

## A Critical Study of the Laws on Domestic Violence in India

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<p><b>Author Affiliation</b> Assistant Professor, Institute of Chartered Financial Analysts of India Law School, ICAFI University, Tripura 799210, India.</p> <p><b>Corresponding Author</b> <b>Debabrata Roy</b>, Assistant Professor, Institute of Chartered Financial Analysts of India Law School, ICAFI University, Tripura 799210, India. <b>E-mail:</b> <a href="mailto:debu_snaha@rediffmail.com">debu_snaha@rediffmail.com</a></p>	<p><b>Abstract</b></p> <p>Domestic Violence has become a serious problem in Indian society affecting adversely the rights and interest of women and their development. Despite of several efforts on the part of the legislator, judiciary, women organization, Non-Governmental Organization etc. to prevent this menace from exploiting Indian women, domestic violence still exists and the number of subjection of women to domestic violence in India is ever increasing. Historically, India is a rich country so far as respecting women and her dignity is concern but in reality very often women are subjected to different kinds of violence in India and this violence has hardly left any culture, religion, class, caste or society untouched. This study has been undertaken to consider the nature and limitations of the existing laws dealing with domestic violence in India and critically analyze these provisions. This study further aims to recommend suggestions for making the laws relating to domestic violence more effective so that the laws can achieve the goal for which they have been enacted.</p> <p><b>Keywords:</b> Domestic Violence; Cruelty Dowry; Dowry death; Victimization.</p>
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### Introduction

Traditionally India is a country which does have a rich heritage so far as respecting women and their dignity is concerned but in reality the picture is different. In Indian society very often women are subjected to harassment, torture both physical and mental, acid attack, sexual exploitation, abuse by person in authority such as police officer, employer, trafficking for forced labour or sex, child marriage, honour killing and so on and these abuses are on the rise. One of such curse through which Indian women is going on for many years is domestic violence. According to the definition given by the United Nations 'domestic violation could be verbal or physical or it may be said that they are subjected to physical or mental sufferings or agony. The status of Indian women has undergone many significant changes over the past few millennia; be it the equal status with men in ancient time or

though the low points of the medieval period or the promotion of equal rights by many reformers. The women in India had an eventful history. It is indeed very discouraging and disturbing to accept, a country praises womanhood through epics and their devotion to goddesses can be so demeaning and indifferent when it comes to the common women living in this country.

There are different reasons for domestic violence in India and out of those reasons the followings are worth mentioning:

1. As discussed above in Indian society women are respected highly and they are placed in a high position but in reality Indian society was and still remains as a male dominated society.
2. In many cases is is found that women in India are scared of complaining against domestic violence and despite of several efforts on the part of various organizations like Women



Commission for making women aware about their rights it seems Indian women are still not aware about their rights against domestic violence.

3. Lack of effort on the part of the authorities for proper awareness regarding the benefits of implementing the provisions of Protection of Women from Domestic Violence Act, 2005.
4. Third parties are discouraged to report instances of domestic violence by scrutinizing them as interloper and problem maker by the community. Bureaucracy connected with the procedure of reporting of domestic violence and insufficiency of funds to support group adds up to the continuance of domestic violence in India<sup>1</sup>.

### *Concept and Meaning of Domestic Violence*

The abuse in the form of domestic violence is extremely multifaceted and fierce that is committed against a woman within the four walls of Indian households. In fact assigning a specific meaning and determining the scope of domestic violence itself is a very difficult task. Violation against women in any form and state's silence regarding the same is a great violation of the fundamental right to equality. The UN Declaration on the Elimination of All Forms of Violence against Women has recognized that violence against women is the result of historically unequal relationship of power between men and women which has led to domination over and discrimination against women by men.<sup>2</sup> Article 1 of the Declaration defined violation against women which is as under:

"Violence against women means any act of gender-based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".<sup>3</sup>

According to Black's Law Dictionary, "domestic violence means violence between members of a household, usually spouses, an assault or other violent act committed by one member of a household against another".<sup>4</sup>

Until 2005, there was no clarity as to the definition of domestic violence in India as before 2005 no Indian law defined domestic violence. A perception was prevalent that domestic violence is restricted to physical harm perpetrated on adult women within a marital relationship. But a much broader definition of domestic violence has come out with the introduction of the Protection of Women from

Domestic Violence Act, 2005 which has enhanced the possibilities that may lead to subjection of women to domestic violence. The Act defines the term 'domestic violence' to include actual abuse or threat or abuse-physical, sexual, verbal, emotional or economic violence.<sup>5</sup>

In the year 1983, matrimonial cruelty has been introduced in the Indian Penal Code by inserting Section 498A which is nothing but an attempt to define and punish the act of domestic violence. Cruelty was defined as "any willful conduct which of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life or limb or health (whether physical or mental) of the woman". Harassment of the woman in connection with the demand of any property or security is also included within the scope of cruelty.<sup>6</sup>

### *The Laws Relating to Domestic Violence*

Indian law on domestic violence has undergone changes from time to time to make the law more effective and to find a solution to this social menace. There are different statutory and penal provisions in Indian which is presently addressing the issue. In this chapter each of such provisions would be discussed thoroughly with a view to have a clear idea about the operational law dealing with domestic violence.

