
JUDICIAL INTERPRETATION OF CRUELTY IN THE CONTEXT OF VIOLENCE AGAINST WOMEN

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ABSTRACT

“**Domestic Violence**” is that social menace against women which has been in existence since time immemorial. But in our society, it has been considered such a normal thing that happens in every household. This issue has been considered more as a private issue or matrimonial dispute rather than as a crime. If a woman gets tortured by her husband or gets ill-treated by her in-laws, she is supposed to be silent and should try for reconciliation for the sake of the respect, and image of the family, unless she will be categorized as a shame by society. This orthodox mindset is the main reason behind the exponential rise in the incidents of bride-killing, dowry death, wife-battering, domestic abuse, and other social evils.

Till the 1980s, there was no specific law to penalise such offences against women. In 1983, for the first time, a specific law was introduced in the form of **Section 498A of IPC** which has penalised “**cruelty against women**” in matrimonial homes. It came as the first ray of hope to protect the married women against all the violence they suffer in matrimonial homes.

But the irony is that this provision which acts as a deterrent to crimes against women is often getting criticized by Courts. There is a misconception that a low rate of conviction, and a higher number of withdrawal of cases represent that section 498A has been misused by women as a weapon to harass their husband or his relatives, ignoring the fact that the absence of adequate evidence, the dependence of the victim upon her assailants, social stigma-may result into acquittal of convicts or withdrawal of cases. S. 498A plays a significant role in protecting women from violence but the question is **to what extent it is effective in its role?”**--that needs to be found out.

Keywords: Violence, Cruelty against Women, Domestic abuse, Marriage, matrimonial dispute

INTRODUCTION

For centuries, atrocities against women are on the rise which has been degrading the possibility of women empowerment. “**Crime against women**” is one of the major issues which exists not just in India but throughout the world. It is a social menace which has its roots in the male-dominated socio-economic, legal and political system. “**Violence against women**” represents the actual scenario of women’s status in society. The irony is that most of the crimes against women go unreported for several reasons like the pressure of the family, society, distrust in the legal machinery, fear of retaliation etc.

One of the major crimes against women which is quite prevalent in our society is “**Domestic Violence**”. Domestic Violence is violence which occurs to women under the veil of marriage. In India, “**marriage**” is a sacred sanctity which is the union of a male and female partner which also involves their respective families. According to the patriarchal society, the male partner has dominance over his spouse and it gives him the right to do whatever he thinks is right to the female partner i.e, his wife under the name of marriage. Hence, if a husband or any member of his family is creating a nuisance for the wife or is involved in “wife battering”/ any other kind of violence, then the act of violence against the woman will be justified because of the marriage. This concept has been in existence even in this 21st century when mankind has been expanding its horizon beyond the sky.

A 2011 study by the International Center for Research on Women (ICRW) revealed that 65% of Indian men surveyed, said that they believe that there are times when women deserve to be beaten.¹

The National Family Health Survey-5² (NFHS-5) conducted in 2019-21 has revealed certain startling facts such as:

1. more than 44% of men and 45% of women responded that a husband is justified in hitting or beating his wife for specific reasons.

¹Barker, G., Contreras, J.M., Heilman, B., Singh, A.K., Verma, R.K., and Nascimento, M. Evolving Men: Initial Results from the International Men and Gender Equality Survey (IMAGES). Washington, D.C.: International Center for Research on Women (ICRW) and Rio de Janeiro: Instituto Promundo. January 2011

²International Institute for Population Sciences (IIPS) and ICF. 2021. National Family Health Survey (NFHS-5), 2019-21: India

2. 32% of ever-married women in the age group of 18-49 years have experienced physical, sexual or emotional spousal violence.
3. The most common type of spousal violence is physical violence (28%), followed by emotional violence (14%).
4. One-fourth of ever-married women in the age group of 18-49 years have experienced spousal physical or sexual violence, including 7% who have had eye injuries, sprains, dislocations or burns and 6% who have had deep wounds, broken bones, broken teeth or any other serious injury.

