Chapter 5

Misuse of Legal Protection by Women

1. Introduction

In the era of man’s ascendency to power, the institution of marriage came into existence as an exclusive union. It is believed that wife is ardhangini i.e. half of man. Man is only half not complete until he marries. Wife is not grihapatni but also dharampatni. In the Ramayana the wife is said to be very soul of her husband.

The institution of marriage is an oldest social institution and provides a foundation on which whole superstructure of civilization and prosperity is built. Stability i.e. a happy, cordial and harmonious relationship between couples has been considered as one of the most important condition for this institution in civilized societies-ancient as well as modern. However due to emergence of industrialized societies and result of social awareness amongst people, especially in females about their right of equality and personal liberty, the meaning of stability in the context of marriage has been changing gradually in different span of times.

The issue of women’s rights and family law reform has been increasingly entangled within the polemics of politics and minority rights. It is true that the hardships and the sufferings experienced by woman of all communities, minorities as well as majority, cannot be overlooked with the help of persuasive or effective freedom of religion. The life on an average Hindu woman has always been difficult and pitiable due to existing social customs practices of time. But today the laws are such that a woman can easily misuse it for her purpose and benefits.

Although women protective laws have been justified with respect to status of women in olden times, but as we all know the world has changed and so on.

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2 Ramayana, 11-37
3 Prof. Ajay Kumar, “Institution Of Marriage-Judicial Approach”, All India Reporter, January, p.6,( 2010)
the behavior of women. Those women who are used to be subjected to house-taker now are taking steps ahead along with men. The law on the other hand has not changed proportionately. The society has progressed to such an extent that criminality amongst women have achieved a higher stand in society and certainly have become influential but with respect to law is still where it was in olden times. The repeatedly misuse of legal protection can lead to new legal terrorism. So there is need to change law relating to women. It is not fair to pre-establish that domestic violence happens to wife only.\(^5\)

While making special laws for women, the legislators must think of victimized sect of the society in male line also. Laws like, Indian Penal Code section 498-A and Domestic Violence Act, 2005 have number of provisions to intimidate men and their families. The effect of these laws is unjustified power in the hands of women for blackmail and extortion in domestic disputes which irreparably damages the life of husbands and their relatives and sometimes also becomes the reasons for their death.\(^6\)

In India and elsewhere in the world, there are no special laws for male. There is Dowry Prohibition Act, Section 498A in Indian Penal Code i.e. offence of cruelty by husband and relatives of husband; section 125 in Code of Criminal Procedure i.e. maintenance for wife; protection of women from domestic violence, in Statute books. But there is no protection of men in Domestic Violence Act, 2005, there is no provision like Section 498B in Indian Penal Code, there is no provision like Section 125A in Code of Criminal Procedure i.e. maintenance to husbands under the Act. Rather the specific laws for women are misused by errant women and police officers. The cry of victimized husbands and their relatives is not heard either in courts or in society. The practice says that real purpose of the women – related specifies laws are misused and thereby husbands suffer for no fault.\(^7\)

The section 498A of Indian Penal Code has become frustrated on the

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feminist standpoint also. Rapid use and heavy misuse of this section has also failed to fulfil the object of social welfare and gender justice. The random arrest of mother-in-law and sister-in-law in the name of cruelty under this section has proved that to protect one woman it has put in danger and made vulnerable two more women.\textsuperscript{8}

2. Concept of Equality and Equal Rights

Article 14 of Indian Constitution provides for equality before Law and equal protection of law. Similarly article 7 of Universal Declaration of Human rights, 1948 provides that all are equal before law and are entitled without any discrimination to equal protection of law. Article 3 of the Covenant on Economic Social and Cultural Rights 1966 and the Covenant in Civil and Political Rights 1966, provides that State parties to these covenants undertake to ensure equal rights for men and women, given under these covenants. Article 15(3) of Indian Constitution is considered as an exception to general rule of Article 14. If there is discrimination in favour of particular sex, it is permissible provided that the classification is the result of other considerations beside the fact that the persons belonging to that class are of a particular sex.\textsuperscript{9}

In \textit{Vijaylakshmi Vs. Panjab University}\textsuperscript{10} it was held that as a result of joint operation of Article 15(1) and (3), the State may discriminate in favour of women against men but it may not discriminate in favour of men against women. Discrimination would be permissible provided it is not only on the ground of sex.

Analyzing the constitutional validity of the sec 498 A of I.P.C. it can be viewed that the section is ultra vires to Art. 14 of constitution of India, the concept of equality and equal protection of law guaranteed by Art 14 in its proper spectrum encompasses social and economic justice in a political democracy. It is a pledge of protection of or guarantee of equal rights within the territorial jurisdiction of the Union to the enjoyment of rights and privileges without favoritism or discrimination. If a wife has a law to protect herself against

\textsuperscript{10} AIR 2003 SC 3331
the cruelty of her husband, why doesn’t husband have it? When male goes with
genuine complaint the police at max can record a Non Cognizable offence
against the women. Every 100 male suicides have 45 married males, and every
100 women suicide have 25 married women. Married women suicides have
default arrests of the in-laws under presumed dowry death. Married men suicide
entitle wife for a 50% share in the property. What kind of equality is this?
Equality is a dynamic concept which goes on changing with changing times and
social contexts and must be understood in that sense. There is no prohibition
clause in the section 498A that would stop women to misuse it against the men.\textsuperscript{11}

3. Concept of Cruelty against Husband

In India where marriage is the union between man and woman to get
social status in the society and marriage is nothing but procreation and caring of
the child. According to Westmark Marriage has been often like as an institution
made by it. As there is increase in number of marriages every day, at the same
time breakdown of marriages in the society has also been seen to be increasing
whether by fault of husband or wife. Though cases filed by wife against husband
and in-laws under Protection from Domestic Violence Act and 498-A of Indian
Penal Code to claim maintenance and divorce but all complaints are not filed
bona-fidely. Freedoms of education, job opportunities, economic independence
and social attitude have brought tremendous change in the status of women. The
balance of scale has tilted reversely in favour of women\textsuperscript{12}.

