



## Gender specific matrimonial offences under the Indian penal code: An overview

Pushpa Kumari

Ph.d Scholar, Department of Law, Kurukshetra University Kurukshetra, Haryana, India

### Abstract

This article seeks to cover the attitude of indifference and negligence that is primarily the result of general acceptance of men's superiority over women. In the wake of increasing crime against women, there is an incessant discussion about the laws that deal with offences against women and which are gender specific offences. Among the various kind of offences one of the serious kind of offences are the marital offences against women include bigamy, adultery, criminal elopement among others and the one that is probably most common offence is cruelty. Over time, courts have expanded the ambit of the definition to include within it different instances. Dowry death is also very serious offence against women. Dowry is a curse upon our society and many innocent women lose their lives because of illegitimate demands for dowry. The provisions dealing with dowry death have been framed in a way that raise a presumption against the accused if certain minimum requirements are met. This article is trying to explore the all those matrimonial offences against women, for which only a male specifically can be charged. critical overview of matrimonial offences against women under the Indian penal code.

**Keywords:** Indian penal code, matrimonial

### Introduction

As we have already know that marriage is a sweet emotional, sacramental and stable relationship between husband and wife. Some wrong acts which directly attack on the stability of the institution of marriage are called offences against marriage. Among all the offences against marriage most of them are specifically matrimonial offences against women like section 493, 497, 498 and 498A and the law is positively biased towards women. In our old, great nation a woman is the personification of a goddess, a symbol of respect and devotion to the gods. We have all been brought up in a way that commands the highest honour and respect for the fairer sex. Yet, unfortunately the latest statistics do not reflect this but in fact, demand introspection. Therefore, it is only necessary that we look into details of the various offences under the IPC against women and the laws that guard them. This project covers all those matrimonial offences against women, for which only a male specifically can be charged.

Legislative Provisions and Judicial Perspectives

### Offences Relating To Marriage (Chapter XX)

Matrimonial offences under Indian Penal Code in India are offences relating to marriage [Chapter XX (section 493- 498)], it includes the matters relating to cohabitation by man deceitfully, marrying again, fraudulently gone through marriage ceremony, adultery and Chapter XX-A, containing only one section (s 498A) dealing with cruelty to a woman by her husband or his relatives to coerce her and her parents to meet the material greed of dowry, was added to the IPC by the Criminal Law (Second Amendment) Act 1983 <sup>[1]</sup>. All these offences deal with infidelity within the institution of marriage in one way or another.

The following are the main gender specific offences under this chapter:

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage shall made punishable. Punishment shall be imprisonment of either description for a term which may extend to ten years. And it shall also be liable to fine (Section 493)

Marriage ceremony fraudulently gone through without lawful marriage shall made punishable. Punishment for same will be imprisonment of either description for a term which may extend to seven years. And it shall also be liable to fine (Section 496)

The essential elements of both the sections i.e. 493 and 496, is that the accused should have practiced deception on the woman, as a consequence of which she is led to believe that she is lawfully married to him, though in reality she is not. In s 493, the word used is 'deceit' and in s 496, the words 'dishonestly' and 'fraudulent intention' have been used. Basically both the sections denote the fact that the woman is cheated by the man into believing that she is legally wedded to him, whereas the man is fully aware that the same is not true. The deceit and fraudulent intention should exist at the time of the marriage <sup>[2]</sup>. Thus mens rea is an essential element of an offence under this section.

Adultery made punishable with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor. (Section 497)

Before the IPC was enacted, adultery was not an offence in India either for men or women. It was also not included in the first draft of the penal code. However, the second Law Commission it. The Law Commissioner noted that the then

prevalent social infrastructure and the secondary and economically dependent position of women were not conducive to punish adulterous men. Further, they noted, that a wife was socially conditioned to accept her husband's adulterous relationship as polygamy was an everyday affair. Thus they incorporated adultery as an offence punishing only adulterous men.

In *Kashuri v. Ramaswamy* <sup>[3]</sup> it was held that the proof of sexual intercourse has to be inferred from the facts and circumstance of a case as direct evidence can rarely be proved. Enticing or taking away or detaining with criminal intent a married woman shall made punishable. Punishment for same will be imprisonment of either description for a term which may extend to two years, or with fine, or with both. (Section 498)

In *Alamgir v. State of Bihar* <sup>[4]</sup>, it was observed that if a man knowingly goes away with the wife of another in such a way to deprive the husband of his control over her, with the intent to have illicit intercourse, then it would constitute an offence within the meaning of the section.

### **Cruelty by Husband (Chapter XX-A)**

Section 498A – Husband of a woman subjecting her to cruelty 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 willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful 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. Therefore, Chapter xx-A, I.P.C. was added in the year 1983.