These kinds of startling facts reveal the importance of having stringent laws to prevent such atrocities against women. In the Indian Penal Code, the provision which plays a major role in protecting women against domestic violence is **Section 498A**³. **Section 498A** along with **Section 304B**⁴ of IPC and corresponding provisions in the **Indian Evidence Act**⁵, **Domestic Violence Act, 2005**⁶ function as a deterrent to the crimes against women in India. These provisions are constituted to provide justice to the women who are the victims of violence within the four walls of the house and also to protect the rights and dignity of women who have been denied the same by the dominant patriarchal society⁷.

But even in the presence of these provisions, often domestic violence is treated as a social crime when compared with violence by strangers, even though it is much more severe in nature⁸.

HISTORICAL BACKGROUND

It was the only early 1980s when in India, the **criminalisation of domestic violence** was brought about after rigorous campaigns and movements by feminist, socialist groups and women activists all over the country. These movements got momentum after the ruling of the Supreme Court in the Mathura Rape case⁹.

³S. 498A of Indian Penal Code, 1860

⁴S. 304-B of Indian Penal Code, 1860

⁵Indian Evidence Act, 1872

⁶Protection of Women from Domestic Violence Act, 2005

⁷Das, S.K. (2014). Whither 498A? Economic and Political Weekly, 49(42), 5-5

⁸Nigam Shalu (2016) Re-examining Family Violence: Perceptions of Survivors from India, Research World, Volume IV, Society of Social Scientists, Agartala

⁹Tukaram v. State of Maharashtra, (1979) 2SCC 143

Till 1983, there was no specific penal provision penalising the violence against women within the home. Husbands could be convicted under the general provisions of **murder**¹⁰, abetment to suicide¹¹, causing hurt¹² and wrongful confinement¹³. But these general provisions of criminal Law are not able to consider the specific situation of a woman facing violence within the home as against assault by a stranger and also overlook the helplessness of the woman who is financially dependent¹⁴.

During the 1980s, there was a large number of incidents of bride-burning, and women dying in their matrimonial homes due to dowry-related harassment which led to several movements demanding the criminalisation of “**Dowry death**” and “**Domestic violence**”.

For the first time, the issue of domestic violence or harassment a woman faces was discussed immensely and was sought to bring out of the protected private realm of the family.¹⁵ **Section 498A** was introduced in the Indian Penal Code in 1983 by the Criminal Law (Second) Amendment Act which recognised “**cruelty against a married woman**” by her husband and in-laws as a crime for which it has laid down the punishment of imprisonment which may extend up to 3 years and/or fine¹⁶. This provision was conceived initially for the protection of women from dowry harassment but is also aimed to prevent other situations of domestic violence.

In 1986, Indian Penal Code was again amended to introduce section 304B, which was aiming to punish the perpetrators of “**dowry death**”. Section **498A** and Section **304B** - both the sections are part of a composite scheme-one is invoked before the woman dies and is preventive in nature, and the other one is invoked when the woman is dead¹⁷.

These legal provisions were introduced after extensive pressure from women activists, which for the first time attempted to penalize violence within homes and empowered the married women who were the victims of abuse in their matrimonial homes.

¹⁰S. 302 of Indian Penal Code, 1860

¹¹S. 306 of Indian Penal Code, 1860

¹²S. 322 of Indian Penal Code, 1860

¹³S. 340 of Indian Penal Code, 1860

¹⁴Jayna Kothari. “Criminal Law on Domestic Violence: Promises and Limits” Economic and Political Weekly, vol. 40, no. 46, 2005, pp. 4843-49

¹⁵Ibid

¹⁶ Supra 8

¹⁷ Supra 8

CRUELTY IN SOCIETY

Cruelty against women has been acknowledged worldwide as a violation of **basic human rights**. It is that social evil which is not only preventing women's empowerment but also obstructing the overall development of society.

But the irony is that the forms of “**cruelty**” practised in society against women under the veil of marriage are generally socially accepted. This kind of “normalisation” of violence is the main culprit behind the existence of this social evil.

