

# DISSERTATION

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CRUELTY BY HUSBAND OR RELATIVE IN INDIAN LEGAL SYSTEM: A  
MYTH OR REALITY?

**SUBMITTED TO**

INSTITUTE OF LAW, NIRMA UNIVERSITY

*AS A PARTIAL FULFILLMENT OF REQUIREMENT FOR THE  
DEGREE OF MASTER OF LAWS (LL.M)*

**UNDER THE GUIDANCE OF**

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19ML016

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## DECLARATION

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I, Namrata Bhatt, bearing roll no. 19ML016, do hereby declare that the dissertation submitted is original and is the outcome of the independent investigations/ research carried out by me and contains no plagiarism. The dissertation is leading to the discovery of new facts/ techniques/ correlation of scientific facts already known. This work has not been submitted to any other University or body in quest of a degree, diploma or any other kind of academic award.

I do hereby further declare that the text, diagrams or any other material taken from other sources including [but not limited to books, journals and web] have been acknowledged, referred and cited to the best of my knowledge and understanding.

Date:

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## CERTIFICATE

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This is to certify that the dissertation entitled “CRUELTY BY HUSBAND OR RELATIVE IN INDIAN LEGAL SYSTEM: A MYTH OR REALITY?” has been prepared by Namrata Bhatt under my supervision and guidance. The dissertation is carried out by her after careful research and investigation. The work of the dissertation is of the standard expected of a candidate for Master of Laws [LLM] in Criminal and Security law and I recommend it be sent for evaluation.

Date:

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I am indebted to all the professor of Institute of law, Nirma University Prof. Dr. Purvi Pokhariyal, Dr Mukti Jaiswal and all the other professors who has been there as a milestone to guide me throughout the journey of my Master Degree and gave me a memorable learning experience. I would also like to gratify my friends and colleagues for their constant support during the LL.M studies. I am also obliged to my family members who provided me with all the facility which I asked from them throughout the study in Institute of Law, Nirma University.

Date-

Namrata .U. Bhatt

19ML016



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## LIST OF CASES

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1	Ashok Kumar v. Vijay Laxmi - A.I.R. 1992 Del. 182
2	Dalip v. State of Orrisa – A.I.R 1998 Ori. 213
3	Ghusabhai Raisangbhai Chorasiya v. State of Gujarat - 10 SCC 48 (2013)
4	Gulabi Devi v. State of Bihar - Cr. L.J. 126 (2007)
5	Jagdish Soni v. State of Rajasthan - 9 Cr. L.J. 1902 (1998)
6	Jia Lal Abrol v. Sarla Devi - A.I.R. 1978 J&K 69
7	Kakumanu Jayaprasada Rao v. State of A.P - 1 RCR (Criminal) 748(2005)
8	Kaliya perumal vs. State of Tamil Nadu - 9 S.C.C. 157 (2004)
9	Kalpana v. Surendra - A.I.R. 1985 All. 253
10	Madhuri Mukund Chitnis v. Mukund Martand Chitnis & anr. -1 Cr. L.J. (Bom)(1992)
11	Manju Ram Kalita v. State of Assam - 13 SCC 330(2009)
12	Mohan Chand Kholia v. State - 2Jud. Cr. Rep. 477 (DL)(2003)
13	Mrs. Christine Lazarus Menezes v. Mr. Lazarus Peter Menezes - 150 HC (Bom) 2008
14	Pawan Kumar v. State of Haryan - 6 Cri.L.J.1679 (2001)
15	Parwana Khatoon v. State of Bihar - 6 SCC 792 (2017)
16	P. Bikshapati and ors. V. State of A.P. - Cr. L. J 1186 (A.P)(1989)
17	Preeti Gupta V. State of Jharkhand - A.I.R. 2010 S.C. 3363
18	Raj Kumar v. State of MP - 4 RCR (Criminal)(2006)
19	Rajesh Kumar & Ors v. Sate of U.P - 10 SCC 443(2018)

20	Sarla Prabhakar Waghmare (Smt) v. State of Maharashtra & ors. - Cr. L.J. 407 (Bom)(1990)
21	Sarojakshah Shankaran Nayor& others v. State of Maharashtra - Cri. L. J. 340 (1995)
22	Savitri Devi v. Ramesh Chand - Cri. L. J. 2759 (2003)
23	Savitri Pandey v. Prem Chandra Pandey - 2 S.C.C. 73(2002)
24	Social Action Forum for Manav Adhikar v. Union of India - 10 SCC 443 (2018)
25	State of Maharashtra vs. Ashok Narayan Dandalwar - Cr. L.J. 4993 (2000)
26	Sushil Kumar Sharma v. Union of India - 6 SCC 281(2005)
27	V. Bhagat v. D. Bhagat - A.I.R. 1994 SC 710
28	Vadia Vinay Kumar v. State of A.P. - 3 RCR (Criminal)394

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## ABBREVIATIONS

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AIR	All India Report
Anr.	Another
Art.	Article
Bom CR(Cri)	Bombay Cases Reporter (Criminal)
CONST	Constitution
Crim	Criminal
Cr.P.C	The Code of Criminal Procedure
Cri. L. J.	Criminal Law Journal
DV	Domestic Violence
IEA	Indian Evidence Act
ILR	Indian Law Reports
IPC	Indian Penal Code
No	Number
Ors.	Others
S. C	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporter

# **CRUELTY BY HUSBAND OR RELATIVE IN INDIAN**

## **LEGAL SYSTEM: A MYTH OR REALITY?**

The present study has been classified into five chapters. All the chapters have been formulated in accordance with the aims and objectives of the study. The same has been discussed as below.

# **CHAPTER – 1**

## **INTRODUCTION**

1.1	Introduction
1.2	Statement of Problem
1.3	Literature Review
1.4	Aims of Study
1.5	Significance of Study
1.6	Scope of Study
1.7	Research Questions
1.8	Hypothesis
1.9	Research Methodology
1.10	Research Outline

## **1.1 Introduction**

Cruelty has been primarily experienced as a social crime which is known as dowry system. There was a time when women were normally in every house subjected to cruelty by in-laws which resulted into them committing suicide. There is no doubt in saying this that women have always been provided least importance in old days. Government of India has then considered women and they have come up with the laws which can protect rights of women after their marriage. The new act has been implemented in the year 1983 for the cruelty. By observing the whole scenario we can say that India has started improving its Penal Laws in and after twenty first century and it is the time when the cruelty has become a much needed provision in the present century where women can ask for their matrimonial rights and they can raise their voice against any kind of cruelty done by husband and his relatives.

This is one of the important provisions which was been initially intended to be a barricade combating torture to the married women by his husband and his members of the family. The said provision now seems to be misused by the women as they are taking laws in their hands. In different words if we say the laws made as a safeguard for protection is nowadays being horribly tainted by women in the society. It is not just women who misuse the present provision but the protectors of the society, the police also sometimes do not fulfil their duties on their part. The judges also have to dispose of their matrimonial cases so it goes very speedy and somewhere it has been misused by the person from whom a common man has so much expectations. Now one more issue for the judiciary arises here to identify the real accused in matrimonial cases. The laws favour women and many of the time It is the husband who suffers from torture by his wife.

First, understand literal meaning of cruelty which has been provided under law of the land. Cruelty is one of the social evils and that has been generally felt by the married women. Cruelty has been given under section 498 of Indian Penal Code; 1860. Cruelty includes Mental as well as Physical harassment. We have seen that the married women can raise her voice against violence. The word cruelty has been provided in a wider sense under this section. Cruelty can be elucidated by the Hon'ble court under case of Kaliya perumal v. State of Tamil Nadu<sup>1</sup>said that it is one of the most common essential of section 304B and 498A which are dealing with the rights of women. These sections are not similar. The previous one deals with the punishment for the offence of dowry but it has been provided by the court that the person who has been convicted for the offence under 304B, can also be tried under section 498A. Moreover, section 304B has not provided any specific meaning so the particular section has been understood with the same perspective of section 498A. The court has also linked the coerced demand of property in a case of Inder Raj Malik v. Sunita Malik<sup>2</sup>and court held that cruelty means any kind of harassment of a married woman which has been done to pressurise his wife for any kind of unlawful demands.

The present work will discuss the meaning and definitions of the Cruelty in the second chapter. Third chapter of the study is dealing with the laws which are relevant to the present issue and the next chapter has been discussed some of the important case laws which are important to take the consideration. The last chapter deals with the conclusion part where the all the chapters have been concluded and suggestions has been made by the researcher.

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<sup>1</sup>9 S.C.C. 157(2004).

<sup>2</sup> 2 Crimes 435 (1986).

## **1.2 Statement of Problem:**

The laws are being enacted by the legislature to maintain peace and security in the society. The Indian Penal Code has inserted section 498A. the present section deals with the cruelty. Generally, it includes the ill-treatment done by her husband or husband's relatives to wife. Cruelty includes both physical as well as mental. there was a period before the insertion of this section that the married women were tortured by their husband and in laws and their ultimate option were to commit suicide. There were no laws in India which protects the right of married women exclusively. This was a social evil which has been spread over Indian society. The 21<sup>st</sup> century has come up with insertion of 498A. The present section was become more of a weapon rather than a shield. The strict action against wrong complaints is required. Misuse of section 498A has overburdened the courts with number of matrimonial disputes and it is not advisable when the courts are already facing number of pending cases.

## **1.3 Literature Review:**

Literature review is a foundation of entire study. It helps the researcher to establish connection between what he has studied and what he is trying to prove by examining the literature. By means of literature the researcher enhances his method. Reviewing literature increases the knowledge and it will help the reader in contributing something new to the present work.

- 1. "Law commission of India Report":**- On 1<sup>st</sup> September, 2009, Government of India through the letter suggested the required amendment in section 498A of IPC and asked for preventive actions to extinguish the misuse of above section. In the leading case of "Preeti Gupta vs. State of Jharkhand", (2010)

the Apex Court laid down that “serious relook of the entire provision is warranted by the Legislature. It is a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over-implication is also reflected in a very large number of cases”. The present literature is helpful for the researcher to understand the present situation of laws and what changes are required to be done can be came out by reading the same.

2. **“The Malimath Committee Report”**:- The provision proves to be non-productive as it helps none of the parties. Offence being non bailable and non-compoundable makes it impossible for parties to come together and when a woman is misusing the provision makes an innocent husband suffer without any criminal act committed. It imposes social stigma and that person has to deal with non-acceptance of that person in a society as a good human being. This leads to the concept of amending a section making it compoundable and bailable. According to 498A the husband and relatives who have allegedly committed cruelty to a woman are placed behind the bar at the very instance when a complaint is lodged. They are provided with no opportunity to explain themselves even when they are innocent and even if a wife regrets and wants to return to her matrimonial home the disbalanced equation between the two parties prevents the compromise and families break down. The present literature is very important and the researcher has mentioned some of the important things from the same committee report in the present study.



**3. “National Commission for Women, India”:-**In the committee report the petitions before parliamentary committee are summarised which were presented by member secretary of National Commission for Women. Provision of 498A and The Protection of Women under Domestic Violence Act 2005 has ample of common elements and a harmony should be established for equal implementation of both. Our Constitution gives fundamental rights to each citizen and to ensure those rights are not snatched away, Police should check the veracity and bonafideness of the complaint before arresting the accused. Mahila Desks and Crime Against Women (CAW) Cell were proposed to be established at the district level which would exclusively handle the complaints by women. So, the present literature has helped the researcher to understand that how the women are given so much importance in the country. It has helped the researcher in concluding the present work and suggesting equal protection for men and women is important.

**4. “Section 498A: “Swinging between Extrmesto find the perfect Balance? By Saif Rasul Khan”, 2018.** The present article has talked about how Judiciary has the rights of woman extended. The present paper has asked for equal treatment for both male and female and also discussed the dowry and it has been provided that the dowry has its roots in history but it has not been completely abolished. This is a genuine legal issue. Thus, the present article is useful and relevant material for present research paper.

**5. The Expansion of Matrimonial Crueltyby Boparai Harinder, (1981).** The present Article has been published in Criminal Law Journal and it is important

for the researcher to understand the significance of “Cruelty”. It has discussed how marriages are being dissolved by the husband and wife due to their minor issues after solemnizing their marriage. The same article has been referred by the researcher for the purpose of writing some psychological effect of nature of both the parties to the marriage. How cruelty takes place after marriage. The present study is different in terms of inclusiveness of men’s right rather only discussing the rights of women. It is a suggestive study which end up with certain required amendments.

6. **“Criminalization of Marital rape in India, Understanding its Constitutional Culture and Legal impact, by Raveena Rao Kallakuru & Pradyumana Soni”, 2018.** The Present Article has detailed discussion on rape victims of married women. The present article has explained that it is a lacuna in IPC that it does not consider a crime for husband of rape his wife. The article also discuss various law commission Reports and it also suggest the redress if wife is raped by husband. The researcher’s paper has different perspective though, it is not ignored by the researcher that 498A is required and important to combat the matrimonial issue. But the present paper will more focus on misuse of section 498A.
  
7. **“Of men’s rights, motherhood and minor, Critical Feminist Reflections’ on shared parenting laws in India by Ira Chadha-Sridhar &Aratrika Choudhuri”, 2016.** The Present article has analysed law commission Reports. This article has studied the feminism reflection. It has mentioned Domestic

Violence which has been provided as safeguarded for the married women. The present article is useful for present research paper. It has been critically examined by the writers.

8. **“Fallacies of sup. Court Judgment : Section 498A and the Dynamics of Acquittals, Prashant Trivedi and smiri Singh”, 2014.** The Present Article discussed that 498A has been continuously misused. This is the most supportive and relevant Article for researcher’s paper. The present article has considered various complexities of law enforcement. It has talked about new perspective regarding misuse of section 498A. The present Article has discussed landmark case of Preeti Gupta’s Case.

9. Author: **“Ratanlal and Dhirajlal, Indian penal code”** Published by LexisNexis, Edition 34<sup>th</sup>(2014) The present literature has helped the researcher in finding verdict and important case laws associated to Section 498A IPC. The literature has helped the researcher to understand the law point of the present section and how it is being misused by the women in Indian case laws in previous times. The present work also provides the history which has been written by taking the help of the present law book.