#### *Section 498A of the Indian Penal Code, 1860*

This provision provides that if any husband or relative of husband of a woman, subjects such woman to cruelty, be physical or mental shall be punished with imprisonment for a term which may be extended to 3 years and shall also be liable to pay fine.

Under this provision meaning of the term 'cruelty' is:

- a. Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb or health (physical or mental); or
- b. Harassment of the woman where such harassment is with a view to coercing her or any other 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.<sup>7</sup>

This Section was inserted in the Indian Penal Code by the Criminal Law (Amendment) Act, 1983. The reason behind the introduction of this Section

is to curb the menace of dowry death in India. The main objective of Section 498A of the Indian Penal Code is to protect a woman who is being tortured or harassed by her husband or in laws.<sup>8</sup> The act of harassment would amount to cruelty within the meaning of this Section and even drinking and late coming habit of the husband coupled with beating and demanding dowry would amount to cruelty within the meaning of this Section. But it has been held that a husband who merely drinks as a habit and comes back home is not doing cruelty to his wife.<sup>9</sup>

In *Inder Raj Malik vs. Sunita Malik*,<sup>10</sup> It was held that the word 'cruelty' is defined in the explanation to Section 498A of the Indian Penal Code which inter alia says that harassment of a woman with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable property is cruelty.

#### ***Kinds of Cruelty Covered under Section 498A***

The following kinds of cruelty are included within the scope of Section 498A of the Indian Penal Code.<sup>11</sup>

- a. Cruelty by vexatious litigation;
- b. Cruelty by deprivation and wasteful habits;
- c. Cruelty by persistent demand;
- d. Cruelty by extra-marital relations;
- e. Harassment for non dowry demand
- f. Cruelty by non acceptance of baby girl
- g. Cruelty by false attack on chastity
- h. Taking away children.

If the working of laws relating to domestic violence against women in India can be analysed since 1983, most of us would be agreed on a particular point that these laws are being misused to a great extent and particularly voice has been raised against the misuses of Section 498A and 304B of the Indian Penal Code.<sup>12</sup> That is why the Hon'ble Supreme Court of India in *Sushil Kumar Sharma vs. Union of India and Ors*,<sup>13</sup> has termed the misuse of Section 498A of the Indian Penal Code as legal terrorism and further said it's a weapon in the hands of vamps.

#### ***Reasons for the Misuse of Section 498A of the Indian Penal Code***

In modern era the misuse of the provisions of this Section is on the rise. In most of the cases which are

filed it is found that the allegations that are being brought against the husbands or his relatives are baseless. This is a matter of serious concern as there is a great threat of innocent victimization. Now the question is why this provision has been misused? A review of the nature of Section 498A and the cases filed under this provision would help us to know the reasons. However the following reasons are worth mentioning.<sup>14</sup>

#### ***Non bailable Nature***

The nature of the offence under Section 498A is non bailable which means once a case is registered against a person it is very difficult for him to secure bail and get released.

#### ***Non Compoundable Nature***

The nature of the offence under this Section is non compoundable as well which means once a case is registered against the husband or relatives no compromise can take place between the parties to the case.

#### ***Cognizable Nature***

This is cognizable as well which means on receipt of a complaint the police may arrest the accused without a warrant.

But the Hon'ble Supreme Court of India in *Arnesh Kumar vs. State of Bihar and Another*,<sup>15</sup> has put a restraint on the power of the police to arrest in cognizable offence. The Court said that arrest should not be made only because the nature of the offence is non bailable and cognizable and so it is lawful for the police to arrest. The presence of the power to arrest is one thing but the justification for the same is quite different. No arrest can be made on a routine manner on the basis of an allegation of commission of offence against any person.

#### ***Adultery***

Having an adulterous relationship is one of the biggest reasons for misuses of Section 498A of the Indian Penal Code. For people having adulterous relationship Section 498A is an easy tool of blackmailing the husband and in laws and to secure money and divorce easily.

Apart from the above there are many other reasons which vary from case to case such as poverty, ignorance as to the harsh nature of Section 498A and so on.

