Cr.L.J 1538 (AP).

¹⁴ II (2003) DMC 546 (DB).

¹⁵ 1988 Cr.L.J 1581

¹⁶ AIR 1983 SC 826.

Again Supreme Court, in a relatively recent case, *Sushil Kumar Sharma v. Union of India and others*¹⁷, observed: “The object of the provision is prevention of the dowry menace. But as has been rightly contented by the petitioner that many instances have come to light where the complaints are not bonafide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and *intra vires*, does not give a license to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. The Supreme Court in its recent judgment in *Arnesh Kumar v. State of Bihar*¹⁸ said that no arrest should be made immediately in the offences which are allegedly committed by the accused and the offence is cognizable and non-bailable, with particular reference to S. 498A. It laid down certain guidelines for the police officers to follow relating to the arrests made under the section, due to increase in number of false complaints.

SECTION 304B - DOWRY DEATH

The Indian Penal Code under defines it as-

Dowry Death — (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation, For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

¹⁷ JT 2005(6) 266.

¹⁸ (2014) 8 SCC 273.

Punishment—Imprisonment of not less than 7 years but which may extend to imprisonment for life—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Essential ingredients¹⁹

1. Death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances.
2. Death should have occurred within seven years of her marriage
3. The woman must have been subjected to cruelty or harassment by her husband or any relative of her husband.
4. Cruelty or harassment should be for or in connection with the demand for dowry.
5. Cruelty or harassment should have been meted out to the woman before her death.

In *Prema S. Rao v. Yadla Srinivasa Rao*²⁰, it was held that to attract the provisions of section 304B, one of the main ingredients which is required to be established is that “soon before her death” she was subjected to cruelty and harassment “in connection with the demand of dowry”.

EXPRESSION ‘SOON BEFORE HER DEATH’

The expression ‘soon before her death’ used in the substantive section 304B, I.P.C. and Section 113B of the Evidence Act is connected to the idea of proximity text. No definite period has been indicated and the expression ‘soon before her death’ is not defined. The determination of the period which can come within the term ‘soon before’ is to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression ‘soon before’ would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.²¹

¹⁹ *Kaliyaperumal v. State of Tamil Nadu*, AIR 2003 SC 3828.

²⁰ AIR 2003 SC 11

²¹ *Yashoda v. State of Madhya Pradesh* (2004) 3 SCC 98.

APPLICABILITY

In the case of *Vadde Rama Rao v. State of Andhra Pradesh*,²² it was argued that the husband or any of his relative could be guilty of the offence only if he or she directly participated in the actual commission of the offence. This contention was rejected by the Andhra Pradesh High Court. It observed that in its real import, section 304B would be applicable if cruelty or harassment was inflicted by the husband on any of his relative for, or in connection with demand for dowry, immediately preceding the death by bodily injury or by burning.

BURDEN OF PROOF

The prosecution under section 304B cannot escape from the burden of proof that the harassment to cruelty was related to the demand for dowry and that it was caused “soon before her death”. The word “dowry” has to be understood as it is defined in section 2 of the Dowry Prohibition Act, 1961. There are three occasions related to dowry, i.e., before marriage, at the time of marriage and at an unending period. The customary payment in connection with the birth of child or other ceremonies, are not involved within ambit of “dowry”.²³ In *Patil Paresh Kumar Jayanti Lal v. State of Gujarat*²⁴, it was held that where the evidence revealed that accused-husband killed deceased-wife for not satisfying his dowry demand but there was nothing on record to show involvement of co-accused in-laws, co-accused in-laws are not guilty of offence under sections 304B. In cases of *Ratan Lal v. State of Madhya Pradesh*²⁵ and *N.V. Satyanandam v. Public Prosecutor*²⁶ it was ruled that in dowry death cases and in most of such offences direct evidence is hardly available and such cases are usually proved by circumstantial evidence. This section as well as section 113B of the Evidence Act enact a rule of presumption, i.e., whether death occurs within seven years of marriage in suspicious circumstances. This may be caused by burns or any other bodily injury. Thus, it is obligatory on the part of the prosecution to show that death occurred within seven years of marriage. If the prosecution would fail to establish that death did not occur within seven years of marriage, this section will not apply;

²² 1990 Cr LJ 1666.

²³ *Satvir Singh v. State of Punjab*, AIR 2001 SC 2828.

²⁴ 2000 Cr LJ 223 (Guj).

²⁵ 1994 Cri LJ 1684.