10. Author: **“J.D. Chandna, Law relating to dowry deaths dying declaration suicides & cruelties to women”**, published by the Bright Law House, Delhi, Edition 1<sup>st</sup> (2005) The present literature has helped the researcher has

understand the perception and that too has been understood by various case laws relating to the same issue. The researcher has understood the role of judiciary by studying different case laws.

**11. Author: “K.D.Gaur, Criminal law: cases and materials”,**It has been Published by LexisNexis Publications, Edition 7<sup>th</sup>, (2013) The above-stated book helped the researcher in finding out relevant case-laws related to Section 498A IPC.

**12. Author: “Mamta Rao, Law relating to women and children”,** Published by Eastern Book Company, Edition 3<sup>rd</sup>, (2012) The present literature has helped the researcher in concluding the issue by reading relevant case-laws.

**13. Author: “S.R.Myneni,Legal research methodology”,** Published by Allahabad Law Agency, Edition 5<sup>th</sup>,2012 The said literature can be useful to researcher for knowing and understanding the elementary ideas of the present work.

**14. Author: “Pramod Kumar Das, Law Relating to Cruelty to Husband: Divorce and Maintenance to Wife”,** Published by Universal Law Publishers, Edition 2nd, 2010 The present literature has been assisted the researcher for understanding the Matrimonial issues. The present work needed a literature from where the researcher can understand the loopholes and try to come out

with something new and which can be asked for suggesting or amending the law.

**15.** Author: “**O.P Tiwari, Cruelty against husbands by wives and its remedies**”, Published by Allahabad Law Agency, 2001. The present study is helpful for the researcher for understanding how the wives are being tortured by the husbands. The same is helpful for the researcher to find out that it is not the wife always who suffers torture but sometimes husbands also become a victim of being tortured by the wife and then wives take the help of the partial laws.

#### **1.4 Aims of the Study:**

The present study is analytical, interpretative and descriptive in nature and has the following aims and objectives:

- To know the nature and extent of cruelty against husbands.
- To know the efficiency of the preventive agencies and the laws against cruelty with the recent judicial trends.
- To find out the drawbacks and loopholes in the present enactment The Indian Penal Code.
- To know the impact upon society by the misuse of the process of law u/s 498A of IPC.
- To make suggestions and lay safeguards precautionary measures regarding the problem.

## **1.5 Significance of the Study**

The motive behind the topic is to elaborately study the social as well as legal effects of the term “cruelty”, which has been identified as an offence against woman and is made punishable under the penal code of our country. Marriage is a pious union of two souls and it is a relationship between two families rather than two individuals only. Like every other relationship, marriage is also about a give and take formula. If husband is responsible for the support and care of his wife, wife is also required to support him and give her best to balance the equations with his family. Though there should be balance in these responsibilities, women are more privileged entity of the society as when the laws were enacted, women were considered to be weaker than men. In a marriage, there were lot many examples where woman was tortured and harassed due to one or other reasons. May it be regarding household chores or for any illegal demands from her or her family. With the enactment of laws, woman under a matrimonial relationship is given a secured remedy if they require any assistance from the judiciary through the process of law, but similar protection is needed by the husband as well. In the modern era, woman is smart, independent, educated and financially making her own self free from the obligation of a man. Though there are some cases where we see that the security given to a woman under Section 498A, IPC is being misused to give their case a sensitive turn where from the society, she can get the sympathy and compassions even though there is no misbehavior from husband or in laws. Nowadays these types of cases are increasing exponentially and the innocent person has to go through a plight full situation which results in family break

downs and sometimes even worst. The experts in the field of law has given a word “legal terrorism” to such activities done by a woman just to gain the unreasonable sympathy from her surroundings as well as from lawful authorities. It is therefore a need of an hour that along with the woman, a man should also be given a similar protection of law where he can also go to the court for the complaint against woman regarding “cruelty” exercised on him and his family. This type of abuse of process of law should be controlled by making stricter provision if the woman without a proper cause harasses her husband or in laws.

### **1.6 Scope of the Study**

The researcher aims to study at the present situation of the society where the imbalance in matrimonial society due to abuse of the rights in favor of a wife is discussed. In the present research the legislative provisions, judicial decisions and suggestions by different committees are briefly explained under the study. The sorrowful situation of a husband and his family if the offence of “cruelty” has been misinterpreted and used for the mean benefits by woman has been deeply discussed with reference to its effect on society and marriage institution.

### **1.7 Research Questions:**

1. What do we understand by the term “Cruelty”?
2. How judiciary and other law agencies are working to curb the new legal issues regarding “Cruelty”?

3. Weather the present Indian Laws requires amendment to curb the problems in the Society?
4. Weather the society has any effect if women misuses their rights provided under Criminal Laws and Constitution of India?
5. What are the amendments which are required to be done in present Indian Legal system?

### **1.8 Hypothesis**

Cruelty by husband in India is myth as the law was enacted to protect the dignity of women but it is being used as instrument of oppression to the husband and his family members.

### **1.9 Research Methodology:**

The method which has been implemented by the author is a doctrinal research. A critical and thorough study would be made of all available statutes, acts and case laws on cruelty under section 498A. The research paper for the present title consists of mainly primary sources such various books on the subject, relevant case laws of Supreme Court, High Courts of India, journals, commission reports, published articles in national dailies, magazines, periodicals and e-sources. Moreover, the present study is Analytical, Exploratory and Explanatory as the present study will also analyse various judicial decisions and explore all the relating Indian laws.



## **1.10 Research Outline:**

The present study shall deal with the below mention Chapters.

Chapter 1- INTRODUCTION–This chapter deals with the Basic skeleton of the study. The Aims and Hypothesis and Literature Review has been provided under this chapter.

Chapter 2- DEFINITION AND CONCEP OF CRUELTY - This chapter deals with the historical background of cruelty and how it came about as a concept and closes with an account of its impact on society and families.

Chapter 3- LAWS GOVERNING THE STUDY - This chapter discusses the statutory provisions laid down in India in various acts in order to protect women.

Chapter 4- JUDICIAL DICTUMS - This chapter deals with the recent and landmark judgments of sec.498 which are acquittal or false cases with reference to the sec.304B of IPC. Judicial decisions are important with regard to the inference and precedents to apply in today's cases.

Chapter 5- CONCLUSIONS AND SUGGESTIONS – This chapter has been divided into two parts namely: Conclusions and suggestions relating to the present study and observation of the whole work which has been done by the researcher.

# **CHAPTER 2**

## **DEFINITION AND CONCEPT OF CRUELTY**

2.1	Historical Background
2.2	Cruelty: Understanding of a term
2.2.1	Definition of Cruelty
2.2.2	Cruelty practised against Husband
2.2.3	Concept of Matrimonial Cruelty in Penal Code
2.3	Causes of Cruelty
2.3.1	Legal extortion
2.3.2	Personal Vendetta
2.3.3	Biased by Society
2.3.4	Fake Feminism
2.3.5	Favoured by the Judiciary

This chapter deals with the historical background of cruelty and how it came about as a concept and closes with an account of its impact on society and families in Twenty First century. Further it classifies the forms of cruelty and also the causes of cruelty which is ultimately the root cause of this study.

## **2.1 Historical Background**

In the ancient times the dominance of a man in a society was practised. The institution of marriage is still known as the ultimate union of two persons. Even under the mythological belief the wife is called “Ardhangini”, which means she is as important as a man to run a juggernaut of life. Man is not complete until he marries a woman.<sup>3</sup> In “Ramayana”, wife is said to be a soul of a husband. Marriage is known as the most sacred and pious bond shared by two people who enters in marriage as they initiate the whole new structure in furtherance of civilisation and prosperity. The relation which has been shared by husband-wife in a pious knot of wedding depends upon the melodious, hearty and a happy bond shared by the two people connected. It is the most crucial element to make the society constantly believe in an institution of marriage. This concept applies and was applicable to both the times, i.e., ancient as well as modern times. The difference nowadays is that women have become much more aware about their rights under a wedding lock. The women due to emergence of developed society believes in equality and personal liberty, which is a plus point of the developed society. Meaning of harmony in marriage has changed gradually with the duration of times.<sup>4</sup>

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<sup>3</sup>Diwan Paras & Diwan Peeyushi, *Modern Hindu Law*, pg. No. 63(19<sup>th</sup> ed. Allahabad Law Agency, (2008).

<sup>4</sup> Prof. Ajay Kumar, (prof) Ajay, *Institution of Marriage-Judicial Approach*, A.I.R. 6 S.C. (2006).

Rights of women under the family law and other personal laws have always been made complex with the discussion between political and legal rights. Due to this the women of all the community, whether minority or majority are entangled. Those rights should not suffer in order to satisfy the religious disciplines. The religious practices and orthodox customs overlook the rights of a women since long and it makes the life of women quite difficult and pitiful.

The scenario of present situation is different than that of previous times and is far better. But women being classified as stronger entity in society has been vested with the power to misuse the laws in her favour. The provisions of law are such that a woman can make misuse of them without proving anything before raising hinderance into the life of her husband and her matrimonial family. The laws now are justifying the rights and status of a women better with respect to past interval of time, but the world changes and grows every second and the law therefore has to remain dynamic and not static so that rights of both the parties to marriage should be balanced.<sup>5</sup> Women who used to be called house-makers are stepping out of their homes and walking on the same footing like that of men. The law should have been changed accordingly but there is no proportional change. The legal extremism can be the result of such continuous misuse of legal protection to the women. Therefore, there is a strong necessity of change in law as it is unfair to consider that only women are subjected to cruelty and it should also be given a thought that men can also be trapped by misusing the provisions in favour of a women.<sup>6</sup>

There are hardly any protective acts in favour of men. We have strict provisions against the men subjecting a woman to cruelty and violence under the context of law

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<sup>5</sup>Lalsa Mohini, *Legitimacy of Section 498A Of Indian Penal Code*, 117 Cri LJ 127 (2011).

<sup>6</sup> SinghAjay Kumar, *Dowry Problem in India: Rethinking Anti-dowry laws*, 1 Cri LJ 256 (2009).

like Indian Penal Code, 1860 and Protection of women against Domestic Violence Act, 2005, Section 125 of the Criminal Procedure Code, dealing with the maintenance to wife. There is a huge vacuum in considering the side of husband rather the women rights are sinfully used by the women with polluted minds. Sometimes these provisions and acts are used to intimidate husband and his family without any sufficient grounds. This way the unusual and an unjustified power has been given in the hands of a woman, which they use for blackmailing, extortion and alike intimidations which causes a social as well as economic loss to the husband and his family. The life of a husband is majorly affected as the social integration of a person gone through this process of law becomes harder and such irreparable loss may cause a person to give up and end his life.

Under the Domestic Violence Act, initially only the husband and the male relative of a husband was to be arrested after the complaint has been filed but that time also there was no specific provision to investigate before arresting them. Afterwards the arrest of Female members of the husband's family was also legally allowed. After this decision of an Apex court, the arbitrary arrest of women in the name of cruelty to protect one woman, there are other women kept in danger of arrest.<sup>7</sup>

## **2.2 Cruelty: Understanding of a term**

Meaning of cruelty is diverse in each passing interval of time and the meaning differs from one to other person.<sup>8</sup> The interpretation of terms depends upon social and

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<sup>7</sup>Dr. ParthaPratim Mitra, *A new look on matrimonial cruelty within criminal law*, 39 Ind. B. Rev. (2013).

<sup>8</sup> Jia Lal Abrol v. SarlaDevi, A.I.R. 1978 J&K 69 (India).

economic status of parties to the case.<sup>9</sup> Court has interpreted the cruelty as an expression of a person subjecting the opposite party to it.<sup>10</sup> Cruelty apprehends a wife about the injury to her life from her husband and will be harmful to her surroundings.<sup>11</sup> The Court considers a relation of husband and wife as a key element to decide the question of cruelty.<sup>12</sup>

We as a human being react generally in every situation but we forget that the situation gets diverse from one case to another, where each one of us could react differently. As some acts silently and some become violent for the similar kind of incidents.<sup>13</sup>

The new “Webster’s Dictionary” has elucidated the term ‘cruel’ as “Disposed to give pain to others in body or mind; destitute of pity, compassion, or kindness; applied to persons; exhibiting or proceeding from cruelty, causing pain, grief or distress; inhuman, tormenting, vexing.”<sup>14</sup> Nonetheless the actual meaning of the term may be irrelevant with that of the explanation given in the provision of 498A. The word cruelty can explain the relation between human conduct and human behaviour.

In the study the researcher will be elaborating the same relation in the context of matrimonial duties towards each other if the behaviour of one person affects the other adversely or not. The cruelty being discussed in the study includes both mental as well as physical cruelty.<sup>15</sup> It can be both intended or unintended.<sup>16</sup> It is the issue of fact which a court has to decide on the merits of the case.

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<sup>9</sup>*Id.*

<sup>10</sup> Savitri Pandey v. Prem Chandra Pandey, (2002) 2 S.C.C. 73 (India).

<sup>11</sup>*Id.*

<sup>12</sup> Sarojkshah Shankaran Nayor & others v. State of Maharashtra, Cri. L. J. 340 (1995).

<sup>13</sup> Vinay Sharma, *Dowry Deaths: Legal Provisions and Judicial Interpretation*, 101 (2007).

<sup>14</sup> The New Webster’s Dictionary, College edition, (1998).

<sup>15</sup> V. Bhagat v. D. Bhagat A.I.R. 1994 SC 710 (India).

