



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **A CRITICAL ANALYSIS OF THE STATUTORY PROVISIONS ON VIOLENCE AGAINST WOMEN IN INDIA**

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## **ABSTRACT**

Violence against women in India is a pervasive and multifaceted issue that undermines the fundamental rights and dignity of women across various social, economic, and cultural contexts. This abstract provides an overview of the prevalence, forms, and consequences of violence against women in India, as well as the systemic factors contributing to its perpetuation.

Despite significant progress in legislation and policy frameworks aimed at protecting women's rights, violence against women remains widespread in India. Various forms of violence, including domestic violence, sexual assault, dowry-related violence, honor killings, and human trafficking, continue to threaten the safety and well-being of women in both public and private spheres. These acts of violence are often rooted in deep-seated gender inequalities, patriarchal norms, and social hierarchies that perpetuate discrimination and oppression against women.

India has implemented several statutory provisions to address the pervasive issue of violence against women in the country. These provisions aim to protect women's rights, ensure their safety, and provide them with avenues for seeking justice. The legal framework includes various laws and acts that cover different forms of violence, such as domestic violence, sexual assault, harassment, and trafficking.

Combating violence against women in India requires a holistic and intersectional approach that addresses the root causes of violence, promotes gender equality, strengthens legal and institutional mechanisms, and fosters social change. By empowering women, challenging patriarchal norms, and mobilizing collective action at all levels of society, India can work towards creating a safer, more inclusive, and equitable society for all.

## CHAPTER 1 INTRODUCTION

### 1.1 INTRODUCTION

“The violence of woman is the most omnipresent and unaddressed human right violations on earth”.

Jimmy Carter

Violence against women in India is a significant and complex issue deeply rooted in cultural, social, economic, and political factors. It takes various forms, including domestic violence, sexual harassment, dowry-associated violence, rape, acid attacks, honor killings, and trafficking.

Violence against women can include physical abuse, sexual assault, emotional abuse, harassment, and other forms of coercion or control. It's rooted in unequal power dynamics between men and women and is often a tool used to maintain control or dominance over women. It violates women's fundamental human rights and can have devastating and long-lasting effects on victims and their communities.<sup>1</sup>.

Women have the right to live free from violence and the threat of violence. Acts such as domestic violence, sexual assault, and honor killings violate this fundamental right. Gender-based violence perpetuates and reinforces discrimination against women. It denies women equal enjoyment of their rights and opportunities solely based on their gender. Women have the right to equal treatment under the law and to access justice without discrimination. Violence against women often results in impunity for perpetrators due to systemic biases and inadequate legal responses. Violence against women can have severe physical and psychological consequences, violating their rights to health and well-being. Survivors may suffer from physical injuries, trauma, depression, and other mental health issues.

In India, several laws have been enacted to address violence against women and ensure their protection and rights. The Protection of Women from Domestic Violence

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<sup>1</sup>Debabrata Roy, Original Research Paper, An Analysis Of The Concept Of Mental Cruelty In India, IJSR (2020)



Act, 2005 aims to provide protection to women from domestic violence and to prevent violence within the family or domestic relationship. It defines domestic violence broadly to include physical, sexual, verbal, emotional, and economic abuse. It provides for protection orders, residence orders, and other measures to support survivors.

The Dowry Prohibition Act, 1961 law prohibits the giving or receiving of dowry as a condition for marriage. Dowry-related violence and harassment of women for dowry are criminal offenses under this Act.

The Sexual Harassment of Women at Workplace Act, 2013 seeks to prevent and address sexual harassment of women in the workplace. It mandates the establishment of ICCs in organizations and outlines procedures for filing complaints and conducting inquiries.<sup>2</sup>

The Criminal Law (Amendment) Act, 2013 amendment to IPC and CrPC introduced several changes to address crimes against women, including amendments to laws related to rape, acid attacks, stalking, voyeurism, and trafficking.

The Prohibition of Child Marriage Act, 2006 prohibits the solemnization of child marriages and provides for the prevention of child marriages, protection of rights of children, and matters connected therewith.

The Juvenile Justice Act, 2015: While not specific to violence against women, this law addresses issues related to juvenile offenders, including those involved in crimes against women. These are some of the key laws in India aimed at preventing and addressing violence against women. However, enforcement and implementation of these laws remain significant challenges, and efforts to improve access to justice, support services for survivors, and address systemic barriers are ongoing.<sup>3</sup>

Specialized courts, such as Fast Track Courts and Women Courts, have been established to expedite trials of cases related to violence against women. These courts are intended to provide swift justice and increase conviction rates. The government, along with civil society organizations, conducts awareness campaigns

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<sup>2</sup> N.K Acharya, Protection of Women from Domestic Violence Act (Asia Law House, 2013)

<sup>3</sup> Neena Bohra et al (2015), Violence against women, Indian J Psychiatry. 2015

to educate the public about gender-based violence, women's rights, and available support services. These campaigns aim to challenge harmful stereotypes and promote gender equality.