²⁶ AIR 2004 SC 1708

SECTION 304B AND SECTION 498A – DISTINCTION

There is a clear distinction between section 304B and 498A of the Indian Penal Code. Now, under section 304B it is a dowry death that is punishable and such death should have occurred within seven years of marriage and this period of limitation is not there in 498A.

In the case of *Soni Devrajibhai Babubhai v. State of Gujarat*²⁷ it was held that Section 304B is a substantive provision creating a new offence and not merely a provision effecting a change in procedure for trial of a pre-existing substantive offence. As a consequence, accused cannot be tried and punished for the offence of dowry death provided in section 304B with the minimum sentence of seven years' imprisonment for an act done by them prior to creation of the new offence of dowry death.

In *Shanti v. State of Haryana*,²⁸ in-laws insisted for dowry from the daughter-in-law. Ultimately, it appeared that she was done to death and her body was cremated without sending any information to her parents or any relatives. The Supreme Court held that, if it was natural death, there was no need for the appellants to act in such unnatural manner and cremate the body in great and unholy haste without even informing the parents. In the result it was an unnatural death, either homicidal or suicidal. But even assuming that it is a case of suicide even then it would be death which had occurred in unnatural circumstances. Even in such a case, section 304B is attracted and this position is not disputed. Therefore, the prosecution has established that the appellants have committed an offence punishable under section 304B beyond all reasonable doubts. In *Venugopal v. State of Karnataka*²⁹ the appellant husband was held liable for dowry death under 304B I.P.C. for creating a situation whereby the wife committed suicide within two years of marriage.

SECTION 294- OBSCENE ACTS AND SONGS

Whoever, to the annoyance of others,

- a) Does any obscene act in any public place, or
- b) Sings, recites or utters any obscene song, ballad or words, in or near any public place,

²⁷1991 Cr LJ (313) (SC).

²⁸AIR 1991 SC 1226.

²⁹(1999) 2 SCC 216.

Shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Section 294 intends to promote public decency and morality. It can be understood as preventing 'eve teasing' in general sense. In order to secure a conviction under this section, the prosecution has to prove two particulars, namely:

- the accused has done an obscene act in public place or has sung, recited or uttered any obscene songs or words in or near any public place and
- has caused annoyance to others.

In *Pawan Kumar v. State of Haryana*³⁰, it was held that if the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, received or uttered in or near any public place, or that it causes no annoyance to others, the offence is, obviously, not committed. Uttering words in private place, therefore, does not constitute an offence under section 294.

In *Deepa v. SI of Police*³¹, the Kerala High Court was called upon to judge the question as to whether cabaret dance being performed in a posh hotel attracts section 294 of the IPC. It was held that an enclosed area in a posh hotel where cabaret dance is performed cannot be said to be a private place, merely by the reason that entry is restricted to persons purchasing highly priced tickets and the costly drinks and food served. Keeping in view the object of section 294, the court refused to accept the contention that persons who willingly come to witness cabaret dance with full knowledge of what is going to happen and even if annoyance is caused, they have no right to complain.

OFFENCES OUTRAGING THE MODESTY OF A WOMAN

“Modesty is not only an ornament, but also a guard to virtue...”

We may think that the position of women has changed in our society, especially in metropolitan cities, but that is nothing but a myth. We might have progressed but what's the point in boasting of our growth-story if it hasn't taught us to respect the modesty of women

³⁰AIR 1996 SC 3300

³¹1986) CrLJ 1120 (Ker.)

The offence of outraging the modesty of a woman has been dealt with in the Indian Penal Code under Section 509 and Section 354, which is an aggravated form of the offence mentioned under Section 509.

SECTION 509

This section reads-

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

The object of this section is to protect the modesty and chastity of a woman. The offence under this section is cognizable, bailable, non-compoundable and triable by a Magistrate of first class. The punishment under this section may extend to one year with simple imprisonment or fine or both.

On a close reading of the section we can infer that, the basic constituents of the offence under Section 509 are-

- Intention to insult the modesty of a woman.
- The insult must be caused-
 - By uttering some words, or making some sound, or gesture or exhibiting any object so as to be heard or seen by such woman, or
 - By intruding upon the privacy of such woman³².

The question of what constitutes an insult to female modesty requires no description.³³ Any song, picture, or figure exhibiting lewd suggestions are considered as immoral and insulting women's modesty. If the above two ingredients are being fulfilled then a person can be held liable under Section 509.

³² See K.D Gaur, *The Indian Penal Code* (Fourth Edition, 2012) p. 833.

³³ *State of Punjab v. Major Singh*, AIR 1967 SC 63.

