

SECTION 498 A OF THE INDIAN PENAL CODE

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Introduction:-

This study aims to understand the access to justice and the justice delivery system from the perspective of victims of marital violence especially in the context of recent debates around Section 498 A of the Indian Penal Code. As is widely recognized violence against women is one of the most pervasive forms of human rights abuse in the world. Women and girls, in all societies, to a greater or lesser degree are subjected to physical, sexual and psychological violence. The violence cuts across lines of class, caste, religion, region, sexual orientation, ethnicity and culture.

In early 1990s, WHO had prophetically declared, "Violence against women causes more deaths and disability than many diseases put together and violence against women is a common phenomenon in Indian society".¹

The overall cases of crime against women have increased to 2, 95,896 in 2013 from 2, 28,650 in 2011². The proportion of crimes committed against women towards total IPC crimes has increased continually and has reached 11.2 % during 2013. In India 22 women were killed each day in dowry related murder in 2007³. Dowry deaths have increased to 8083 in 2013 from 4648 in 2008. In merely these years the cases of cruelty by husband and relatives have increased to 1, 18,866 in 2013 from 99,135 in 2010. The National Crime Bureau figures reveal that the incidents of cruelty against a wife have continuously increased from 2002 to 2013 and accounted for a large 1 WHO: Violence against women :A Priority Health Issue, 1997 2 National Crime Records Bureau : Crimes in India, 2013 3 UNIFEM Factsheet: Violence Against Women Worldwide 6 share of the total crime against women. According to the NCRB records of 2013, in comparison to 28579 reported cases of cruelty by husband and relatives in 1995, the cases have increased to 1, 18,866 by 2013. This is, by any standard a significant increase. However, the conviction rate in cases of cruelty by husband and relatives has gone down from 20.2 in 2011 to 16.0 in 2013. Unfortunately, the conviction

¹ WHO: Violence against Women: A Priority Health Issue, 1997.

² National Crime Records Bureau: Crimes in India, 2013.

³ UNIFEM Factsheet: Violence against Women Worldwide.

rate is the least in cases of cruelty if this is compared with various crimes committed against women.

Definition and Explanation of IPC Section 498 A

Matrimonial cruelty in India is defined in Chapter XX A of IPC under Section 498 A as:

Husband or relative of husband of a woman subjecting her to cruelty, whoever being the husband or the relative of the husband of a woman, subjects her to cruelty shall be punished with imprisonment for a term, which may extend to three years and shall also be liable to a fine. Explanation – for the purpose of this section, “cruelty” means:

(a) 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

(b) 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 has deliberately been defined in the Indian Penal Code in two ways. In part (a) of Section 498 A cruelty has been defined as “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.” Secondly in part “b” it has also been defined as “harassment of the woman” to coerce her or any person related to her “to meet any unlawful demand for any property or valuable security”. This sub-section further states that harassment “on account of failure” by a woman to meet the demand of dowry will also be punishable. The offence was made punishable with imprisonment up to 3 years and with fine. The offence was also made cognizable, if reported by the victim or any person related to her or by notified public servants. It was further made non-bailable and non-compoundable. According to the National Family Health Survey 2007, one third of women in the age of 15-49 have experienced physical abuse, one in ten women has experienced sexual abuse, nearly two of every five women have experienced some form of sexual or physical violence from their husband and only one in four abused women seeks help to end the violence they have experienced. The Indian state has taken various initiatives in the form of policy, legislation and institutional mechanisms to address the issue of violence against women. Violence

against women was given top priority in the Tenth Five Year Plan. Again, the Eleventh Five Year Plan has included violence against women as one of the three aspects relating to the problems of women besides women's economic empowerment and women's health. Elimination of discrimination and 8 all forms of violence against women and the girl child is one of the objectives of 'National Policy for Empowerment of Women, 2001'⁴. In addition, India has ratified various international Conventions and Human Rights Treaties. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women in 1993, the UN Declaration on Elimination of Violence against Women, the Beijing Declaration and the Platform for Action in 1995. As has often been pointed out, the Indian Constitution not only guarantees equality to women vide Articles 14, 15 and 16, but also empowers the state to adopt measures of positive discrimination in favor of women in order to achieve gender equality. Yet, crimes against women in the country continue to be on the increase. This not only has grave implications for the health and well being of a woman but it has also been pointed out that in India, one incident of violence translates into losing seven working days for women⁵.

