



GENDER BIAS: A MALE PERSPECTIVE

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The Indian legal mechanism undoubtedly works for the benefit of the persons living in bad relationships. An analysis depicts that the pro women laws give them an upper hand over their male counterparts and in that quest men are sometimes not only deprived of their basic rights, but are also exploited by women. After a close review of the present socio-legal scenario, gender equality, judicial accountability and balanced laws are stressed upon in the present study for those males who are some way or the other being harassed by the females. The present article is an effort to provide equal laws irrespective of any gender so that justice should be available to everyone. The laws like, Section 498A of Indian Penal Code (WC), Protection of Women from Domestic Violence Act 2005, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill 2006, etc., deprive the males of the concept of equality which the Constitution of India has granted to all the citizens equally without any discrimination of caste, colour, creed and sex. Hence, these laws should be repealed to provide an atmosphere where both males and females live in harmony so that a better society can be created.

No doubt, shortly after independence, the abuse of females in the household and outside by the males finally gained recognition and attention it deserved in the academic community and society at large. This recognition was overdue as females tend to be victimized at an alarming rate- thanks to the age long anti female practices in our country. We can't deny the fact, that in a society in which men are economically, socially and politically powerful, the women suffer more physically and psychologically. But at the same time, this fact is also undeniable that a section of males are also victims of violence, harassment and exploitation at the hands of females. However small a number of victimized males might be, the causes and effects of victimization are worth exploring.

We have entered 21st Century a decade earlier, but still our society firmly believes in the stereotypes, that only women are being harassed at all walks of life - domestic or workplace. Gender based violence is always presumed to be violence against women. Is it not another Form of gender bias? After so many years of independence, not a single law reform has been made to redress the problems faced by males, knowingly that they can also be victims of harassment especially in the urban setting. Now the questions arise why males' harassment goes un-identified? Is it due to the social pressure? Is it due to the lack of support and trust from the society? From the very childhood, the males are taught not to express their pain.-"Don't cry like a girl",- "Be a man", are the expressions which are often used to define their identity. The idea of men being victims of any kind of violence is so unthinkable that men themselves don't report such abuses believing that nobody is going to trust them. To put it right, men are their own worst enemies; they often don't seek help when they need it. Moreover, a comparatively low number of victimized men don't attract the attention of policy makers and society at large. Let's have a look on the issues and laws through which males can be harassed easily.

DOMESTIC FRONT

The agony of large number of males starts at home. Despite the fact that he plays various roles of a provider, protector and promoter of his family's well being, yet he becomes prey to his spouse's selfishness and here begins the story of his exploitation and harassment. The legal system of our country sides with the wife assuming her to be a soft target of maltreatment. Section 498A of IPC and Protection of Women from Domestic Violence Act are the two easy tools that have been handed over to women by our Government, basically for their protection, but are largely misused by them.

The 91st Law Commission¹ provided for the insertion of new section in Indian Penal Code 1860, Indian Evidence Act 1872 and Criminal Procedure Code, 1973 for handling the issue of increased death rate of married females under abnormal situations. Accordingly, certain amendment were made by the Criminal Law (Amendment) Act 1983, which broadly outlined the definition of cruelty and harassment of women by her husband and any of his relatives, in the newly inserted section 498A in IPC², and made that offence non-



cognizable, except upon police report of the facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother or sister or with the leave of the court or by any other person related to her by blood, marriage or adoption.³ It is also non-bailable and non-compoundable.⁴ The application of 498A begins when cruelty compels the woman to commit suicide or causes great danger to her life, limb or health, both mental and physical. The Indian society is a place where evil of dowry through customary gifts or demands is widely prevalent and is adversely effecting the institution of marriage. However, it is a sorry state of affairs that whatever a marriage goes wrong, the husband and his relatives are alleged for demanding, dowry, and treating the wife with cruelty in case the demand is not fulfilled, despite the fact that neither cruelty nor harassment has always a criminal culpability for the purpose of Section 498A.⁵ Almost in all fabricated cases under this section, it is seen that instead of preventing the evil of dowry and harassment, the abuse of pro women laws is badly affecting the mental and physical health of the husband and consequently shaking the foundations of families as a whole. However, vague or exaggerated a complaint may be, the threat of arrest makes the man run here and there till he gets anticipatory bail.

