Section 498A, Marital Rape and Adverse Propaganda

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The need of the hour is to salvage Section 498A of the Indian Penal Code from the shackles of adverse propaganda and "misuse" by the media, goaded on by men's rights groups from the urban and privileged classes, and restore it as a viable law to protect victims of all types of domestic violence. The provisions of the civil law of Domestic Violence Act should be linked to the criminal provision which will help all affected women much more than the introduction of the charge of marital rape.

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Two comments by Union Minister of State for Home Affairs Haribhai Chaudhary when read together sound ominous for the safety and survival of married women in India. On 29 April 2015 the minister commented that since marriage in India is perceived as a sacred union, marital rape cannot be brought within the purview of the law on rape. This seems to convey that men in India have a licence to rape their wives with impunity. The fact that Hindu marriages ceased to be sacramental more than half a century ago, and Muslim marriages have always been contractual is negated by this comment. It also disregards the legal provision under the Indian Penal Code (IPC) which renders cruelty to wives a criminal offence under Section 498A (enacted 30 years ago) and a civil law which provides protection to victims from domestic violence, enacted almost a decade ago.

Surely, sexual violence would not be outside the pale of these legal provisions. Yet, while making these sexist comments about male privileges within marriage on the floor of Parliament, the minister did not deem it fit to point to any of these remedies available to wives against their husbands for sexually violating their dignity and safety.

On 3 March 2015, the minister said that the government is proposing to dilute the provisions of this important section because of its alleged misuse and as per the recommendations by the Law Commission of India (LCI).

While his comments on marital rape have been widely criticised, those on the dilution of Section 498A of the IPC have been welcomed by the media. Some editorials have gone further and commented that there should also be a provision to prosecute women who file false cases under it, as though the general provision regarding filing of false cases under the IPC would not suffice where women are concerned (Marapakwar 2015)!

Surprisingly, the only opposition to this move has come not from civil society but from another union minister. The Minister for Women and Child Development, Maneka Gandhi, has clearly stated that this will be detrimental to women since it is the only criminal provision to ensure their safety within marriage, in a country where a large number of women are subjected to brutal domestic violence (Dhawan 2015).

Those who have criticised Chaudhary for his comments on marital rape and urged the government to delete the exemption granted to husbands under Section 376 of the IPC, on the ground that "a rape is a rape whether within or outside the marriage" have failed to connect the dots and examine the implications of the earlier comment to a large number of battered wives in our country. The experts' opinions seem to suggest that women are trapped within sexually abusive marriages only because of this offending clause and if it is deleted, women will be able to walk out of their marriages at the very first instance of sexual abuse and press criminal charges against their husbands.

Continuum of Brutality

When I hear the heart-rending stories of women raped every night, even during pregnancy and childbirth, the question that leaps to my mind is: what else did this woman endure along with forcible violent sex? And also, if it is not rape but brutal physical violence which fractured her skull, broke her limbs, damaged her kidneys, scalded her face, paralysed her or drove her to the brink of suicide, would the violence be less damaging? These concerns are relegated to the sidelines while discussing marital rape. However, for the victim they form a continuum of a life of degradation and despair, where one act of violence cannot be segregated from the other.

How does making non-consensual penetrative sex more heinous redeem her from this continuum of brutality? The demand for deletion of this clause seems to subscribe to the patriarchal

presumption that vaginal violation forms a category apart, even within marriage, than other types of brutality.

In support of the demand to render marital rape culpable under the rape law, experts have relied upon various studies, both national and international, which have highlighted the fact that a large number of women are subjected to sexual violence in India. However, the fact that these studies point to an even higher number of women being subjected to domestic violence is not highlighted during these discussions.

While a 2011 study by the International Center for Research on Women (ICRW) stated that one in every five Indian men surveyed admitted to forcing their wives into sex, the same study also mentioned that 65% of Indian men surveyed said they believe there are times when women deserve to be beaten (Gaynair 2011). The National Family Health Survey–III (NFHS–III) conducted in 2005–06 has stated that more than 54% of men and 51% of women responded that it was okay for a man to beat his wife if she disrespected her in-laws, neglected her home or children, or even over something as trivial as putting less (or more) salt in the food.

