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# Crime against Women in India: Laws and Protection

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## ABSTRACT

*Before going further first read the quote which is greatly emphasis the importance of the woman in the society. "A woman with a voice is, by definition, a strong woman. But the search to find that voice can be remarkably difficult."—Melinda Gates, philanthropist.*

*A woman is always to be the backbone of any society. She plays the role of strength for any man. But with the passing of time they are not in the position of getting the situation that they deserve. At present they are victims of cruelty, Harassment, Dowry's death, and Sexual Assault, and there are lots of things that they are suffering from. This article talks about the crime against women which exists in a society like cruelty by her in-laws, Domestic violence, Sexual Assault, and denial of maintenance.*

**Keywords:** *Cruelty, Sati, Domestic Violence, Sexual Assault, Maintenance, Woman Empowerment.*

## I. INTRODUCTION

*As laws are required to regulate and maintain the society in a similar way woman is to be the foremost factor in the development of the society. Even in ancient time woman have given a great importance and even the kings appointed female to their council to discuss political issues. But from the beginning, they have to struggle for their rights as they are always considered the weaker section of society. Every time they have to prove themselves and even in some societies they are not allowed to raise their voice, due to which they remained the subject matter of such violence or harassment.*

*There are many practiced which were only prohibited when the law came on such a subject like the practice of the Sati was only prohibited when the Sati (Prevention) Act, 1987 was enacted. The Act prevents sati, which is the forced or voluntary burning of alive of a widow.*

*Sati was first banned under Bengal Sati Regulation, 1829 and many social reformers worked as the pioneer so that such cruel practices were to be stopped. Raja Ram Mohan Roy was one of the social reformers who worked for welfare of women.*

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Even there are many cruel practices which women have to face like child marriage, sale and purchase of girls etc. Such discrimination can be seen at their workplace that they are paid less than the male counterparts.

By the evolution of the society now the women have so many laws which give them so many rights. These laws uplift the status of the woman and now they are no more subject matter of such cruelty or the harassment.

## **II. CAUSES OF CRIME AGAINST WOMEN IN INDIAN SOCIETY**

A marginalized section of society also consist women as they are seen as a weaker section and they are treated as inferior to man. They are the easiest target during any conflict between two groups or even in the society in general. Due to seen as a weaker section they are unable to resist against the injustice they face in society. Because of this patriarchal system they suffer in silent in homes and outsides. The crimes like Physical harm, rape, sexual harassment and acid attack are used as a teaching lesson to hostile group.

The reasons for the rising crime against women can be attributed to the low status of women in our society. Attitude towards women have not changed much since traditional time. Because of patriarchy women are treated as burden in society hence they denied in education. The women are considered as commodities. Low educational status of women leads to economic dependent of women which make their condition worsen in society.

Women faced violence in their household, place of work and in the society at large scale. The inferior situation of women not only related to rural area but also related to urban area a well. The mindset of the male community in the society is very conservative. If a woman fails to comply with the rotten patriarchal norms of the society they can face severe consequences for that without any fault.

## **III. PROTECTION UNDER CONSTITUTION**

The Constitution of India is the mother of the all the law and no law can be made which ultra vires the Constitution. All the law derived their powers from the Constitution and it Treat all the people equally irrespective of any caste, Race, Sex or religion. The Part III of the Constitution has the Fundamental Rights which are to be enforced in the court of law through the writs under article 32 in the Hon'ble Supreme Court of India or Under Article 226 in the Respective High Courts. The Article 14 of the constitution talks about the right to equality to all the citizens irrespective of caste, race, sex, place of birth.

**In Indian Young Lawyers Association and Ors. vs. The State of Kerala and Ors** <sup>3</sup> The Hon'ble Supreme Court of India held that the entry of woman of any age is allow in the temple and ban of entry is the violation of the Fundamental Right under article 14, 19 and 25 of the Indian Constitution.

If we read the Article 15(3) of the Constitution it says, "Nothing in this article shall prevent the State from making any special provision for women and children". It simply means that the Government has the power to make any special law for woman so that their status in society can be uplift.

The protection of the woman has also been provided under **Article 39(d)** in The Constitution of India which states, "That is the duty of state to pay equal pay for equal work both to the men and the women.