### ***Recommendations for Preventing Misuse of Section 498A of the Indian Penal Code***

The Following measures may be recommended to prevent the misuses of this provision:<sup>16</sup>

#### ***Role of Women Organizations***

These organizations should investigate the cases of cruelty/domestic violence without any bias towards the women keeping in mind the fact that this provision is largely misused in our country. Women should not be encouraged to file criminal case against in laws for minor matters.

#### ***Family Counseling Centers***

Numerous complaints are coming out in this country from different parts where it is clear that men are being victimized or harassed by wives or in laws. But as of now there is no organization in this country which can look after these matters. So, the need of the hour is to establish family counseling centers across the country who can successfully address this issue.

#### ***Time Bound Investigation and Trial***

A speedy and time bound investigation and trial of cases under Section 498(a) of Indian Penal Code would have twofold benefit. On one hand it will ensure that innocence are not victimized for false charges and on the other as there would be reduction of burden on the judiciary, it would be able to provide time bound justice to the victims of dowry.

#### ***Definition of Mental Cruelty***

The definition is not clear and vague and hence it leaves scope for misuse. Therefore, it is very important that mental cruelty should be clearly defined to reduce the scope of misuse.

#### ***Bailable***

The main reason of the misuse of this provision is lying in the fact that the nature of the provision is non bailable and hence it paves the way for innocent victimization. Therefore, the demand of the hour is the provision should be made bailable in order to effort the innocent a chance to defend himself.

#### ***Compoundable***

After registration of FIR even if the complainant wants to withdraw the FIR, it becomes impossible for the person to withdraw it as the nature of the offence is non compoundable which means after

registration of case no compromise can take place between the parties? Hence, the offence is required to be made a compoundable one.

#### ***Arrest Warrant***

If arrest warrant to be issued, the same should be issued only against the main accused and only after cognizance is taken. The family members and relatives of the husband should not be arrested unnecessarily.

#### ***Penalty for Bringing False Accusation***

Whenever, a criminal court comes to the conclusion that case registered under Section 498(a) is false, exemplary action should be taken against the person who has registered the case and it would definitely result into reduction of cases and innocent victimization.

#### ***Implementation of Punishment against Dowry Givers***

Once a complainant admits giving of dowry in the complaint, the court should take cognizance of the same and prosecute the dowry giver under the relevant provision of the Dowry Prohibition Act, 1961.

#### ***NRI Issue***

Unless NRIs are proven guilty after the completion of trial, they should be given a fair chance to secure justice since it is directly connected with their survival.

#### ***Section 304B of the Indian Penal Code:<sup>17</sup>***

A plain reading of Section 304B of the Indian Penal Code, 1860 would reveal that if the death of a lady is caused by burns, bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her marriage she was subjected to cruelty whether physical or mental for or in connection with the demand of dowry, such death shall be called dowry death and the husband or relatives of husband shall be deemed to have caused her dowry death.

'Dowry' shall have the same meaning for the purposes of this Section and Section 2 of the Dowry Prohibition Act, 1961.

Sub Section 2 of this Section provides the punishment and says whoever causes dowry death shall be punish with imprisonment for a term which shall not be less than 7 years but which may be extended to life imprisonment.



The Hon'ble Supreme Court in *Sher Singh vs. State of Hariyana*,<sup>18</sup> has examined and interpreted various provisions related to eradication of dowry such as, Sections 498(a) and 304B of the Indian Penal Code. The court opined that an elaborate legislation such as Dowry Prohibition Act, 1961 has done a very little to curb the social evil of dowry and hence the legislature by introducing several amendments has included the provisions of Sections 498(a) and 304B of the Indian Penal Code. The court observed that it would not be appropriate to lessen the husband's burden to that of predominance of probability as that would extinguish the deemed guilt as expressed in Section 304B and such interpretation would defeat the intention and purpose of the parliament.

The court further observed that it is not at all doubtful that if the same word is used in the Section and in its different segments then they should be given the same meaning unless the contrary situation is stated in the provision, but the opposite happens when different words of close immediacy occur in the same Section, then under such circumstances it should be presumed that the intention of the legislature was to enumerate different situations with different ramifications.

The court further while interpreting the words 'prove', 'shown' and 'presume' as used in Section 304B stated that the word 'shown' in this Section connotes 'prove', in other words it is for the prosecution to establish that a dowry death has occurred. The court again observed that the parliament intended by using the word deemed that only preponderance of evidence would be insufficient to discharge the husband or his family members of their guilt. While, interpreting the word 'shown' the court stated that the appropriate manner of interpreting it is that the word 'shown' must be read up to 'prove' and the word 'deemed' has to be read up to mean 'presumed'.