<sup>16</sup>*Id.*

The countries are having different perspective and views regarding the concept of cruelty. India is having some jurisprudence which may be different from any other country and *vice versa*. In a way, The American Jurisprudence has provided certain Parameters which shows that what can constitute the cruelty in marital affairs.<sup>17</sup> It has been provided that when there is a question raised regarding any misconduct is amount to constitute cruelty or not and if there is a matter of divorce then how it will effect on the person who has complained about such act before the court.<sup>18</sup> It is to be decided primarily by the court. Here, there is no question arises regarding the conduct, that such conduct is cruel to the person.<sup>19</sup> When a person is having normal mental condition and the person is sensible enough, then also such act may have adverse effect upon the spouse.<sup>20</sup> It is also possible that some act which can be considered as cruel to one person cannot be the same for another.<sup>21</sup> On other hand what cannot be harsh to a specific person under one set of situations can be life-threatening to other for the same set of situations.<sup>22</sup> Hence to determine cruelty in marriage the individual transactions of acts and behaviours should be studied to conclude. Sometimes not the entire transaction but some single instance can also help to infer if the cruelty has been practised with how much gravity. Collective Image should be painted of all the incidents in determining the degree of seriousness of cruelty practised. Until and Unless all the incidents of ill behaviours are summed up, the conclusive inference as to existence of cruelty cannot be resulted.<sup>23</sup>

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<sup>174</sup> Lawyers Co-operative Publishing Company and Bancroft-Whitney Company, American Jurisprudence: A Modern Comprehensive Text Statement of American Law, State and Federal 206 (West Group, California, 2nd Edition)

<sup>18</sup> *Ibid.*

<sup>19</sup> Supra note 17.

<sup>20</sup> Supra note 17.

<sup>21</sup> Supra note 17.

<sup>22</sup> Supra note 17.

<sup>23</sup> Savitri Devi v. Ramesh Chand. Cri. L. J. 2759 (2003).

### 2.2.1 Definition of Cruelty

The legal concept of cruelty comprises of binary components;

I} mal-practise complained of;

II} the trepidation from intimidation.<sup>24</sup>

Indian Penal Code, regarding the offence says:

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

Explanation-

1. any will full 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
2. harassment of the woman where such harassment is with view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

Above explanation depicts that any intentional act which abets or directs a woman to commit suicide constitutes cruelty. Such abetment points towards the presumption under Section 113A of IEA. When these two provisions are read together, it says that any conduct done by a person causing mental or physical injury to woman due to any illegal demand would be considered a cruelty. The decision says, when harassment has been done to a woman or her relative for

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<sup>24</sup>N.V. Hood, Cruelty against Husband 3 (Sagar Publication 1st Ed. 1993).



obtaining any unlawful demand of money or valuable security is to be considered a cruelty.<sup>25</sup>It was further laid down that the concrete evidences to establish a cruelty to woman should be there to convict the accused.<sup>26</sup>This is the condition precedent to establish an offence under Indian Penal Code. It is observed in the IPC that the conduct can be unintentional or it can be non-deliberate. If the offence is committed in a matrimonial relation, the above-mentioned motives are not required to be set up as an evidence. Under Hindu Marriage Act, 1955 (Section 13(1)(i-a)) intention is not required to be proved to impose an offence of 'Cruelty'.

A bare perusal shows that the word 'cruelty' encompasses any of the following elements: (a) any 'wilful' conduct which is of such a nature as is likely to drive the woman to commit suicide; or

(b) any 'wilful' conduct which is likely to cause grave injury to the woman; or

(c) any 'wilful' act which is likely to cause danger to life, limb or health whether physical or mental of the woman. Section 498-A of the I.P.C. speaks of cruelty to wife by husband or the relatives of the husband. The first part of this Section provides for the punishment for the person, which includes the husband or the relative of the husband of the woman who subjects the woman to cruelty.<sup>27</sup>

Explanation makes it clear as to what meaning would be given to the term 'cruelty'. Explanation (a) says that 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 would

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<sup>25</sup>Shobha Rani v. Medhukar Reddi, A.I.R. 1988 S.C. 121(India).

<sup>26</sup>*Id.*

<sup>27</sup> Supra note 25.

amount to cruelty. Explanation (b) says that cruelty would mean the harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

It is established principles of law so far as sec. 498-A, I.P.C. is concerned that to constitute an offence of cruelty, wilful conduct should be practised to drive a woman to commit suicide and that practised if done should be proved against the accused beyond reasonable doubt. The conduct performed by the accused should be reason of apprehension and anxiety of the victim.

### **2.2.2 Cruelty practised against Husband**

Under Indian culture, marriage is an ultimate union of man and woman. According to ancient thoughts, this union is nothing but for procreation and caring a child. According to “Westmarck”, The above concept is in foundation of an institution of wedlock. Now a days, numbers of marriages solemnised each day are increasing but the divorce cases in society are also in a vast proportion either due to mistake by husband or wife. Though, cases are mostly filed by a woman victim it is not always necessary that all those complaints are filed bona fide. Freedom of schooling, working outdoors and equal opportunities for economic growth have changed the mindset of women who have gained success after the above opportunities and the harmony of marital relation is disbalanced, when that status has been misused by a woman. When the perks given to women under legal

provisions are abused the scale tilts towards woman as the society is more concerned about the so-called weaker entity in a marriage.<sup>28</sup>

“Cruelty” is an ill-treatment which causes mental and physical hardship endangering health of a person who is subjected to such unfair treatment. General assumption is that only a woman has to go through such torture and harassment by husband and his relatives but practically the reverse cases are exponentially increasing in modern era.

“Cruelty” has been practised since the civilization began. Human beings are cruel irrespective of any particular gender. The one who is powerful always dominates the will of other who is under any type of obligation to that person.<sup>29</sup>

When the society started developing, the human started using their power over a human very frequently than it was practised in ancient times. The one living a backward or weaker life are exploited by the person living a powerful life. After that, a subject of cruelty was taken to marital relations. In the initial stage, a woman was considered as a vulnerable community who was subjected to cruelty by man. After a passage of time, the condition reversed and so called strong male community was also affected by this practise. Women got the awareness of their rights and many of times innocent male were dragged into the court without any offence being committed by them. During early times, there were no authority for the redressal of such issues and the complaints of such cruelty were hardly reported.<sup>30</sup>

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<sup>28</sup>Dhawesh Pahuja, Cruelty against husband in India, LEGAL INDIA (Aug. 26, 2011), <https://www.legalindia.com/cruelty-against-husband-in-india/> .visited on 02 June 2020.

<sup>29</sup>A.S Arora, *Law on Cruelty against husband*, (2010).

<sup>30</sup>*Id.*

### 2.2.3 Concept of Matrimonial Cruelty in Penal Code

Section 498A was inserted in 1983 in the Indian Penal Code. It was introduced with an idea to overcome the social issue of 'Cruelty'.<sup>31</sup> This step was taken by the legislation to make a better matrimonial institution. It was protecting two-way interest of society. On one hand its motive was to society protected from such violent activities and on the other hand its motive was to introduce a strict provision which can help women safer in terms of dowry harassment and other polluting elements of society. In Marriage knot woman has to undergo lots of different challenges which she can handle with the support of her husband and her in-laws. But, when a woman faces challenge from them only, it is necessary that provisions to handle with such frequent matrimonial issues should be made punishable. Under IPC there are different provisions dealing with different matrimonial offences which the researcher has discussed later.

These legislative provisions echoed differently than expected. The drawbacks of these provisions are coming out in light very repeatedly nowadays. If 'Malimath Committee Report' is analysed, it can be observed that when a complaint of harassment or cruelty has been lodged, the power of arrest in hands of police is vested by the legislation and such powers are used arbitrarily by them as they misuse their powers by threatening the accused for arrest and even threatens to hinder in the investigation proceeding.<sup>32</sup>

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<sup>31</sup>The Criminal (Amendment) Act, 1983, No. 15, Acts of Parliament, 1983(India).

<sup>32</sup>237th Law Commission Report, THE LAW COMMISSION, (Oct. 2001), [http://lawcom.gov.uk/app/uploads/2015/03/lc273\\_Evidence\\_of\\_Bad\\_Character\\_in\\_Criminal\\_Proceedings\\_Report.pdf](http://lawcom.gov.uk/app/uploads/2015/03/lc273_Evidence_of_Bad_Character_in_Criminal_Proceedings_Report.pdf). Visited on June 13, 2020.

A report has been prepared by the law commission of India regarding 'compounding' of different offences listed in IPC. In the report it was highly recommended that the offence of 'cruelty' should be made compoundable with the permission of court as per the procedure laid down in Cr.P.C. Such suggestion was made for numerous times before it was suggested by the Law Commission even in the Apex Court decisions.

In a benchmark case of 'Preeti Gupta V. State of Jharkhand'<sup>33</sup> the Apex Court suggested a reiteration of provision of 'Cruelty' and this suggestion was contrary to the rigidness of the offence. Thus, the procedural laws were likely to be made liberal so that the object of substantive law is not frustrated. Simple legal procedures will make the laws easy to implement and as the offence discussed here has a direct nexus between family and marriage, a scope of settlement should be included when the matter has been taken to the court, because now a days the rights of woman are deliberately used either by woman herself or by their solicitors as they are using it to get money from the other party and in case if the woman is misguided, the object of person advising such loops of law are using it to get money from their client. If the opportunity of compromise is not given the marriage relation fails and it affects the arrangement in society which has been trusted since long times.

It has been properly discussed that how sister-in-law become victims of section 498A without having any connection with cruelty. Not only that but there are many practical examples where 498A was charged against remote relatives and friends. The fast increase of matrimonial litigation according to the Supreme Court establishes discontent and disturbance in the family life of a huge number of

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<sup>33</sup> A.I.R. 2010 S.C. 3363(India).

people of society. False charge of cruelty under criminal law has become a ground of cruelty for matrimonial relief. False cases of bigamy against husband<sup>34</sup> or under Dowry Prohibition Act, 1961 as well as Indian Penal Code<sup>35</sup> are also amount to cruelty as decided by various High Courts. As the Supreme Court said the target was to abolish evil of dowry system but the abuse of process is giving rise to a novel issue to be solved without the specific provisions under any law for the time being in force.<sup>36</sup> The judiciary has considered a vexatious claim to be one type of cruelty only.<sup>37</sup>

Though, the generalised opinion imposes the imputation on a husband being preparator, it cannot be strictly believed that wife can never be perpetuated for the cruelty towards husband. During the prior period instances of cruelty by woman were not coming out in light as earlier cruelty in physical sense only was the ground when matrimonial disputes were dealt by courts. In a modern timespan Hon'ble Supreme court has laid down that psychological cruelty can also be the ground for such cases and a husband can also rely on such ground of cruelty.

The High court of Bombay, has ruled that the adultery committed by husband can be the ground for a wife seeking divorce but if the allegation is founded on inefficient reasons such false statements by wife also amounts to cruelty. The High court stated that the uncorroborated imputations causing mental harassment to husband makes it cruelty practised on husband by a wife.

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<sup>34</sup> Raj v. Raj, A.I.R. 1986 pat. 362(India).

<sup>35</sup> Kalpana v. Surendra, A.I.R. 1985 All. 253(India).

<sup>36</sup> Sushil Kumar Sharma v. Union of India, A.I.R. 2005 S.C. 3100(India).

<sup>37</sup> Ashok Kumar v. Vijay Laxmi, A.I.R. 1992 Del. 182(India).

## **2.3 Causes of Cruelty**

### **2.3.1 Legal extortion**

When marriages are on the brink of divorce 498A acts a weapon to harass husbands and in laws for money. Women blackmail their husbands and in laws and coerce them to fulfil her demands in lieu of false allegations against them. Greedy and vengeful women grossly misusing pro-women laws have resulted in verdicts by the Supreme court that have come as a big blow for women who are in real victims within their marriages.<sup>38</sup>

By abusing a process of law under section 498A, the status, character and social image of innocent men and his family are on stake when a woman seeks to gain money and tends to take revenge to satisfy her feminist ego. The frivolous case of 498A has put innocent families behind the bars as the law highly favours women and concept of protection of men is being frustrated frequently. The women therefore, is using this provision as a weapon to strengthen her position in house and society at large by malign the image of her husband and his family. Such threats are enough for the husband to succumb to her demands since women are favoured by the law and it becomes difficult to fight that.

### **2.3.2 Personal Vendetta**

Extortion and seeking vengeance became easy with fabrication of lies and involving husband and all the relatives with no fault of their own. The court has observed that women victims who have not good relations with her marital family

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<sup>38</sup>Pooja Bedi, *Marriage is the new extortion racket*, TOI, June 17, 2018 at pg. No. 1.

uses section 498A as a shield and accuses the entire family to grow her points in the eyes of law and society even if there are no evidences against any of the family members.

In one case the Delhi resident Sanjay Kumar along with his three family members were acquitted by ADJ. Kamini Lau as the complaint filed by her wife of dowry harassment was found independent of any material corroboration. “I may further observe that Section 498A IPC (husband or relative subjecting a woman to cruelty) in the recent years has become consummate embodiment of gross human rights violation, extortion and corruption and even the apex court of our country had acknowledged this abuse and termed it legal terrorism. The provisions of Section 498A IPC are not a law to take revenge, seek recovery of dowry or to force a divorce, but a penal provision to punish the wrong doers, the judge said.”<sup>39</sup>

### **2.3.3 Biased by Society**

Woman is always viewed as vulnerable and weak participant in social context due to modernization and fight against gender discrimination, society is favouring women more than ever. Men are viewed as the problem makers and that that they cannot be on the right side of the law which gave birth to “pseudo-feminism” where men are looked down on and women have gained much power and prowess from this. The fight against gender discrimination is age old and its effects are multifaceted. Cruelty is no more just “against women” but the tables have turned and Cruelty is a gender-neutral issue today.

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<sup>39</sup>Deccan Herald, DOWRY LAW IS NOT FOR PERSONAL VENDETTA: COURT, 3 (Deccan Herald News Service, Hubli ed. 2011).



### **2.3.4 Fake Feminism**

A fake feminism is famous for misusing the law and thus those women practising the above-mentioned term have changed the meaning of feminism by defining themselves as the better sex and how women are superior to men. Encouraging the idea that women deserve more than men and thrusting ideologies of how women should be in a society without the consideration of free will violates the concept of feminism. Some of the instances today are such as discouraging or patronizing women who want to stay at home or choose to be home makers, condemning women who do not dress well or do not wish to wear makeup, Failure to provide men with '*benefit of the doubt*' when it comes to homely disputes or rape accusations, degrading men who choose to stay home and take care of the family, etc. Feminist feel has run over the minds of women such largely that ground less cases against men are lodged because such women believe that they deserve better than men and they are not equal but superior than a male entity.