Taking into account the present scenario, it can be stated that the males are the biggest victims of marriage industry these days especially in the urban areas where the female; is educated enough to know how to misuse the laws in their own benefit. The men are being implicated in false cases. This is very clear from the fact that in 98% cases filed under Section 498A, there is no conviction.⁶ According to National Human Rights Commission (NHRC), Tihar jail is overflowing with falsely accused under dowry cases.⁷ Most of the false complaints are filed with ulterior motives. That's why the Apex court of India has called the misuse of Section 498A as "Legal Terrorism".⁸ Recently, it has told the government to revise the anti-dowry laws so that the false complaints against husbands can be avoided. "To find out the truth is a herculean task in a majority of these complaints", said a bench comprising of Justice Dalveer Bhandari and K.S. Radhakrishnan.⁹

To further complicate the situation for males, cruelty has also been included in the definition of domestic violence in the Protection of Women from the Domestic Violence Act 2005¹⁰, which was passed to safeguard the rights of women, who are being victimised by their husband or in-laws. The Act has further enhanced the area of exploitation of men by the women especially section 3 of the Act includes under the definition of domestic violence, any act, omission, commission or conduct of the respondent if it harasses-, harms, injures or endangers the aggrieved person related to her to any unlawful demand for any dowry or other property or valuable security¹¹. Upon the receipt of information or complaint, the police officer has to proceed in accordance with law as to the commission of a cognizable offence¹².

Evidently, the Act seems violating the rights and liberty of a man and his family. Renuka Chaudhary, the Minister for Women and Child Development (2006-2009), in an interview, agreed that a gender neutral law can be an ideal solution. Similarly the former Attorney General of India, Soli Sorabjee, also criticized the broad definition of verbal abuse in the Act¹⁴. The main lacuna in this enactment is that it is not only pro women which can be easily misused. As per this law, only a woman can lodge a complaint against man. On the other hand, a man can't do so even if- he is a victim. A study shows that 98% of Indian males face domestic violence in terms of economic exploitation, mental harassment and abuse, relationship cheating etc. Different studies have proved that women are no less abusive than men in intimate relationships.¹⁶ Due to the loose provisions of the Act, the women: can easily misuse it under the pretext economic abuse, not providing food, insult etc. Mostly, the complaint lodged by females is considered to be true which usually implicates men and their families in false cases. Shri Prava Shanker Mishra, former Chief Justice of High Court of Calcutta and Andhra Pradesh, in an interview, attests that 98% cases of 498A and Domestic Violence Act are fake.¹⁷ The Chief Justice of India, Honorable Justice K.G. Balakrishnan admits the gross misuse of dowry harassment law, i.e. 498A against husbands and their families. An SMS Poll on 18 April, 2009 shows 64% of Indians want 498A and Domestic Violence Act to be abolished¹⁸. The result of these false cases, whether due to allegations under Section 498A or Domestic Violence Act, is really devastating. According to National Crime Record Bureau (NCRB), in every six minutes, one innocent is arrested. It further reports that the cases gone to trial under 498A, approximately in 94% of cases people prove their innocence at the court which means that they had been arrested without any reason or evidence as this law is non-bailable. Many falsely accused husbands take their lives because of being unable to bear the humiliation and trauma of being labeled as "guilty until proven innocent" and the frustration caused by the delays in judicial system. The National Crime Record Bureau indicates that more number of



married males committed suicide as compared to married women in the years 2005-2007. The main causes of suicide among males were domestic violence and false dowry cases. See the table below²⁰.

| Year | Suicide Committed by Males | Suicide Committed by Females |
|-------------|-----------------------------------|-------------------------------------|
| 2005 | 52000 | 28000 |
| 2006 | 55452 | 29869 |
| 2007 | 57593 | 30064 |

Ironically, if the wife ends her life, the husband is sent behind the bars without any investigations and most of them are found innocent later on. Contrary to this, if the husband commits suicide, normally wife is not questioned as to why her husband ended his life²¹.

The counsellors and social workers have pointed out that mostly educated wives and women from upper class lodge false complaints against men. Usually, they approach women cells not for reconciliation but to set their scores with husbands by demanding huge settlement amount and to get a mutually agreed divorce. In one such case 17 persons of a family were arrested under dowry law and finally the compromise was reached.²²

IMPLICATIONS

False cases severely hamper the personal and professional lives of the most productive section of the society. Aspirations of young men are crushed and their most fruitful years are wasted in litigation. Many men lose their jobs and have to quit their professions as a result of their never ending legal battle. Every year more than 1 lakh men lose their jobs and become unemployed because of the wrongful arrests under dowry laws²³. All this adversely affects the psyche of an average male. A number of psychological problems like depression, fear, anxiety etc. are reported in case of those men who are compelled to live with such females. It is further reported that 6% of victims meet the diagnostic criteria for depression, either during or after a particular negative event and have a great risk of committing suicide.²⁴ The most commonly referenced psychological effect on the victims is Post Traumatic Stress Disorder, which is characterized by flash backs, nightmares and avoidance of triggers that are associated with the abuse²⁵.