### ***Section 113A of the Indian Evidence Act***

This provision deals with raising presumption in cases of dowry death. It provides that the court shall draw up a presumption as to dowry death against any person when in a given case dowry death of a woman took place and it is shown before the court that soon before the death such woman was subjected to cruelty or harassment by any person (husband or his relatives) for or in connection with the demand of dowry.<sup>19</sup>

### ***The Dowry Prohibition Act, 1961***

This Act has given the most comprehensive definition of the term 'dowry' though the definition

suffers from some inherent defects. Section 2 of the Act defines dowry as "dowry means any property or valuable security given or agreed to be given either directly or indirectly'

1. By one party to the marriage to the other party to the marriage, or
2. By the parent of either party to the marriage or by any other person, to either party to the marriage or to any other person, at or before or anytime after the marriage in connection with the marriage of the said parties.<sup>20</sup>

Explanation to Section 2 of the Act has made it clear that gifts given or taken by parties or their parents at the time or even after the marriage shall not be considered as dowry and hence it opens up a huge scope for misuse as the parents of the bride would hardly accept the giving of dowry and dowry would be named as gifts.

In *Soni DevrajBhai Babar Devraj Bhai vs. State of Gujrat*,<sup>21</sup> the Supreme Court cited the observation of Pt. Jawahal Lal Nehru to show the role of legislation in dealing with dowry as a social evil as follows: legislation cannot by itself normally solve this deep rooted social problem. In this case the Supreme Court observed that the social evil of dowry has been the bane of Indian society and continue to persist. Yet the legal sanction in the form of its prohibition and punishment are some steps in that direction. Thus the Dowry Prohibition Act, 1961 has been made to achieve these goals.

Section 3 of the Act provides for punishment for giving and taking of dowry. It says if any person after the commencement of the Dowry Prohibition Act, 1961 gives or takes or abets the giving or taking of dowry he shall be punished with imprisonment for a term which shall not be less than 5 years and fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry whichever is more.

Proviso to this Section provides that the court may for adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment which is less than five years.<sup>22</sup>

### ***Protection of Women from Domestic Violence Act, 2005***

For the first time the Term 'domestic violence' has been defined in a detailed manner under this Act which includes actual abuse or threat of abuse that is physical, sexual, verbal, emotional or economic. Even harassment by unlawful demand of dowry to women or to her relatives would also cover under this Act. The Act seeks to cover even those

women who had been in a relationship with the abuser, where the parties live together in a shared household and are related by consanguinity, marriage or adoption. Legal protection is thus available to a women who are sisters, widow, mother, single women or living with the abuser.

The term 'cruelty' as defined under Section 498A of the Indian Penal Code is covered under this new Act as well. The new law has also worked in widening the meaning of the term 'Woman' as women facing violence outside matrimonial house is also included within the term 'woman'. The Act has been given a secular nature as the term woman is used in this Act without any religious reference.<sup>23</sup>

#### *Scope for Misuse of the Protection of Women from Domestic Violence Act, 2005*

The chances of misuse of the provisions of this Act cannot be ignored or overlooked. The definition of domestic violence as provided in the Act is too wide to be safe enough. It is quite doubtful as to how the courts can judge the genuineness of the complainants. In the absence of such mechanism the presence of malafide intention on the part of a party cannot be ruled out.

Though in camera proceedings is a shield for women as it saves them from harassment and humiliation particularly in cases where explicit acts of sexual abuse and violence are being argued and discussed in the open court in presence of lawyers, officials, police etc. but there are some trials where in camera proceedings only intimidated the aggrieved in favour of the respondent. The solution to this problem is introducing changes in this provision with a view to only going for in camera proceedings, not only when either party wants this but only when the aggrieved desires so.<sup>24</sup>

#### **Conclusion**

The laws relating to domestic violence has undergone changes from time to time in order to make the laws more effective so that the law can work as a shield for the protection of women from domestic violence. But, in reality there still exist shot comings/flaws in the existing laws course of domestic violence in India is growing day by day resulting in the jeopardizing of many lives. The offence of cruelty to the wife under Section 498(a) of the Indian Penal Code is required to be made a bailable and compoundable one with a view to provide effective justice and to prevent innocent victimization. The Definition of dowry is

required to be made more specific and clear under the Dowry Prohibition Act, 1961 so that people cannot take advantage of the loop holes lying therein. Police should acknowledge a limit on its power to arrest in cognizable offences as per the guidelines issued in this regard by the Apex court of the country. Role of NGOs, family counseling centers, women commission is highly important in this regard and people would be able to know consequences of false implications. Lastly, but not the least aggrieved persons should be encouraged to file a case under the provisions of the Protection of Women Domestic Violence Act, 2005 instead of filing under Section 498(a) of the Indian Penal Code because there would be a chance of reconciliation between the parties.

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