This important study revealed that 31% of married women were physically abused and 10% were subjected to "severe domestic violence" such as burning or attack with a weapon. Another 12% of those who reported severe violence suffered at least one of the following injuries: bruises, wounds, sprains, dislocation, broken bones or broken teeth, and severe burns while 14% of the women experienced emotional abuse (Ministry of Health and Family Welfare 2005–06). Despite the clinching evidence of wide prevalence of domestic violence in the country, support systems for battered women, such as emergency shelters, medical aid, halfway homes, skill training, financial support, a specially trained and sensitive police machinery, and reliable and effective legal aid, etc, have not evolved. Our only answer to the problem over the decades has been to provide "counselling," where the woman is advised to adjust, reconcile and "save the marriage" even at the cost of danger to her life, because nothing else exists for her outside. In a society where marriage is perceived to be the "be all and end all of a woman's life" a woman who wishes to break the shackles of an oppressive marriage and press criminal charges against her abuser is viewed as a deviant.

The other state response has been to introduce penal provisions to deal with "dowry related violence" (Section 304B—dowry death and Section 498A—cruelty to wives) and enact the Protection of Women from Domestic Violence Act to provide civil remedies.

Dowry or Nothing

So where do these large numbers of abused women go? For an answer, we need to turn to the statistics provided by the National Crime Records Bureau (NCRB). They bring out the startling fact that since 2008, every year more than 8,000 women are killed by their husbands for dowry. These figures do not include women who were murdered by their husbands for reasons other than dowry (Section 302 murder) or women who were driven to suicide (Section 306 abetment to suicide). These numbers are not even mentioned in the section "Crimes against Women" in the annual NCRB reports, because the government does not consider wife murders for reasons other than dowry serious enough to record as a special category and monitor the trends.

When we go through the reported judgments under Section 304B, it is evident that hardly any woman who was killed for dowry had filed a complaint under Section 498A which deals with cruelty to wives, prior to her death. At another level, despite the propaganda by men's rights groups that most cases filed under this section are false, the conviction rate for cases under Section 304B is relatively high, around 35% (Law Commission of India 2012).

The NCRB reports also reveal another startling fact. Judging by the number of cases recorded as dowry deaths (304B), Bihar, Uttar Pradesh (UP) and Madhya Pradesh (MP) appear to be the most violent towards women. Ironically, in these states, while the number of women who are killed for dowry is high, the number of cases filed under Section 498A is minuscule. For Bihar and UP, it is around four times the figures for dowry murders and for MP the rate improves slightly at seven times.

States	S 304B	S 498A
Bihar	1,182	4,533
Uttar Pradesh	2,335	8,781
Madhya Pradesh	776	4,988

Source: NCRB report—2013.

Surely for every woman who is murdered for dowry, there would be thousands of others who are subjected to domestic violence, as indicated by national and international surveys. This proves that the number of cases filed under Section 498A is low as compared to the extent of violence that married women are subjected to. The data is a pointer that the 31% women who were physically abused, the 10% who were subjected to severe domestic violence, and the 14% who were subjected to emotional abuse as per the NFHS-III study either did not approach the police or the police did not record their complaints. This, despite the fact that Explanation (A) of Section 498A is as follows:

> Explanation—For the purpose of this section, 'cruelty' means-(a) any wilful 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 woman...

Apart from lack of options, another reason why women who are subjected to domestic violence are unable to register their cases under Section 498A is due to the fact that even after 30 years of its enactment, an erroneous view prevails that it is a law exclusively to curb dowry-related cruelty. Hence, the police refuse to record a complaint, if an allegation regarding dowry harassment is not added to the complaint of domestic violence. The media, which constantly brings out stories about women misusing this section seldom report cases where the police have refused to record complaints of brutally violated women, thus perpetuating the myth that this provision is misused and needs to be diluted.

The blame also lies with the women's movement which, in the 1980s, gave

dowry-related violence greater importance and demanded separate legal provisions to address this issue. This only served to undermine routine domestic violence. This is similar to the present demand that marital rape should be treated as a separate category from the routine domestic violence inflicted upon thousands of women in India. Frequently, when a battered woman approaches the police, the police pressurise her to add the allegation of dowry demand by insisting that without it, it is not possible to register her complaint under Section 498A. Women from the lower strata who approach the police station with bleeding wounds and broken bones are ridiculed with comments such as, "If a husband does not beat his wife, who else will? There is nothing special about a husband beating his wife. If you are harassed for dowry, then it is serious, and we shall arrest him."