Cruelty is an inhuman treatment and it is an act that causes mental
sufferings and endangers to the life and health of the other. Cruelty may be in the
form of physical as well as mental by the act either of the husband or the wife.
Though it is the women who have always been subjected to be tortured and
harassed by the husband and relatives, in fact saying this will not be proper as
cases of torture and harassment against the husband by the wife is increasing day
by day. Cruelty is the main ground to seek divorce as defined under ‘Sec 13(1)
(i-a)’ of ‘The Hindu Marriage Act, 1955’ and party who is filing a case must

\textsuperscript{11} Supra note, 4, p.127-128
\textsuperscript{12} Dhawesh Pahuja, “Cruelty against husband in India” www.legalindia.in/cruelty-against-husband, visited
on 10\textsuperscript{th} July 2013
prove that living between husband and wife became impossible.

Cruelty in human behaviour is as old as human civilization itself is. Human by nature is cruel. As and when one gets an opportunity, be it a male or female, one perpetuate cruelty upon other. In the ancient days the human being practices cruelties towards animals. After some development of human race the subject of cruelty changed from animal to other human being. The perpetuator of cruelty always remains to be the powerful one and the one upon whom the cruelty was perpetuated always remains to be weaker one. With the concept in mind human being started perpetuating cruelty in order to gain strength and show their power.\(^\text{13}\)

With the development in civilization and with coming into existence institution of marriage the subject of cruelty changed drastically and one spouse, be it a male or female, started perpetuating cruelty upon the other spouse but as there was no forum to redress this grievance, so the instances of cruelty remained confined to four walls of house.\(^\text{14}\)

### 3.1 Concept of Matrimonial Cruelty in Penal Code

The Criminal law Amendment Act, 1983 inserted section 498A (Chapter XX-A) relating to cruelty by husband or relatives of husbands to combat social evil of dowry and matrimonial atrocities against married women.\(^\text{15}\) Here this feminist measure was to make better family system for greater society. One side to protect society from crime against women and other side to put matrimonial cruelty in penal code for making it more stringent to curb wife battering, dowry system which made society more polluted. There are several provisions in penal law relating to offences of matrimonial nature. A married woman is subjected to cruelty under Indian Penal Code, 1860 by her husband or his relatives (498A) or by same husband and his relatives in demands of dowry preceding unnatural death within seven years of marriage (304B) or causing woman’s death (302) amounting to murder.\(^\text{16}\) In both sections 498A and 304B cruelty extends toward

\(^{13}\) A.S Arora, *Law on Cruelty against husband*, (2010), p.1

\(^{14}\) Ibid

\(^{15}\) Act 46 of 1983

death. A person charged under section 304B can be convicted under 498A without any charge under that section.\textsuperscript{17}

But this shield has become only and multipurpose sword against husband and his relatives. According to Malimath Committee Report once a complaint or FIR is lodged under section 498A or 406 of Indian Penal Code, it becomes easy tool in the hands of the police to arrest or threaten to arrest the husband and other relatives named in FIR without even considering the intrinsic worth of allegations and making a preliminary investigation.\textsuperscript{18}

The law Commission of India recently in its 237\textsuperscript{th} report on ‘compounding of IPC offences’ highly recommended for section 498A of Indian Penal Code, 1860 should be made compoundable with the permission of the court.\textsuperscript{19} This is not the first time; the same recommendation was made in its 154\textsuperscript{th} report on 1996 and 177\textsuperscript{th} report on 2001 respectively. Apart from law commission, Justice Malimath Committee’s report on ‘Reform of Criminal justice System’ also suggested to bring the section 498A under the purview of compoundable offence. There was a constant demand for flexibility of this provision from apex court in numerous cases.\textsuperscript{20}

In famous case of \textbf{Preeti Gupta Vs. State of Jharkhand}\textsuperscript{21} Supreme Court observed that a serious re-look of entire section 498A of Indian Penal Code is needed. All of these recommendations are in against the rigidity of this provision. The simple principle has been revealed here that if procedural laws are made too hard then object of the substantive law will be frustrated. The simplicity in the procedural laws will give the scope of amicable settlement of family disputes because this offence is very much related to marriage and family. If chance of reconciliation is not given then the whole institution of family will come to an end. But cardinal rule of family law is to make the family not to break the family. The aim of this provision was mainly to make a society free

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\textsuperscript{17} Ratanlal and Dhirajlal, \textit{The Indian Penal Code}, (2006), p.919
\textsuperscript{18} 237\textsuperscript{th} Law Commission Report
\textsuperscript{19} Published in December 2011
\textsuperscript{20} Dr Partha Partim Mitra, “ A new look on matrimonial cruelty with criminal law”, \textit{Indian Bar Review}, Vol XL(1) 2013, p.87
\textsuperscript{21} AIR 2010 SC 3363
\end{flushright}
from family disputes. Whereas heavy misuse of law has made this society full of matrimonial problems. In writ petition about the constitutional validity of section 498A, the Supreme Court said, merely because the provision was constitutional and intra vires, did not give a license to unscrupulous persons to wreck personal vendetta or unleash harassment. It has been very properly discussed that how sister-in-laws become victim of section 498A without having any nexus with cruelty. Not only that but there are many practical examples where 498A was charged against remote relatives, friends, match makers or even priest also. The rapid increase of matrimonial litigations according to the Supreme Court demonstrates discontent and unrest in the family life of a large number of people of society. Even false charge of cruelty under criminal law has become a ground of cruelty for matrimonial relief. False cases of bigamy against husband\textsuperscript{22} or under Dowry Prohibition Act, 1961 as well as Indian Penal Code\textsuperscript{23} are also amount to cruelty as decided by various High Courts. As the Supreme Court said the object was to strike at the roots of dowry menace. But by the misuse of the provision a new legal terrorism can be unleashed.\textsuperscript{24} Even Court has accepted that false allegation of cruelty is amount to cruelty.\textsuperscript{25} This is an irony of law that one protective legislation has become a cause for protection for other.