Furthermore, the lives of the aged parents of the victimized males also become hell when they see their sons' health and careers in a dilapidated state. The situation worsens when the elderly are also implicated, along with their sons, in false dowry cases and mercilessly tortured by the police and the estranged daughters in law aided by the law enforcement system. In the evening of their lives, they are bound to lose their peace of mind, health and money which may lead to their premature demise. The so-called women protection, law are doing no less harm to women themselves especially the mother in law and sister in law of the family. On mere allegations, they are sent behind bars are subjected to long trials till they are proved innocent. In case of marital dispute and legal battles between husband and wife, children are the worse, victims. They are denied to live in a healthy environment of a proper family and hence are subjected to various psychological problems.

Above all, the women who are being misled by false notions of liberation and empowerment are big losers themselves. Their own families are broken beyond repair and many a times they also have to face a lot of social, economic and emotional hardships till the case is finally settled; and even if the case is settled in their favour, they carry a blot of their misdeeds with them which further complicate their lives.

WORK PLACE

The agony of the males doesn't stop within the four walls of the house; he is easy prey to exploitation and harassment at his workplace too. The draft for the Sexual Harassment of Women at Work Place (Prevention, prohibition and Redressal) Bill, 2006 has a very striking similarity with Section 498A of IPC and Domestic Violence Act 2005, in harassing men. This Bill is also highly biased against males that consider only females are prone to easy sexual harassment and it has not included men as aggrieved persons. This has made the Bill an instrument of money extortion and black mail of employees. Sexual harassment being a burning issue recently, is supposed to be balanced and gender neutral so that interests of males should also be safeguarded, because the



fact, that males are also sexually harassed in certain situations, can't be denied (A Hindi movie named `Aitraz' has beautifully portrayed this issue).

Broadly, Sexual harassment, as explained in the Bill is an unwelcome sexually determined behaviour such as physical contact, advances, sexually coloured remarks, showing pornography or making sexual demands, whether verbal, textual, graphic or electronic or by any other action... It is commonly seen that female bosses or other employees misuse their power to explicit their male subordinates or colleagues for certain selfish motives. Either allegations of sexual harassment are levied against them or they are prone to second kind of harassment, where a female treats women more favourably than men in an official setting or criticizes males more regularly causing stressful situation of work. Certain statistical studies prove that males are also harassed at workplace by females.

In the U.S., almost 16% of all sexual harassment complaints received by Equal Employment Opportunity Commission are regarding sexual harassment of men which might include improper physical contact, verbal indecent remarks, and false allegations of sexual harassment if their demands are not fulfilled²⁶. The U.S. Equal Employment Opportunity Commission describes of sexual harassment as a form of gender discrimination that is in violation of Title VII of 1964 Civil Rights Act. In 1998, the U.S. Supreme Court made employers more liable for sexual harassment of their employees. Moreover, the society for Human Resource Management has reported that 62% of companies offer sexual harassment prevention training programmes and 97% have a written sexual harassment policy²⁷. A telephone poll by Loius Harris and associates on 782 U.S. workers revealed the following statistics²⁸

- 1.31% of female workers reported harassment at work.
- 2.7% of male workers harassment at work.
- 3.62% of targets took no action.
- 4.100% of women reported that the harasser was a male.
- 5.59% of men reported that the harasser was a female.
- 6.41 % of men reported that the harasser was a male.

In U.K., Department of Trade and Industry reports that men constitute 40% of the sexual harassment victims²⁹. Moreover, a 2006 government study in U.K revealed that 2 out of 5 sexual harassment victims in U.K. are males, with 80% of all sexual harassment complaints to the Equal Opportunity Commission coming from men³⁰. In Hongkong, a survey conducted by the civic party and Equal Opportunity Commission revealed that one third of sexual harassment victims are males³¹.

After going through the above mentioned facts, it is justified to comment that the possibility of a woman employee sexually harassing a male colleague or threatening him of implicating him in a false case cannot be overruled.

Apart from this there are many other provisions in this draft which are of controversial in nature. It is provided that there should be an 'Internal Compliant Committee' at workplace with a senior level women, who is 'committed to the cause of women' as chairperson in case of non-availability of women, the chairperson shall be appointed from sister organisation or an NGO with the same qualification of being 'committed to the cause of the women'. This provision is clear violation of 'Vishakha guidelines' by the Supreme Court³² which nowhere mentions that a pre-requisite for being a sexual harassment committee member is a candidate 'committed to the cause of women'. Such deliberate language will only widen the gulf between two sexes.

This draft further prescribes that the committee shall conduct no further enquiry if the settlement is reached. What if the man is forced to accept the guilt and a preset settlement is imposed on him? If he is dissatisfied with the decision of the committee, then where should he go? The provisions are vague relating to his going to court or taking his counsel with him during the proceeding of the committee. Further there is no remedy for the insult, humiliation, mental torture and blot on career of the male who is being falsely implicated.