In a society where **marriage** and **procreation** are considered as the woman's life's sole purpose, a woman who is suffering from cruelty is often suggested to mend things with her spouse or in-laws at any cost to save her respect in the eyes of society. This kind of normalisation of cruelty leads to lower reporting of these cases and even lower conviction rates which ultimately leads to severe crimes like **bride-burning**, **killing of the female spouse**, **foeticide**, **infanticide**, **domestic violence**, etc.

Even in this 21st century, “**Divorce**” is still a taboo in our society and most of the time it is considered that it is the woman who is responsible for a broken relationship, she must be at fault. A study¹⁸ observed that **89%** of women did not seek help for the sake of family integrity, **70%** had fear of being beaten again and **49%** felt that it would not improve their situation. These orthodox thinking of the society are making “**violence against women**” tenable and women as the vulnerable section.

According to the **2020 report of the National Crime Records Bureau**¹⁹, the rate of total crime against women all over the country is **56.5%** and the majority of cases under crime against women under IPC were registered under “**cruelty by husband or his relatives**” which is around **30.2%**.

These facts make us realise the actual reality of the status of women in our society. These show the significance of the presence of penal provisions such as **s. 498-A**, **s. 304-B** of IPC etc for

¹⁸Shrivastava Prateek S and SR Shrivastava (2013) A Study of Spousal Domestic violence in an Urban Slum of Mumbai, International Journal of Preventive Medicine, 4(1) 27-32

¹⁹Crime in India- 2020, Vol. I, 68th ed. Of the Annual Publication of NCRB

safeguarding women against the cruelty they face behind the four walls of their matrimonial home. This scenario prevails everywhere in the world, not only in India.

“**Violence against women**” has been internationally recognized as a heinous crime affecting women’s lives, health, liberty, and dignity. A **2018 report**²⁰ by **WHO** indicated that **26-28%** of ever-married or partnered women belonging to the age group of 20-44 years have been subjected to physical and/or sexual violence from a current or formal husband or male intimate partner at least once in their lifetime. Almost one in four ever married or partnered adolescent girls in the age group of 15-19 years old have already been subjected to physical and/ or sexual violence from an intimate partner at least once in their lifetime.

These estimates indicate that “**violence against women**” is not at all a national issue, rather it is a global issue which can only be eradicated through global participation, and encouragement against it. It is not a tiny issue prevailing only in a particular section of society: rather it is a pandemic which not only exists in society and affects millions of women throughout the world. To raise concern over this issue there are already several global initiatives such as the **1993 United Nations Declaration on the Elimination of Violence Against Women, 1995 Beijing Platform For Action**, etc.

In 2015, several countries have adopted the **2030 United Nations Agenda for Sustainable development** which includes a target on the elimination of “**all forms of violence against women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation**”, under the **5th goal** of SDG: **Achieve gender equality and empower all women and girls**. Hence, it is the need of the hour to bring global unity to eradicate this social issue through stringent legal machinery.

Interpretation of the term 'Cruelty' by the Courts

Society has been making women prisoners in the name of customs, and traditions for ages. There are several instances like, e.g. **Sati**²¹ i.e. self-immolation by a widow on the pyre of the dead body of her husband; **Polygamy** i.e. the male was allowed to marry more than one woman

²⁰Violence against women prevalence estimates, 2018: global, regional and national prevalence estimates for intimate partner violence against women and global and regional prevalence estimates for non-partner sexual violence against women. Geneva: World Health Organization; 2021

²¹K.D.Gaur, “The poor victim of uses and abuses of criminal law and process in India”, 27 Indian Bar Review 39 (2000)

when his first wife was still alive; ***Instant Triple Talaq*** in Muslims which gave uncontrollable power to the male to divorce their wife at the instant; ***Child marriage*** i.e. small minor girls were married off with aged men, etc. which can be found in different religions and communities which show how women were and still are suffering because of the injustice of the patriarchal society. Treating women in an inhumane manner has introduced the concept of **Cruelty** into the legal system.