## **CHAPTER 2**

### **HUMAN RIGHT ISSUES AND VIOLENCE AGAINST WOMEN**

#### **2.1 INTRODUCTION**

The right to life stands as the foremost and universally recognized human right, underpinning a spectrum of rights aimed at ensuring individuals can achieve their full potential and lead dignified lives within society. It places a positive obligation on states to create conditions conducive to such development and to prevent violations of this right, ensuring perpetrators are held accountable.

Despite widespread endorsement of the UDHR, women continue to endure pervasive violence and injustices globally. This violence, stemming from entrenched patriarchal norms prevalent in many societies, manifests in various forms, including physical abuse, psychological trauma, female infanticide, sexual exploitation, and human trafficking. Numerous studies consistently highlight the disproportionate impact of violence on women, alongside the structural barriers hindering their advancement across generations.

Throughout history, women have vocally advocated for equal rights and an end to gender-based violence, catalyzing transformative movements such as the three waves of feminism. While progress has been made, persistent inequalities persist, necessitating targeted legislative measures and societal interventions. However, disparities persist, with women from rural or marginalized communities facing compounded challenges compared to their urban or privileged counterparts.

To foster a more equitable environment for women globally, several steps can be taken. Firstly, ensuring access to education from an early age is paramount, empowering young women with knowledge of their rights and enabling them to challenge harmful traditions limiting their intellectual growth. Secondly, there must be vigilant monitoring of instances of violence against women, coupled with swift and decisive legal action to send a clear message that such acts will not be tolerated. These efforts should be complemented by broader societal initiatives aimed

at dismantling entrenched patriarchal structures and promoting gender equality across all spheres of life.<sup>4</sup>

## **2.2 UDHR CONCERNING VIOLENCE AGAINST WOMEN**

**Foundation for Human Rights:** The UDHR serves as a foundational document in the realm of human rights, emphasizing principles such as equality, dignity, and non-discrimination. These principles are crucial in addressing violence against women as a violation of their fundamental human rights.

**Broad Protection:** While the UDHR does not explicitly mention violence against women, its provisions on the right to life, liberty, and security of person (Article 3) provide a broad framework that can encompass protection from various forms of violence, including those experienced by women.

**Universal Applicability:** One of the key strengths of the UDHR is its universal applicability. It applies to all individuals, regardless of gender, ethnicity, religion, or any other characteristic. This universality underscores the principle that violence against women is a human rights issue that concerns everyone.

**Lack of Explicit Mention:** One of the primary limitations of the UDHR regarding violence against women is its failure to explicitly address this issue. While Article 3 provides a foundation for protection from violence, the document does not specifically acknowledge the unique forms of violence and discrimination that women may face.

**Gender Neutrality:** The language of the UDHR is often criticized for being gender-neutral, which can obscure the gendered nature of human rights violations. By not explicitly recognizing the specific challenges faced by women, the UDHR may not adequately capture the complexity of violence against women and the systemic inequalities that underpin it.

**Need for Further Instruments:** While the UDHR lays the groundwork for human rights protection, additional instruments specifically addressing violence against women,

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<sup>4</sup> Aruna Sharma, Women's rights: Misuse of laws erode faith in justice system, The Financial Express, 2017

such as the DEVAW and the CEDAW, are necessary to provide more targeted and comprehensive protections.

While the UDHR provides a foundational framework for addressing violence against women as a human rights violation, its limitations highlight the need for more specific and comprehensive instruments to address the unique challenges faced by women in relation to violence and discrimination.<sup>5</sup>

### **2.3 SOCIAL AND ECONOMIC ISSUES**

Violence against women in India is a multifaceted issue with deep-rooted social, cultural, and economic dimensions. Here's an analysis of some of the social and economic factors contributing to this problem:

**Patriarchal Norms:** India has a long history of patriarchal traditions that subordinate women and perpetuate gender inequality. These norms dictate women's roles within the family and society, often relegating them to subordinate positions and denying them autonomy over their bodies and lives. Patriarchal attitudes contribute to a culture of impunity for perpetrators of violence against women.

**Economic Disempowerment:** Women's economic dependence on men can exacerbate their vulnerability to violence. Limited access to education and employment opportunities restricts women's financial independence and ability to leave abusive situations. Economic disparities also intersect with other forms of marginalization, such as caste and ethnicity, further complicating women's experiences of violence.