It is a general notion that in matrimonial disputes the perpetrator of cruelty is always to be husband being the strongest one and the subject is always the faire sex i.e. wife. But it can not be ruled out that wife had never perpetuated cruelty towards her husband. Earlier instances of cruelty having been practiced by wife were not highlighted. It is only first time in the history of legal system the case of cruelty having been perpetuated by wife came before the Hon’ble Supreme Court for decision. Earlier to the said decision the cruelty to be a ground for matrimonial dispute was considered to be only physical cruelty.\textsuperscript{26}

Unsubstantiated allegations made by wife in a court of law during divorce proceedings about her husband’s extramarital relations amounts to cruelty, the

\textsuperscript{22} Raj Vs. Raj, AIR 1986 pat. 362.
\textsuperscript{23} Kalpana Vs. Surendra, AIR 1985 All 253.
\textsuperscript{24} Sushil Kumar Sharma Vs. Union of India, AIR 2005 SC 3100
\textsuperscript{25} Ashok Kumar Vs. Vijay Laxmi, AIR 1992 Del. 182.
\textsuperscript{26} Ibid, p.3
Bombay High Court has ruled, while allowing dissolution of marriage on these
grounds. The ruling was delivered recently by a bench which quashed a Pune
family court order of July 11 dismissing a divorce petition filed by a man on the
grounds of cruelty. Hearing an appeal of husband against the impugned order,
Justices G S Patel and O S Oka allowed dissolution of marriage between Mahesh
and Mohini Paigude. The husband had filed a petition in the family court seeking
a decree of divorce on the grounds of cruelty. One of the grounds pressed by him
was an unsubstantiated allegation made by his wife that he was having
extramarital relationship. The High Court held that making such unsubstantiated
allegations amounts to causing mental cruelty to the husband.\(^{27}\)

Though it is the duty of the court to decide the case based on facts and
circumstances but what amounts to cruelty is an important aspect as misuse of
Laws by the wife against husband in society is growing day by day and most
apparently some Indian Urban educated women have turned the tables and are
using these laws as weapon to unleash personal vendetta on their husbands and
innocent relatives and there are certain grounds on which cruelty against husband
can be proved\(^{28}\):-

- Misuse of Dowry Laws, Domestic Violence Act and ‘Sec: 498-A’ of IPC
  by wife against husband and in-laws of husband through lodging false
  complaints.
- Desertion by wife which means wife deliberately intending for separation
  and to bring cohabitation permanently to an end.
- Adultery by the wife means wife having sexual relationship with some
  other person during the lifetime of marriage and there must be strict law
  to punish wife who has committed adultery.
- Wife opting out for second marriage without applying for the divorce
  proceedings.
- Threatening to leave husband’s home and threat to commit suicide by the

\(^{27}\) *The Indian Express*, 27\(^{th}\) July 2013.
\(^{28}\) Dhawesh Pahuja, “Cruelty against husband in India” [www.legalindia.in/cruelty-against-husband](http://www.legalindia.in/cruelty-against-husband), visited on 10\(^{th}\) July 2013.
wife.

- Cruel behavior of wife where wife tearing the shirt of the husband, refusing to cook food properly or on time and breaking of the mangalsutra in the presence of husband’s relatives.

- Abusing and accusing husband by way of insulting in presence of in-laws and in some cases wife abusing husband in front of office staff members.

- Wife refusing to have sex with husband without any sufficient reasons which can be considered as a ground of cruelty and husband can file a divorce petition.

- Lowering reputation of the husband by using derogatory words in presence of family members and elders.

- Lodging FIR against husband and in-laws which has later proved as false report.

- Conduct and misbehavior of the wife against husband i.e. pressuring husband to leave his home, insisting for the separate residence, mentally torture and disrespectful behavior towards husband and in-laws as well.

- Some other grounds of cruelty i.e. mental disorder and unsoundness of wife, Impotency of wife, illicit relationship of wife with some other person and Wife suffering from the filarial.

- Extra-marital affairs of wife can also be a ground of cruelty against the husband.

- Initiating criminal proceedings against husband and in-laws of husband with mala-fide intention by the wife.

Situations in Hindu marriage where a wife was held as cruel to the husband and the Hindu divorce law was applied by the Supreme Court:

But while rendering landmark judgment in the case in *Dr. N. G. Dastane Vs. Mrs. S. Dastane* the Hon’ble Supreme Court had held that the cruelty is of

29 AIR 1975 SC 1534
two type one is mental and other is physical. It might be true that physical is generally being perpetuated by the husband being a strong one but at the same time this can’t be said to be universally true. It is also vice versa in the case of mental cruelty. But in the majority of cases of mental cruelty it is almost the wife who causes mental cruelty to the husband.

**Mrs. Deepalakshmi Saehia Zingade Vs. Sachi Rameshrao Zingade**\(^3\) In this case petitioner/wife filed a false case against her husband on the ground of Husband Having Girl Friend which is proved as false in a court of law so it can be considered as cruelty against husband.

**Anil Bharadwaj Vs. Nimlesh Bharadwaj**\(^3\) According to this case a wife who refuses to have sexual intercourse with the husband without giving any reason was proved as sufficient ground which amounts to cruelty against husband.

**Kalpana Vs. Surendranath**\(^3\) According to this case it has been observed that where a wife who refuses to prepare tea for the husbands friends was declared by the court as cruelty to husband. Though the amendments introduced in the penal code are with the laudable object of eradicating the evil of Dowry, such provisions cannot be allowed to be misused by the parents and the relatives of a psychopath wife who may have chosen to end her life for reason which may be many other than cruelty.

