

Protect Women but Stop Harassing Innocent Men Too

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Abstract

Dowry and Cruelty Laws which were originally meant to be acting as a shield but as the days are passing by; a dangerous trend of misusing these laws is being witnessed in our society. Husbands, their innocent and aged parents, relatives, bed ridden family members are being dragged into and severe harassment is being imposed emotionally, mentally, financially and physically too. There had been many such cases where the entire family has committed suicide for such misuse. Article 21 of the Indian Constitution guarantees Right to Life and Personal Liberty. But when this right gets infringed then a human being is completely broken both mentally and emotionally.

Keywords: Hindu Law, Misuse of Dowry, Cruelty Law, IPC 498A, Law of Contract.

Introduction

As per Hon'ble Supreme Court of India in "M.Nagraj v Union of India, AIR 2007, SC 71 at 81", stated that Fundamental Rights is a gift of the State to its citizens. Constitution does not confer Fundamental Right rather it confirms its very existence and gives them protection.

As the years are passing the Apex Court of the country has identified new dimensions of Article 21. Article 21 has vast amplitude. No attribute is more important than Life and Personal Liberty. As human beings and being a citizen of this country must feel the essence of this marvelous Article. It must always be remembered that on 26th November 1949 (as per the Preamble of the Constitution); we the people of India have adopted, enacted and given to ourselves the Constitution. The ultimate sovereignty lies in us. Hence every action from our side towards any citizen and to the society as a whole should be imposed sparingly so that none of the Fundamental Rights guaranteed in the Constitution are infringed. But this trend of misusing the dowry and cruelty laws has severely infringed Right to Life and Personal Liberty (Article 21) of hundreds and thousands of people.

Importance of Man and Woman in Our Society

As per ancient mythology, male and female forms are given equal importance. Male signifies mind and the Female signifies matter. Hence nature is feminine and the Goddess embodies nature. The mind through which it responds to the nature is embodied through the Male deities. The entire world around is the feminine part but the mind within us is the masculine part. This is the teaching of Ardhanarishvara that a half woman God is embodied within us all. Our flesh constitutes the feminine part and our mind constitutes the masculine. Hence from here the inference can be drawn that both Male and Female are undoubtedly inter-related and inter-dependant on each other. May be that's the reason why marriages are considered to be sacred and as per Hindu Law, marriage is a Sacrament (a solemn pledge) too.

Cruelty to Woman

But it's an extreme misfortune for us (as a society) to witness that the divine essence of our ancient mythologies, texts and beliefs has been lost and as a society it is not at all interested to understand and feel the essence and bring back its lost charm, charisma and divinity. Day by day, our minds are being driven into bodily and materialistic pleasures and have forgotten the reason of our own being in this world. Some people have become so much hungry to fulfill their inner desires (both physical and materialistic) that they have lost their senses to judge an act which is not only an offence but its brutality, its barbarism. The best example which can be quoted here is the Hathras incident in Uttar Pradesh 2020, Nirbhaya incident in New Delhi 2012 and so on. Today while writing this the period of Navaratri celebrations had already commenced, the period when the entire world comes forward to pray and praise the essence of nature, the essence of matter, the essence and spirit of womanhood. But side by side we must not forget that when Navratri is being rejoiced and celebrated, a percentage of women in our society are being or will be subjected to cruelty by husband and relatives for dowry, dowry heath, domestic violence, acid attack, rape etc. Out of this percentage some will be able to seek justice and some will never come into consideration for reasons like financial instability, coercion, lack of awareness etc. Due to such atrocities the Judiciary, the Legislature and the Executive (the three organs of the State, as per Indian Constitution) are playing their significant roles. Both mitigation and contingency steps are being implemented which are preventive, correctional and penal in nature.

Crime is Committed by Human Being

As per jurist Blackstone, Crime is defined as "*An act committed or omitted in violation of a public law either forbidding or commanding it.*" From the basic definition of Crime it is understood that there is no specific indication to a particular gender or sex. Hence it can also be said that criminal is a human being irrespective of gender or sex. "Human being" forms the first element to constitute Crime, then the other considerations comes into consideration that whether his/her act was voluntary in nature or not coupled with a guilty intention. For this basic reason that a "*criminal is a human being*", the Reformatory theory of punishment had been defined. It forms the key ingredient behind this theory stating that even if an offender commits a crime under any circumstances he does not cease to be a human being. At present in India this theory is being followed. From both the definitions above an inference can be drawn that Crime is such an act which disturbs the peace and harmony of the public and society at large. That is the reason why after an FIR and charge sheet preparation, the State puts forward the case to the Hon'ble Court though it was a private complaint.