**Child Marriage and Dowry:** Practices such as child marriage and dowry perpetuate the subjugation of women and contribute to their vulnerability to violence. Child brides are more likely to experience domestic violence, and the pressure to provide dowry can lead to financial strain and exploitation within marriages.

**Lack of Legal Enforcement:** Despite legislative measures aimed at protecting women's rights, including the PWDVA and amendments to the IPC, enforcement remains weak.

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<sup>5</sup> Kishan Dutt, The necessity of Gender-Neutral laws in India, Legatoapp, 2021

Cultural barriers, corruption, and inadequate legal infrastructure often impede access to justice for survivors of violence.

**Social Stigma and Victim Blaming:** Survivors of violence often face social stigma and victim blaming, discouraging them from seeking help or reporting incidents to authorities. Cultural taboos surrounding discussions of sexuality and violence further marginalize survivors and perpetuate cycles of abuse.

**Urban-Rural Divide:** While violence against women occurs across India, there are significant disparities between urban and rural areas in terms of access to resources and support services. Rural women may face additional barriers to seeking help, including limited access to healthcare, legal aid, and support networks.

Addressing violence against women in India requires a comprehensive approach that addresses the underlying social and economic factors driving this phenomenon. Efforts to promote gender equality, empower women economically, strengthen legal protections, and challenge patriarchal norms are crucial in creating a safer and more equitable society for all.

## 2.4 **WOMEN AND GENDER JUSTICE IN INDIA**

Gender justice in India is an ongoing struggle rooted in complex social, cultural, and economic dynamics. Despite progress in some areas, women continue to face significant challenges, including discrimination, violence, and unequal access to resources and opportunities. Achieving gender justice requires addressing systemic inequalities and promoting the full realization of women's rights across all sectors of society.<sup>6</sup>

**Legal Framework:** India has enacted various laws and policies aimed at promoting gender equality and protecting women's rights. These include laws addressing violence against women, such as the Protection of Women from Domestic Violence Act and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and

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<sup>6</sup> Monica Chawla, *Gender Justice- Women and Law in India*, (Deep and Deep Publications, 2016)

Redressal) Act. However, effective implementation and enforcement remain key challenges.

**Violence Against Women:** Gender-based violence remains a pervasive issue in India, encompassing various forms such as domestic violence, sexual assault, dowry-related violence, and honor killings. Despite legislative measures, social norms and attitudes often perpetuate a culture of impunity for perpetrators and discourage survivors from seeking justice.

**Education and Employment:** Access to education and employment opportunities is crucial for promoting gender equality and empowering women. While strides have been made in increasing women's literacy and workforce participation, disparities persist, particularly in rural and marginalized communities. Addressing barriers to education and employment, including gender stereotypes and lack of infrastructure, is essential for advancing gender justice.

**Health and Reproductive Rights:** Women's health and reproductive rights are fundamental aspects of gender justice. Ensuring access to affordable healthcare, reproductive services, and information empowers women to make informed decisions about their bodies and lives. Efforts to address maternal mortality, family planning, and reproductive healthcare must prioritize the needs of marginalized women.

**Political Participation and Representation:** Women's participation in politics and decision-making processes is crucial for achieving gender-responsive governance and policies. While India has made progress in increasing women's representation in local government through reservations for women in panchayats and municipal bodies, women remain underrepresented in higher levels of government and face barriers to meaningful participation.

**Cultural and Social Norms:** Cultural beliefs and social norms play a significant role in shaping attitudes towards gender roles and relations. Addressing harmful stereotypes, patriarchal practices, and discriminatory customs is essential for promoting gender

justice. Engaging communities, religious leaders, and media in challenging gender norms and promoting gender equality is critical for fostering social change.

**Intersectionality:** Recognizing the intersecting identities and experiences of women is essential for inclusive approaches to gender justice. Women from marginalized communities, including Dalits, Adivasis, LGBTQ+ individuals, and religious minorities, face compounded forms of discrimination and marginalization. Intersectional approaches to policy-making and programming are necessary to address the diverse needs and realities of all women.