#### **IV. OFFENCES UNDER INDIAN PENAL CODE**

The Indian Penal Code is the Uniform Code it is apply to all people throughout the territory of India.<sup>4</sup>

This code contains the lot of the provision which gave the protection to the women against the various offences. As law is the dynamic concept, its changes according to the needs of the society. It is greatly said that the law is useless if the society will not change according to the law.

There are lots of amendment has been done by the various Criminal Amendments, through the Criminal Amendment Act 2018 the punishment for the Rape has been Increased and this was done with reference to the Protection of Children from The Sexual Harassment Act 2012.

**Section 304B-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.

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<sup>3</sup> (2019) 11 SCC 1

<sup>4</sup> Section 1 of The Indian Penal Code 1860

This section was inserted by the Criminal Amendment Act 1986.

**Ingredients of Section 304 – B of I.P.C. are as follows:**

- When the death of the woman is caused under abnormal and suspicious circumstances caused by burns or any other bodily injuries
- Within 7 years of the marriage.
- The death is caused in relation to the demand for dowry.
- The expression of Soon before her Death
- The woman was subjected to cruelty or harassment by her husband or any of the relatives of her husband.

In **Kamlesh Panjiyar v. the State of Bihar**<sup>5</sup>, The Honorable Supreme Court observed that-

*“Marriages are made in heaven is an adage. A bride leaves the parental home for the matrimonial home, leaving behind a sweet memory there with a hope that, she will see a new world full of love in her groom’s house. She leaves behind not only her memories but also her surname gotra and maidenhood. She expects not only a daughter-in-law but a daughter. Alas! the alarming rise in the number of cases involving harassment to the newly wedded girls for dowry shatters the dreams. In-laws are characterized to be out-laws for perpetrating terrorism which destroyed the matrimonial home. The terrorist is dowry, and it is spreading tentacles in every possible direction”*

**V. SUPREME COURT WIDENS THE SCOPE OF SECTION 304-B**

CJI Ramana’s judgment goes beyond a straight-jacket and literal interpretation of the provision.

The Supreme Court indicated in a judgment on Friday that a straitjacket and literal interpretation of a penal provision on dowry death may have blunted the battle against the “long-standing social evil”.

Dowry deaths accounted for 40% to 50% of homicides in the country for almost a decade from 1999 to 2018. The judgment pronounced by a three-judge Bench led by Chief Justice of India N.V. Ramana called dowry harassment a “pestiferous” crime where women are subjected to cruelty by “covetous” husbands and in-laws.

In 2019 alone, 7,115 cases of dowry death were registered under Section 304-B of the Indian Penal Code.

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<sup>5</sup> 2005 Cri. L.J. 1418 (S.C)

But the language used in Section 304-B has always flummoxed courts. Courts have often opted for a strict and narrow reading of the provision, which was one of the many legal initiatives introduced against dowry.

Chief Justice of India N.V. Ramana, who authored the judgment, said courts should instead interpret Section 304-B liberally while keeping in mind the law's intention to punish dowry and bride-burning.

According to Section 304-B, to make out a case of dowry death, a woman should have died of burns or other bodily injuries or "otherwise than under normal circumstances" within seven years of her marriage. She should have suffered cruelty or harassment from her husband or in-laws "soon before her death" in connection with the demand for dowry.

Over the years, courts had interpreted the phrase 'soon before' in Section 304-B as 'immediately before'. This interpretation would make it necessary for a woman to have been harassed moments before she died. Such "absurd" interpretations should be avoided, the apex court noted in the judgment on Friday.

Instead, Chief Justice Ramana said the prosecution needed to show only a "proximate and live link" between the harassment and her death.

"It is safe to deduce that when the legislature used the words 'soon before' they did not mean 'immediately before'. Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is quite varied, as it can range from physical, verbal, or even emotional... No straitjacket formulae can therefore be laid down by this court to define what exactly the phrase 'soon before' entails," Chief Justice Ramana explained.

The court further said the phrase "otherwise than under normal circumstances" in the Section also calls for a liberal interpretation. "Section 304-B, IPC does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental. The reason for such non-categorization is because death occurring 'other than under normal circumstances can, in cases, be homicidal or suicidal or accidental,'" Chief Justice Raman noted.

The judgment also raised concern about the casual way in which trial courts examined accused persons in dowry death cases under Section 313 of the Code of Criminal Procedure.