Present Trend

Marriages are the union of "Males" and "Females" in our lives and families too. As mentioned above that as per Hindu Law, marriage is a Sacrament (a solemn pledge) too but when it turns out to be a contract (not necessarily on paper but in the minds) then the issue arises. (As per my little knowledge on Law of Contract 1872 the important element to constitute a contract is a legal consideration which may not be always a monetary one but an act to do or abstinence to do an act. Basically it's the flow of advantage or benefit between both the parties). When marriages happen with a mentality of expecting advantage or benefit from the other party, there takes birth of dowry demand, lust, over expectations etc and due to such mentality, spouses are being subjected to cruelty, coercion, mental agony, mental, emotional and physical cruelty etc. As per data provided by the Family Court of Kochi

in Kerala, the divorce pleas have reached a count of 3122 in 2019. In 2018 it was 2948 and 2017 the count was 2576. In 2020, during the beginning of the year more 226 pleas have added the count of 2019. 10 cases are filed daily on an average. Mostly youngsters approach the court for separation. There has been a case where a couple had filed Divorce petition with 24 hours after their marriage. Most of the couples belong from well established and highly educated families. As per data of the National Family Health Survey (NHFS-4, 2014-15), 31% of women in India have been subjected to physical, sexual or emotional violence by their spouses. Out of 31%, 27% women had been subjected to Physical and/or Sexual Violence, 13% to Emotional Violence. Surprisingly only 14% women had reported to the authorities. As per data of National Crime Record Bureau (NCRB) and judgment of the Hon'ble Supreme Court of India in Arnesh Kumar v State of Bihar, cases under IPC Section 498A has the highest charge sheeting rate of 93.6% but at the same time it had the lowest conviction rate of 15% among all heads. The present trend clearly depicts that this solemn pledge of oneness has lost its divinity in the line of mental deterioration. Spouses are being considered mere objects.

Incorporation of IPC Section 498A and Misuse of the Same

Let me concentrate my topic on a Legislature act which amounts to cruelty on wife by husband and husband relative. After numerous campaigns and others, the enactment of Criminal Law (Second Amendment) Act 1983 which actually amended the IPC 1860, CrPC 1973, the Indian Evidence Act 1872 and Dowry Prohibition Act 1961. It intended to protect wives from marital violence. Section 498A provisions were inserted in the IPC 1860. This section is non-bail able, non compoundable and a cognizable offence. The punishment term may be extended to three years and shall also be liable to fine. The intention was to prevent the Dowry menace. But there are numerous instances where the wives complaints were found to be vague, non bona fide and filed with malicious intentions.

As per Hon'ble Supreme Court of India in Writ Petition (civil) 141 of 2005, Sushil Kumar Sharma v Union of India and Others, the Apex Court had stated that due to such misuse of Section 498A "*a new legal terrorism can be unleashed.*" The Apex Court of the country had also rightly stated that merely because the provisions of Sec 498A is constitutional and intra vires, it does not give license to disgruntled wives to wreck personal vengeance and impose harassment. As per Hon'ble High Court of Delhi in CrI. M.C. 722 of 2009 Amit Sharma vs State & Ors (dated: August 06, 2010) Hon'ble Justice Shiv Narayan Dhingra clearly pointed the intention and acts of the Police authorities as well. As per order it says "*.....It is this police which refuses to register FIRs in case of robberies, thefts and other heinous offences which take place on the roads of Delhi and when the complainant dare comes to police station for registration of FIR, he is made to run from one police station to another on the issue of jurisdiction itself, while the FIRs are registered when nothing happened in India and no investigation can be done by the police in India. Why such FIRs are registered is obvious. It seems registration of FIRs has been made a profitable business by some police officials. The police, in the present case, not only registered the FIR but also got lookout circulars for the petitioners issued.*" As per Special Leave Petition, SLP (CrI.) No.9127 of 2013 Arnesh Kumar vs State of Bihar, the Hon'ble Supreme Court of India had mentioned in its landmark judgment that as per data of National Crime Records Bureau (NCRB), the charge-sheeting rate in the FIRs relating IPC Section 498A is as high as 93.6%, while the conviction rate is only 15%, which is lowest across among all the heads. The Apex Court also stated "*The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision.*" This is considered to be one of the landmark judgments of our Apex Court since it

specifically mandated the procedures to be followed by the police officers under CrPC Section 41A for FIRs relating to IPC Section 498A. In this judgment it also directed Police Department of all States and UTs that they cannot arrest the accused unnecessarily and Magistrate cannot authorize detention casually and mechanically. Failure to comply with the directions the police officers will be held liable for departmental action, punishment for contempt of court before the Hon'ble High Court. As per Hon'ble Supreme Court of India in Writ Petition (civil) 141 of 2005, Sushil Kumar Sharma vs Union of India and Ors, dated 19-07-2005 the Apex Court had mentioned "Sometimes adverse media coverage adds to the misery".