## CHAPTER 3

### STATUTORY PROVISIONS ON VIOLENCE AGAINST WOMEN IN INDIA

In India, marriage, and family life hold significant importance, with the act of marrying someone and leading a contented life together regarded as sacred and fundamental in one's existence. Be that as it may, in fact, India is among those nations which have countless arguments including violence against wedded women along with offenses connecting with dowry. Cases including domestic violence and dowry are being enlisted at an expanded speed when contrasted with the last ten years. The primary reason for this phenomenon is the lack of a supportive environment in many households, leading to strained relationships and mistreatment of individuals, particularly women. In such situations, women often become victims of various forms of abuse and inhumane treatment. In India, legal frameworks such as the IPC and other enactments like the Dowry Prohibition Act and the Protection of Women from Domestic Violence Act, 2005, aim to safeguard the rights of women, especially married women, and protect them from various offenses that have physical and psychological impacts.<sup>7</sup>

#### 3.1 **MEANING AND CONCEPT OF VIOLENCE**

Causing hurt, injury or risk to life, appendage, wellbeing, security or prosperity, whether mental or physical.

Inflicting damage, injury, or risk to the woman with an aim to pressure her or some other individual connected with her to fulfill any need for share.

"Actual maltreatment" incorporates hurt of any sort. Attack, criminal terrorizing and criminal power.<sup>8</sup>

"Sexual abuse" encompasses behaviors of a sexual nature, including forced sexual

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<sup>7</sup> Goel, Shivam, The "Shared Household Argument & Other Fundamentals *ILJ* (2019).

<sup>8</sup> <https://indiankanoon.org/doc/542601/> (visited on 6<sup>th</sup> March 2024)



intercourse, compelling the victim to view pornography or other explicit content, coercing a woman into entertaining others sexually, and any other acts that are sexually demeaning, humiliating, or violative of one's dignity.

Economic abuse against women is a form of control and manipulation whereby an individual restricts a woman's access to economic resources, thereby limiting her financial independence and autonomy. This involves controlling a woman's income, limiting her access to money, or withholding financial resources altogether. This might include confiscating pay checks, preventing access to bank accounts, or demanding an account of every penny spent.

Perpetrators may prevent women from pursuing education or employment opportunities, thus hindering their ability to earn income and achieve financial independence. This can involve actions such as undermining a woman's job or academic performance, creating obstacles to advancement, or pressuring her to quit her job or drop out of school. This includes forcing women to work in exploitative conditions, compelling them to take on debt, or coercing them into financial agreements that are disadvantageous to them. Perpetrators may use economic resources as leverage to manipulate or coerce women into complying with their demands or staying in abusive relationships. Preventing access to financial information: This involves withholding information about finances, such as income, savings, or investments, thereby leaving women uninformed and vulnerable.<sup>9</sup>

The maxim "Domestic Violence" signifies any act, exclusion or commission or lead of the respondent will add up to domestic violence in specific conditions. It incorporates causing actual maltreatment, sexual maltreatment, verbal and profound or monetary maltreatment which are likewise made sense of under the meaning of domestic violence. In deciding if any act, oversight or commission or direct of the respondent comprises "Domestic Violence" the general facts and conditions of the case will be a directing factor. Section 3 of the law says any act/direct/exclusion/commission that damages or harms or can possibly hurt or harm

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<sup>9</sup> Bhattacharya R *Behind the close doors: Domestic violence in India*.98 ( SAGE Publications, 2013)

will be considered 'domestic violence'. Indeed, even a solitary act of commission or oversight might comprise domestic violence. As such, women don't need to experience a drawn out time of maltreatment prior to taking response to the law. The law says any meaning of domestic violence is a human rights infringement. Further, the law subtleties the various types of violence looked by women, and guarantees that such understandings are not left exclusively to the tact of the appointed authorities.<sup>10</sup>

### **3.2 OBJECTIVES AND SCOPE OF PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005**

From the statement of articles and reasons appended to the act shows that aim of Act is to shield women from domestic violence looked by them in their families. Candidate under this Act will be just woman. A significant element of the said milestone regulation is a Woman's all in all correct to get lodging or elective convenience. It accommodes a woman's more right than wrong to live in the marital or shared family, however she has not having any title or directly in the family. This right is gotten by home request which is passed by Court. This Act doesn't recognize wedded women and woman who are in live in connections. It gives equivalent protection to both from maltreatment on account of their accomplices.

PWDVA, 2005, was enacted in India to provide comprehensive legal protection to women who are victims of domestic violence. The objectives and scope of the Act include:

The primary objective of the Act is to prevent domestic violence against women and provide effective remedies for victims. The Act defines domestic violence broadly to include not only physical abuse but also emotional, verbal, sexual, and economic abuse. It recognizes that violence against women can take various forms within

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<sup>10</sup> Ibid

domestic relationships.<sup>11</sup>

The Act provides for various protection orders that can be issued by the court to ensure the safety and well-being of the victim. These orders may include restraining orders, residence orders, or orders prohibiting the offender from contacting or harassing the victim. The Act mandates the provision of shelter homes or safe houses for women who are victims of domestic violence and need a safe place to stay away from the abuser.