Hence, “**Cruelty**” is nothing but a human behaviour which is inhumane in nature towards another person. If we go by its dictionary meaning, it means such a behaviour that causes pain or suffering to others²². “**Cruelty**” is defined in to mean “**the intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (abuse, inhuman treatment, indignity)**”²³. **Domestic Violence against women** often is considered as a social and private issue and the result of matrimonial disputes, instead of a criminal offence and public harm. To safeguard the image of the sanctity of marriage, often women become victims and get suppressed by society. Several enactments and provisions have been brought to address the concerns of liberty, dignity and equal respect for women founded on the community perception that women suffer violence or are deprived of their constitutional rights owing to severe social and cultural factors. The concept of “**cruelty**” is quite vague and not confined to any particular form of violence. It has always been left upon the shoulders of the judiciary to interpret, analyse and define what cruelty is and what the ingredients are to constitute this crime. Women in general and brides, in particular, are the unfortunate victims of dowry in India. It is almost a matter of day-to-day occurrence that married women are harassed, tortured and put to death because parents are unable to meet the dowry demands of their husbands or in-laws as laid down in the *L.V. Jadhav v. S.A. Pawar*²⁴.

The expression “**cruelty**” has been defined in a broad sense under **section 498A** which not only includes dowry harassments but also any physical or mental harm to the body, health of the woman or creating any situation driving the woman to commit suicide. It penalizes offensive conduct of the husband and his relatives towards the married woman²⁵. Courts have vehemently criticised societal norms like wife-beating, one or two assaults on a woman are considered as

²²Oxford Dictionary

²³ Black's Law Dictionary

²⁴1983 Cri LJ 1501

²⁵243rd report of Law Commission of India

a normal facet of married life. In *Vajresh Venkatray Anvekar v. State of Karnataka*²⁶, the Court held the view that “*there is a phenomenal rise in crime against women and protection granted to women by the Constitution of India and other laws can be meaningful only if those who are entrusted with the job of doing justice are sensitised toward women's problems.*”

Nature of the offence under s. 498A

1. **Cognizable offence:** The crime under section 498A is a **cognizable offence**²⁷ which means if information relating to the commission of the offence is given to an officer-in-charge of a police station, police may arrest the accused without warrant.
2. **Non-bailable offence:** The offence under section 498-A is a **non-bailable offence**²⁸ where bail can be granted only at the discretion of the court. In non-bailable offences, the accused cannot ask to be released on bail as a matter of right.²⁹
3. **Non-compoundable offence:** The offence under section 498-A is a non-compoundable offence, i.e, this offence can't be compounded only be quashed by the Court under s. 482³⁰ of CrPC.

Several Courts throughout these years have given several judgements while interpreting the concept of “cruelty” under section 498-A of IPC. Sometimes Courts have given a broader and liberal perspectives like “**mental cruelty**” & sometimes very narrow perspective by following strict rules. These several interpretations have shaped today's law dealing with domestic violence cases.

IMPORTANT RULINGS

Through various decisions, different Courts have explained the concept of cruelty such as:

Reasonable apprehension: In *N.G. Dastane v. S. Dastane*³¹, the Supreme Court has observed that conduct charged as cruelty should be of such a character as to cause in the mind of the

²⁶ (2013) 3 SCC 462

²⁷ s. 2(c) of Code of Criminal procedure, 1973

²⁸ s. 2(a) of Code of Criminal Procedure, 1973

²⁹ <https://lawrato.com/criminal-legal-advice/difference-between-bailable-and-non-bailable-offences-172767>

³⁰ S. 482 of Code of Criminal Procedure, 1973

³¹(1975)2 SCC 326

Petitioner, a reasonable apprehension that it is harmful or injurious to live with the respondent.

Cruelty goes beyond ordinary wear & tear marriage: In *Neelu Kohli v. Naveen Kohli*³², it was held by the Apex Court that to constitute cruelty the acts complained of as causing cruelty must be more serious than ordinary wear and tear of marriage. Not any and every abnormal act of the other party can be viewed as mental cruelty.

Cruelty as a necessary ingredient: To bring the charge under **Section 498-A**, Court held, that cruelty is the necessary ingredient which is needed to be proved as stated in *State of Maharashtra v. Ashok Narayan Dandalwar*³³.

In *Shobha Rani vs. Madhukar Reddi*³⁴, the Apex Court held that the evidence as to harassment of the wife to meet any unlawful demand for money is necessary to constitute cruelty in criminal law. It is the requirement of the offence of 'cruelty' defined under **Section 498A** of the Indian Penal Code.