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शादी के सप्ताह भर बाद से ही ससुराल पक्ष द्वारा दहेज की मांग को लेकर प्रताड़ित हो रही पीड़िता ने महिला थाना में शिकायत दर्ज कराई है. पीड़िता की शिकायत पर पुलिस ने पीड़िता के पति, सास, ससुर व जेट के खिलाफ धारा 498 ए, 34 के तहत अपराध दर्ज किया है.

पुलिस के मुताबिक पीड़िता दालेश्वरी यादव का विवाह कोलिहापुरी चंदखुरी दुर्ग निवासी नेतराम यादव के साथ हुआ था. विवाह के समय दालेश्वरी के माता-पिता ने

अपने हैसियत के मुताबिक दहेज दिए थे. शादी के 1 सप्ताह बाद से ही पीड़िता का पति को तार 1 म् यादव, सास श्रीमती गोमती यादव, ससुर जगन्नाथ

यादव तथा जेट चेतन यादव दहेज कम लाने की बात पर शारीरिक व मानसिक प्रताड़ना देने लगे थे. इमेशा मारपीट किया जाने लगा था. पहली बार पीड़िता दालेश्वरी तीज मनाने अपने मायके गईं तब से उसके ससुराल वालों ने उसे घर में घुसने नहीं दिया था. इस पर पीड़िता के माता-पिता उसे मायके लेकर आ गए थे. मायके में रहकर पीड़िता ने उसे फोन भी किया परन्तु पति नहीं उठाता था और न ही ससुराल वापस ले जाने कोई पहल किया था.



FIRST INFORMATION REPORT

S.No. (क्र.सं.)	Acts (अधिनियम)	Sections (धाराएं)
1	भा द सं 1860	34
2	भा द सं 1860	498-A

3. (a) Occurrence of offence (अपराध की घटना):

1. Day (दिन): सोमवार Date From (दिनांक से): 25/04/2019 Date To (दिनांक तक): 17/08/2020
Time Period (समय अवधि): पहर 1 Time From (समय से): 00:00 बजे Time To (समय तक): 00:00 बजे
(b) Information received at P.S. (थाना जहाँ सूचना प्राप्त हुई): Date (दिनांक): 17/08/2020 Time (समय): 17:50 बजे
(c) General Diary Reference (रोजनामचा Entry No. (पंकेट सं.): 001 Date & Time (दिनांक और समय): 17/08/2020 17:50 बजे

4. Type of Information (सूचना का प्रकार): Written

5. Place of Occurrence (घटनास्थल):

1. (a) Direction and distance from P.S. (थाना से दूरी और दिशा): पश्चिम 15 किमी Beat No. (बीट सं.):
(b) Address (पता): सतनामी बस्ती कोलिहापुरी, चंदखुरी, दुर्ग
(c) In case, outside the limit of this Police Station, then (यदि थाना सीमा के बाहर है तो):
Name of P.S. (थाना का नाम): District (State) (जिला (राज्य)):

6. Complainant / Informant (शिकायतकर्ता/सूचनाकर्ता):

(a) Name (नाम): श्रीमती दालेश्वरी यादव उम. 23 वर्ष
(b) Husband's Name (पति का नाम): नेतराम यादव

Figure 1: Newspaper Publication

Example of this is as shown (figure 1). From such publication it is evident that the media publications are not careful enough in dealing with this sensitive issue of misuse of the section 498A. But if we notice the above mentioned judgments (especially of the Hon'ble Supreme Court of India) all are covered by the media and newspapers in their respective dailies. From this picture (as shown) it is clear that the related FIR for 498A was filed on 17-08-2020 and it got published in a Newspaper named Navbharat dated 19-08-2020 that is during the pre-investigational phase. As per the "norms of journalistic conduct" of Press Council of India (a statutory body under the Ministry of Information and Broadcasting, Government of India) it clearly mentions that if such publications of FIR contents are made which relates to the reputation of a person then the same news report must also give a declaration that the veracity of the version of FIR has to be decided by the Court. The Newspaper should also publish the version of the affected party. But as evident this essential and vital norm of journalistic conduct has not being followed in this FIR of IPC 498A. Right to Reputation is an important and an inseparable facet of Article 21 (Right to Life and Personal Liberty). In Subramanian Swamy v Union of India, AIR 2016, SC 2728 the Hon'ble Supreme Court of India had rightly stated "Reputation is a glorious amalgam of unification of virtues which makes a man feel proud of his ancestry. If reputation is hurt, a man is half dead." Such a Libel leads to severe defamation of a

person which affects him both emotionally and mentally. In many cases this leads to job suspensions and/or job terminations.