For safeguarding the interest of a woman against the cruelty they face behind the four walls of their matrimonial home, the Indian Penal Code,1860 was amended in 1983 and S.498A was inserted which deals with ‘Matrimonial Cruelty’ to a woman. The section was enacted to combat the menace of dowry deaths. It was introduced in the code by the Criminal Law Amendment Act, 1983 (Act 46 of 1983). By the same Act section 113-A was been added to the Indian Evidence Act to raise presumption regarding abetment of suicide by married woman. The main objective of section 498-A of I.P.C is to protect a woman who is being harassed by her husband or relatives of husband.

Section 113-A of Indian Evidence Act, reads as follows:

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 has been subjected by such person to cruelty or harassment for, or in 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).

The object with which section 498A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting Criminal Law (Second Amendment) Act No. 46 of 1983. As clearly stated therein, the increase in number of dowry deaths was a matter of serious concern. The extent of the evil was commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some of cases, cruelty of the husband and the relatives of the husband culminated in suicide by or murder of the helpless woman concerned. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure,1973 and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in- law's and relatives. The avowed object was to combat the menace of dowry death and cruelty <sup>[5]</sup>.

### **Meaning of Cruelty**

Cruelty includes both physical and mental torture. Wilful conduct in Explanation (a) to section 498A, I.P.C. can be inferred from direct and indirect evidence. The word cruelty in the Explanation clause attached to the section has been given a wider meaning.

It was held in *Kaliyaperumal vs. State of Tamil Nadu* <sup>[6]</sup>, that cruelty is a common essential in offences under both the sections 304B and 498A of IPC. The two sections are not mutually inclusive but both are distinct offences and persons acquitted under section 304B for the offence of dowry death can be convicted for an offence under sec.498A of IPC. The meaning of cruelty is given in explanation to section 498A. Section 304B does not contain its meaning but the meaning of cruelty or harassment as given in section 498-A applies in section 304-B as well.

The Supreme Court, in *Mohd. Hoshan vs. State of A.P* <sup>[7]</sup>, observed: “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”

### **Constitution Validity of Section 498A**

In *Inder Raj Malik and others vs. Sunita Malik* <sup>[8]</sup>, it was contended that this section is ultra vires Article 14 and Article 20 (2) of the Constitution. There is the Dowry Prohibition Act, 1961 which also deals with similar types of cases; therefore, both statutes together create a situation commonly known as double jeopardy. But Delhi High Court negated this contention and held that this section does not create situation for double jeopardy. Section 498-A is distinguishable from Section 4 of the Dowry Prohibition Act because in the latter mere demand of dowry is punishable and existence of the element of cruelty is not necessary, whereas section 498-A deals with an aggravated form of the offence. It punishes such demands of property or valuable security from the wife or her relatives as are coupled with cruelty to her. Hence a person can be prosecuted in respect of both the offences punishable under section 4 of the Dowry Prohibition Act and this section.

It was thus held that though, this section gives wide discretion to the courts in the matters of interpretation of the words occurring in the laws and also in matters of awarding punishment.

In the case of *Surajmal Banthia & Anr. v. State of West Bengal* <sup>[9]</sup>, the deceased was ill-treated and tortured for several days and not given food several times. The court acknowledging that this is the treatment that several young brides face when they move out of their parents' home and into the house of her in-laws, held the husband and his father liable under 498A.

In *Vijai Ratna Sharma v. State of Uttar Pradesh* <sup>[10]</sup> the Allahabad High Court took a pragmatic view in a criminal proceeding initiated by a dowry victim, by doing away with jurisdictional technicalities in the matter. The court brushed aside the argument of lack of jurisdiction on technical grounds and held that since from the very beginning, the dowry demand had been present and subsequent behaviour was an ensuing consequence, all the offences can be tried together.

In *Bhagwant Singh v. Commissioner of Police* <sup>[11]</sup>, Supreme Court held that the greed for dowry and the dowry system as an institution calls for the severest condemnation by all sections.

#### Section 304B-Dowry Death of Indian Penal Code

Dowry death.-(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.]

In *Prema S. Rao v. Yadla Srinivasa Rao* <sup>[12]</sup>, it was held that to attract the provisions of section 304B, one of the main ingredients which is required to be established is that "soon before her death" she was subjected to cruelty and harassment "in connection with the demand of dowry".

Expression 'soon before her death'

The expression 'soon before her death' used in the substantive section 304B, I.P.C. and Section 113B of the Evidence Act is connected to the idea of proximity text. No definite period has been indicated and the expression 'soon before her death' is not defined. The determination of the period which can come within the term 'soon before' is to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effects of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence <sup>[13]</sup>.

#### Applicability

In the case of *Vadde Rama Rao v. State of Andhra Pradesh* <sup>[14]</sup>, it was argued that the husband or any of his relative could be guilty of the offence only if he or she directly participated in the actual commission of the offence. This contention was rejected by the Andhra Pradesh High Court. It observed that in its real import, section 304B would be applicable if cruelty or harassment was inflicted by the husband on any of his relative for, or in connection with demand for dowry, immediately preceding the death by bodily injury or by burning.