Continuing nature of the offence: In *Mohd. Hoshan v. State of A.P.*³⁵, the Court held that mental or physical torture should be "**continuously**" practised by the accused on the wife. The Court further stated that the impart of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc.

Conduct driving women to commit suicide: In *K. Prema S. Rao and Ors. vs. Yadla Srinivasa Rao and Ors*³⁶, the accused pressurised and harassed the deceased to part with the land received by her from her father as "**Stridhana**." As a method adopted for harassment, the Postal Mail her relatives sent to her was suppressed by her husband who was in a position to do so as a Branch Post Master in the village. When the letters were discovered by the wife and she handed them over to her father (PW1) she was driven out of the house. This cruel conduct of the husband led the wife to commit suicide. The Court held the accused guilty of the offence of 'cruelty' under **Section 498A**.

³²AIR 2006 SC 1675

³³(2000) 9 SCC 257

³⁴AIR1988SC121

³⁵2002CriLJ4124

³⁶AIR2003SC11

No double jeopardy: In *Inder Raj Malik and Ors. vs. Sunita Malik*³⁷, Delhi High Court held that section 498A IPC does not invoke double jeopardy. If dowry is demanded then, a person can be prosecuted under **section 4 of the Dowry Prohibition Act** and **section 498A IPC** simultaneously. Because under section 4 of the Dowry Prohibition Act only demand of dowry is punishable and the existence of the element of cruelty is not necessary whereas **Section 498A** IPC deals with the aggravated form of the offence which punishes such demands of property or valuable security from the wife or her relative as are coupled with cruelty.

MENTAL CRUELTY: The concept of cruelty has been interpreted by the judiciary in such a way that nowadays, “**mental cruelty**” is also considered as an ingredient under **S. 498A IPC**. “**Mental Cruelty**” is such a thing which does affect one’s mind, health and quality of life. It does not consist of physical bruises or physical abuse but can be caused by mental abuse. It is the need of the hour to acknowledge the presence of “mental cruelty”.

In *Sirajmohmed khan Janmohamad khan vs. Hafizunnisa Yasin khan and Ors.*³⁸, it was held that the “*Conception of legal cruelty undergoes changes according to the changes and advances in social concepts and standards of living. To establish legal cruelty, it is not necessary that physical violence should be used*”.

In *Mohd. Hoshan v. State of A.P.*³⁹, the Apex Court considered the “mental cruelty” as an element of cruelty under s. 498A of IPC. The Court observed that mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty.

In *Pushpa Rani v. Vijay Pal Singh*⁴⁰, the Court held that “*Persistent unlawful demand for dowry of any amount- by the parents of the husband to the wife with the support of the husband would amount to mental cruelty*”.

In *Vinitha Saxena v. Pankaj Pandit*⁴¹, the Supreme Court held that what constitutes mental cruelty will not depend upon the numerical count of such incidents or only on the continuous course of such conduct, but go by the intensity, gravity and stigmatic impact of it when meted

³⁷1986 CriLJ 1510

³⁸AIR 1981 SC 1972

³⁹2002 CriLJ4124

⁴⁰AIR1994All216

⁴¹(2006)3 SCC 778

out even once and the deleterious effect of it in the mental attitude, necessary for maintaining a conducive matrimonial home.

There are several instances where the Courts had given several **narrow interpretations** while acquitting the accused on the concept of proving the offence **beyond reasonable doubt**.

It is a matter of serious concern that a large number of cases continue to be filed under **Section 498-A** alleging harassment of married women and that most of such complaints are filed in the heat of the moment over trivial issues and many are not bona fide. A new set of directions was issued to prevent the misuse of Section 498-A in *Rajesh Sharma v. State of U.P*⁴².

Directions contained in the *Rajesh Sharma case*⁴³, regarding Family Welfare Committees, and regarding the power of Sessions Judge to settle cases, set aside. Further, directions contained regarding the preliminary enquiry, arrest, investigation, designation and training of investigating officers, bail, impounding of passport, Red Corner Notice, clubbing of matters, exemption from appearance, affirmed with modifications in *Social Action Forum for Manav Adhikar v. Union of India*⁴⁴.