Though the amendments introduced in the penal code are with the laudable object of eradicating the evil of Dowry, such provisions cannot be allowed to be misused by the parents and the relatives of a psychopath wife who may have chosen to end her life for reason which may be many other than cruelty. The glaring reality cannot be ignored that the ugly trend of false implications in view to harass and blackmail an innocent spouse and his relatives, i.e. fast emerging. A strict law need to be passed by the parliament for saving the institution of marriage and to punish those women who are trying to misguide the court by filing false reports just to make the life of men miserable.

\(^3\) AIR 2010 Bom
\(^3\) AIR 1987 Del 111
\(^3\) AIR 1985 All 253
and ‘justice should not only be done but manifestly and undoubtedly be seen to be done’. 33


Marriage is a basic social and legal institution. Marriage of two persons brings a lot of changes in their socio-economic and legal status. Due to rapid growth and development of the society and as a result of liberalization, post-modernization and globalization, the stability of institution of marriage has weakened. The new concepts like live-in-relationships, gay and lesbian marriages have eroded the traditional concept of marriage. At the same time matrimonial offences are rising high in our country. There are real victims of these offences. At the same time, there are persons who are falsely implicated in these cases. They are accused but they are ‘innocent victims’ of matrimonial offences. Because, they have to face trial for no guilt. Their only guilt is that they are relatives of husband. The cases of false implication in dowry related matter has reached on the alarming level. 34

Commenting upon the situation in our country, Hon’ble Apex Court in Shushil Kumar Sharma Vs. Union of India has observed that by misuse of the provision a New Legal Terrorism can be unleashed. This observation of Hon’ble Apex Court came in year 2005; now six more years have passed. The question is – does a provision of law have become synonymous of a very negative thought like terrorism? It is an arguable question and needs a close examination of prevailing socio-legal position.

Law is always to protect its subjects and to ensure justice, which is its end. But if the situation arrives when a ‘piece of legislation’ becomes a ‘symbol of terror’ for the subjects, its horrible. Imagine the plight of unmarried girl, whose life and future prospects are ruined due to arrest and detention and frequent visits to courts, the sufferings of old aged persons, who went to jail, the pain of married sister, and other in-laws, falsely implicated, who never lived

33 Supra note 16
35 AIR 2005 SC 3100.
with the victim of 498 A and 304 B, of I.P.C. All these are terrorized in the hands of the law. Before we can term this scenario as New-Legal Terrorism, there has to be very strong and sound reason in support thereof. Terrorism has no face, no caste, no creed, no religion, no geographical limits, no defined objects, its lurking everywhere, be it temple, church, mosque, gurudwara sahib. Certainly, its war against humanity. What is terrorism? Terrorism is the philosophy that supports the acts of terror to cause extreme fear in the society, to destabilize the society, to end the peace and harmony of the society. The cases of false implications in dowry related matter has reached to such level that almost every married male persons and his relatives are fearful of it every time. Thanks to the Protection of Women from Domestic Violence Act, 2005, this has added one more lethal weapon in the armory of unscrupulous litigants.\textsuperscript{36}

The observation of Hon’ble Apex Court that “Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society”\textsuperscript{37}, clearly shows that these provisions are causing extreme fear in the society, therefore, synonymous with New-Legal Terrorism, perhaps has now been unleashed. Like terrorism it is the nation wide, rampant in every religion, in every social strata. No age group is exempted of it.

5. Legal Provisions Relating to Women and their Misuse

Due to ever increasing evil of dowry deaths in the country the need was felt for inserting the stringent provisions in substantive and procedural criminal law which tend to deal effectively with sordid incidents of mental cruelty on helpless wives. In 1983 certain amendments were made in Indian Penal Code, Code of Criminal Procedure and Indian Evidence Act on the recommendations of the 91\textsuperscript{st} law commission.\textsuperscript{38}

S. 498A of Indian Penal Code, 1860 provides that 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

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\textsuperscript{36} Ibid
\textsuperscript{37} Preeti Gupta Vs. State of Jharkand, AIR 2010 SC 3363
\textsuperscript{38} 91\textsuperscript{st} Law Commission Report, 10\textsuperscript{th} August, 1983.
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three years and shall be liable to fine. Similarly S.113-B of Indian Evidence Act, 1872 provides that in case of dowry death, the Court has to presume that dowry death was caused by the person who is shown to have subjected the woman to cruelty or harassment soon before the death.

Moreover S.406 of Indian Penal Code, 1860 provides for the punishment for criminal breach of trust. Wives can file a case against their in-laws under this section if ‘streedhan’ is not returned. The Protection of Domestic Violence Act, 2005 under sec 31 provides that Magistrate may file case under Sec 498-A of Indian Penal Code in appropriate case. Protection officers, Service providers and Magistrates are under duty to inform aggrieved party of her right to file a complaint under S. 498-A of Indian Penal Code 1860.

Payment of dowry, gift-often financial, has a long history in many parts of the world. In India, the payments of dowry was prohibited in 1961 under Indian law and subsequently by section 304B and 498A of the Indian Penal Code were enacted to make it easier for the wife to seek redress from potential harassment by the husband’s family. The giving and taking dowry, its abetment or the demand for it have been made as an offence punishable with imprisonment or fine both (Section 3 and 4 of Dowry Prohibition Act 1961). Section 5 of the act, makes the agreement for giving dowry to be void which means that such an agreement is unenforceable by law.