The Act ensures that victims have access to legal aid and support services to help them navigate the legal process and seek redressal for the violence they have experienced. The Act recognizes domestic violence as a criminal offense and provides for penalties against offenders. It aims to hold perpetrators accountable for their actions and deter future instances of violence.

In addition to criminal proceedings, the Act also provides for civil remedies such as compensation for injuries or damages caused by the violence.

**Awareness and Education:** The Act emphasizes the importance of raising awareness about domestic violence and educating the public about its consequences. It promotes a societal shift towards zero tolerance for violence against women.

The scope of the Act is broad and covers various aspects of domestic violence, aiming to provide holistic protection and support to women who are victims of such violence. It recognizes the rights of women to live free from violence and seeks to empower them to assert those rights effectively.<sup>12</sup>

**The right to be free of violence:** Various regional and international human rights treaties and conventions include provisions safeguarding the right to be free from violence, highlighting its universal significance and the obligation of states to protect individuals from such harm.

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<sup>11</sup> Ritu Singh, "Domestic violence act "shield or weapon of an Indian women" *Indian Journal of Positive Psychology*, 165-169 (2018)

<sup>12</sup> Gayathri M, "An Empirical Study on the Existing Legal Framework against Domestic Violence in India", *JPSPA* 6(2017)

The right to be free from violence is integral to the broader framework of human rights, dignity, and equality. Efforts to combat violence against individuals, particularly marginalized and vulnerable groups, are essential for building societies that uphold human rights principles and ensure the well-being and safety of all individuals.

**The right to dignity:** In *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*, the fact that the right to life included in its ambit the right to live with human dignity, basing its opinion on a host of cases that had been decided in favour of this proposition. This case, decided by the Supreme Court of India, highlighted the importance of protecting the dignity of individuals, particularly those from marginalized communities. The Supreme Court, in its judgment, emphasized the right to dignity as a fundamental aspect of human rights. It held that denying someone the opportunity to lead a life of dignity violates their constitutional rights. The Court recognized the inherent dignity of all individuals and condemned the practice of manual scavenging, noting its incompatibility with the principles of equality and human dignity enshrined in the Indian Constitution.

The judgment underscored the obligation of the state to take affirmative action to protect the dignity of marginalized and vulnerable groups and to eradicate practices that perpetuate discrimination and social exclusion. The Court directed the AMC to provide permanent employment to manual scavengers and to take proactive measures to rehabilitate and uplift them, ensuring their right to lead a life of dignity.

This case exemplifies the judiciary's role in upholding and promoting human dignity and underscores the importance of eliminating practices that undermine the dignity of individuals, particularly those from marginalized backgrounds. It serves as a landmark decision in the struggle for human rights and social justice in India.

**The right to shelter:** In *Chameli Singh v. State of U.P.*<sup>13</sup>, The Supreme Court, in its judgment, reaffirmed that the right to shelter is an essential component of the right to life and dignity guaranteed by Article 21. The Court emphasized that shelter is not

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<sup>13</sup> *Chameli Singh vs. State of UP*, (1996) 2 SCC 549

merely a physical structure but encompasses various elements necessary for a dignified life, including adequate living space, basic amenities, and protection from the elements. The judgment recognized the precarious situation of slum dwellers who often live in substandard housing conditions and lack access to essential services. It emphasized the state's obligation to ensure the provision of adequate housing and to protect vulnerable communities from arbitrary evictions. The Court held that evictions cannot be carried out without proper rehabilitation measures in place to ensure that the affected individuals are not rendered homeless. It directed the state government to formulate a comprehensive policy for slum redevelopment and rehabilitation, taking into account the needs and interests of slum dwellers.<sup>14</sup>

### **3.3 LOOPHOLES OF THE ACT**

One of the major loopholes is the inconsistent implementation of the Act across different states and regions. Lack of awareness among law enforcement agencies, judicial officials, and the public often leads to underreporting and inadequate response to cases of domestic violence.

The Act primarily focuses on protecting women from domestic violence, which may leave other vulnerable groups, such as men, children, and elderly individuals, inadequately protected. Domestic violence against these groups may not receive the same level of attention and support under the Act. Despite the provision for shelter homes and support services for victims of domestic violence, there is a shortage of such facilities, especially in rural areas. This leaves many victims without access to safe accommodation and essential support services.

The legal procedures involved in obtaining protection orders and other reliefs under the Act can be lengthy and cumbersome, leading to delays in providing timely relief to victims. This may discourage victims from seeking legal recourse or reporting incidents of domestic violence.