The Historical Background and Legislative intent of Section 498A of IPC:-

The human life begins with a female; she is the originator. She is considered to be divine, creative, nurturing and supportive. She symbolizes both "Laxmi" and "Saraswati"- Laxmi for wealth and Saraswati for knowledge.⁷ Wife has been subjected to rigorous test to prove her single minded devotion to her sole life partner her husband. In Ramayana 'Sita' had to face the acid test of 'Agni-Pariksha' which was nothing but cruelty personified. Similarly, Cruelty was also the subject matter of Mahabharata where 'Draupadi' was called upon by her husband 'Duryodhana' to prove her chastity. But at the same time, she is subjected to all types of violence, right from cradle to grave. Birth of a daughter even in 2015 is still considered to be bad luck. A growing girl child is considered to be a burden on her family. A female child at the tender age is subjected to sexual exploitation. The married women have all along been receivers of myriad forms of violence of varying proportions, so much so that home becomes the least safe place for women, whereas it has become the safest place for men.⁸ Violence against women is a phenomenon that cuts across boundaries of culture, class, education, ethnicity and age.⁹ Domestic violence against women means "Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm

⁴ National Policy for the Empowerment of Women, Goals and Objectives.

⁵ United Nations Population Fund report, 2005.

or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".¹⁰ All this gave birth to the feminist movement of the 70s and 80s, which focused light on the age old practice of subjecting women to atrocious treatment by male folk. To mitigate the all- pervasive acts of violence against helpless women in India, in 1980s Indian legislatures also decided to act. That led to the formation of Joint Committee of the two Houses of Parliament which made in-depth study of the working of the Dowry Prohibition Act, 1961. The study revealed the phenomenon of ever increasing incidences of dowry deaths in India culminating in to suicide by women victims. All this is the background of formation of Criminal Law Amendment Committee (1982). This Committee electrified the Government which decided to provide meaningful protection to victims of domestic violence during their life time itself.

498-A Husband or relatives of husband of a women subjecting her to cruelty –

Whoever, being the husband or relative or relative of the husband of a women, subjects such women to cruelty shall be punished with imprisonment for a term which may be extend to three years and shall also be liable to fine.

Explanation:- For the purpose of this section, "Cruelty" means-

[a] any willful conduct which is of such a nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health, or

[b] harassment of the women where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or any valuable security or is on account of failure by her or any person related to her to meet such demand.

Meaning of cruelty:-

It was held in Kaliyaperumal v. state of Tamil Nadu, that cruelty is common essential offence under both the sections 304-B and 498-A of the Indian Penal Code. The two sections are not mutually inclusive but both are distinct offences and a person acquitted under section 304-B for the offence of dowry death can be convicted for an offence under section 498-A of Indian Penal Code.

The meaning of is given in explanation to 498-A. Section 304-B does not contain its meaning but the meaning of cruelty or harassment as given in section 498-A applies in

section 304-B as well. Under section 498-A cruelty by itself amount to an offence whereas under section 304-B the offence is that of dowry death and the death must have occurred within 7 years of marriage. But no such period is mentioned in section 498-A.

Case; - In Virender Bhatti V. State, it was held that where the suicide had taken place within 7 years of the marriage and the convincing evidence had come on record that the deceased wife was subjected to cruelty at the hand of the accused husband, a presumption is that it was the accused who abetted the commission of suicide by his wife could be drawn and thus, the conviction of offences under section 306 and 498-A was proper.

