

## VIOLENCE AGAINST WOMEN AND THE LAWS IN INDIA

NIRU SHARAN

Assistant Professor, Amity Law School, Noida, India

### ABSTRACT

“The view of the Indian Supreme Court is very dicey as there have been many contradictory views when the courts are enshrined with the responsibilities in defining the term cruelty. Article 21 of the Indian Constitution says that no individual or any person must be tortured mentally or physically as every person under Article 21 has the right to the life and liberty. Every individual has the right to live his life on her own terms, but without harming or violating another’s rights”.

**KEYWORDS:** Responsibilities, person, tortured mentally and physically

### HISTORY

#### Ancient India

“The history of dowry in India is not clear. Some scholars believe dowry was practiced in antiquity, but some do not. Historical eyewitness reports, as discussed below, suggest dowry in ancient India was insignificant, and daughters had inheritance rights, which by custom were exercised at the time of their marriage.”

“The Ancient Code of Manu sanctioned dowry and bride wealth in ancient India, but dowry was the most prestigious form and associated with the Brahmanic (priestly) caste. Bride wealth was restricted to the lower castes, who were not allowed to give dowry. He cites two studies from the early 20th century with data to suggest that this pattern of dowry in upper castes and bride wealth in lower castes has persisted through the first half of the 20th century.”

“The beginning of 19th century plays an important role in degrading Indian women till its depth. The fear of insecurity hasn't only envisaged in unmarried young women, but also married women. In India, "family" has always been prime importance. Marriage being an important social institution since the Vedic period was biased against women. There were three main objectives of Hindu marriage: Dharma or religious duties to be performed by the couple, Prague or procreation, and Rati or conjugal love.”

A woman had no freedom, neither personal nor economic. Traditionally, the Hindu woman had a distinct economic right called 'stridhan'.

“The traditional concept of marriage has greatly changed and Hindu marriage is considered to be of dual nature, i.e. of both religious sacrament and contract, where mutual consent and benefit of both the parties are duly aided by different legal provisions and reforms. Attempts to bring about changes in the status of women either through legislation or judicial activism can achieve little success without a simultaneous movement to transform the social and economic structures and the culture (values, ideologies and attitudes) of society”.

## MODERN INDIA

“Dowry has been a prevalent practice in India's modern era and in this context, it can be in the form of a payment of cash or gifts from the bride's family to the bridegroom's family upon marriage. States in the north are more likely to participate in the dowry system among all classes, and dowry is more likely to be in the form of material and movable goods. In the south, the bride price system is more prevalent, and is more often in the form of land, or other inheritance goods.

Dowry also varies by economic standards in India. Upper-class families are more likely to engage in the dowry system than the lower class. When the dowry evolved in the Vedic period, it was essentially followed by the upper castes to benefit the bride, who was unable to inherit property under Hindu law. To counter this, the bride's family provided the groom with dowry which would be registered in the bride's name. Various laws have been made regarding dowry and cruelty. Women have equal rights that of a man in the society. In the modern era, the practice of dowry requires the bride's family to transfer goods to the groom's family in consideration for the marriage.”

Today, the law recognizes that words, barbs and acts that are not physical or violent could be wounded and hurtful enough to amount to cruelty. Even if kicking may not cause grave physical injury, it could be extremely degrading, demeaning and traumatic to the individual. The importance of the judgment is not confined to the two acts of kicking and threatening divorce being taken out of the purview of cruelty, under Section 498 A in the present case.

## OBJECTIVE

Keeping in mind the above discussion, my Paper would focus on the following objectives.

- To examine the perspective and experiences of women litigants seeking justice within the legal domain. This is in order to arrive at an understanding of whether or how such mechanisms have been able to mitigate the sufferings of women in cases pertaining to domestic violence.
- To analyze the role of the justice delivery mechanism in fulfilling its objectives toward empowering women victims within the patriarchal social structure.
- To understand the problems women litigants face within larger social-legal matrix once they approach the legal system with the object to seek justice.

## CONCEPT OF CRUELTY

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

## CRUELTY UNDER 498A UNDER INDIAN PENAL CODE

### Necessity for Section 498A

During the 1980s, dowry deaths were steadily rising in India. Dowry death is the murder of a young woman; committed by the in-laws, upon non-fulfillment of their coercive demands for money, articles or property, commonly called as dowry. Cases of cruelty by husband and relatives of the husband culminating into suicide/ murder of innocent helpless women though

Constitute only a small but a grueling fraction of cases involving cruelty. The objective was to allow the state to intervene rapidly and prevent the murders of young girls who were unable to meet the dowry demands of their in-laws. With this object, the Government of India amended the Indian Penal Code, 1860 (IPC) by way of the Criminal Law (Second Amendment) Act, 1983 and inserted a new section 498 (A) under Chapter XX-A, Of Cruelty by Husband or Relatives of Husband on 26th December, 1983. The amendment focuses not only on dowry deaths, but also cases of cruelty to married women by their in-laws. Section 498 (A) IPC is the only section in the IPC that recognizes domestic violence against women as a crime. Subsequent amendments were also made in the Code of Criminal Procedure, 1973 (CrPC) and the Indian Evidence Act, 1972 (IEA) by the same amendment in order to effectively deal with cases of dowry deaths and cruelty to married women by the husband, in laws and relatives. 7

### DEVELOPMENT OF SECTION 498 A

The section was enacted with the aim to protect women from dowry harassment and domestic violence. However, more recently, its misuse is becoming an everyday affair.