In *Mrs. Rupan Deol Bajaj & Anr v. Kanwar Pal Singh Gill & Anr*,³⁴ the accused was held liable of outraging the modesty of an Officer of the Indian Administrative Service (I.A.S), belonging to the Punjab Cadre. He was held liable under both sections 509 and 354 of the IPC.

SECTION 354

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The essential ingredients of the offence under this section are:

1. A woman was assaulted or criminal force was used against her;
2. The accused intended to outrage her modesty or knew that her modesty was likely to be outraged.³⁵

What constitutes an outrage to female modesty is nowhere defined, however, the Supreme Court of India in *Ramkripal* case³⁶ decided by Justices Ajit Pasayat and S.H. Kapadia brought clarity to section 354. The bench defined modesty as ‘The essence of a woman’s modesty is her sex, and thus giving skeleton to the flesh.’

Section 354 under The Criminal Law (Amendment) Act, 2013

After section 354 of the Penal Code, the following sections have been inserted, namely:—

SECTION 354A - SEXUAL HARASSMENT

(1) The following acts or behavior shall constitute the offence of sexual harassment

- i. Physical contact and advances involving unwelcome and explicit sexual overtures; or
- ii. A demand or request for sexual favours; or
- iii. Making sexually coloured remarks; or
- iv. Forcibly showing pornography; or

³⁴ 1995 (6) SCC 194.

³⁵ See K.D Gaur, *The Indian Penal Code*, (Fourth Edition, 2012), p. 608.

³⁶ *Ramkripal S/O Shyamlal Charmakar v. State Of Madhya Pradesh*, AIR 2004 SC 1677.

v. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

(2) Any person who commits the offence specified in clause (i) or clause (ii) of sub-section (1) shall be punished with rigorous imprisonment which may extend to five years, or with fine, or with both.

(3) Any person who commits the offence specified in clause (iii) or clause (iv) or clause (v) of sub-section (1) shall be punishable with imprisonment of either description that may extend to one year, or with fine, or with both. Assault or use of criminal force to woman with intent to disrobe.

SECTION 354B

Whoever assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years and with fine.

SECTION 354C- VOYEURISM

Whoever watches, or captures the image of, a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1.— For the purposes of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy, and where the victim’s genitals, buttocks or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the person is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.— Where the victim consents to the capture of images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

SECTION 354D - STALKING

(1) Whoever follows a person and contacts, or attempts to contact such person to foster personal interaction repeatedly, despite a clear indication of disinterest by such person, or whoever monitors the use by a person of the internet, email or any other form of electronic communication, or watches or spies on a person in a manner that results in a fear of violence or serious alarm or distress in the mind of such person, or interferes with the mental peace of such person, commits the offence of stalking: Provided that the course of conduct will not amount to stalking if the person who pursued it shows—

- i. That it was pursued for the purpose of preventing or detecting crime and the person accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the state; or
- ii. That it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
- iii. That in the particular circumstances the pursuit of the course of conduct was reasonable.

(2) Whoever commits the offence of stalking shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to three years, and shall also be liable to fine.

RAPE

“Rape is the highest in the class of all indignities, one which can never be fully righted and that diminishes all humanity.”-Supreme Court of California in *M v. City of Los Angeles*³⁷

The above quotation doesn't even come close to the horror of a heinous crime like rape which tears the victim apart, both in physical and mental measure. The brutality of such an act is so sharp and deep that the victim is unlikely to completely shake off the trauma throughout their

³⁷54 Cal.3d 202, 222 (1991).

lives. Rape is a type of sexual assault initiated by one against the other's consent with the purpose of forcing sexual intercourse. In India, rape has been the subject of definition under Section 375 of the Indian Penal Code with its aggravated forms given under Section 376 of the I.P.C. For a nation which reveres its women as goddesses, fresh crime statistics fail to reflect the very same. We have a case of rape every 29 minutes and a case of molestation every 15 minutes, which is inhuman to put it mildly for a divine nation such as ours.

However, it must be first understood that laws are only as good as the people who make them. In other words, the worldview and the very opinionated mind-sets of the society are what define what a law would be like. Therefore, despite the ultimate well-mindedness of the provisions on rape we must realize that it isn't a crime the society shares a common dais on. It was, and remains an issue that divides us especially in a nation like India where patriarchal, traditional hierarchies still exist.

"This is what God intended to happen," comments a member of the Haryana Khap Panchayat, a sentiment echoed by a senator in Indiana, United States.³⁸ "The girl brought it on herself," says another self-proclaimed godman who adds that the victim should have called the offender brother. Such sentiments exist, or rather thrive and it is up to these laws to stand the tides of such sentiments and make the world a better place to live in.