### **2.3.5 Favoured by the Judiciary**

Judiciary has always favoured women and hence the existence of women friendly laws. Giving them privilege and respect as a weaker sex turned into a bane since men are viewed as culprits even if they're innocent. This has been going on since a long time now and fighting against a false case is difficult since women are favoured and considered to be honest in their stance. Men find it too difficult to get anticipatory bail in case of false allegations and the relatives gets involved are also not spared.

## CHAPTER 3

### LAWS GOVERNING THE STUDY

3.1	Constitutional Provisions
3.1.1	Concept of Equality and Equal Rights
3.2	Indian Penal Code,1860
3.2.1	Sec.498A
3.2.2	Sec. 304B. Dowry death
3.2.3	Section 306, I.P.C. Abetment of suicide
3.2.4	Presumption of abetment to suicide and Section 306
3.2.5	Presumption as to dowry death
3.3	The Hindu Marriage Act, 1955
3.3.1	Cruelty under The Hindu Marriage Act
3.4	Domestic Violence Act, 2005
3.4.1	Concept of Cruelty under this Act

This chapter discusses the statutory provisions laid down in India in various acts in order to protect women.

### **3.1 Constitutional Provisions**

Constitution is called law of land. It binds all High Courts and subordinate courts of India. The Constitution has provided certain more powers to the weaker section of the society. The said provisions and other provisions relating to this study has been discussed as below.

#### **3.1.1 Equality of Rights:**

Article-14 : “Equality before law - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.”<sup>40</sup>

Article-15 : “Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

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<sup>40</sup>INDIA CONST. art. 14.

(3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or in clause ( 2 ) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”<sup>41</sup>

Article-21 : “Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.”<sup>42</sup>

**Scope :** The underlying principle under Article 14 of the Constitution gives equality and equal protection of Law. It is extended to all the citizens. It stands for non-discrimination among citizens with respect to equality. The concept of equality embossed in preamble is stated under this provision. To gain the objectives included under preamble, Constitution guarantees fundamental rights to the citizens and some of those rights can be exercised by the non-citizens too. These rights are extended to women equivalent to men. Above listed Articles are enacted to prohibit gender-based classification of those fundamental rights and made applicable to each person uniformly.

#### **Application by Hon’ble Courts :**

In Vijaylakshmi Vs. Punjab University<sup>43</sup> Hon’ble court laid down that as a collective interpretation of Article 15(1) and 15(3) state may make special rules for women but there is no special provision in favour of men. It can be thus concluded that somehow

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<sup>41</sup>INDIA CONST. art. 15.

<sup>42</sup>INDIA CONST. art. 21.

<sup>43</sup>A.I.R. (2003) S.C. 3331(India).

the discrimination when exercised on men is permissible but *vice versa* should not be exercised. Section 498A of IPC should be looked into to check its constitutional validity, whether it complies with Article 14 or not. Article 14 paints a rainbow of socio-economic equality in our democratic country. But 498A of IPC gives special rights to women who has actually gained equality in this dynamically evolving world and still considered as a privileged and a weaker community of our society. Moreover, the control over the legal rights under this section is nowhere mentioned and women misuses such privileges against man.

In Pawan Kumar v. State of Haryana,<sup>44</sup> Reason of death was burn injury to deceased. The evidences were adduced that deceased was being harassed in order to anticipation of dowry and presumption of dowry death under section 113B comes into context and conviction of her partner and his relatives was announced to be legitimate.

In Mohammad Hoshan v. State of Andhra Pradesh.<sup>45</sup> The Supreme court held: “Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusation or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of the sensitivity, degree of courage and endurance to withstand such cruelty. Each case has to be decided on its own facts whether mental cruelty is made out”.

### **Analysis:**

Justice Malimath Committee- ‘Reforms of Criminal Justice System’ , Government of India suggested the amendment in Section-498A and the offence under section was

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<sup>44</sup>6 Cri.L.J.1679 (2001)(India).

<sup>45</sup>9 Cri. .L.J. 4124 (2002)(India).

asked to be made bailable and compoundable rather being non-bailable and non-compoundable. It was observed by the committee that every woman is not necessarily innocent and every man is not necessarily cruel but, section 498A generalises the women being innocent always and men are *jeopardised* due to such generalisation. The provision of IPC was therefore disbalancing the concept of Article 14 under Constitution aggressively.

## **3.2 Indian Penal Code,1860**

**3.2.1 Section-498A:** “Cruelty against 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 such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

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 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 demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

The present Section-498A has been inserted in 1983. This was inserted to help needy women for their protection. These women were frequently abused, harassed at her matrimonial house. As per this provision those perpetrators were to be held liable for the imprisonment of three years and fine. The concept is further extended under section 304B if woman dies in circumstances where reasonable suspicion on matrimonial relatives is founded on the grounds of dowry within 7 years of her marriage; the inquest by executive magistrate as per section 174 of Cr.P.C. is to be carried out.<sup>46</sup>

In times of urbanization social freedom, economic independence, the feminism is using section 498A as shield to coverup their weaknesses and inability to balance economy as well as social growth. The feeling of taking vengeance by daughter-in-law of a family is unfortunately taking away the familiar feelings from the husband and his family members as well as any relative whom a woman wants to target. Women uses the weapon of blackmailing her in-laws by misusing such provisions to make them agree to her unreasonable demands and huge amount of money is asked for by the women to settle the case before a court. Her marital family chooses to bow down to such irrational demands to avoid the social anger of society due to such court cases. According to statistics 9 out of 10 women are lodging the case due to demand of dowry and threats to her for money and property given to her by her marital relatives. As, if the demand is not satisfied, she is being threatened by them verbally and physically. There are cases where dowry is not demanded but making a woman feel inferior in different things like her family status, complexion, etc and as a result

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<sup>46</sup>Adhip Kumar Ray, *Section 498A of IPC: A Weapon or A Shield? – Supreme Court of India*, MONDAQ (Oct. 10,2018), <https://www.mondaq.com/india/crime/743068/section-498a-of-ipc-a-weapon-or-a-shield-supreme-court-of-india>. last visited June 15, 2020.

she detaches her strings from life on her own. It is also one of the ways to exercise cruelty on a married woman.

The offence to constitute a cruelty under section 198A requires a specific type of acts to be done by a husband and his relatives. The elements which constitutes cruelty under this provision are as follows:

1. Wilful conduct;
2. Injuring or endangering the 'life, limb or health of a woman';
3. Woman attempting a suicide.
4. Coercing a woman/her relative for the illegal demand of assets.
5. Repeated demand of dowry and to gain the dowry harassment exercised on woman both physically and psychologically.
6. Presence of husband or his relative at the time of suicide is not necessary to make the liable for cruelty.
7. It is also immaterial whether an act, omission or conduct has been practised on woman at her marital home or any other home. At the relevant time the place of woman's stay is not material.<sup>47</sup>

**(A) Act or Omission Amounting to Cruelty-**

Below listed phenomena show cases where, accused himself was convicted of the offence of 'Cruelty':

1. The victim wrote a letter to her brother that her in-laws are treating her badly as they demand 30,000 Rupees along with a Maruti Car. In that case

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<sup>47</sup>Jagdish Soni v. State of Rajasthan, 9 Cr. L.J. 1902 (1998).



demanding of such properties and threatening a woman if the demands are not satisfied, attracts the offence of 'Cruelty' under I.P.C.<sup>48</sup>

2. Husband did not allow her wife to go out of the house. He always suspected her, demeaned her and called her prostitute. It was a mental harassment of the woman and she felt insulted. Thus, the husband was convicted of the offence of 'Cruelty'.<sup>49</sup>
3. Father-in-law of the deceased person asked for cash, watch, gold, radio set in spite of Bullet motorcycle amounted to 'Cruelty' exercised on a deceased woman under 498A, I.P.C.<sup>50</sup>
4. The wife was harassed through the vexatious and malicious litigation and warrants were executed against her and her personal property was seized through the court. She committed suicide and her husband and his relatives were convicted.<sup>51</sup>
5. Deceased woman was harassed and abused in the presence of her brother using abusive language like "Bloody whore, why don't you die?" and always raised fingers at her ethics and character. Such facts proved were found enough to establish the offence of 'Cruelty'.<sup>52</sup>
6. Woman committed suicide as she was threatened and beaten by her husband. Husband slapped her and intimidated her that she will not come to her marital home alive from her parent's house. These occasions were sufficient to prove the offence of 'Cruelty'.<sup>53</sup>

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<sup>48</sup>Gulabi Devi v. State of Bihar, Cr. L.J. 126 (2007).

<sup>49</sup>Sarojakshan Shankarm & ors v. State of Maharashtra Cr. L.J. 340 (1995).

<sup>50</sup>Dalip v. State of Orrisa, 3 Jud. Cr. Rep. 285 (2002).

<sup>51</sup>Madhuri Mukund Chitnis v. Mukund Martand Chitnis & anor Cr. L.J. III (Bom)(1992).

<sup>52</sup>Mohan Chand Kholia v. State, 2Jud. Cr. Rep. 477 (DL)(2003).

<sup>53</sup>Raj Kumar v. State of MP, 4 RCR (Criminal)(2006).

**(B) Act or Omission not Amounting to Cruelty-**

The phenomena listed below are exempted from being called an offence of cruelty:

1. A husband seeking for help from his Father-in-law is not something to be known as dowry demand and if a woman misunderstands the money requested by her husband does not account as cruelty to woman.<sup>54</sup>
2. Drinking and late night home coming against the will of wife may not solely amount to cruelty to wife.<sup>55</sup>
3. In married life of any couple there is no total harmony in opinion of two people and it is nothing unusual if husband and wife quarrel at petty issues. It is not to be considered as cruelty.<sup>56</sup>
4. when the motive behind illegal demands and harassment to women is not conclusively proved to be the cause of commission of suicide by woman, such beating and harassment may not always amount to cruelty.<sup>57</sup>
5. Occasional beating by husband is not enough to conclude the offence of cruelty.<sup>58</sup>
6. A wife was told to do the cultivation on her husband's land. She refused to do so and was taunted by him that she should work in the field as she did not bring any property from her parental home and was assaulted with hands twice. Such assault is not amounting to cruelty as against the husband.<sup>59</sup>

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<sup>54</sup>Kakumanu Jayaprasada Rao v. State of A.P., 1 RCR (Criminal) 748(2005).

<sup>55</sup>P. Bikshapati and ors. V. State of A.P. Cr. L. J 1186 (A.P)(1989).

<sup>56</sup>Vadia Vinay Kumar v. State of A.P., 3 RCR (Criminal), 394(2006).

<sup>57</sup>Sarla Prabhakar Waghmare (Smt) v. State of Maharashtra &ors, Cr. L.J. 407 (Bom)(1990).

<sup>58</sup>Changala Jaya Sankara Rao v. State of A. P, 1 Crimes 122 (A. P.)(1997).

<sup>59</sup>Rajkumar & anr. v. State of Karnataka, 3 RCR (Criminal) 820(2006).

7. A woman was asked to leave her habits of being idol all the time and was advised to take interest in household works by the husband and her in-laws. Their motive behind such advice was to make her more compatible with other family members which does not constitute cruelty.<sup>60</sup>

### **Result of abusing privilege given:**

Due to privilege given to female, sometimes they drag innocent man who has to suffer through the long and tiring process of court procedures. A false implication on a person makes it hard to survive in social environment making him go through disgust of society. Sometimes the reverse impact is felt on the woman who lodged a fake complaint when she has no independent source of livelihood as a husband being hurt by such step by his wife may lead to the demand of divorce as his family members would have been arrested due to such complaint and she showed no mercy on his parents. Children born during the marriage are the real victims of such drastic steps who don't need to go through the legal action but have to face socially raised questions which sometimes make them anti-social and rough personality.

The court proceeding drives way towards stringent sufferings to entire family concerned with the accused. The suffering and struggle leave such deep scars that the acquittal also proves to be insufficient to remove its signs from their life. The increasing numbers of such complaints are the poking fingers to the disturbance in social equilibrium and marriage institution. The genuine

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<sup>60</sup> State of Karnataka v. Krishna Parasharam Kharade &Ors, 3 RCR (Criminal)(2006).

complaints are also doubted due to such fake complaints as the veracity of real complaints are also not believed by the society.

The conclusive result of such abuse of power shows adverse effect on marriage institute and family culture. The trust of younger generations eligible for marriage would be shaken from marriage institute.

Other anticipated results of abuse are as follows:

- When a person is sent to prison after arrest under offence of dowry demand, he is kept in custody with the rigid criminals, which directly affects their thinking and point of view towards their own life.
- Corruption in a system may increase as the officers may intimidate the innocent accused to pay for their legal rights to get the bail or they will delay the progress of their court proceeding.
- The tendency of lawyers also changes when the women lodging fake complaints come to them. The professionals with low ethical values encourage woman to exaggerate their demands and amounts they ask for. It causes collective disgust from the society towards such modus operandi of both the professional and client.
- Due to social harassment and disgust to the husband and his family even when the complaint is false, people with less tolerance commits suicide and balance in both families.
- WHO reported that the foremost reason of 'Elder Abuse' in India is misuse of laws in favour of woman with respect to dowry demand and cruelty to lower the suicide cases.
- When woman takes revenge on her husband by keeping him away from meeting their child, the soft mindset of child has been impacted

adversely and the psychological and physical growth of the child is resisted.

These reasons raise question against the womanhood as the provisions were instituted to reduce crime against woman but, women are misusing this privilege. This is suggested that women liable for such fake complaints should be punished twice than prescribed under the connecting sections.

### **3.2.2 Sec. 304B. Dowry death<sup>61</sup>—**

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Dowry or Dahej is the payment in cash or/and kind by the bride’s family to the bridegroom’s family along with the giving away of the bride (called

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<sup>61</sup> The Indian Penal Code 1860, Sec.304B(India).

Kanyadaan) in Indian marriage. Kanyadanam is an important part of Hindu marital rites. Kanya means daughter, and dana means gift.