As per the guidelines of the Hon'ble Supreme Court of India in Writ Petition (Civil) No. 73 of 2015 Social Action Forum for Manav Adhikar v Union of India Ministry of Law and Justice and others, dated: 14-09-2018, the Apex Court has mentioned that with reference to previous guidelines issued by the Apex Court (including Arnesh Kumar v State of Bihar, as mentioned above), for cases under IPC Section 498A, it directed the Director General of Police (DGP) of all States to ensure that the investigating officers must be imparted rigorous training with respect to the principles stated by the Apex Court relating to arrests under IPC Section 498A.

Recent Judgments on Misuse of Dowry and Cruelty Law

In Criminal Petition No. 7129 of 2018, Faizal Ahmed Khan v State of Karnataka (judgment date: 11-10-2019), the Hon'ble High Court of Karnataka had reprimanded the wife for filing false case under IPC 498A on her husband and asked her to pay a penalty of Rupees twenty five thousand (Rs 25,000/-) for unnecessary harassment. In a recent case of the Hon'ble Supreme Court of India Kamlesh Kalra v Shilpika Kalra & ors (SLP No. 2908 of 2019, Criminal Appeal No. 415 of 2020, Shilpika Kalra v Kamlesh Kalra), in this case the applicant filed FIR under IPC 406 (Punishment for Criminal Breach of Trust) after years of divorce from Kamlesh Kalra, with regard to non return of her Stridhan. In this matter while granting special leave to Kamlesh Kalra additionally the Hon'ble Apex Court had rightly pointed that charges under IPC 406 against Kamlesh Kalra and his relatives is not sustainable under law. It clearly establishes the fact that filing a criminal complaint is a pressure tactic and had been employed by the complainant Shilpika Kalra against her husband and in-laws is clearly an abuse of the process of law and is liable to be quashed. On 15th May 2020, in Amarjit Kaur & ors v Jaswinder Kaur & ors, the Hon'ble High Court of Punjab and Haryana has reiterated the words of the Hon'ble Supreme Court of India that it has become a common practice to use the provisions of Sec 498A IPC as a weapon rather than shield of disgruntled wives.

As per Indian Constitution, Article 14 guarantees Right to equality before law and equal protection of laws. Whenever there has been any infringement to these Rights the Hon'ble Judiciary has always protected our Rights. As per 'Rule of Law' none is above the Law.

Impact to the Society at Large Because of such Misuse

- 1) As per Hon'ble Supreme Court in K.Srinivas Rao v. D.A. Deepa (2013) 5 SCC 226
"Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse."
The same has been referred and mentioned in the judgment of Hon'ble High Court of Punjab & Haryana FAO No. 262-M of 2006 (O&M) Dr. Anita Rani vs Dr. Suresh Kumar, dated 26-02-2015.
- 2) As per Sections 10 and 13 of Hindu Marriage Act 1955, cruelty forms a ground for both Judicial Separation and Divorce respectively.
- 3) The terror of such misuse of the provisions has completely destroyed several innocent families. On Feb 3, 2007 in Alwar, Rajasthan an entire family consumed poison and many more.

- 4) As per report of 2006 in UT of Chandigarh there had been 112 suicides due to false complaints of wives against their husbands and families under IPC Sec 498A. A brief survey of the families of the suicide victims revealed that majority of persons who committed suicide had depression, was addicted to alcohol or drugs, and faced marital discord or chronic physical illness. The Department of Psychiatry, GMCH, made efforts to initiate preventive measures.
- 5) The spouses involved in the dispute are matured enough and may be to some extent being able to tolerate their sufferings but what about any child who was born from the wedlock. The child has all the rights to receive love, care and affection of his/her parents. None has the authority to deprive the child from his/her rights.

Conclusion

It must be always kept in mind that all men are not born criminal, all men are not rapists, all men are not cruel and all men are not barbaric. This unjustified mentality is spreading in our society similar like a bonfire. Today our neighbors may be affected but tomorrow we ourselves may get affected too. Being just an initiator and having least knowledge on this divine subject of law, tried my best to express whatever I have understood and witnessed in my surroundings. I have immense faith in Law and I believe that through proper understanding and implementation of the provisions of Law we can bring a drastic change in our society by both deterrent and reformative approach. Whenever any unlawful act take place, the Law is always prevailing to punish the offender irrespective of the fact that the human being is male or female. None should take granted any human being as a criminal based on mere sex. Henceforth judge dispassionately if he/she is having a guilty intention or mind. Guilty intention is the actual legal blameworthy part of the mind and not the entire human being or a particular sex. If we consider our mother to be holy then our fathers are sacred too. If mothers had borne the massive pain to give us lives then fathers too had happily accepted and borne the massive pain and burden on their shoulders to give us a prosperous, happy and secured life. Hence as mentioned in the very beginning, both man and woman are undoubtedly related and inter-dependant on each other. Since after every dark night a new dawn arises, based on this thought I would not like to conclude but to again begin with a new ray of hope and re-quoting “PROTECT WOMEN BUT NEED TO STOP HARASSING INNOCENT MEN TOO”.

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