Even at International level various efforts were made for the protection of women. International Conferences like Vienna 1993, Cairo 1994, Copenhagen 1995 and Beijing 1995 highlighted problems of women. In 1998, 50th anniversary of ‘Declaration of Human Rights’ was celebrated by the United Nations with global campaign for elimination of gender based violence and discriminations.39

Basically anti-dowry laws and other laws relating to women protection are made to protect them from greedy in laws and husbands. But there is also another section of women who often abuse the authority of law. They snuff–out vengeance with the liberty of protection of law and find enough room to misuse the instruments of law at their pleasure. The husband is victimized most, so also

the members of his family. We don’t always have Sita in every frame of woman. The law which was meant to protect the women is often getting double edged, hitting back the husband with deep incised wounds. The provisions of Indian Penal Code, Code of Criminal Procedure and Domestic Violence Act 2005 become handy weapons for those who want to settle any scores with the “husband” and “in-laws”. There had been no live concern about the reality but the sharpening of the wits was there with wrong signals. It has become an easy reckoner for the wife to dictate her own terms to the husband and the in–laws even if mentally and physically she remains elsewhere.40

The objects with which these provisions were added in the statue books were noble one. But these provisions have been misused over the years by the unscrupulous litigants to serve their oblique motives. It was noticed during the survey that there are some misguided elements amongst women who misuse the law to reap the vengeance and harass the poor husband. According to a lady Magistrate Prabha Tak, who has lot of experience of cases of dowry deaths, young girl marry with lots of aspirations based on movies and films. Their expectations are totally unrealistic. They are away from the mundane realities of life, this leads to tensions and frustrations when realities down their marriages. The new culture of not teaching the girls any household makes their life miserable when they have to involve in these jobs. They have not learnt cooking, naturally their cloth will catch fire if they are not careful. Similar are views of DCP Crime (women cell) and many of them who were interviewed. Most of the cases of dowry harassment are actually cases of marital maladjustment. The wife commits suicide out of the frustration of work or because of her inability to make adjustments and the poor husbands and his family have to take the blame for the acts of his over sentimental wife. The girl’s parents by blaming the in-laws for demanding more dowry or perpetrating atrocities, actually cover up their own responsibility of not bringing up their daughter properly. In most of the cases the fault could be appropriated to both, the husband as well as wife. It was the mental blocks and lack of desire to adjust with each other.41

40 V.K Dewan, Law relating to Cruelty and Offences against Husbands, (2009), p. 4
It is not fair to pre-establish that domestic violence happens to a wife only in the Indian family. In a typical situation a wife can act cruel to her husband physically, mentally or by her anti-social behavior. As in most Indian families, husband’s parents live with him, so wife can be also cruel to them. In such circumstance, many husbands and their old parents committed suicide after being neglected by everyone including the police, courts and civil societies. The common reasons for misuse of anti-dowry laws are:-

- To maintain her illicit relations and extra–marital relations after marriage.
- Abusing the parents, sisters and brothers of her husband with filthy words.
- Demanding the separation of husband from his old parents.
- Demanding transfer of property and assets just after marriage to her name.
- Aborting the child without telling husbands or his parents.
- To extract money from husband and her in laws.42

Sole object of women protective laws was to give legal protection to the married women against victimization by. But these laws have now become a handy weapon for many women to black mail, harass, humiliate and falsely implicate the innocent members of the In-laws family in dowry-demanded cases and extract money from them before finally setting the marital discard or dispute.

5.1 Legitimacy of Section 498 A of Indian Penal Code

Section 498-A was inserted in Indian Penal Code in 1983 to protect married women from cruelty including dowry harassment but it is being fearlessly abused and misused by large section of unscrupulous people who are using law as a weapon for ulterior motive.

The section 498-A was brought in forth for the protection of women from the cruelty of her husband and his relatives which is now being misused by some thoughtless women. These women are turning the law other way round by being cruel to their husbands and his relatives and getting them tired under Section 498-A. Indian Law has always laid emphasized on protection of the innocent. It

42 Supra note, 2
has always been emphasized that ten guilty persons can be acquitted rather
punishing a single innocent person. But this section is being misused and
innocents are punished. Today the time demands an equal law for the men to
protect them against the evil shadow of section 498A. This anti-social misuse of
provisions of law is growing a legal terrorism in the society.\(^\text{43}\)

Constitutional validity of the section 498A, of Indian Penal Code has been
challenged on the ground that this provision is misused. But Hon’ble Apex Court
in *Sushil Kumar Vs. Union of India*\(^\text{44}\) has upheld its constitutional validity,
holding that possibility of misuse or abuse of a statutory provision of Law, which
is otherwise valid, can’t render it invalid.

According to Black’s Law Dictionary\(^\text{45}\) Cruelty means, “the intentional
and malicious inflection of mental or physical suffering on a living creatures esp.
a human; abusive treatment.” Cruelty is defined under S. 498A and it has been
used in relation to human conduct and human behavior. Human conduct is
complex and a rigid definition of cruelty is not impossible. While deciding
whether cruelty has been proved or not variety of factors like social status,
customs, traditions, public opinion etc. have to be considered. Cruelty for the
purpose of section 498A need not be physical, even mental torture or abnormal
behaviour may amount to cruelty. Inference should be drawn by taking into the
account the nature of conduct and its effect on the complaining spouse.\(^\text{46}\)

In *Vinita Saxena Vs. Pankaj Pandit*\(^\text{47}\) It was held by the Apex Court that
cruelty depends upon the type of the life the parties are accustomed to or their
economic and social conditions and human values.

There are no parameters by which cruelty by wife against her husband and
his relatives, can be measured. Wives are continuously taking advantage of this
stringent provision under which husband or his relatives can be punished upto
three years of punishment and fine.

\(^{44}\) AIR 2005 SC 3100
\(^{47}\) AIR 2006 SC 1662.
“whenever there is matrimonial dispute between the husband and wife for the fault of husband or other relations of the husband that is the brother, sister, parents are also roped in the litigation on the allegation of demand of dowry, whether they are living jointly or separate and sometime even the parents who are aged 80 to 90 years and are unable to walk or talk and the sisters living at far off place in the matrimonial house are involved”. As it is always presumed that these legal provision are made for the protection of the women from cruelty, then what about the mother, sisters, sister-in-law of the husband? Are they not women? Why they are involved in all these litigation?