The examination of the accused about the incriminatory material against him should be done fairly. The court must put incriminating circumstances before the accused and seek his response. He should be given sufficient opportunity to give his side of the story. The court

should question the accused fairly, with care and caution.

“Due to the precarious nature of Section 304-B, judges, prosecution and defense should be careful during the conduct of the trial,” Chief Justice Ramana observed in the judgment.”<sup>6</sup>

### **Section 326A.-Voluntarily causing grievous hurt by use of Acid, etc.**

Section 326-A deals with the offence of voluntarily causing grievous hurt by use of acid, etc. The following are covered in this section:

- Causing permanent or partial damages or deformity to any person
- Causing burns
- Any person who maims or disfigures or disable any part or part of the body of a person ,or
- Causing grievous hurt by throwing acid or by administering acid , or
- Causing injury by any other means.

### **Section 326B- Voluntarily throwing or attempting to throw acid-**

Following acts are made punishable under this section-

- Throwing or attempting to throw acid on any person, or
- Attempting to administer acid to any person, or
- Attempting to use any other means with the intention of
  - a) Causing permanent ; or
  - b) Causing partial damages; or
  - c) Causing the deformity ; or
  - d) Causing the burns ; or
  - e) Maiming; or
  - f) Causing the disfigurement or Disability or grievous hurt.
  - g) These injuries may be caused to any person.

### **Section 354. Assault or Criminal Force to woman with intent to outrage her modesty-**

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby 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.

So for the constitution of this offence following things has to be fulfilled

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<sup>6</sup> <https://www.thehindu.com/news/national/dowry-deaths-supreme-court-widens-scope-of-section-304-b/article34670458.ece>

- Assault must be on woman
- Accused must have used Criminal force on the woman
- That the use of such criminal Force must be with the intend to outrage her modesty

The term modesty has not been defined in this code but the various court has interpreted it through the various remarkable Judgment.

The same has been defined in the *Ram Kripal S/O Shyam Lal Charmakar v. State of the Madhya Pradesh*<sup>7</sup> it was held that, the test to determine the modesty of a woman has been outraged is whether action of offender is such as could be perceived as one which is capable of shocking sense of decency of a woman.

By the way of the Criminal Law (Amendment) Act 2013 the four new sections has been inserted in order to protection of women.

**Section 354-A-Sexual Harassment –This Section includes the various form of the Sexual Harassment which includes –**

- Physical contact and advances involving unwelcome and explicit sexual overtures; or
- A demand or request for sexual favours; or
- Showing pornography against the will of a woman; or
- Making sexually coloured remarks, shall be guilty of the offence of sexual harassment

**Section 354-B.Assault or use of Criminal Force to woman with the intent to disrobe-**

Following acts are the offence under this section-

- Assaulting the woman
- Using the Criminal Force to any woman
- Abetting any of the above mention acts
- Such abetment must be with the intention to disrobe woman or compelling her to be naked.

**Section 354-C.Voyeurism-**This Section provides that any man who watches or captures the image of a woman engaging in a private act commits an offence.

Even Dissemination of such image is made an offence and as such is punishable on first conviction.

**Section 354-D.Stalking –Following Acts are made punishable under this section-**

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<sup>7</sup> 2007II Cri. L.J 2302(S.C)



- Any man who follows a woman and contacts or attempts to contact such woman is treated as an offence. The above acts must be for the purpose to foster personal interaction repeatedly despite a clear indication of disinterest by such woman ,or
- Any man who monitors the use by a woman of the internet, email or any other form of electronic communication is also made an offence.

**Section 366-Kidnapping, abducting or Inducing woman to compel her marriage**-This section punished the person who with the intent of marriage kidnap ,abduct or induces the any woman whether she is married or not for the purpose to compel her to marriage .

Section 376 –Rape – A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

(First) — Against her will.

(Secondly) —Without her consent.

(Thirdly) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

(Fourthly) —With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(Fifthly) — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly) — With or without her consent, when she is under sixteen years of age.  
Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

(Exception) —Sexual intercourse by a man with his wife, the wife not being under fifteen years of age, is not rape.]

But the above mention exception has been declared inconsistent with the POCSO through the Judgment **Independent Thought vs. Union of India**<sup>8</sup>, and it was held that the Sexual Intercourse with the wife under the fifteen year of is also considered to be the Rape as the

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<sup>8</sup> (2017) 10 SCC 800

Protection of Children from Sexual Offences Act, 2012 says that, “the child means the person under the Eighteen years of age”. And it is the irrelevant ground that the girl is the wife of that person. As per the provision of the POCSO the said girl is considered to be the child and making the sexual intercourse with her is the offence under the same Act.