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<sup>14</sup> Kumari, P. V. "Harassed husband challenges Domestic Violence Act". *The Times of India*, (2013)

While the Act provides for counseling and rehabilitation services for victims of domestic violence, there is a lack of adequate infrastructure and trained professionals to provide these services effectively. This limits the effectiveness of interventions aimed at addressing the root causes of violence and supporting victims in their recovery.

Economic abuse, which is a common form of domestic violence, is not addressed comprehensively under the Act. Victims may continue to face economic dependence on their abusers, making it difficult for them to leave abusive situations and rebuild their lives independently.

There is a lack of comprehensive data collection and research on domestic violence, which hampers evidence-based policymaking and program planning. Better data collection mechanisms are needed to understand the prevalence, patterns, and underlying factors contributing to domestic violence..

#### Section 498 A: IPC

Section 498A of IPC deals with the offense of cruelty by a husband or his relatives towards a married woman. It is a provision aimed at protecting married women from harassment and cruelty inflicted upon them by their husbands or in-laws.

**Definition of Offense:** Section 498A defines cruelty as any wilful conduct that is likely to drive a woman to commit suicide or cause her grave injury to her life, limb, or mental health. This includes harassment or torture for dowry, directly or indirectly.

**Punishment:** The offense under Section 498A is cognizable, non-bailable, and non-compoundable. Upon conviction, the accused can be punished with imprisonment for a term which may extend to three years and shall also be liable to a fine.

**Scope of the Offense:** The offense under Section 498A can be committed by the husband or his relatives, including his parents, siblings, or any other family

members. The offense is not limited to physical cruelty but also includes mental and emotional abuse.

**Dowry Harassment:** While the provision primarily aims to address cruelty against married women, it specifically includes harassment for dowry as a form of cruelty. Dowry harassment refers to the demand for dowry or harassment related to dowry, which is punishable under this section.

**Legal Procedure:** Complaints under Section 498A can be filed by the victim woman herself, her relatives, or any other person who has knowledge of the offense. The police are required to register a First Information Report (FIR) upon receiving such a complaint and investigate the matter accordingly.

**Misuse Concerns:** Section 498A has often been criticized for its potential misuse, where false allegations are made to harass the husband and his family members. The Supreme Court of India has issued guidelines to prevent the misuse of this provision and has emphasized the need for a fair and impartial investigation in such cases.

Section 498A serves as an important legal safeguard for married women against cruelty and harassment in matrimonial relationships. However, concerns regarding its misuse have prompted calls for reform and stricter enforcement of guidelines to ensure justice for all parties involved.<sup>15</sup>

## **Duty of the court while dealing with cases under the Act**

In the case of *Krishna Bhattacharjee vs Sarathi Choudhury*<sup>16</sup>, the court has established guidelines for handling cases under Section 498A of the Indian Penal Code to ensure fairness and justice. These guidelines include:

**Recognizing the Aggrieved Person's Situation:** Courts must consider the challenging circumstances under which the aggrieved person has approached the court. They should be mindful of the vulnerability and helplessness often experienced by victims of domestic violence.

<sup>15</sup> Ibid

<sup>16</sup> *Krishna Bhattacharjee vs Sarathi Choudhury* CA No 1545

of 2015

Scrutinizing Facts Thoroughly: Courts should thoroughly examine all aspects of the case from different perspectives. They must carefully assess the validity of the respondent's arguments aimed at dismissing the grievances of the aggrieved person, ensuring that legal and factual accuracy is maintained.

Upholding Truth and Delivering Justice: The primary objective of the court should be to uphold truth and ensure proper justice is served. Decisions should be made impartially and with the aim of providing fair outcomes for all parties involved.

Avoiding Hasty Dismissals: Before dismissing a petition on grounds of maintainability, the court should ensure that the aggrieved person's right to have their case adjudicated is not compromised. Hasty dismissals should be avoided, and efforts should be made to address the merits of the case thoroughly.

At the point when the inquiry at issue is whether an individual is liable of dowry death of a lady and the proof unveils that preceding her death she was oppressed by such individual to brutality and additionally badgering for, or regarding, any interest for dowry's. 113B, gives that the court will assume that such individual had caused dowry death. Obviously, if there is evidence of the individual having deliberately caused her death that would pull in s. 302, IPC<sup>17</sup>.