Dowry originated in upper caste families as the wedding gift to the bride from her family. The dowry was later given to help with marriage expenses and became a form of insurance in the case that her in-laws mistreated her. Although the dowry was legally prohibited in 1961, it continues to be highly institutionalized. The groom often demands a dowry consisting of a large sum of money, farm animals, furniture, and electronics.

Dowry is one of the biggest social evils facing our country, and no civilized society should tolerate this, and every effort should be made to eradicate this evil. People giving and demanding dowry should be punished so severely that it deters to other such persons. But very often these laws formulated to help sufferer and to save them from guilty ones, are being misused by some unscrupulous wives to wreak havoc on husband and family.<sup>62</sup>

Paras Diwan has rightly quoted as, A man is not complete till he marries and a woman is just not a grihatpatni but a dharmapatni.<sup>63</sup> The state of an average Hindu woman has always been pitiable in society due to the current sociological structure and existing customary practices, but today the laws are such that she can easily misuse the laws favouring her to fulfil her own vicious desires. With changing time and society, the mentality of women has also changed. The rate of criminality among women has been at a rise but the laws have not changed with their changing mental capacity.<sup>64</sup>

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<sup>62</sup>Mr. Jitendra Gautam, *Anti-dowry laws-use or misuse*, (April 10, 2011, 10:59 pm), <http://www.mightylaws.in/414/anti-dowry-laws-misuse>. Last visited on June, 18, 2020)

<sup>63</sup>Diwan Paras & Diwan Peeyushi, *Modern Hindu Laws* 63,(19<sup>th</sup> ed. Allahabad Law agency,2008).

<sup>64</sup>Soumi Chatterjee & Dr. Pankaj Dwivedi, *Misuse of Anti Dowry laws-A Dark side of marriage*, 6 QJ (2018).

The tendency to adopt to crime against their own family members has risen to an alarming rate and it is certainly not fair to pre-establish that domestic violence happens to women only.<sup>65</sup> The reason why these laws are so much likely to be misused is because of the strict nature as they are non-compoundable, non-bailable, women have used them as shield to harass and torture men and following the stereotype of men being at fault since the beginning of time which lead to a series of false and fabricated cases allowing automatic arrests by the police.

The Hon'ble Supreme Court in *Rajesh Sharma v. State of Uttar Pradesh* said that there will be no arrests under 498A unless a Family Welfare Committee Vets Domestic Violence report by the family members. The judgement being in contravention with the Article 14 of The Constitution of India was dismissed by the Supreme Court in 2018 stating that the requirement of constitution of family welfare committees in every district to scrutinize complaints received by police or magistrate as "erroneous" and "impermissible"<sup>66</sup>

Considering the evil of dowry, it would have been wiser had the court issued certain guidelines to stop the evil. The time has come to stamp out the evil of dowry from the surroundings by handling the issue with strict measures and guaranty it to the society that no dowry demand and dowry death cases will take place in their society.<sup>67</sup>

### **Application:**

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<sup>65</sup>Singh Ajay Kumar, *Dowry Problems in India : Rethinking Anti Dowry Laws*, Cri. L.J. 256 (2009).

<sup>66</sup>Harish V Nair, *Supreme Court set back for husbands in bogus dowry cases*, IndiaToday, Sept.5,2018.

<sup>67</sup>Jyotika Kalra, *Misuse of dowry laws and the failure of the system*, The Hindu,Aug.5,2017.

The provision of punishment for dowry death is attracted if the following conditions are satisfied.

1. A woman should have died due to burn injury or in circumstances seems different from the natural death.
2. Incident of death “within 7 years of marriage”.
3. Women, been targeted by her in-laws for illegal property demand for solemnization or continuance of and cruelty/harassment should have been practiced by them.
4. Such practice should be proved to be done “soon before her death”.

“Soon before her death” is a question of fact as per the cases in which it is discussed and no specific time limits are prescribed for interpretation of the term.

For presumption under section 113B, IEA, it is material to establish that women were a victim of cruelty/harassment soon before her death. Every probability of natural death or accidental death has to be proved null by the State to let the case be in the context of death due to dowry. To prove such death, it is presumed by the courts that there is no need of direct evidences.

**Analysis:**

According to section 2 of Dowry Prohibition Act, exchanging of enticing properties and like practices should be abolished. It includes such demands to be curbed at, before or after marriage. The gifts given to bride and groom by their parents to express love and affection as well as according to customs are excluded from the purview of definition. The things which are ‘given or which



have been agreed to be given' as a consideration for marriage; i.e., gift, money or other expenditure are to be interpreted as dowry. As per the customary belief, bride's parents are said to be a weaker party to the marriage and they are bound to fulfil the wishes of groom and his family. Therefore, sometimes the position of bride's family has been exploited and to make relation continue her family has to compulsorily bow down to such coercive demand. Such coercion should be introduced as a key element to differentiate the terms 'dowry' and 'present' or else every present might become one type of dowry only.

In ancient times demand of dowry was a normal practice in most of the parts of India irrespective of bride being educated or middle class, they had to let it happen. As a result, women who could not give a burden to her parental family ended their lives on their own or they were forced to death by burning or causing other bodily injury. At that time dowry death was also called bride burning and nationwide it was recognised by such name as it was a differently tragic violence practiced on Indian women.

International media showed this practice and compared Indian culture with the other grown up and developed societies, where the reasons of women being murdered were due to much more complex reasons Indian was fighting with the very basic social as well as mental enemy. With modernisation social activists and Legislative institutes felt a strong urge to enact a strict law to eliminate such evil from society and Dowry Prohibition Act was drafted.

### **3.2.3 Section 306, I.P.C. Abetment of suicide:**

According to the definition given under Section 306- I.P.C:

“If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

In *Arvind Kumar v. State of U.P.*, adduced evidences were enough to prove that accused was humiliating, harassing and torturing his woman for not giving him expected dowry. As a result of such ill-treatment she used a kerosene to set herself on fire and was burnt 100%. When a living human set itself on fire, they naturally scream. When the incident took place, husband was present in the house but he did not try to stop her from doing this, neither he tried prevent her from the burns. He did not even call up a doctor when she was such badly injured. The circumstances pointed towards the presumption of Section 113B of the I.E.A, 1872. Defence failed to rebut the presumption and husband was punished under section 306 of I.P.C. and Section 4 of Dowry Prohibition Act.

#### **Analysis:**

It can be analysed after examining sections 304-B, 306 and 498A of the I.P.C. together that, though there are some similarity between Explanation-A of 498A and 306, elements of Section 306 alone are not compatible to commit offence of 498A or vice versa. But it is evident that if the ‘cruelty’ has been practised as a coercive force to demand a dowry according to Explanation-B under 498A, it attracts the 304-B of I.P.C.

Therefore, anything done by a husband or his relatives to abet woman to commit suicide/ injures/ threatens her for her life, limb or health with physical or psychological harassment is 'cruelty' under Section-498A as it drives a woman to end her self-respected life easily than to survive from day to day sufferings given by her own family.

Whenever a woman ends her life due to such stress and no one from the family tries to take out her from such harassing environment and constantly keeps taunting about dowry, it falls into a case of dowry death along with the cruelty practised for such particular demands. It can also be concluded that if woman commits suicide within 7 years of her marriage, than the death comes into a purview of presumption under section 113A, but if the death seems not a natural one and cause of death is in question, the presumption of 113B is to be inferred if she has been subjected to cruelty for dowry soon before her death. 'Soon before death' is an issue of fact, as the facts of cases differs from one to another.

### **3.2.4 Presumption of abetment to suicide and Section 306.**

Section-113A: "When the question is whether the commission of suicide by a woman has been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation- For the purposes of this section, ‘cruelty’ shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).”

There are two main elements which a prosecution has to establish to make a court presume under section- 113A in such case:

1. Wife has committed suicide “within 7 years of her marriage”;
2. Husband or any of his friends or his family member practised on her a “cruelty”.

In *Ghusabhai Raisangbhai Chorasiya v. State of Gujarat*,<sup>68</sup> husband had illicit relationship outside his wedding lock and wife committed suicide. The prosecution wanted the court to presume the relation of a husband to be the reason of her suicide under section 113A. As due to such relation wife was so much mentally harassed that she committed suicide to overcome that mental stigma given to her by the husband. Court refused to presume so under evidence act as the extra-marital relation does not fall into the meaning of cruelty defined in IPC and such illicit relationship issue can be sorted out by other provisions of law. Thus, the presumption under 113A is not extensible to this case because the illicit relationship is not included within the context of cruelty under Section 498A.

### **3.2.5 Presumption for dowry death**

Section 113-B:“ When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in

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<sup>68</sup>10 SCC 48 (2013).

connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation- For the purpose of this section 'dowry death' shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860)."

Intend behind this provision is to cultivate the way for using law of dowry, penal code and recording of evidence in such cases altogether. The provision of such presumption was introduced to monitor the cause and speedy trials of increasing dowry cases. This presumption was backed by most of the jurists and legal reformers because when a woman denied to give dowry or was concerned about the status of her parents when they are not in a position to give more dowry as and when asked by her in-laws, she was treated like nobody in the house and her rights are snatched away from her as a family member. Her parental family also cannot present sufficient proofs before court as they live far away from her daughter's home and cannot explain the actual circumstances through which she had gone through. Such loop holes were making it hard to prove that a woman was made a subject to exercise harassment in anticipation of property and it left very less chances of triumph of the prosecution.

The presuming can be applied to all the cases, without looking into the date of complaint lodging. It applies to the cases which were instituted before the introduction of this provision. Therefore, when in court, a case of dowry death is taken up for prosecution the cases of prior dates will also be presumed in consonance with the IEA presumption. Hence, effect of provision is *Retrospective*.

There are cases in which the accused was falsely imputed with the offence of dowry death without any substantial accusation. In one case Patna High Court refused the conviction of husband under dowry death as the essential element of “demand of dowry” by the man or his near ones was not proved. Both of a woman gave a statement as the father-in-law of her sister called just before four days of her death to demand the dowry, eventually it was concluded that this statement was given by him merely to satisfy the ingredient to attract the provision of 113B and no such communication was done to the father or any guardian of a woman regarding demand of dowry. Therefore, it was laid down by the court that until and unless cruelty under 498A and dowry demand under 304B is not proved, the presumption of 113B does not come into picture.

It is the essence of all the criminal laws that one who wants the court to believe a fact affirmed by them has to prove it first, then only the court can allow them for a legal remedy available. Same principle is applicable to the matrimony cases.

The ingredients to prove applicability of section 113B are as follows:

1. Married woman should have died in unnatural circumstances and cause of her death must be in question.
2. She must have been subjected to cruelty regarding the unlawful demand of dowry.
3. Demand of dowry should be established by the prosecution *beyond reasonable doubt*.
4. Such cruelty with dowry demand must have been made soon before a death of a woman.

### **Analysis:**

In the above sub-topics, the researcher has discussed provisions defined under different laws, i.e., IPC, IEA, (Prevention of) Dowry Prohibition Act. It can be made out easily that all these laws are inter-connected with each other directly or indirectly. There is a clear link between Indian Penal Code and Indian Evidence Act. When the complaint is filed in court, with some conditions satisfied during adducing evidence, the clear and direct nexus with Presumption in abetment to suicide (Section 113A) under Indian Evidence Act is established. When an offence of dowry death (Section 304B) under IPC is handled by court and essentials being present according to definition, the direct link between the above provision with the Presumption of Dowry Death (Section 113B) under Indian Evidence Act is formed. Both of the above provisions play an important role in deciding the cases of cruelty as when these cases have come into light, because the ingredients among the definitions are so strict and compulsive in nature that there are very few chances of a woman being left out from justice and equally, a man can be convicted for an offence which he has not committed. Mere statements given by prosecution will not be sufficient because they are imposed with the burden to prove what they affirm during the proceeding before Hon'ble Court. Hence it can be said that court can stop violence to a woman of any class irrespective of her standard of life, work, family background, etc. but, it also assures that such provisions will not make any innocent man suffer if the offence against them is not actually proved through all the above connected provisions. Therefore, providing security to women in their marital house along with the proviso that women don't misuse these privileges against a man and malpractice by women folks

and other such organizations can be eliminated and vanished from society making it easy to maintain and live life comfortably without fear from each other. Hence, care has been taken by the legislative power that no loopholes be left for any party to marriage and the next generation does not face trust issues when it comes to marriage institution.

### **3.3 The Hindu Marriage Act**

This Act is considered as first enacted law governing the matrimonial issues especially of Hindu Marriage.<sup>69</sup> Imposition of “cruelty” can be raised to obtain any relief in marital life by proving it has been done unlike previous Acts when the issue could be raised only to obtain judicial separation<sup>70</sup>.

#### **3.3.1 “Cruelty and Marriage”:**

The Act ensembles the provision for filing divorce petition on the ground of cruelty under Section- 13 (i) (a). It states as under:

“Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has, after the solemnization of the marriage, treated the petitioner with cruelty”.

It is evident from the sentence that, the provision has a *Retrospective* effect over the cases under this Act. By taking shelter under this provision, anybody,

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<sup>69</sup> Boparai Harinder, *The Expansion of Matrimonial Cruelty*, 23 J. Indian Law Institute Pg. No. 33-89(1981).

<sup>70</sup>Section 10(1)(b) repealed under amendment in Marriage Laws 1976.



including both man and woman can take the other to the court if the petitioner was harassed by the other party to marriage either by physical torturing or mental harassing, and pray to the court for granting divorce from that party. There are numerous cases where court has depicted that intentional harassment or motive full conduct is not a condition precedent to make the cruelty a ground for seeking divorce. The proof that it was exercised on aggrieved party is enough to claim divorce after the amendment in Act. Under the Hindu Marriage Act, 1955 as amended by the Marriage Laws (Amendment) Act, 1976, cruelty is a ground for divorce as well as for judicial separation.<sup>71</sup>

There are no conditions as regards the nature or fear of injury or harm. It may be pointed out here that the move towards liberalisation of the divorce laws vide the amendments in 1976 had many dissents who apprehended that the institution marriage would collapse. They urged caution and pointed out that divorce is not by any means a panacea for women's ills, and that quick-divorce may be much less valuable than tardy divorce.<sup>72</sup>

### **Scope:**

There are innumerable precedents dealing with the term "cruelty", which may be read here. There is no strict meaning of the term "cruelty", and it is also not possible because one act or conduct may be considered as cruelty in some case and it may not be considered as such in some other case. Mental cruelty may be considered as when either the husband or the wife gives mental pain,

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<sup>71</sup> Hindu Marriage Act, 1955, sec. 10 & sec. 13.