In *State of West Bengal v. Orilal Jaiswal and Anr.*⁴⁵, Court has narrowly interpreted this concept by saying if it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life which was quite common to the society to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstances individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused should be found guilty.

In *Smt. Raj Rani v. State (Delhi Administration)*⁴⁶, the Court held that while considering the case of cruelty in the context of the provisions of **Section 498A I.P.C.**, the Court must examine those allegations/accusations must be of a very grave nature and should be proved **beyond reasonable doubt**.

⁴²(2018) 10 SCC 472

⁴³ Ibid

⁴⁴(2018) 10 SCC 443

⁴⁵1994 CriLJ210

⁴⁶AIR 2000 SC 3559

In **Arvind Singh v. State of Bihar**⁴⁷, the Apex Court has given a vague interpretation of the term “cruelty”. It held that a state of conduct by the husband to the wife or by any relative of the husband which can be attributed to being painful or distressing would be within the meaning of the section.

In **Vipin Jaiswal v. State of A.P.**⁴⁸, the Court held that onus was on the prosecution to prove beyond reasonable doubt the ingredient of Section 498-A IPC and the essential ingredient of offence under Section 498-A is that the accused, as the husband of the deceased, has subjected her to cruelty as defined in the Explanation to Section 498-A IPC. Since the prosecution has not been able to prove beyond reasonable doubt this ingredient of harassment or cruelty, neither of the offences under Sections 498-A and 304-B IPC has been made out by the Prosecution.

In **Durga Prasad v. State of M.P.**⁴⁹, (2010) 9 SCC 73, the court allowed the benefit of doubt to the appellants as there was no evidence against the accused except the statements made by the witnesses who were the family members of the victim alleging that the victim had been subjected to cruelty and harassment prior to her death.

In these cases, the Courts have given a negative interpretation. The Courts have ignored the fact that mental condition, capability to handle a situation, and the reaction of a person while dealing with a situation varies from person to person which is impossible to generalise. Courts often did not consider the fact that offences like domestic violence occurs behind the closed doors, hence it is quite impossible for the victim to present witness to corroborate the offence before the court of law.

SUGGESTIONS

1. **Education:** Women’s experience of violence declines sharply with women’s schooling and wealth. By schooling, the percentage of women who report physical violence declines from 40% among women with no schooling to 18% among women with 12 or more years of schooling. Similarly, the experience of physical violence ranges from 39% among women in the lowest wealth quintile to 17 % among women in the highest wealth quintile⁵⁰. It shows the

⁴⁷(2001) 6 SCC 407

⁴⁸ (2013) 3 SCC 684

⁴⁹ (2010) 9 SCC 73

⁵⁰Supra note 2

importance of education. An educated woman is more aware about her rights and can speak against all the violence she has faced.

2. Employment: In most of the domestic violence cases, it has been observed that the victims are financially dependent upon her assaulters. Hence, the victims often remain silent against cruelty so that they don't get thrown out from the shelter provided by her assaulter. Hence, if a woman is financially independent, then she will not have the obligation not to go against her assaulters.

3. Awareness: The major issue is that people are not aware about the rights available to them. A woman who is suffering, she herself is not aware about the rights, remedies and process of Law. This illiteracy and unawareness play major role behind these social crimes. Hence, social campaigns, training programs and awareness camps should be conducted at every level to create **awareness** of the provisions, especially among the poor and illiterate living in rural areas.

4. Access to Justice: The easy access of aggrieved women to the Taluka and District level Legal Service Authorities, credible NGOs with professional counsellors should be ensured by appropriate measures.

5. Speedy trial: In India, the trials of criminal cases especially of serious nature continues for so many years. These delays are not at all in favour of justice, as it is said "**Justice delayed is justice denied**". Hence, a speedy trial is advisable so that the innocent victims entrapped get prompt redressal and they don't get fed up with the legal machinery. It is the need of the hour that Judiciary must expedite the process of law so that the trust of people upon the legal machinery remains same.