Where the arraignment had the option to demonstrate that the expired lady was most recently seen alive in the organization of the denounced, she being right now in her uncommon consideration and authority, that there was a solid thought process in the wrongdoing and that the death being referred to was unnatural and maniacal, it was held that by ethicalness of the arrangement in S.106 of the Evidence Act the weight of indicating the conditions of the death was on the blamed as those conditions must be uniquely known to him as it were<sup>18</sup>. Where the death was by strangulation and proof was accessible to show that dowry was being requested and the blamed spouse was additionally exposing his expired wife to mercilessness, it was held that the assumption under the section applied with full power making the denounced obligated

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<sup>17</sup> (1991) 3 SCC 1.

<sup>18</sup> 1989 Cr LJ (NOC) 12 (P&H).



to be indicted under s. 304B, I.P.C<sup>19</sup>. Section 113B of the Evidence Act being procedural, it has been held that it is review in activity<sup>20</sup>.

Assumption – when might be raised. — The assumption under section 113B will be raised distinctly on the confirmation of the accompanying basics: -

- (1) The inquiry under the watchful eye of the Court must be whether the blamed has submitted the dowry death for a lady. This implies the assumption can be raised just if the charged is being gone after for the offense under section 304B, I.P.C.
- (2) The lady was exposed to remorselessness or badgering by her better half or his family members.
- (3) Such remorselessness or badgering was for or regarding any interest for dowry.
- (4) Such pitilessness or provocation was occurring soon before her death<sup>21</sup>.

The arrangements of this section, albeit obligatory in nature, essentially charge upon the court to draw such assumption of dowry death on evidence of conditions referenced in that which add up to moving the onus on the blamed to show that the wedded lady was not treated with savagery by her significant other soon before her death<sup>22</sup>. In a dowry death case, it is a condition point of reference to the raising of the assumption that the expired wedded lady was exposed to brutality or provocation for and regarding the interest for dowry soon before her death<sup>23</sup>.

Where the realities indicated that a nonstop provocation associated with interest for dowry was occurring straight up to the time that the perished lady met her folks two- days under the steady gaze of her death, the court said that it could be expected that badgering existed upto a period soon before her death. There were no mediating endeavors at a settlement<sup>24</sup>. The court said that interest for dowry was occurring soon before her death and in this manner, assumption under the section could be drawn<sup>25</sup>.

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<sup>19</sup> AIR 1995 SC 120

<sup>20</sup> 1992 Cr LJ 2294 (All).

<sup>21</sup> 1995 Cr LJ 174 (Ori).

<sup>22</sup> 1994 Cr LJ 3472 (P&H).

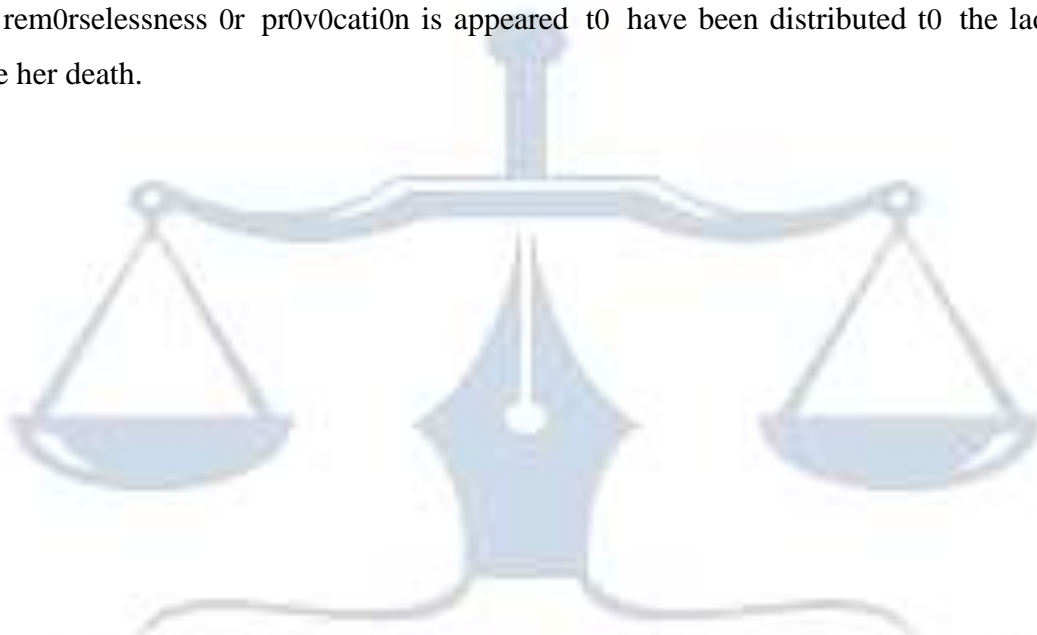
<sup>23</sup> 1993 Cr LJ 2636 (All).