RAPE UNDER THE INDIAN PENAL CODE

Rape, its definition, elements and punishments have been given under Section 375-376. These sections were substantially amended on the recommendations of the Justice J.S. Verma Committee that was setup in wake of the 16 December 2012 gang rape case. The amendment was made to make the provisions more inclusive and at the same time award a stricter punishment.

Under Section 375, Rape which derives from the Latin word '*rapio*' meaning '*to seize*'³⁹ is defined as any act of penetration by penis or another body part or object, or any manipulation the woman's body parts under the following circumstances-

1. Against her will: Here, 'will' refers to the faculty of reasoning or the mental capacity to understand the consequences of doing or not doing a particular act. In *State of*

³⁸Will Murdock's Rape Comments Sink the GOP? "U.S. News & World Report."

³⁹Nelson's Penal Code, 7th Edition (1983).

*Punjab v. Gurmeet Singh*⁴⁰ it was held that the prosecutrix who had been abducted and subjected to sexual intercourse forcibly had been raped against her will.

2. Without her consent: Consent refers to the positive concurrence of a woman's will. This is based on the principle that a man is the best judge of what is good for him/her and can consider and give consent to what he feels is good for him. In *Queen v. Flattery*,⁴¹ it was held that the girl's consent was meant for a surgical operation and not for sexual intercourse and such a consent was manufactured and was not a ground for exemption from criminal culpability.
3. Consent obtained by fear of death or hurt of person or someone close: In '*State of Maharashtra v. Prakash*',⁴² it was ruled that where a gypsy woman was raped by police constables who beat her husband and threatened to put him in remand, it accounted for being a threat manufacturing a false consent. The infamous *Mathura Rape Case*⁴³ held that where a woman was raped in a police station by police constables with no sign of injury or any threat of the same, the meekness towards such an act constituted consent.
4. Under the pretence of being her husband: *Queen v. Elbakkay*,⁴⁴ held that even on the account of a man representing himself to be a woman's boyfriend to have sexual intercourse, it accounted to false pretence.
5. Under intoxication or unsoundness of mind by which capacity to consent is undermined: This provision was a consequence of the Criminal Amendment Act of 1983 according to which where a woman has been intoxicated and is unable to judge or give consent to any act of sexual intercourse or where the woman is impaired with intelligence or social functioning skills, she is said to be intoxicated or unsound respectively.
6. Under eighteen years of age, irrelevant of consent: The consent of a woman is irrelevant and in fact, immaterial if she is below the prescribed age.
7. Unable to communicate consent

Section 376 goes ahead to define the punishment for rape as under Section 375 which is a minimum of seven years extending to life plus fine. Sub-section 2 prescribes a stringent

⁴⁰AIR 1996 SC 1393

⁴¹1877 QBD 410.

⁴²AIR 1992 SC 1275.

⁴³AIR 1979 SC 185

⁴⁴1995 Cri LR 163

punishment (10 years to life) for certain special circumstances like a police officer committing rape in the premises of a police station or on a woman in his protective custody, a public servant who takes advantage of his position to rape a woman in his custody, an official in service within a jail or remand home who commits rape etc.

Justice Arijit Pasayat in his judgement in *State of Karnataka v. Puttaraja*⁴⁵ held that a rapist not only robs a woman of her most cherished possession i.e. her chastity and dignity but also leaves an indelible mark on the society around the victim and the offender. Brilliantly put, we must keep this in mind while handing out punishments of sexual offences which leave a deep imprint on the moral compass of any society. In *State of Himachal Pradesh v. Raghbir Singh*,⁴⁶ it was held that punishment for sexual assault may be reduced on rare, compassionate grounds.

NEED TO STREAMLINE RAPE LAWS

With a rising number of cases of rape, the public opinion in favour of death for rape convicts is higher than ever. Yet, members of the legal fraternity must see sexual offences like Rape through a legal perspective and not through the prism of public opinion. Finally, the question remains if the punishment is adequate in cases of rape under Section 375 and 376. This has been debated upon widely because there has never been a strict interpretation of the gravity of a crime like Rape or of the accused in such a crime. For example, in the United States of America, people convicted of sexual offences are given psychiatric and therapeutic help as they are viewed as 'sick' and not just as one of the crowd of prisoners in India's jails.

The rising tide of suggestions to streamline Rape laws under the Indian Penal Code include,

1. Incestuous rape or rape by a person within the family must be made a statutory offence given the fact that cases of incest have risen over the years.
2. In India, most cases of rape either go unreported because of the inevitable social stigma that gets attached to the victim or are dismissed where the accused are acquitted due to lack of evidence or proof. This is largely because here, a case of rape includes the careful dissecting of a woman's character and chastity.