Delhi High Court in Anu Gill Vs. State & Anr. observed as The Hon’ble Judge of Punjab and Haryana High Court has observed that: “It has become a practice that whenever a police report is lodged consequent upon a matrimonial discord, there is always a tendency on the part of the complainant to involve practically all the relations of her in-laws family either out of vengeance or to curl out appropriate settlement. Such a tendency ought to be deprecated.”

There are many reasons for filing false case against husband and his family like demanding separation of husband from his old parents, interference by parents of wife in her matrimonial life, past affair of wife or extra-marital affair, financial independence of wife etc. It is seen that most cases of misuses of dowry laws are reported by urban families and wives who are well educated, independent and aggressive. Mere lodging a complaint by a married woman even based on conflicts with husband on trivial matters not distantly relating to dowry demand gets the police machinery into action quickly and all accused are put behind the bar; even young kids and close relatives are not spared some time. Offences under section 498A of Indian Penal Code are non bailable and non compoundable. Women take advantage of these provisions to set scores with husbands and in laws.

5.1.1 Why good law turned into legal terrorism

The question is- why a good law that was created with noble vision...
Misuse of Legal Protection by Women

gradually turned into a legal terrorism? Here it is submitted that researcher had found that there are several reasons, which have been crystallized on the basis of judicial decisions, empirical research work and experiences came across in court. They are:

• In those cases where matter is partially true, exaggeration is made to make the matter real and thrust of the complainant remains on the point that maximum relatives of in-laws are roped and arrested so as to mount pressure on the in-laws and on husband to settle the matter on the dictate of wife.

• Sometimes false cases are filed to take revenge.

• There are cases, where wife gets second marriage done, concealing the first marriage. In such cases, when second husband comes to know the fact of first marriage, he files complaint of bigamy. Then, in rebuttal, wife files complaints alleging dowry demands and harassment.

• _Luteri Dulhan_- Cases have come in light, where a woman used to marry a number of men and cheat everyone of them, by living sometime with them and sometime and then making theft of valuable property and disappear. If case of cheating and theft is filed against such woman, criminal complaints of alleging dowry demand and harassment are filed.

• In several cases, criminal complaints of dowry demand and harassment are filed to get the property of husband, where husband is alone successor of huge property.

• The most common fake complaints are filed at the moment when husband files suit for restitution of conjugal rights and the notice is served on the wife; wife files complaints of dowry demand and harassment.

• In very rare case, a complainant is punished for filing false complaints.

• Most of these complaints are filed in the heat of the moment over trivial issues without proper deliberations.

• Last but not the least, a good lawyer in Bar is one, in the eyes of litigant,
who can win the case of the complainant, by whatever means.

It is submitted that these reasons can’t be exhaustive because human mind can never be explored *in toto*. For the aforesaid reasons filing of false complaint are rising high, creating fear in the mind of citizens of India.

**5.1.2 Adverse Impact of Misusing S.498A of Indian Penal Code, 1860**

Every person who is falsely implicated in criminal complaints or F.I.R. is sufferer. A false complaint has a far reaching impact on social and economic prospects of accused. Sometimes, a complainant herself is sufferer, mostly in those cases where complaining wife has no independent source of livelihood. Because, arrest of near and dear one’s of husband culminates in divorce between husband and wife and ultimately she is left at the mercy of her natural parents. Minor children to marriage are innocent victims, who don’t face legal action but they do face social problem like, single parenting, criminogenic atmosphere of up-bringing which results in ‘broken personality’. The criminal trial lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. A large number of these complaints have led to enormous social unrest affecting peace, harmony and happiness of the society. Further, tendency of false implication of parties does have bearing on genuine cases.

It can be concluded that the institution of marriage and family got adversely affected by misuse of this provision and the other dowry related laws. Following are the few points of ill effects of misuse of this provision:-

- It has resulted into large number of divorce cases. Once the members of the husband’s family are arrested, chances of surviving the marriage became remote and marriage comes to an end.

- A woman who is not economically independent gets adversely affected with break chances of remarriage and by becoming dependent upon parents and brothers again.

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50 *Preeti Gupta Vs. State of Jharkhand*, AIR 2010 SC 3363
• The future of unmarried girls of the husband’s family gets adversely affected by the false implication and prosecution.

• The accused under dowry crimes are kept with hard core criminals that severely affect their personality and thinking.

• It increases corruption in police and society as police threaten persons involved that if they would not pay money, their bail will be delayed.

• Many lawyers, in lieu of getting commission on the money received by women by misusing this provision, encourage complaints to exaggerate the amount due to them as streedhana. It causing disgrace to profession of advocates.

• Many husbands or their old parents commit suicide due to the harassment by women in such false cases.

• World Health Organization report on Elder Abuse finds misuse of dowry laws by daughter-in-law as the main reason for the elder abuse in India.

• Mothers, in order to take revenge on the husband, do not allow fathers to see the child. It has ill impact on the physical and mental development of the child.

Annually about 75000 dowry harassment cases are filed in India. According to National Crime Reports Bureau data, more than 80% people arrested under dowry law cases have turned out to be innocent. Suicide rates of married men in India are higher than females and their proportion increases with their age. For males in the age group of 30 to 40 suicide rate is 508 per 100000 persons; for women it is 220. The suicide rates among men in the age group of 45 to 59 are 1812 per 100000 persons and among women, it is 550. It shows that more husbands are compelled to commit suicide because of unbearable harassment, mental torture, disturbed family life, financial pressure etc.\(^\text{51}\)

If a woman misuses S, 498A of Indian Penal Code, 1860 she is committing following crimes:-

• Crimes against her husband and his family members.
• Crime against her children, who will suffer due to their separation and tension.
• Crime against the religious vows that she took during marriage.
• Crime against the sanctity of court.
• Crime against police and public administration who has supported her as a victimized women.
• Crime against society, social system and values.
• Crime against the womanhood which is in question due to her.