#### Burden of Proof

The prosecution under section 304B cannot escape from the burden of proof that the harassment to cruelty was related to the demand for dowry and that it was caused "soon before her death". The word "dowry" has to be understood as it is defined in section 2 of the Dowry Prohibition Act, 1961. There are three occasions related to dowry, i.e., before marriage, at the time of marriage and at an unending period. The customary payment in connection with the birth of child or other ceremonies, are not involved within ambit of "dowry" <sup>[15]</sup>.

In *Patil Paresb Kumar Jayanti Lal v. State of Gujarat* <sup>[16]</sup>, it was held that where the evidence revealed that accused-husband killed deceased-wife for not satisfying his dowry demand but there was nothing on record to show involvement of co-accused in-laws, co-accused in-laws are not guilty of offence under sections 304B.

In cases of *Ratan Lal v. State of Madhya Pradesh* <sup>[17]</sup> and *N.V. Satyanandam v. Public Prosecutor* <sup>[18]</sup>, it was ruled that in dowry death cases and in most of such offences direct evidence is hardly available and such cases are usually proved by circumstantial evidence. This section as well as section 113B of the Evidence Act enact a rule of presumption, i.e., whether death occurs within seven years of marriage in suspicious circumstances. This may be caused by burns or any other bodily injury. Thus, it is obligatory on the part of the prosecution to show that death occurred within seven years of marriage. If the prosecution would fail to establish that death did not occur within seven years of marriage, this section will not apply;

#### Section 304B and Section 498A-Distinction

There is a clear distinction between section 304B and 498A of the Indian Penal Code. Now, under section 304B it is a dowry death that is punishable and such death should have occurred within seven years of marriage and this period of limitation is not there in 498A.

In the case of *Soni Dev-rajbhai Babubhai v. State of Gujarat* <sup>[19]</sup> it was held that Section 304B is a substantive provision creating a new offence and not merely a provision effecting a change in procedure for trial of a pre-existing substantive offence. As a consequence, accused cannot be tried and punished for the offence of dowry death provided in section 304B with the minimum sentence of seven years' imprisonment for an act done by them prior to creation of the new offence of dowry death.

In *Shanti v. State of Haryana*, in-laws insisted for dowry from the daughter-in-law. Ultimately, it appeared that she was done to death and her body was cremated without sending any information to her parents or any relatives. The Supreme Court held that, if it was natural death, there was no need for

the appellants to act in such unnatural manner and cremate the body in great and unholy haste without even informing the parents. In the result it was an unnatural death, either homicidal or suicidal. But even assuming that it is a case of suicide even then it would be death which had occurred in unnatural circumstances. Even in such a case, section 304B is attracted and this position is not disputed. Therefore, the prosecution has established that the appellants have committed an offence punishable under section 304B beyond all reasonable doubts <sup>[20]</sup>.

### Section 498a and the Allegation of Misuse

In the last 20 years of criminal law reform a common argument made against laws relating to violence against women in India has been that women misuse these laws. The police, civil society, politicians and even judges of the High Courts and Supreme Court have offered these arguments of the misuse of laws vehemently. The allegation of misuse is made particularly against Sec 498A and against the offence of dowry death in Sec 304B. The 2003 Malimath Committee report on reforms in the criminal justice system also noted, significantly, that there is a "general complaint" that Sec 498A of the IPC is subject to gross misuse; it used this as justification to suggest an amendment to the provision, but provided no data to indicate how frequently the section is being misused.

Again Supreme Court, in a relatively recent case, Sushil Kumar Sharma vs. Union of India and others <sup>[21]</sup>, observed: "The object of the provision is prevention of the dowry menace. But as has been rightly contented by the petitioner that many instances have come to light where the complaints are not bonafide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with.

The Supreme Court in its recent judgment in Arnesh Kumar v. State of Bihar and Anr <sup>[22]</sup> said that no arrest should be made immediately in the offences which are allegedly committed by the accused and the offence is cognizable and non-bailable, with particular reference to S. 498A. It laid down certain guidelines for the police officers to follow relating to the arrests made under the section, due to increase in number of false complaints.

### Conclusion

A comparative glance of all the above mentioned matrimonial offences show that there cannot be a straightjacket formula for dealing with these problems. Criminal law like any other law is used as an instrument for social change. But is the change possible without changing the philosophical foundation of the law. In case of matrimonial offences it is not only the interest of either the husband or the wife need to be taken into consideration, but also the interest of family and to certain

extent also the larger interest of society needed to be considered. The challenge before the criminal law today is to bring a balance among these conflicting interest with a minimum of waste. It is time that women should start raising voice against such injustice.

The Constitution under Article 51A (e) states that it is the fundamental duty of every citizen of India to denounce practices that are derogatory to the dignity of women. There is also need for general reform in the law to protect a wife physical integrity and personal dignity against the violence by the husband.

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