6. Broad definition: Any critical review of **Sec 498-A** would require that the definition of "**cruelty**" be expanded and elaborated to include the varied forms of **violence against women** within the home so that it is not left to the discretion of police officers and Courts to assess whether such violence would qualify as cruelty or not. Laws should be made more effective, and stringent and changes should be brought out from time to time according to the circumstance.

Such a broad and inclusive definition would also be in line with the definition of family violence given under the **Domestic Violence Act, 2005** and several human rights treaties and

conventions ratified by India (**Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)**).

7. Inclusion of NRI spouses: There are several instances where the assaulters being NRI uses the excuse of “territorial jurisdiction” in domestic violence cases. Hence, for the sake of justice, the laws should be flexible enough to take such circumstances within its sweep.

8. Change in the Society: Legislative measures, education, and socio-economic status alone do not put an end to the **crimes against women** in society. It is the attitudinal change of the people and the end of the dominance of the patriarchal system that could help to lower crime and gradually it may put an end to this inhumane social evil⁵¹. When the orthodox thinking of the society towards women will change, then only these kind of crimes will be eradicated, otherwise it will continue years after years to come.

9. Focus on the real issues: Instead of conceptualising the debate around the “use-misuse” (of laws) dichotomy, it is more reasonable to talk about a number of different forms of violence that remain unnoticed like “**Marital rape**” because dominant stereotypes cloud their understanding and recognition. We will argue that this dichotomy is constructed to distract attention from the real issues of the varying categories of violence⁵².

CONCLUSION

In today’s society “**violence against women**” is normalised to such an extent that the woman herself who is the victim of the violence is not aware of the same. This is not a new born concept, this has been in existence for ages. It has been deeply rooted in our minds that women are the weaker gender who can be dominated and needs protection by the opposite gender to survive.

This dependency has given birth to the misconception that the tag of “**marriage**” gives the man every right to do with a woman within the walls of a home. The violence women face within the home is not limited to physical or mental abuse, it can be in varied forms such as verbal,

⁵¹Pramila, B. “A CRITIQUE ON DOWRY PROHIBITION ACT, 1961.” Proceedings of the Indian History Congress, vol. 76, 2015, pp. 844–50

⁵²TRIVEDI, PRASHANT K., and SMRITI SINGH. “Fallacies of a Supreme Court Judgment: Section 498A and the Dynamics of Acquittals.” Economic and Political Weekly, vol. 49, no. 52, 2014, pp. 90–97

psychological, sexual and even economic. In the annual report of NCW⁵³, it can be seen that major complaints are registered under the category of dowry harassment/ cruelty to married women (**4209 complaints**), and dowry death (**327 complaints**). These facts reveal the prevalence of this social evil in our society.

To check the further deterioration of the situation, provisions penalising cruelty against women need stringent implementation. **Section 498A** of IPC plays a significant role as a shield to protect the women who are subjected to violence within their homes. The expression “**cruelty**” given in s. 498A IPC is broad enough, which is not confined to the giving or taking of dowry but extends to all conduct that causes mental or physical injury to the woman by her husband or his relatives. The presence of this provision is essential to demonstrate the seriousness of the treatment poured by cruelty to the “**right to life**” of women.

But the irony is that, even in the presence of this penal provision, “**violence against women**” are on the rise. Bride-burning, dowry-killing, wife-battering, and ill behaviour by the in-laws can be seen every day in the newspapers. Now the question arises why these events are increasing day by day even in the presence of laws. The answer is its ineffectiveness, if section 498A were properly invoked, we would not see the number of dowry deaths, and domestic violence cases that we continue to see every day.

The major issue with section 498A of IPC is that it does not address the different forms of violence a woman faces, rather it addresses “cruelty” very generally, as an act that drives a woman to commit suicide or any act that causes grave injury or danger to life, limb or health

of the woman. Due to this vague definition, often it is at the discretion of the police officer to assess whether the abuse faced by a woman by her husband or his relatives is serious enough to justify the conviction under section 498A⁵⁴.