⁴⁵AIR 2004 SC 433.

⁴⁶1993 (1) SCALE 708

“Perhaps it is the only crime in which the victim becomes the accused and, in reality, it is she who must prove her good reputation, her mental soundness, and her impeccable propriety.”⁴⁷

CONCLUSION

There can be a de-jure or de-facto acceptance of violent behavior and lack of remedies for women victims

1. Lack of criminalization

There are instances where crimes against women are also categorized as minor offences such as female genital mutilation, marital rape, forced marriage etc.

2. Lack of awareness

There are so many laws but when we are talking about implementation we get to know that women even don't know about their rights .They are not being aware about laws which are being made for their safety

3. Challenges in making a case in court

In certain cases the burden of proof can be placed on the victim. In such circumstance women is not only under with the physical torcher but as well the mental torcher. Even though the society ignored their existence.

4. Existing laws are insufficient, conflicting and have no effect in practice

There are various laws which contradict with each other and its get difficult for women to get justice & ultimately to reach their goal. The CEDAW committee recommends that its state authority obligation to report undocumented persons be replaced in national legislation so that we can get the exact data or fact regarding any issue. It should always to know the actual situation. Not even in the above mentioned instances but the women are facing participation problem in every field of life. The impact of these measures are also difficult due to lack of data coordination of efforts between policy makers and implementing partners.

FINDINGS

After the in-depth study of women laws and its implementation there are certain suggestion are proposed from our side.

⁴⁷Freda Adler, *Sisters in Crime: The Rise of the New Female Criminal* (1975).

1. STRICT IMPLEMENTATION OF THE LAWS-

As the legislature has made so many laws for the safety of women, certain efforts should be done towards the laws for making it stricter and straight forward. Once a heinous crime is being committed, It is the responsibility of the judiciary to give such judgment so that no one can think about to commit the crime again. Judgments must be like *lakshman rekha* for the wrongdoer because of which not even in real life they can't even think so to do such act in their dreams and it will be done only when strict laws will be made and enforced.

2. MORE RECRUITMENT OF WOMEN IN POLICE DEPARTMENT-

We can change the position of women by recruiting more and more women police officers in the police department and also facilitate the women prisoners. Even though in the jail also we can make a provision of women jailor mandatory in each jail who is equal in position with her male counterpart jailor . Female constable should be recruited in good numbers .Government has to provide good facility to the women who are working in such departments so that they can work efficiently.

3. THERE MUST BE FLEXIBILITY IN LAWS ACCORDING TO THE CONVENIENCE OF THE WOMEN-

In special cases where a female feels shy to answer the question in such situation, law has to make such provision so that a female feels comfortable while giving any answer. In certain circumstances due to uncomfortable situation we are not able to know about the real facts, so to avoid such situation female should feel safe and comfortable while answering any question.

4. STRONG PUNISHMENT AGAINST THE MISUSES OF THESE LAWS-

Sometimes laws are being misused by the female counterpart, in such situation female should get punishment so that no one female can do the same wrong. Due to few females a larger section of the female has to face the problem in getting justice because of the mindset that these are the women oriented laws so females are getting benefit of that.

5. MORE AWARENESS SHOULD BE SPREAD AMONG THE WOMEN-

Awareness among females not even in the urban area but also in the rural areas as well. The government has to make certain programs in every area of our country thrice in a year to aware the females about their rights and safety.

6. GOVERNMENT MUST DRIVE THE MOVEMENT FOR FINANCIAL INDEPENDENCE OF WOMEN-

Moreover we cannot leave everything on the government we have to make ourselves financial independent so that we can face any problem in future .Yes but government has the role to provide us more and more opportunities so that we can achieve our goal.

7. ENHANCE THE PARTICIPATION OF WOMEN IN POLICY MAKING AND LAW MAKING AGENCY-

To make women of our country strong not only she has to become financial independent but also opportunity will be given to them in policy making by giving authority to them to make laws and to participate in law making agency.

8. PROVIDE EDUCATION AS WELL AS THE TRAINING SESSION FOR THE GIRL CHILD FROM PRIMARY LEVEL

All should be done only when the base of female become strong .We have to make them strong at the grassroots level by providing them good education not only in the subjects but also in the legal context .Time to time training session will be conducted for them to make them aware about the updated situation and laws . If at the initial stage we make them strong then only we can prepare them for future challenges in their life.