<sup>24</sup> 2000 Cri Lj 2993.

<sup>25</sup> 2001 Cri LJ 4417 (All).

The basic elements of 304 B<sup>26</sup> are

- i. The death of a lady ought to be brought about by consumes or real or in any case than under ordinary conditions
- ii. Such a death ought to have happened inside seven years of her marriage
- iii. She more likely than not been exposed to remorselessness or badgering by her better half or by any relative of her significant other
- iv. Such savagery or provocation ought to be for, regarding, the interest for dowry; and
- v. Such remorselessness or provocation is appeared to have been distributed to the lady soon before her death.



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<sup>26</sup> (2012) 5 SCALE 311

## CHAPTER 4

### CONCLUSION AND SUGGESTIONS

#### 4.1 Conclusion

In India, various statutory provisions have been enacted to address violence against women, aiming to provide legal protection, support, and justice to survivors.

One of the notable effects of statutory provisions is the increased awareness of women's rights and legal protections against violence. These laws have empowered women to speak out against abuse and seek recourse through legal channels. For example, the Domestic Violence Act has provided survivors with civil remedies and support services, offering a pathway to safety and justice.

Additionally, legislative amendments such as those introduced in the Criminal Law (Amendment) Act, 2013, have led to stricter penalties for sexual offenses and expanded the definition of rape to be more inclusive. This has signaled a stronger commitment to holding perpetrators accountable and providing survivors with greater legal recourse.

However, despite these advancements, the effectiveness of statutory provisions is hampered by systemic challenges. Implementation gaps, including limited awareness of legal rights, corruption, and inadequate infrastructure, often hinder survivors' access to justice and support services. Furthermore, social stigma and victim-blaming attitudes continue to deter survivors from reporting incidents of violence and seeking help.

Intersectional discrimination further exacerbates the challenges faced by marginalized women, who may experience multiple forms of oppression based on factors such as caste, religion, ethnicity, and sexual orientation. Legal frameworks must address these intersecting vulnerabilities and ensure inclusive access to justice and support services for all women.

Despite the existence of laws, there is often a gap between legislation and implementation. Limited awareness of legal rights, corruption, inadequate

infrastructure, and cultural barriers can hinder survivors' access to justice and support services.

Deep-rooted social norms and stigma surrounding issues of violence against women can discourage survivors from reporting incidents and seeking help. Victim-blaming attitudes and pressure to preserve family honor further compound the challenges faced by survivors.

In conclusion, while statutory provisions play a crucial role in combating violence against women in India, comprehensive efforts are needed to address the systemic factors that perpetuate gender-based violence. This includes raising awareness, promoting gender equality, strengthening law enforcement mechanisms, and providing holistic support to survivors. Only through a multi-sectoral and rights-based approach can India effectively tackle the pervasive issue of violence against women and create a society where all individuals can live free from fear and discrimination.

## **4.2 SUGGESTIONS**

- Increase awareness of women's rights and available legal protections through targeted educational campaigns, community outreach programs, and mandatory inclusion of gender-sensitive curricula in schools and colleges. Empower women with knowledge of their rights and avenues for seeking help.
- Provide training and capacity-building programs for law enforcement officials, judiciary personnel, and healthcare professionals to sensitively handle cases of violence against women. Enhance their understanding of gender-based violence, trauma-informed care, and survivor-centred approaches.
- Improve the implementation and enforcement of existing laws by addressing bottlenecks in the legal system, enhancing coordination among relevant agencies, and establishing specialized courts and fast-track mechanisms for handling cases of violence against women.
- Ensure equitable access to justice for all women, including those from marginalized communities, by removing barriers such as cost, distance, and discrimination. Provide

legal aid and support services to survivors, including counselling, shelter, and rehabilitation programs.

- Implement preventive measures to address the root causes of violence against women, including poverty, gender inequality, and patriarchal norms. Promote gender-sensitive attitudes and behaviours from an early age through community-based interventions, youth programs, and media campaigns.
- Expand access to comprehensive support services for survivors of violence, including medical care, counselling, legal assistance, and economic empowerment programs. Ensure these services are survivor-centred, culturally sensitive, and available across urban, rural, and remote areas.
- Invest in data collection systems and research initiatives to better understand the prevalence, patterns, and underlying drivers of violence against women. Use evidence-based approaches to inform policymaking, program design, and resource allocation.
- Foster collaboration among government agencies, civil society organizations, grassroots movements, and international stakeholders to address violence against women comprehensively. Pool resources, expertise, and networks to maximize impact and reach underserved populations.



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