It means that misuse of S. 498A is an offence that should amount to seven times the punishment provided under this section.\(^52\)

5.1.3 Non Resident Indians and Misuse of S. 498A

The NRI husbands get harassed tortured and blackmail by their wives, when dowry harassment cases are registered against them. Due to distance, they are unable to deal properly with the authorities and legal procedures to prove their innocence. In some cases Indian authorities ask foreign embassies to cancel their visa. When they arrive India they are arrested at airports as criminals, their passports are seized and are stopped to go back to their job abroad. Due to this harassment, the USA State Department has already issued warning to foreigners for not travelling for marriage to India. It is seriously unfortunate for India to depict such a horrific image at International level. The dowry harassment laws are cognizable offence, in which the proof is not required and on the basis of statement of wife, police put all accused persons in jail.\(^53\)

There are many issues for which wives harass their NRI husbands like wife marries NRI husband to procure visa, to make money from marriage with NRI, etc. Wives are obtaining Permanent Residency of file false dowry cases against NRI husbands to take over his assets, wives abducts children and flee to


\(^{53}\) Ibid
India.\textsuperscript{54}

Several reports of the abuse of section 498A have involved couples based outside India especially in US & Canada. The United States Department of State has published the following travel warning:

A number of US men who have come to India to marry Indian nationals have been arrested and charged with crimes related to dowry extraction. Many of the charges stem from the US citizen’s inability to provide an immigrant visa for his prospective spouse to travel immediately to the United States. The Courts sometimes order the US citizen to pay large sums of money to his spouse in exchange for dismissal of charges. The Courts normally confiscate the American’s passport, and he must remain in India until the case has been settled. It is stated in Travel Advisory by US, since the police may arrest anyone who is accused of committing a crime (even if the allegation is frivolous in nature), the Indian criminal justice system is often used to escalate personal disagreements into criminal charges. This practice has been increasingly exploited by dissatisfied business partner, contractor, estranged spouses, or other persons with whom the US citizens has a disagreement, occasionally resulting in the jailing of US citizens pending resolution of their disputes. At the very least such circumstances can delay the US citizen’s timely departure from India, and may result in an unintended long-term stay in the country. Corruption in India, especially at local levels, is a concern, as evidenced by Transparency International’s Corruption perception index of 3.5, ranking India in 72\textsuperscript{nd} place of the world’s countries.\textsuperscript{55}

In a well publicized case, Dr. Balamurali Ambati who earned his MD at age 17, and his family were detained in India for over three years in a suit related to alleged dowry demands by the family for his brother’s wife Archana, which delayed Dr. Ambati’s entry to the ophthalmology program for two years, leaving him to begin his residency in 1998. All charges against him were dismissed in October 1996 and his family members were acquitted in June 1999. During the


course of the trial the Ambatis produced a tape in which the father of Archana
demanded US $500,00 to drop all the charges although the details of this
particular case are still debated in India.\textsuperscript{56}

The world Health organization reports Lebanon and India as first ranking
countries for legal abuse of elders in India\textsuperscript{57}. And also in year 2005 there were
10491 cases which were not charge sheeted because of frivolous grounds. Not
only are senior citizens, even women and children abused using this legal
process. It is ironic that more than 5,000 innocent women get arrested under
section 498-A, which has been projected as a law for welfare of women. Under
false cases of section 498-A, an innocent woman is arrested every 23 minutes
and an innocent person is arrested every 5 minutes.\textsuperscript{58}

5.1.4 How this Terrorism can be Prevented?

Every problem has solution. There are several measures by which problem
can be minimized. These measures may be taken at family level, at police station
level and finally in courts.\textsuperscript{59}

- Trivial disputes between husband and wife or wife and in-laws are part
and parcel of matrimonial life. These problems can amicably be settled at
family level, by the involvement of elders in the family. If these are
settled down normal matrimonial relations are resorted.

- Where wife leaves matrimonial home, normal tendency of Indian society
is that efforts are made to solve the problem. At this stage mediation can
be made by the relatives, respectable persons of locality in which either
party to marriage resides. If these problems settled down normal
matrimonial relations are resorted.

- Where suit by husband for restitution of conjugal rights is filed, Courts
can refer the matter to mediation or conciliation cell or make efforts
themselves. Learned mediator of bar can also act as mediator. If at this

\textsuperscript{56} Ibid
\textsuperscript{57} http://www.498a.org/legaltorture.html, visited on 20\textsuperscript{th} November 2010
\textsuperscript{58} National Crime Record Bureau, 2006
stage mediation succeeds, suit by husband for restitution of conjugal rights is withdrawn and normal matrimonial life is also resorted with some efforts.

- Legislature should conscious enough to the fact that conciliation is the best way to settle matrimonial disputes. Provisions have been made in this regard. Section 23 of the Hindu Marriage Act, 1955, Section 9 of the Family Courts Act and section 14 of the Protection of Women from Domestic Violence Act, contains the provisions regarding conciliation.

- The High Courts should laid down several guidelines, through judicial pronouncement, to protect the liberty of the citizens and harassment of innocent persons in the hands of unscrupulous litigants.