The Supreme Court, hence, in the landmark case of *Sushil Kumar Sharma v. Union of India*<sup>21</sup> condemned this section as 'Legal Terrorism'. Since cruelty is a ground for divorce under section 13 (1) (I) of the Hindu marriage Act, 1955. Wives often use this provision in order to threaten their husbands.

The society needs to change its attitude as well as its mental make up on women related issues. Further

The Court and Legislature have to make changes if the laws of matrimonial cruelty are to be of any deterrence.

- Role of Women NGOs: 'These organizations should investigate the complaint properly without any bias towards the woman keeping in mind that the law is being misused largely to harass more women in husband's family. They should not encourage any woman to file a criminal case against her in-laws for trivial matters. These organizations should also conduct survey/research on the misuse of the act and should educate people about its consequences. If these organizations are found to be assisting in filing false complaints, then they should be made liable for prosecution in the country where they are functioning'.
- Time bound Investigation and Trial: 'A speedy trial of 498 (a) cases will not only ensure justice for the innocents that have been implicated in false charges, it will also lead to prompt Redressal of the grievances of real dowry victims. The reduction in false cases will also reduce the burden on the judiciary and expedite the processing of real cases'.

- Definition of Mental Cruelty: ‘Mental cruelty has been vaguely defined in the act, which leaves scope of misuse. This should be clearly elaborated to remove loopholes in the law. There should be provision for men also to file a case for mental cruelty by his wife’.
- Bailable: ‘The main reason of 498A being misused to harass innocent is its non-bailable nature. This section should be made bailable, to prevent innocent old parents, pregnant sisters, and school going children from languishing in custody for weeks without any fault of them’.
- Compoundable: ‘Once FIR has been registered it becomes impossible to withdraw the case even if wife realizes that she has done a blunder and wants to come back to her matrimonial home. To save the institution of marriage this should be made compoundable. Moreover, in the scenario where the couple decides to end the marriage by mutual divorce, continuations of criminal proceedings hamper their life’.
- Arrest Warrants: ‘Arrest warrant should be issued only against the main accused and only after cognizance has been taken. Husband, family members should not be arrested’.
- Penalty for making false accusation: ‘Whenever any court comes to the conclusion that the allegations made regarding the commission of offenses under section 498A IPC are unfounded, stringent action should be taken against persons making the allegations. This would discourage persons from coming to court with unclean hands and ulterior motives. Criminal charges should be brought against all authorities that are collaborating with falsely accusing women and their parental families’.
- Court Proceedings: ‘Physical appearance of the accused at the hearing should be waived or kept low to avoid hassles in appearing to the court, especially for NRIs. The court should not ask to surrender passport of the husband and his family, which could cost the jobs of the husband and his family members’.
- Punish Dowry Givers: ‘If the complainant admits giving dowry in the complaint, the courts should take cognizance of the same and initiate proceedings against them under the relevant sections of the Dowry Prohibition Act’
- Gender Neutral: ‘Everyone should have equal rights and responsibilities, irrespective of gender. In the current social context, there should be similar laws to protect harassed husbands and their family.’

The position of the women in India is still not good. They need rights, along with a positive change in the outlook of the society. The status of women needs to be alleviated in the society. But what needs to be assured that the Rights guaranteeing freedom to women should not be misused. These rights should not become a tool to harass innocent people. We need to build a society, where women enjoy full liberty and equality in all respects, along with a harmonious balance of rights and freedom of every individual in the society.

## REFERENCES

1. [The Indian Penal Code](#), 32nd edition, reprint 2014, Author- [Ratanlal & Dhirajlal](#)
2. Commentary on the INDIAN PENAL CODE 1860 (The Law of Crimes), 3rd edition, 2014, Author - Batuk Lal
3. The Law of Evidence, 19<sup>th</sup> edition reprint 2013, Author- Batuk Lal

4. The Constitutional Law of India, 49<sup>th</sup> edition 2012, Author- Dr. Pandey
5. Constitution of India
6. Indian Penal code (IPC), 1860
7. The Evidence Act, 1872
8. The Code of Criminal Procedure, 197