Case;- It was held in Ramesh Chand v. State of U.P. that a complain under section 498-A can succeed only if it can be proved that there was an "unlawful demand" by the husband of some money. Mere demand without settlement of dowry at the time of marriage is no offence. Mere refusal by the father-in-law to meet the demand does not make the demand unlawful unless they said demand can come within the definition of dowry.

Case;- In Arun Vyas V. Anita Vyas, it was held that the offence of cruelty defined under section 498-A, Indian Penal Code read with the explanation appended to it, is a continuing offence and thus on each occasion on which the wife is subjected to cruelty she would have knew starting point of limitation.

Case; - In Mohd Hoshan v. State of A.P. was held by the supreme court that the reversal of order of acquittal by High Court by taking offence was not improper and accused are liable to be convicted for offences under section 306 and 498-A of the Indian Penal Code.

It was further observed this whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunt on a person amounting to cruelty depends on various factors like the sensitivity of individual victim concerned, the social background, the environment, education etc. Further mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such cruelty.

Harassment for Dowry: -

In Preeti Gupta and another v. State of Jharkhand a complaint was filed by wife against the husband and his relatives (sister-in-law and unmarried brother-in-law of complainant) regarding harassment and demand of dowry. No specific allegation was made against the two relatives. Appellants were residing at a different place. They neither visited place of incident nor lived with complainant and her husband. It was held that in view of these facts the implication of relatives in complaint was meant to harass and humiliate husband's relatives. Therefore permitting complainant to pursue complaint would be an abuse of process of law. Therefore it was held liable to be quashed.

It was also held that members of the Bar should treat every such complaint as basic human problem and must make serious endeavor to help parties in arriving at amicable solution of that problem.

Cruelty for Dowry demand and Murder:-

In Balbir Singh V. State of Punjab the deceased Amarjeet kaur was married to appellant. She had been complaining of ill-treatment at the hand of her husband and in-laws. Sometime a Panchayat was held to settle the dispute but ill-treatment continued while her husband had come home on two months leave. She in view of a settlement came to her matrimonial home on 12-10-1995. She received 90% burn injuries. In her dying declaration before the doctor the victim had stated her husband had put kerosene oil upon her and upon igniting locked doors both the rooms from outside. The victim was rescued by neighbors. Victim in her second dying declaration before the investigating officer not only named her husband but also mother-in-law. Witness in evidence stated how she was maltreated at the hand of the accused persons on account of non-fulfillment of their demand of dowry. The Supreme Court held that in view of the fact that victim was rescued by the neighbor case of suicide must be ruled out and the conviction of accused under section 302 Indian Penal Code was held proper. However in view of inconsistencies between two dying declarations benefit of doubt must be given to mother-in-law as for the offence under section 302 is concerned. However, conviction of both the accused under section 498-A was held proper. The mother-in-law was already in custody for four years therefore, she was ordered to release forthwith. It was also made clear that only because dying declaration was not recorder by a Magistrate it by itself

may not be a ground to disbelieve entire prosecution case.

Constitutionality of section 498-A:-

It was held in **Satish Kumar Batra and other V. State of Haryana** that merely because there is possibility of misuse of offence of cruelty to wife under section 498-A of Indian Penal Code is not a ground to hold this provision as unconstitutional.

Conclusion:-

The study has recorded the experiences of hundreds of women who have faced gross domestic violence. After years of struggle most of these women have been forced to move out of their marital homes where they faced violence. While some are still trying to “resolve” the issues on an informal social level, many have approached the formal mechanisms of justice delivery.

A primary reason is also that these women feel that they cannot go back to their natal families and will be a burden on them. In many cases women have been forced to go back to their marital home under pressure from their natal families. Most of the respondents in the study started experiencing violence within the first year of their marriage, but even when it reached sizable proportions they kept on looking for solutions by seeking intervention from panchayats or reporting the matter to a women's organization. Many of these women kept going back to their husbands hoping against hope that the situation will become better. It was only after failed repeated attempts that the victims approached the police and the judiciary.

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