<sup>72</sup> J. DUNCAN & M. DERRETT, THE DEATH OF MARRIAGE LAW: E PITAPH FOR THE RISHIS, (Carolina Academic Press, 4<sup>th</sup> ed. 1978).

pressure, agony or suffering of such an extent that it divides the wife or the husband.

“Harassment” is generally known as the behaviour, in which a person is repeatedly disturbed. In the legal field, it means the behaviour, which seems to be disturbing and threatening. Such as, sexual harassment represents the situation at the workplace, in which the person works in continuous and unjustified sexual favours.

Numbers of sections have been amended and many sections have also been newly added, so that the law could not feel that its hands are insufficient to deal with the cruelty over women. Section 498A of Indian Penal Code (45 of 1860) is one of those measures implemented by legislature. This section was especially added to cope up with the situation of cruelty against married woman by her husband or his relatives, regarding the demand of dowry made “within 7 years of the marriage”. But cannot be denied the purpose of the section has been frustrated. In some cases, women have reported fake cases under this section, just for their personal benefits.

### **3.4 Act against Domestic Violence:**

“Protection of Women from Domestic Violence Act, 2005” proved to be an icon in the history of recognizing the cases of violence in sphere of society. The law has a huge area covering not only dowry issues but deals with many more social evils. The preface points out that every woman living as a family member after marriage in a matrimonial house is a beneficiary of this Act if

any violence has been committed to her by a person with whom she is sharing a domestic relation.

### **3.4.1 “Cruelty” under this Act:**

Under Section- 3 of the Act, definition of ‘Domestic Violence’ has been given.

It provides as under:

“Section-3: For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well- being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.—For the purposes of this section,—

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health

or development of the aggrieved person and includes assault, criminal intimidation and criminal force; (ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes— (a) insults, ridicule, humiliation, name calling and insults or ridicule especially with regard to not having a child or a male child; and (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

“economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.”

### **Scope**

Main objective of the Act is to protect woman from domestic violence under different provisions laid down under the Act. The motive behind this Act is to protect a woman living with the accused or is still living with the abuser. The crucial element to be established before court is the shared household of parties to dispute and they are connected to each other in terms of “*consanguinity, marriage or a relationship in the nature of marriage or adoption*”. When it is a joint family, relationship with all of them also matters. Not only wife, but sisters, widows, mother or any single woman if living with the abuser or had been lived with the abuser are eligible to such protection against violence exercised on them.

As per the different aspects covered under the definition, a threat given to woman can be of different types; i.e., it could have been expressed verbally, emotionally, physically, sexually or economically. Dowry demand by using harassment as a weapon to a woman and her relatives is included in domestic violence as well. The Act mainly wants to comply that woman has right over

the household that she shares at her matrimonial home. There are different types of orders that courts can pass. One of them is Residence Order under Section- 19, which may be passed by court to secure her title and ownership at in-law's home. This type of order cannot be passed against a woman.

Court can pass other orders like order for Monetary relief, Compensatory order, Custody order, protection order, etc. Such orders can prevent the abuser from doing violence or some other refraining acts against the abused woman or her family or to any other person who might be giving her help through the Act.

Act envisages the post of 'Protection officer' and gives power to NGOs to assist the woman in different ways. The free legal help, shelter for her, medical check-ups, etc are the helps that is to be provided to the woman by such authorities mentioned above to help a woman when she complaints about any violence committed to her or her family. There are officers whose duty is to let the authorities know about the incident of violence taking place under their area of functioning and the 'Protection officer' issues 'Protection order' and other needful measures to be passed in favour of a woman. If the order pronounced has not been complied with by the abuser, there is a penal provision in the act which makes the abuser liable to be punished with the imprisonment for maximum 1 year/ fine up to 20,000 rupees/ both. The offence of breaching the order is made *cognizable and non-bailable* under this Act. Protection officer has an authority to pass the order punishing the abuser to the above-mentioned limit. But when there is a miscarriage of duty on the part of such 'Protection officer', his misconduct is also made punishable under this Act. Therefore, ignorance of the legal provisions laid down under the Act

are to be considered as an offence, no matter they have been ignored by the authority or the abuser.

### **Application**

Just like Section-498A of the IPC was introduced for the security to woman from cruelty by the legislative power, the same institute made a law named 'Protection of Women from Domestic Violence Act, 2005' for providing security to woman against violence she might be facing I her own house. The decision of Government was supported and made applicable by 28 States of the country. The Act gives lots of opportunities to the abused woman and the reliefs granted to woman by the court are in the form of following orders:

1. Protection Order: After hearing the facts of both the parties, if *prima facie* case of domestic violence is found to have been committed or would be committed in future, the court may pass protection order in support of abused preventing the abuser from doing specific Acts; i.e., committing domestic violence, abetting domestic violence, etc.
2. Residence Order: If the violence has been proved, court may pass order restraining the abuser from selling or making any transaction regarding the shared household, removing the abuser from shared household, etc.
3. Monetary Relief: If it is proved that abused woman had to go through hardships due to domestic violence incurred to her, the court may pass order of relief for following subjects:
  - i) Loss of income necessary for livelihood;
  - ii) Medical expenditure;

- iii) For property if it has been removed from the control of abused;
  - iv) Maintenance of child and woman in addition to maintenance under section 125 of Cr.P.C.
4. Custody Order: During the prosecution of above-mentioned orders, the court can order the custody of a child to the applicant(abused) or grant it to any person applying on her behalf and decide the times when abused can meet his child. If it seems harming to a child the court can refuse the abuser to meet the child in custody of the abused.
  5. Compensation Order: In addition to the physical abuse, a woman who has faced the mental torture or any emotional abuse, court can order the respondent to pay compensation to the abused woman.

**Analysis:** Indian culture is called male dominated culture since long. Even today when it is a millennium of modernization in society there are huge number of people believing in ancient concept of patriarchy which makes it hard for these people to believe that women can work for home as well as work outside home on a same footing like a man do. This lack of trust towards women leads them to prove male dominance in house and society and if women tries to prove herself even after such opposing force a male dominated society tries to bury their willingness and efforts to divert them from the idea of equality. The Domestic Violence incurred to women is a result of such backward thought process of society. Therefore, the Act to stop such discriminatory and violent force against women was introduced to provide secured environment in a society to women and it gives a chance of improvement to the people having such idea of male centred society.



The physical aspects discussed above are not the only violence exercised by a person. Especially in a domestic relation when people are attached to each other, they get affected with the words and actions spoken and done to them. The domestic violence can be of a 'coercive control'<sup>73</sup> nature. In such violence a bodily injury visible is very minor to that which is found on the mind of an abused. The ignorant, demeaning behaviour of the abuser also affects the abused which can lead their mind to negative side. In R V. Dhaliwal<sup>74</sup> the wife was demeaned for long span of time before she eventually committed suicide. When the remarks and inferior behaviour was reported to court, they were considered as trivial if no physical abuse has been complained of and was given no focus but after the same thing continued for long a woman committed suicide and her husband was convicted. Therefore, there has to be the presence of *personal violence* in any form may it be psychological, provocative or of any other type.<sup>75</sup>

This mind set of male community has such strong impact that even the cultured and well-educated components living in a society are also not spared. Knowingly or unknowingly they are hurting their *grahlxmi* by imputing such orthodox ideologies on them. Women who does not retaliate considers it as the destiny and does not raise their voice against such mental and sometimes also physical abuse of society as they are left out with no other choice because they have no independent source of their livelihood.

In the modern era there are women who can fight for their rights opposed by the society. They don't believe in letting the society snatch away their right of

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<sup>73</sup> Herring Jonathan, *The Severity of Domestic Abuse*, 30 Student Advocate Committee Pg. No. 37-50(2018).

<sup>74</sup>2006 EWCA Crim 1139.

<sup>75</sup> Boparai Harinder, *The Expansion of Matrimonial Cruelty*, 23 J. Indian Law Institute Pg. No. 33-89(1981).

earning a lifestyle and gradually making it better to live atmosphere for other women too. Sometimes it has been seen that in the intoxication of breaking a stereotype woman are leaving behind the fidelity towards their families and dragging them into court proceedings to take advantage of the provisions laid down under the women supporting laws. To make their wish come true women are abusing the process of law as they are using it without any proper grounds against the family members who have different experiences in life and their motive behind preventing a women from doing something is to safeguard a family and not to confine a women in house. Though the legal court proceeding looks after a balanced decision, when the respondent of a case is unable to produce evidences in their support court has to give decision in favour of women who is misusing the law.

When India became independent, we actually started developing ourselves by improving so many aspects. Society and our culture are day by day getting advanced. Indian economy and education have also increased after independence. The government come up with the slogan of '*Beti Bachao Beti Padhao*' which indicates that girls should be provided more and more education to develop themselves as well as the Nation at large. They become self-dependent and become powerful to uplift themselves. Women now days are very much well versed with their rights. They have been provided with so many matrimonial rights also.

# CHAPTER 4

## JUDICIAL DECTUM

4.1	Interpretation of Cruelty in matrimonial Cases
4.2	Determining expression of “Cruelty”
4.3	Concept of “legal terrorism”
4.4	False accusation & Seriousness of Cruelty
4.5	False accusation of Physical Cruelty
4.6	Misuse of Section- 498A.
4.7	Landmark Judgement: Preventing misuse of S.498A
4.8	False allegations for demand of dowry and cruelty
4.9	Cruelty by wife

This chapter deals with the recent and landmark judgments of sec.498 which are acquittal or false cases with reference to the sec.304B of IPC. Judicial decisions are important with regard to the inference and precedents to apply in today's cases. Judicial precedents are imperative to comprehend stature of the law & society and where it stands. Judicial decisions are as important as the historical background of a provision for a better understanding and decision-making process for the present cases.

#### **4.1 Interpretation of Cruelty in matrimonial Cases**

**Shobha Rani v. Medhukar Reddi**<sup>76</sup>,

Facts:

The couple was happily married. At once stage they felt that there is no happiness in their wedlock anymore. The letters expressing anger towards each other were exchanged. The accusation against each other then started. Eventually, they decided to windup their relation mutually. Marriage was not dissolved by mutual consent unfortunately. Wife moved to the court by imputing cruelty as a ground for divorce and both of them landed in the court.

Issue of law:

Whether matrimonial cruelty amounts to cruelty in S.498A

Held:

The apex court in the above case laid down that section 498A of IPC has added a new facet to the concept of cruelty. According to Hon'ble court it is essential to prove any unlawful demand of money as to harass the wife in order to commit the offence of

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<sup>76</sup>1 SCR 1010 (1988).

cruelty. It was added that wilful or deliberate conduct need not always be intentional as in matrimonial offence the term cruelty as a ground for dissolution of marriage under section 13(a)(i-a) does not require it to be intentional. If the inference of harm or hurt to the women can be made out of behaviour to her, the offence of cruelty is said to have been established. Therefore, a relief to party, just because of absence of intention, cannot be denied. As a summarised result, after adducing evidences given by parties Hon'ble court concluded that both of them came to court with a mutual agreement to misuse the provision of law and dowry was demanded by husband merely to support the claim of wife and not to harass her. Apex Court changed the decision of the High Court.

## 4.2 Determining expression of “Cruelty”

In the case of *Noorjahan v. State*<sup>77</sup>,

Facts:

In very short period of marriage, a woman was ill treated by her man and in-laws for dowry. A woman was constricted by her husband and her brother-in-law, while a sister-in-law held a woman’s arm which resulted in a woman’s death. Every accused was punished and sentenced for the offence of murder and “cruelty” under IPC. Husband’s aunt was also made a party to case and convicted for “cruelty”. His aunt appealed against the conviction.

Issue of law :

Whether only dowry-related cruelty amounts to cruelty under S.498A

Held:

The decision of a trial court was confirmed by the High Court but it was reversed by the Supreme Court. Apex Court laid down that motive behind section 498A is to overcome the issue of woman’s death due to dowry and the proof to establish the offence was not given by the prosecution and conviction of aunt for “cruelty” was held unlawful.

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<sup>77</sup> 11 SCC 55(2008).

### 4.3 Concept of “legal terrorism”

In the case of Sushil Kumar Sharma v. Union of India<sup>78</sup> :

Facts:

As per “Article-32” of the constitution, the writ was instituted to announce the provision of Cruelty unconstitutional as the provision was misused by the women following pseudo-feminism and innocent people had to suffer due to false imputations raised on them.

Issue of law:

Adverse utilization of Section 498A is due to its constitutional validity and the provision being intra virus, does not make it a weapon for a woman to establish their personal benefits.

Held:

Hon’ble Supreme Court explained the object of section 498A as a preventive measure to control the evil of dowry demand from the society. The court has marked that there are incidents where the provision was used by woman with *malafide* intentions and complaints were found to be fake. When such cases are instituted, it imposes a social stigma on a husband and his family and even if they are acquitted as they were not in fault, it is not always necessary that the stain on their social status is wiped off. Nowadays social media and the press are the handiest mediums for people who wants their story to be heard by large numbers of people, which gives miserable outcome if someone is trying to conspire against any person. The court while dealing the case

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<sup>78</sup> 6 SCC 281(2005).

also laid down the remedies should be there for the innocent people so as to abolish the misuse of concerned and considerate legislative laws. The court said:

“Merely because the provision is constitutional and *intra vires*, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment.”