Although it is being suggested by the Ministry of women and Child Development to insert a clause in the Sexual Harassment Bill that would put a check on the false complainants. It recommended, "Some kind of punishment will be incorporated in the bill for women (complainants) too. The punishment will, however, be imposed if the complaint is found to be false" Various women organizations especially the National



Commission of the Women opposed such proposals under which a false complainant is taken seriously and the accused is to be punished³⁴. As a result of which the bill has been struck in the law ministry.

IMPLICATIONS

The above analysis clearly indicates that the males also face sexual harassment at workplace and they may be implicated in false cases due to the loose provisions of Sexual harassment at Workplace Bill. It has devastating effects on the social and mental well-being of the victim. The false allegations not only tarnish his image, but can also lead him to depression and post-traumatic stress disorder. Here a mention is made of the two important studies, which were conducted on the effects of sexual harassment, in 1998 covering sixteen European countries³⁵. The studies point out that the 'victims reported negative consequences both in their private and professional lives. In addition to this, psycho-somatic symptoms and loss of self-esteem are the most commonly reported psychological implications.

To make things worse, the interrogating and investigating agencies like Police and Internal Complaints Committee treat the alleged male with a preset bias that he is definitely a culprit and consequently, without caring for his social, marital or professional status, interrogate him in a very stern and derogatory manner. Many a times, the victim is compelled to accept the guilt forcibly. Often the reactions of his employer and colleagues are also full of suspicion, no matter how honestly and dedicatedly he had put in many years of service to the institution. His career falls at stake and the suspension or sometimes dismissal from the job make him face economic hardships also and that too, without any fault of his. So the need of the hour is that it should be seriously realized that one false case may change a victim's life completely and he becomes vulnerable to nervous breakdown and may take a drastic step of committing suicide.

SUGGESTIONS

The aforesaid discussion about the agony of Indian males at the domestic as well as professional front explains vividly the loopholes and vagueness of the existing women related laws. These laws are frequently misused by those women who 'aim at setting the males' right', as if they want to take revenge of the atrocities inflicted on women since ancient times. The above discussed laws are gender biased paving way for the exploitation and harassment of males, if misused. The following suggestions can control the chaotic legal situation if implied:

1. The laws should be made gender neutral so that harmony can be maintained not only in the families but in the whole society as well. The words 'men or women' needs to be replaced by a common word 'persons': 'husband or wife' with 'spouse' and 'working women' with 'employees'. It would make every individual equal in the eyes of law without any discrimination of sexes.
2. Section 498A of IPC should be made bailable and compoundable, as per the recommendations of the Malimath Committee Report to save the institution of marriage as well as to avoid any undue exploitation of innocent persons who are implicated in false cases.
3. Heavy penalties should be imposed on those who misuse the provisions of Section 498A, Domestic Violence Act or Sexual Harassment at workplace recommendations, for settling, personal scores in a marital dispute or in the official setting.
4. Police should be refrained to use its power in an arbitrary manner. The former Chief justice of India, M.N.Venkatachalliah in his landmark judgment, defined the powers of police to arrest a person. He remarked, No arrest can be made because it's lawful for the police officer to do so. The existence of power to arrest is one thing, the justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so..."³⁷. This judgment is especially applicable in cognizable offences as under section 498A.
5. The footsteps of Maharashtra can be followed for the guidelines that had been issued by the Home Ministry of Maharashtra to the DGP which says, "No immediate arrest, in case of 498A case, only counselling should be done to sort out the issues between husband and wife. If the counselling fails, then enquiry should be conducted to ascertain the truth of the complaint. If the wife's complaint is found to be true after proper investigation, then only arrest after getting a warrant"³⁸.
6. It is further suggested that aggrieved males can file RTI applications to get income details of wife's parents to prove false allegation of huge dowry payments and to make rightful claims for maintenance.

7. In the sexual harassment bill, instead of appointing a woman as a Chairperson of the Internal Complaints Committee an impartial person of integrity and fair mind set may be deputed as a chairperson in order to discourage false complaints.
8. Clear cut provisions regarding the legal safeguards should be mentioned in the Sexual Harassment at Workplace Bill to give relief to the aggrieved male employees. These may be in the form of punishments to the false complainants, taking a counsel during the proceedings of the committee or filing a suit of defamation.
9. There should also be proper arrangement of compensation for the victimized males for all the agony he goes through due to false allegations during or after the investigations.

The crux of what has been stated above is that certain laws which are basically framed for the welfare of the women are grossly misused by a certain section of females for their own selfish interests. Certain changes are required in the present legal scenario considering the wellbeing of the victimized males and relieving them of the agony which they face due to the misuse of these laws. The urgency of the situation is to realize that if the women need legal safeguards to maintain their identity, the men also deserve to have certain protective measures so that they should be saved from the constant unnoticed harassment.

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