#### **Section 498A –Cruelty-following are the Ingredient of this Section-**

- The woman should be married.
- The married woman should be the subject of cruelty or harassment.
- The harassment or cruelty should be done by the husband or by the husband's relatives
- There should be a Mens Rea on the part of the husband or husband's relatives.<sup>9</sup>

Further to give justice to the deceased and to strengthen the belief of the society in the legal system of the country the Hon'ble Supreme Court in the case of **Pawan Kumar and others v. State of Haryana**<sup>10</sup>, held that-

“The wife who died within 7 years of the marriage, which is the result of dowry death by committing suicide, then along with section 304 – B of the I.P.C and section 498 – A of the I.P.C. the accused can also be held liable under section 306 of the I.P.C. (which says Abetment of the attempt to commit suicide) as the treatment of the accused forced the wife to do so”.

#### **Criminal Procedure Code 1973**

Section 125-Maintenace –The concept of the maintenance is very ancient and this system was brought in the society just to support the woman. This section is in uniform in nature and it is applied all the communities in the India irrespective of any religion.

This section says that if any person having the sufficient means neglects or refuses to maintain his wife than the wife can claims the maintenance under this section.

The same thing has been said by the Hon’ble Supreme Court of India, through the Judgment of Mohd. Ahmed Khan v. Shah Bano Begum<sup>11</sup>, it was held that the Muslim woman is also entitled to maintenance under this section as this section is uniform in nature and this uniformity strengthen the national Unity.

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<sup>9</sup> C. Veerudu v. State of Andhra Pradesh: (1988) 2 AP LJ 75; 1989 CriLJ (NOC 52) 25) 44. (1998) 3 SCC 309; 1998 SCC (Cri) 740; AIR 1998 SC 958; MANU/SC/0104/1998

<sup>11</sup> 1985 (1) SCALE 767; 1985 (3) SCR 844; 1985 (2) SCC 556; AIR 1985 SC 945

### **Section 198A in The Code Of Criminal Procedure, 1973**

Section 198A.<sup>12</sup> Prosecution of offenses under section 498A of the Indian Penal Code. No Court shall take cognizance of an Offence Punishable section 498A of the Indian Penal Code except upon a police report of facts which constitute such offense or Upon a complaint made by the person aggrieved by the offense or by her father, mother, brother, sister, or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.

### **Committal Of Dowry Related Death Cases –Section 209**

It has been observed as per the facts of the case *of Bajrang Lal v. State of Rajasthan*<sup>13</sup> that under Section 209, the Magistrate is only to examine the police report and other documents mentioned in Section 207 and find out whether the offense is exclusively triable by the Court of Session. Once, he reaches this conclusion, he has to commit the case for trial to the Court of Session. Informing the above opinion, the Magistrate is not to weigh the evidence and probabilities in the case; he is not required to hear the accused. He is only to consider whether a prima facie case is disclosed or not and is not competent to satisfy the merits of the case whether a prima facie case is made out or not.

## **VI. CONCLUSION**

As there are many laws and statutes were made by the legislature for the protection of the women against the various crimes but in the practical scenario these acts and provisions are not also useful and the basic reason is that the people are not afraid by these and provisions. Secondly the women's are not aware their rights and even if they are aware they are not capable to access these rights because of lack of education and knowledge. Even it has seen some time that the concern authorities do not initiate any strict action against such complains. The negligence of the concern authorities leads to continues suffering from such things. In order to prevent such crime against women the legislature have to do yearly survey and made the committees in a regular interval of time so that they will get the actual conditions which is prevalent in the society instead of making the laws hypothetically. National women commission and the state women commission need to organize the women awareness camp where women of the society get awareness regarding the laws. It is also the duty of the courts that they should penalized criminals of such crimes. Speedy trial should be done so the cases of such crimes come to the conclusion. At the same time court have power to make some

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<sup>12</sup> Ins. By Act 46 of 1983 , sec.5(w.e.f.25-12-1983)

<sup>13</sup> 2003, Cr. L.J. 1127.

guidelines in the form of obiter dicta.

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