Police–Lawyer Nexus

There is also an economic motive for the police not to register cases of domestic violence of women from the lower class, as there is nothing to be gained from registering such complaints. On the other hand if a woman from the middle or affluent class approaches them, registering the complaints becomes a lucrative business, as the police can immediately alert the husband and provide contacts of a criminal lawyer for filing for anticipatory bail, all for a hefty fee. The police–lawyer nexus within the criminal law is well established and the blame for it cannot be attributed to Section 498A. When a victim of domestic violence approaches lawyers for a protection order, maintenance and child support, or even divorce, they rush to the police station with a written complaint, which includes dowry demands and assure her that it is a shortcut to solve all her other problems as her husband will soon fall in line once a complaint is registered. But ironically, the problems only get compounded. It is not as though the woman was not subjected to domestic violence, but this aspect gets relegated to the background.

The 243rd report of the LCI on this section has accurately identified the problem and commented as follows:

> The correct advice of legal professionals and the sensitivity of police officials are very important, and if these are in place, undoubtedly, the law will not take a devious course. Unfortunately, there is a strong feeling that some lawyers and police personnel have failed to act and approach the problem in a manner ethically and legally expected of them.

Hardly any case filed under Section 498A reaches the stage of trial where the woman is alive. On the other hand, courts are flooded with applications for anticipatory bail, quashing or compounding the case. Our judges from the higher courts, sitting in their ivory towers, while making scathing remarks that women misuse the law, have never pondered over the fact of why "genuine" cases of domestic violence never reach their courts, even while their courts are flooded with appeals by husbands who have murdered their wives, and are convicted by lower courts!

Regarding this issue, the LCI has commented in para 7.1:

> (The) object and purpose (of Section 498A) cannot be stultified by overemphasising its potentiality for abuse or misuse. Misuse by itself cannot be a ground to repeal it or to take away its teeth wholesale. The re-evaluation of Section 498A merely on the ground of abuse is not warranted. While courts are confronted with abusive dimensions, sometimes very visibly in Section 498A prosecutions, we cannot close our eyes to a large number of cases which go unprosecuted for a variety of reasons.... The allegations of misuse do not however mean that the Police should not appreciate the grievance of the complainant woman with empathy and understanding or that the Police should play a passive role.

The constitutional bench ruling in *Lalita Kumari vs State of Uttar Pradesh* (2014), is relevant here. This judgment has laid down that if a woman's complaint discloses commission of a cognisable offence, it is mandatory for the police to register an FIR (first information report). Only when the information does not disclose a cognisable offence can the police conduct a preliminary inquiry.

The LCI has commented further:

> Section 498–A has to be seen in the context of violence and impairment of women's liberty and dignity within the matrimonial fold. Mindless and senseless deprivation of life and liberty of women could not have been dealt with effectively through soft sanctions alone. Even though values of equality and non-discrimination may have to gain deeper roots through other social measures, the need to give valuable protection to vulnerable sections of women cannot be negated (Law Commission of India 2012).

The question that we need to address is: what will be the implications of further diluting the provision by making it compoundable? As mentioned earlier, the rate of conviction under Section 498A when a woman is alive is less than 1%. Cases languish in the magistrate courts for years on end, without reaching any finality. In such a situation, it is but natural that parties reach a compromise and compound the case with consent of the court.

These cases cannot be categorised as "false cases" as our minister has chosen to do. However, by bringing in a perceived dilution, the presumption that women are misusing this legal provision will gain further validity through its sensationalisation in the media, and it will be impossible to file any case under this section in future, even in cases of extreme domestic violence. This will render the lives of thousands of women from poor and margianlised sections even more perilous. Faced with this dismal situation, the need of the hour is to salvage Section 498A from the shackles of adverse propaganda of "misuse" by the media, goaded on by men's rights' groups from urban and privileged classes, and restore it as a viable law to protect victims of all types of domestic violence—physical abuse, mental harassment, sexual violence and dowry-related violence, and not view any of these as violence of a higher category warranting special intervention. This does not need a legislative intervention, but a change in attitude at all levels—the police, the media, the judiciary, and the government functionaries.

The need is also to link the provisions of the civil law of Domestic Violence Act to the criminal provision if the situation so warrants, so that the woman is simultaneously awarded protection, maintenance, shelter and support. Such a campaign will yield greater results and will

become a viable option for sexually violated women than introducing marital rape by deleting the exemption provided for husband under Section 376, IPC, just because it has become a fashion to make such a demand.

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