According to the observation of the Apex court, it necessitates the amendment in such provision which is misused to let the case reach to better merits irrespective of its veracity and truthfulness. Amendment should be of the nature where vexatious and frivolous complaints lodged against the husband can be treated as nullity. It becomes a duty of trial courts to look after it with caution that no one is deprived off from justice in the present framework. The provision is being used by the female members as a ‘legal terrorism’ against innocent man and while eliminating one menace from society, one more enemy factor to the society has been added. The story of wolf was mentioned and it was exemplary, it was said that if cry of wolf is frequently made, no one would come to protect you when actually wolf comes. In any case there is no straight jacket formula for the investigating agency and court as they have to conduct the prosecution of the case according to legal provisions only. Therefore, there should be no pre-decisive setup in their mind in favour of or against any party to the case. It was argued by the petitioner in the appeal before Apex court that investigating authority as well as courts presume the accused to be guilty and the complaint is *bona fide*. It was told in the order that, “Role of investigating agencies and court is that of watch dog and not of a bloodhound”. Thus, in any case there should be no conviction of the innocent person on the basis of vexatious or frivolous complaint.



#### **4.4 False accusation & Seriousness of Cruelty**

In *Manju Ram Kalita v. State of Assam*<sup>79</sup>,

Facts:

The charges by the wife were imposed regarding mental as well as physical harassment amounting to cruelty and those charges were denied by the husband.

Issue of law:

Whether petty quarrels amount to cruelty

Held:

Hon'ble Court laid down that to establish 'Cruelty', the explanations and conditions under section- 498A should be complied with as the cruelty can include other offences too. The offence of 'Cruelty' is to be decided by adducing evidences on man's conduct, gravity or seriousness of his acts and determining whether it was a reason behind suicide of a woman. This is required to be established that a woman was harassed by "cruelty" for some continuous period or for a time in a close proximity of time of her suicide when a complaint is filed against a husband of 'Cruelty'. If a woman is lodging complaint of cruelty due to nominal home quarrels, it does not come into the purview of 'Cruelty' under Section 498A of I.P.C.

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<sup>79</sup> 13 SCC 330(2009).

#### **4. 5 False accusation of Physical Cruelty**

In *Bibi Parwana Khatoon v. State of Bihar*<sup>80</sup>,

Facts:

The husband and his relatives were convicted under the offence of ‘Cruelty’ by setting her up on fire and killed. The conviction was challenged by sister-in-law and her husband of the deceased woman.

Issue of law:

Whether family of husband are equally part of the accusation.

Held:

Circumstantial evidence did not establish that appellant-accused, deceased victim’s sister-in-law and her husband, had any common intention with husband (convicted accused) of deceased in commission of crime and sufficient evidence was also present that both used to live in a different village and not with accused husband. As evidence available did not prove beyond reasonable doubt, that appellants tortured victim for any demand of dowry. It was noticed by the Court that the common intention not being established, the residence of the sister-in-law and brother-in-law of the deceased was also different and away from the house where deceased was killed. Thus, without the proving of charge “beyond reasonable doubt” the conviction was stayed by the High Court. The acquittal was a message to lower courts that the innocent relatives should be safeguarded from the false imputations by misusing the vulnerability of woman.

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<sup>80</sup> 6 SCC 792 (2017).

## **4.6 Misuse of Section- 498A.**

In 'Social Action Forum for Manav Adhikar' v. Union of India<sup>81</sup>,

Facts:

A writ petition under Article-32 was filed by petitioners. A petition contended that there are numerous cases where women are suffering in their home by their husband and family members with Cruelty, but there are women who are using this legal provision as a weapon to take vengeance against her in-laws. Such abuse of law is not prevented by any concrete remedy to the innocent sufferers. It was added in the argument that the actual purpose behind the provision is frustrated and the targeted community of society is not provided with the effects of its misuse because the families entirely are ruined when they face social disgust for the things that they have not done.

Issue of law:

Whether S.498A of IPC is misused?

Held:

As per the directions, the duty and operation of Family Welfare Committee was not in consonance with the procedural law. The cognizance and bail system was affected due to the functions of committee. Therefore, organizational functions of committee were held improper and the directions given under Rajesh Sharma case was edited by allowing approach to the High Court of the State under Criminal Procedure Code through Section 482.

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<sup>81</sup> 10 SCC 443 (2018).

## **4.7 Landmark Judgement: Preventing misuse of S.498A**

In *Rajesh Kumar & Ors. v. State of U.P.*<sup>82</sup>,

Facts:

Here, relatives were also made party along with the husband by the abused party for causing ‘cruelty’ to wife. The other relatives demanded certain guidelines to prevent collective imputation against innocent members of family. It was their deposition that other relatives are also dragged unnecessarily in the case of cruelty as it is not always true that all the family members have participated in the offence. Thus, prayer was to draw proper guidelines for preventing misuse of provision of ‘Cruelty’ in the said appeal.

Issue of law:

Preventing misuse of law and guidelines for arrest.

Held:

The detailed directory guidelines were given by SC of India to prevent the abuse of rights under Section-498A IPC. There was a direction to constitute a Family Welfare Committee in every district which will be consisting of three members. The District Legal Service Authorities was to make this committee. Committee members may consist of volunteer/ social worker/ retire officers/ wife of working officials or anybody who may be found willing and suitable as per the qualifications. The working and constitution of the committee should be reviewed for one time in 12 months by District and Sessions Judge who was ex-officio chairman of District Legal Service Authority. These committee members cannot be witnesses.

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<sup>82</sup> 10 SCC 443(2018).

The power to grant exemption has been vested in a trial court by allowing presence through video conferencing without adverse effect to the merits of case. These directions were not applicable to the offences involving tangible injuries or death of person.

#### **4.8 False allegations for demand of dowry and cruelty**

In State of Maharashtra vs. Ashok Narayan Dandalwar<sup>83</sup>,

Facts:

The accused was charged for Section-498A and Section-306 of the Indian Penal Code, was acquitted from the charge under Section-306 but was convicted for “cruelty”.

Held:

Objection appealed was dismissed and court submitted that,

“ On an appeal being carried, the High Court examined the entire material on record and came to the conclusion that there is not an iota of material on the basis of which the cruelty which is the necessary ingredient for bringing home the charge under Section 498A, I.P.C. can be said to have been established and accordingly acquitted him. Mr. Deshpande, appearing for the State vehemently contended that the oral evidence read with the letters supposed to have been written by the deceased to her brother as well as other persons unequivocally indicates the treatment that was meted out to her by the accused and therefore, the order of acquittal is wholly unjustified. But, having gone through the letters produced by the prosecution, we do not find even a slightest assertion in any of the letters complaining against the husband either he was making any demand at any point of time or he has assaulted or treated the wife with cruelty or torture. In that view of the matter, when in so many letters the deceased has not reflected any cruelty alleged to have been meted out to her by the husband. It is difficult to maintain a conviction on the oral testimony of the younger

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<sup>83</sup> Cr. L.J. 4993 (2000).

brother of the deceased and, in our view, the High Court was fully justified in recording an order of acquittal. We see no merits in this appeal to interfere with the said order of acquittal.”

## 4.9 Cruelty by wife

In the case of Mrs. Christine Lazarus Menezes v. Mr. Lazarus Peter Menezes,<sup>84</sup>

Facts:

A wife filed an appeal against a decision of Family Court who granted the prayer of husband for dissolution of marriage.

Issue of law:

Whether husband was subjected to cruelty

Held:

The Bombay High Court rejected the appeal and the decision of Family Court allowing the dissolution of marriage to husband held correct by the High Court. During proceeding it was admitted by the wife in affidavit that she got registered, complaint against her husband for “Cruelty” and 406 of IPC in Khervadi Police Station, Mumbai. She admitted that she lodged the complaint to bring him back to the house where they used to live. The Trial Court observed from the proceedings that the vexatious allegation was imputed on him due to that he remained in custody for 7 days. Thus, a woman constituted an offence of cruelty by wife against her husband.

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<sup>84</sup> 150 HC (Bom) 2008.



# **CHAPTER 5**

## **CONCLUSIONS AND SUGGESTIONS**

5.1	Conclusions
5.2	Suggestions
5.2.1	Need for a statute to protect men
5.2.2	Rule of innocent until proven guilty
5.2.3	Separate machinery and agency
5.2.4	Particular reforms in s. 498A, I.P.C
5.2.5	Law should be equal for everyone
5.2.6	General suggestions

The present chapter has been divided into two parts namely: Conclusions and suggestions.

## **5.1 Conclusions**

In the first chapter, it is discussed about the introduction part to the problem of harassment of men through the protective laws for women in India. It contains the matter about the early period, where the husbands were treated equivalent to God by their wives and the root cause of the misuse. Further, the chapter deals with the object and significance of the study, scope and limitations of the study, what is the method and tool for collection of data, the research methodology adopted, the hypothesis and the research questions to justify the hypothesis.

Second chapter deals with the cruelty and harassment against men in India. It provides the meaning of the term “Cruelty” and “Harassment”, considered by various jurists. It highlights the various forms of cruelty and its cause. Also, the Chapter closes on the account on its impact on the society, families, women and children. Cruelty is used in three fields of law, i.e. in law related to divorce as a ground for divorce, in law related to animal as cruelty to animal and in international law related to human rights for prohibition of cruel punishment. It is infliction of pain on some person with some wrongful intention. The test to find whether there is cruelty or not is that the act, which is said to be the act of cruelty, must not be any trivial act rather it must be something serious and weighty in nature.

Third chapter has discussed about a fleet of laws and provisions which are created at national for the benefit and welfare of women. The object behind all these instruments is to save the interests of women against the cruelty, harassment and violence, in one or the other form, occurring over women worldwide. The meaning of life under

Indian Constitution (Article-21) does not include life of animal and includes only the life of human because human existence is spiritual as well as physical. The right to life is not limited to the mere protection of the body parts, rather it also includes right to live with full dignity, which is necessary for making complete the human life. The chapter highlights various provisions and misuse of the protective laws by women.

In the Fourth chapter, a deep study has been made over the harassment of men by women. Various latest case laws have also been discussed, to understand the concept of harassment of men by women in a better way. Apex court, along with its subordinates have heard & finally decided in favour of men in various fake and false cases filed by women. According to Indian laws, a man is always guilty of harassing his wife for dowry. Indian society, including policemen and judiciary, would never believe a man, if he complains of a woman harassing, blackmailing or beating him, even if he has complete evidences. It is presumed that it must have been his fault. Indian laws consider all men as regular sex-offenders, women are always treated as a victim. It dealt with the series of cases, decided from the Apex Court of India to High Courts of almost all states. These cases are the proof of the fact that women in one or the other form as a wife, family member, colleague, employee, neighbour are harassing men. It is the intellect of the judges that they have considered that women, which was earlier deemed to be the weaker section, is currently on the much stronger footing than men, as they have a number of specific special laws for saving their interests. Judges, including of the Supreme Court of India, have admitted that men are harassed by women through the misuse of specific provisions of law.

The subject matter related to the incidents, where woman misuses the liberty provided by law to her and file a case of cruelty, harassment or violence for the demand of dowry or any other favour, only because the marriage has taken place within past 7

years or the incidents, in which woman report the fake case of rape or its attempt against some man, are said to be the direct assault over the dignity and the right to life to a man. Of course, side of woman is also generally strong in the court, as she is prima facie deemed to be innocent in all the cases. It is also considered that woman never takes the steps to lodge the complaint, which ultimately affects the interests of man in the case. If in any case, there is lack of evidences and witnesses from both husband and wife, then soft nature of court towards woman, create problem for man. Every law has its own effects. Laws are enacted for some good purpose, but people use them for their own benefits and sometimes for fulfilling their evil purposes. Gone are the days, when women were tortured by men. Now the time is for domination of women over men. The former is harassing the latter for their self-interest, forgetting the actual purpose of those laws. No matter what tactics or precaution one take, nothing works in India in current situation, when it comes to Law and Police. Even if one agrees to all terms by the women concerned, police try to create confusions in between. In the end it all boils down to how much money the women get. If one fights and wins, one pays less. If one loses, one loses big. If one compromise, one still pays, but in instalments. Best way for Indian Men to avoid extortion is to only marry a woman with better financial state (among other obvious reasons like love). Middle class gold-digger educated women are most dangerous, when it comes to exploiting laws and use them to extort money on trivial issues. In India, there is no penalty on women, even if husband has video evidence of adultery, all she has to do is say that he ignored her that's why she had to stray. The belief is no static that men are heartless and never suffer as it is not only women who are vulnerable and harassed. The credit of abuse of the provision should not be shouldered upon a woman exclusively as there is a loophole left out by the legislative as well as law enforcing

authorities. The gifts given to groom and his family by means of money, furniture, jewellery etc; also known as dowry is present in our society since long. That practice is adversely converted to a ground in every matrimonial dispute and criminal offence of harassment or demand of dowry to the prejudice to family of husband. The Apex court gave a warning while dealing with such cases of section 498A and said, "The role of the investigating agencies and courts is that of a watchdog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations." Law therefore seems to be inefficient and non-absolute as it is tilted towards the rights of women biasedly.

A real reason behind the cases of dowry in town areas are less civilised culture and society for which education is a crucial element which is yet to be achieved satisfactorily. Those who know the real loop holes to be used in their favour are those organizations which are denying to amend the laws relating to the issue of "cruelty". By not supporting the equal law for all they are evidently taking a stand of biased laws which does not prescribe a specific provision in favour of men and exactly willing to continue the opposite some of the institutions are giving their back to the existing law which hardly supports men in the society. Man, in our society is taken for responsibilities and the necessary rights along with the responsibilities are not provided for them like for woman.

As per the data released by NCRB, the Apex Court noticed that the cases reported of "cruelty" are 93.6% and in only 15% of the accused are convicted across the country by explaining the reason that the disgruntle wife is using the IPC provision as a

weapon rather than using it as guard to get her husband, relatives and close friends arrested as the offence is *cognizable and non-bailable*<sup>85</sup>.

Thus, the research scholar has proved the hypothesis in the light of the research and confirms the hypothesis and that there has been misuse of the section 498A of The Indian Penal Code.