Over the years, it has been observed that **domestic violence** is being treated as a **family dispute** or a lesser crime by law enforcement agencies. Instead of taking action against the perpetrators of violence, they tend to provide a solution in the form of “**counselling**” where the women would be

⁵³Annual report 2020-2021 of NCW, available at http://ncwapps.nic.in/pdfReports/Annual_Report_2020_21_English_Full.pdf)

⁵⁴Jayna Kothari. “Criminal Law on Domestic Violence: Promises and Limits.” Economic and Political Weekly, vol. 40, no. 46, 2005, pp. 4843–49

advised to adjust, reconcile and “save the marriage”. It will not just grave prejudice against women but also will lead to enormous social unrest affecting the peace and tranquillity of the society.

Women often remain silent tolerating all violence against them because of family pressure, a sense of shame, societal stigma, fear of reprisal, for the sake of family integrity etc. But when she ultimately gathers the courage to speak up, she gets discredited by society as hypersensitive or prone to exaggeration.

There is a misconception that women are using these provisions **as a weapon rather than a shield** to harass their husbands or husband's family. According to media reports and several judgements, the higher rate of acquittal of convicts and withdrawal of complaints reflect the apparent misuse of Section 498A. The Supreme Court in one of its rulings said that —By misuse of the provision (IPC, 1860 498A - Dowry and Cruelty Law) new **legal terrorism** can be unleashed. The provision is intended to be used as a shield and not an assassin's⁵⁵.

But we tend to ignore the fact that it may happen due to inadequate investigation, the accused getting benefit of doubt or biases towards women⁵⁶. **Domestic Violence** is such a crime which happens within the walls of the home, i.e., private domain. Hence, most of the time it is extremely difficult for the victim to prove physical or mental cruelty **beyond reasonable doubt** which is required by criminal jurisprudence. Often there are no witnesses to corroborate the victim's evidence as the offence is committed behind closed doors⁵⁷.

In the case of **Arvind v. State of Bihar**⁵⁸, the victim who was burnt to death by her husband and in-laws made a dying declaration to her mother that they had poured kerosene on her and threw a matchstick on her. The Apex Court held that the evidence of the mother could not be relied upon as she was an interested witness and thus acquitted the accused from charges due to insufficient evidence. An innocent soul could not get justice because the Court was not satisfied that the offence was committed by the accused beyond reasonable doubt.

⁵⁵Supra note 47

⁵⁶Concern for the Dead, Condemnation for the Living, EPW, 26TH July, 2014

⁵⁷Flavia Agnes. “Protecting Women against Violence? Review of a Decade of Legislation, 1980-89.” Economic and Political Weekly, vol. 27, no. 17, 1992, pp. WS19–33

⁵⁸AIR2000SC2124

In **Gananath Pattnaik v. State of Orissa**⁵⁹, the victim died by hanging herself and her sister testified that the victim used to complain to her of assault and ill-treatment from her husband and in-laws. But the Apex Court acquitted the accused due to benefit of the doubt.

There are several such instances where Judges have taken adherence to strict rules of evidence and technical approach which has failed not only the purpose of section 498A but also have created a negative image of the legal machinery in the minds of the society. Different criteria need to be evolved to deal with the cases of “domestic violence”. Generally, complaints are considered only after an offence has been committed. But in a domestic violence case, the victim may need protection even before a crime is committed when she is apprehensive about her life as she may be in close contact with her assaulter and financially dependent upon him.⁶⁰

It is the need of the hour to protect **Section 498A** from the adverse propaganda of misuse and to restore it as a viable law to protect victims of all types of domestic violence- physical abuse, mental harassment, sexual violence and other dowry-related violence. Now, the time has come to take out the notion of domestic violence from the private sphere and also to rethink the extent of “cruelty” as there are still many aspects like “**Marital Rape**” which are left out of this provision.

As Martin Luther King Jr. said, “***Injustice anywhere is a threat to justice everywhere***”. If a woman is not safe in her own house with her own family, then she will not be safe anywhere in the world. We do celebrate “**International Women’s Day**” on 8th March every year, but can we provide women with a safe life with liberty or dignity or not- that we definitely need to think about.

⁵⁹(2002) 2 SCC 619

⁶⁰Supra note 66