## **5.2 Suggestions**

On completing whole study and analysis over the problem, the following suggestions can be made for resolving of the problem and betterment of men in comparison to women, legally, socially, mentally, economically and politically:

### **5.2.1 Need for a statute to protect men:**

Each year sixty-two thousand men are committing suicide in our country. Either due to stigma and threat of arrest or due to force of family and society to live with their abusive wives. Their complaints regarding the exploitation or harassment are never heard by the society that they are victimized. It is the reason behind their nature of being belittled. It has to be taken into account by the society at large, and for it a law for the protection of harassed males, especially for husbands, is required. Study of INSAAF, a research organisation, has analysed the seriousness and impact on husbands and male partners out of the marriage relation in India by comparing the numbers with the observations measured around the world. It was concluded under the study that in more than 50% cases, female partners also initiated the fights and it

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<sup>85</sup> Trivedi Prashant & Singh Smriti, *Fallacies of a Supreme Court Judgment: Section 498A and the dynamics of Acquittals*, 49 Economic and Political Weekly Pg. No. 90-97(2014).

resulted into attack on a male partner due to such fights. Number of NGOs sent a draft of bill in the form of petition to the Rajya Sabha.

### **5.2.2 Rule of innocent until proven guilty:**

Ample of false complaints are found to be lodged for harassment to the husband. This drastic and insensitive step by the wife leads to family breaks down. Ultimately it is loss to both of them as both lose their family and partner. There should be a provision of inquiry before arrest when any complaint in this regard has been lodged. The provision of arrest is necessary because being there no such provision, the actual offenders would also flee from the hands of police to prevent the arrest but, it should be supported by the provision of inquiry before arrest and necessary preventive measures should be laid down under that provision. Need of such provision is frequently required in urban areas as the women there, are more aware and alert of their rights and use of the provisions under law to favour them. They have resources which can make them use those provisions to harass the genuine person who has never did anything wrong to them or any petty nominal act between two which would not constitute cruelty to woman. along with the husband, she drags her in-laws also in the court. There are lots of cases where there is a disbalanced relation between daughter-in-law and mother-in-law. O teach them lesson wife files such untrue complaints resulting in a harassment to entire family. Since the offence has no provision for bail and compounding, the families have to undergo lots of hurdles in getting justice and the cost of all these long proceedings are very high in terms of money as well as emotionally.

As per the normal process, prosecution sends the accused with the “forwarding report” to the Magistrate. This process is followed when the accused is to be kept in custody for more than 24 hours. The Supreme Court laid down the guidelines to deal with such cases directing the Magistrate to apply his judicial mind so that the circumstances can be analysed and it can be decided whether the accused is required to be kept in police custody or not. As per the Constitutional right of liberty, the arrest and detention in police custody is an infringement of right, the order of police custody cannot be given as a matter of mere process when the accused is produced before Magistrate in order to get the remand. Under Section-167 of Cr.P.C, it is discretion to a judge to decide whether the police custody should be granted or not. It has been directed that when the order of detention is pronounced by the Magistrate, he has to give his reasons in writing under section 167 (3) when such order has been passed, to prevent slip of justice to the accused. Because when complaints are filed by woman, they use dowry demand, harassment, etc along with the offence under Section-498A. Other prayers attached with the mains includes maintenance under Cr. P. C. These burdens break husband mentally, physically and financially. The world does not accept a man after been acquitted. Going through all these and being stressed so much, man commits suicide when all these cannot be taken by him anymore. As a solution a social mind set of ours should accept both man and women as equal in every aspect, may it be about their rights or their grievance and misconception of only woman getting harassed should be abolished.

**5.2.3 Separate machinery and agency :**Some organization, like Ministry for Men, should be constituted, which can think about the interests of men and study about the situation of men. A sub-section should be added to S.498 A, I.P.C., which will create



a fear for those, who misuse the section. In addition to this, money given in the form of maintenance should be returned along with the interest, when offence under penal code will be proved as fake and false. To run these two wheels of the society together, both should respect each other. Society should also be serious towards the crime. Every man is father, brother and husband, as every woman is mother, sister, daughter and wife. It is in the interest of the society to consider the value of each and every relation. Laws should be good and strong, but their misuse is much bigger crime than the crime.

#### **5.2.4 Particular reforms in s. 498A, I.P.C.:**

A stringent law in this relation should be enacted by the parliament for the purpose of punishing women, who act with wrong intention and attempt to mislead the judicial system. As the section has no provision of bail and there is direct cognizance allowed, the husband has less chance to get justice speedily, which is similar as 'justice delayed is justice denied'. Women working in NGOs should not instigate women to file vexatious allegations but they should assist them for doing right things. Nominal issues can be dealt through summarized process. The woman and her near ones should be told about the results of the misuse of the special laws by women. It is seen that the husband and his relatives are made bound to present in the court for defending their case till the judgment of the case under s. 498A. Finally, even if the judgment comes against the wife, the psychological and monetary loss suffered during the entire procedure makes the moment disgraceful. Therefore, the courts should settle the matter in a very speedy and proper manner. For this purpose, a special provision should be inserted in the existing law so as to fix the maximum period for disposing

of the case by the court. Husband and his relatives should only be ordered to present before the court when needed, otherwise not. Some terms and provisions should also be interpreted in the manner, in which our parliament wanted to be interpreted at the time of enactment of the law, which will remove the doubts and confusions regarding those laws. It has been shown in different instances that the law is biased. To deal with the present degrading situation, law should be enacted and implemented unbiased. Further, there should be some fine for lodging fake complaints and reporting false matters. Therefore, some liberal view should be there. Husbands have no centres and commissions, as women have. Some centres and commissions should be constituted all over the country for counselling the harassed husbands. There is a need to make amendments in Constitution and all the laws, by viewing the style of commission of offences. Many cases of misuse of s. 498A, I.P.C. by corrupt mentality people are heard and seen after the amendment in dowry related laws.

#### **5.2.5 Law should be equal for everyone:**

Once there was a time, when woman was considered as the idol of delicacy, helplessness and sacrifice. Time changed, life style of people changed, but the notion regarding woman remains the same. Modern, educated, self-dependant, aware woman is considered as the same idol of delicacy, helplessness and sacrifice, as she was considered in the earlier times. Because the mentality of the people in India has not changed today. Due to this reason, Indian society and the laws has the same sympathy with the woman. This sympathy with the woman leads to the enactment of the laws relating to the women, so that women may use these laws for gaining of their rights, for their own protection and to take the action against the acts of atrocity and

harassment, which are occurring over them. But unfortunate to say, consciousness comes less and hardness comes more in the sensitive women. This is the reason why the feelings like love, sacrifice and sympathy remain only on papers in the modern era. Subsequently, today's women are entangling not only her husband, but also her in-laws by misusing these special laws.

The punishment is only for the husband and his parents, whether they are accused or not. This law shows biasness in dealing with husband and his parents. There is no exaggeration in saying that currently s. 498A of Indian Penal Code is becoming the weapon for breaking the family. This is such a provision of the law that on recording of FIR by the wife against her husband, police immediately arrest the husband and his parents for the purpose of investigation. As the husband is recorded as the main accused in the FIR, so he does not get the bail. Whole family, including 80 years old person to 10 years child, are alleged to be involved in the harassment to the woman. The most sorrowful position is that the husband and his family members are first arrested and the investigation starts later on.

Today the need is to enact such laws, under which the women, who entangle their husband and her in-laws in fake cases, can be punished. It is the supreme obligation of the government of India that it will take proper steps in this direction. Considering the modern woman as helpless, is becoming such a weapon for woman that she is using it by filing fake cases and misusing the protective laws. Present law is providing protection to the woman. By challenging this protection, base of Domestic Violence Act and Dowry Prohibition Act can be weakened.

#### **5.2.6. General suggestions:**

- ❖ The Government should have to take some steps to curb this evil as soon as possible, as enumerated under: - Scrap S. 498A I.P.C.- Marriage disputes should be decriminalized and the involvement of police agency should be eliminated from counselling or equitable settling between parties. The Crime against Women cells should not be used as a marriage counselling centres.
  
- ❖ Laws are enacted by our Parliament in such a way that women are taking more benefits. Men feel helpless in a number of cases. A balance should be maintained between men and women; between husband and wife. The law should be enacted by our Parliament keeping in mind both the sexes, i.e. man and woman, so any harassment cannot be done with any of the party with the help of misusing the laws.
  
- ❖ The judge should be humanitarian, while dealing with the cases related to women, in which allegations are against man. Law should be followed in a liberal manner as the ultimate motto of our laws is to keep peace and provide protection to our families. There's no point of laws which break the society and disturb the harmonious and affectionate relations in the society.
  
- ❖ NGOs should not perform the role of catalyst to encourage the fake complaints by women, rather they should fight for the prevention of these fake complaints. Non-serious matters should be treated with non-serious procedure.

- ❖ The serious consequences of the fake complaints should be explained to women and their relatives, so that they think before starting the legal proceedings against men.
  
- ❖ A major part of the residents of India likes westernization. They want to eat as western countries eat. They want to wear as western countries wear. Their laws are much upgraded according to the current situation and time. The laws followed in India, were enacted 60 years before. The situation, existed 60 years back, has totally changed now. One can see the drastic changes in each and every aspect of society. Be it food, dress, profession, living style, thinking, views, and last but not the least – the human being. Now, it's the time to replace our 60 years old law with new ones or to amend the existing laws to the extent, so that they can meet the present requirement of the society.
  
- ❖ It is seen in almost cases that before the marriage and after the marriage, there is difference in the statements of the parents of husband and wife, relating to the environment at the houses of both the parties. So, all the statements regarding the environment at the houses of both the parties to the marriage, conditions of their life, should be recorded in a document. Such statements should be signed by both the parties and countersigned by the parents of both the parties, before the court. The marriage will only then be deemed to be completed. In future, if there will any kind of dispute, then this document will be kept in mind by the authorities. This document somewhere also plays the role of estoppel over both the parties and their parents.

## BIBLIOGRAPHY

### ARTICLES/JOURNAL

- A.S Arora, *Law on Cruelty against husband*, (2010).
- Boparai Harinder, *The Expansion of Matrimonial Cruelty*, 23 J. Indian Law Institute Pg. No. 33-89(1981).
- Dr. Partha Pratim Mitra, *A new look on matrimonial cruelty within criminal law*, 39 Ind. B. Rev. (2013).
- Herring Jonathan, *The Severity of Domestic Abuse*, 30 Student Advocate Committee Pg. No. 37-50(2018).
- Lalsa Mohini, *Legitimacy of Section 498A Of Indian Penal Code*, 117 Cri LJ 127 (2011).
- Prof. Ajay Kumar, *Institution of Marriage-Judicial Approach* , A. I. R. 6 S.C. (2006).
- Singh Ajay Kumar, *Dowry Problem in India: Rethinking Anti-dowry laws*, 1 Cri LJ 256 (2009).
- Vinay Sharma, *Dowry Deaths: Legal Provisions and Judicial Interpretation*, 101 (2007).

### BOOKS

- Diwan Paras & Diwan Peeyushi, *Modern Hindu Law*, pg. No. 63(Allahabad Law Agency , 19<sup>th</sup> ed., 2008).
- Dr. J. N. Pandey, *The Constitution of India* (Central Law Agency, 50<sup>th</sup> ed. 2013).

- J.D. Chandna, Law relating to dowry deaths dying declaration suicides & cruelties to women (Bright Law House, 1<sup>st</sup>ed. 2005).
- K.D.Gaur, Criminal law: cases and materials, (LexisNexis Publications, 7<sup>th</sup>ed. (2013).
- M.P. Jain, Indian Constitutional Law, (EBC, 12<sup>th</sup> ed. 2019).
- N.V. Hood, Cruelty against Husband 3 (Sagar Publication 1st Ed. 1993).
- Ratanlal and Dhirajlal, Indian penal code(LexisNexis,34<sup>th</sup>ed. 2014).
- Mamta Rao, Law relating to women and children, (Eastern Book Company, 3<sup>rd</sup>ed. (2012).

#### **NEWSPAPER**

- Harish V Nair, *Supreme Court set back for husbands in bogus dowry cases*, India Today, Sept.5,2018.
- Jyotika Kalra, *Misuse of dowry laws and the failure of the system*, The Hindu, Aug.5, 2017.
- Pooja Bedi, *Marriage is the new extortion racket*, TOI, June 17, 2018 at pg. No. 1.

#### **WEBSITE**

- [www.manupatra.com](http://www.manupatra.com)
- [www.heinonline.com](http://www.heinonline.com)
- [www.sconline.com](http://www.sconline.com)
- [www.jstore.com](http://www.jstore.com)

- DhaweshPahuja, Cruelty against husband in India, LEGAL INDIA (Aug. 26, 2011), <https://www.legalindia.com/cruelty-against-husband-in-india/> .visited on 02 June 2020.
- 237th Law Commission Report, THE LAW COMMISSION, (Oct. 2001), [http://lawcsom.gov.uk/app/uploads/2015/03/lc273\\_Evidence\\_of\\_Bad\\_Character\\_in\\_Criminal\\_Proceedings\\_Report.pdf](http://lawcsom.gov.uk/app/uploads/2015/03/lc273_Evidence_of_Bad_Character_in_Criminal_Proceedings_Report.pdf). Visited on June 13, 2020.
- Adhip Kumar Ray, *Section 498A of IPC: A Weapon or A Shield? – Supreme Court of India*, MONDAQ (Oct. 10,2018), <https://www.mondaq.com/india/crime/743068/section-498a-of-ipc-a-weapon-or-a-shield-supreme-court-of-india>. last visited June 15, 2020.
- Mr. Jitendra Gautam, *Anti-dowry laws-use or misuse*, (April 10, 2011, 10:59 pm), <http://www.mightylaws.in/414/anti-dowry-laws-misuse>. Last visited on June, 18, 2020)

## OTHERS

- 4 Lawyers Co-operative Publishing Company and Bancroft-Whitney Company, *American Jurisprudence: A Modern Comprehensive Text Statement of American Law, State and Federal* 206 (West Group,California,2nd Edition)
- Deccan Herald, *DOWRY LAW IS NOT FOR PERSONAL VENDETTA: COURT*, 3 (Deccan Herald News Service, Hubli ed. 2011).
- J. DUNCAN&M. DERRETT, *THE DEATH OF MARRIAGE LAW: E PITAPH FOR THE RISHIS*, (Carolina Academic Press, 4<sup>th</sup> ed. 1978).