Offence under Section 498A of the IPC, relating to harassment for dowry and cruelty to women in her matrimonial home, may become slightly less stringent on husband and in-laws. After many complaints about its misuse, the law commission is set to recommend making the offence compoundable. This means the husband and in-laws of a complaint would have the choice of compromising and getting the case of their back, provided the woman agrees. Till the compromise takes place, the offender would stay in jail unless they get bail.\(^{60}\)

The Government of India is mulling over a proposal to review/amend some provisions of Dowry Prohibition Act, 1961. Replying to a question in Lok Sabha the Minister of Women and Child Development Smt. Krishna Tirath stated that the Government has a proposal for amendment to the Dowry Prohibition Act, 1961 to make it more effective and prevent its misuse. The Minister revealed that No complaints/ representations alleging misuse of Dowry Prohibition Act, 1961 have been received. She however informed that, some complaints/ representations regarding alleged harassment of husband and other family members for inflicting cruelty on account of dowry using Section 498-A IPC have received. Smt. Tirath stated that for preventing the misuse of Section 498-A of IPC, Government has issued an Advisory to all the State Governments and

\(^{60}\) *Times Of India*, May 26th 2011
Union Territory Administrations on 20th October, 2009. They have been advised to comply with the procedures laid down by the Hon’ble Supreme Court and that in cases of matrimonial disputes; the first recourse should be to effect conciliation and mediation between the warring spouses and their families.  

5.2 Dowry Prohibition Act - a boon or bane?

Till a hundred or two hundred years back, the valuables/money/property given to a daughter during her marriage which she would take along with her to her husband’s family. This practice was prevalent in many countries across the world including in Europe. In those days, the women were typically not allowed to own property or get inheritance assets/property/business shares and this was a way to give the woman's own right/share to her once she got married. This would save from any disputes between the brothers and this woman after the parents of the wife expired. In India, it is still not uncommon for women to sign off all rights on their parents' properties at the time of marriage and their parents give away the woman's share as expenses of the marriage and as Streedhan. The original definition of so called dowry was what is known as Streedhan in India. The other historical purpose of dowry, or dower from which the word dowry originated, was to provide support for the wife in the case of his death.

Unfortunately, many people abuse the power that money brings. Many brides' family used the power of dowry to "purchase" grooms that the bride could get on her own merits. Over the years, one thing that has clearly been seen is that there are very rare cases brought up when dowry is demanded and not a single case the dowry givers had been punished. Largely, cases are registered firstly when some marriage dispute occurs due to various reasons and all the disputes termed as Dowry dispute. Surprisingly, in most of these cases, the matter is not even brought up or looked down initially and this way both giving and taking dowry is justified. It is a well known strategy of stopping crime and terrorism to find the source of funds to these groups and cut this source of funds. Till the time the brides and their families are willing to pay the price for a groom who is

61 Ministry of Home affairs, 5th November 2009.
better that the bride on merits, this system can't be stopped.\textsuperscript{63}

It is now a well known fact that in India, there are now more men than women. This means that for a bride getting a suitable groom should no more be a problem. There is now no real reason for a bride and her parents to pay a "price" for a suitable groom in the current situation. Other noticeable things that have happened are that women have been brought up to the same level as far as men by the amendments to the Succession Act. Some of these amendments had already been made in the South. The concept of Streedhan and that it is something in total control of the bride to whom it is given is also well known and established. After marriage it is the husband’s family who are harassed at least 10 times more to get the money/property/business share by the wives and their family members. Result more and more burden put on the head of Husbands and they are ending their life all most double than married women.\textsuperscript{64}

THE STRINGENT provisions incorporated in the Dowry Prohibition Act of 1961 (Central Act) have been largely diluted. Recent amendments and rules framed under the Act by State governments reinforce this perception. Whether the teeth provided in the Act had been plucked off as the injustice caused by it was too much, or whether cases filed under the Act and put to test acted as a catalyst for a rethinking about the provisions is a moot point. When the Bill was introduced in Parliament it was said that its object was `to prohibit the evil practice of giving and taking of dowry.' When a Bill was introduced to amend the Act of 1961, it was said that the evil of dowry had been a matter of serious concern in view of its ever increasing and disturbing proportions. Accordingly the Act of 1984 made some amendments in the Act of 1961. Some women's voluntary organizations felt that the amendments were still inadequate. Hence the Amendment Act of 1986 further amended the 1961 Act. After the above two amendments, the Act became more stringent. The 1986 Act introduced new sections 8-A and 8-B. Sec. 8-A says that the burden of proving that one has not committed offence u/s. 3 (giving or taking of dowry or any abetment towards it)

\textsuperscript{63} \url{http://www.saveindiafamily.org/index.php}
\textsuperscript{64} \textit{Ibid}
and u/s. 4 (demanding dowry) is on the person charged.\textsuperscript{65}

However, the Supreme Court in the case of \textit{Balram Kumawat Vs. Union of India}\textsuperscript{66} has held that conviction cannot be based on such presumptions without offence being proved beyond reasonable doubt. The amendments and Sec. 498-A of the Indian Penal Code (IPC) were introduced presupposing that only genuinely aggrieved women would lodge complaints and that they would invariably tell the truth. Some victims of false cases formed associations and expressed concern over the arrest of the accused husband, his family members and even remote relatives without proper investigation, and money mongering by wife and her relatives led to suicides by many men.\textsuperscript{67}

Today more persons are committing suicide for fearing harassment on the basis of false complaints under Dowry Prohibition Act. It is submitted that punitive punishment should be imposed on those responsible for giving false complaints besides awarding costs and damages to the victims; that tax payer should not be made to pay for mala fide and frivolous complaints; that the process of courts should not be used for settling personal vendetta; that Sec. 498-A of the IPC and the amended Dowry Prohibition Act, which were meant to prevent the victimization of women, were being increasingly misused by women to blackmail, victimize and harass innocent husbands and their relatives.

When the Dowry Prohibition Act was sought to be amended in 1986, Parliament with a view to checking the misuse of the Act, introduced Sec. 8-B which deals with appointment of dowry prohibition officers by State governments. The Supreme Court in a number of judgments asked the State governments and Union Territories to immediately frame rules for appointment of dowry prohibition officers under the Act.

The Punjab Government (Act 26 of 1976) substituted Sec. 7 of the Act to the effect that no police officer below the rank of Deputy Superintendent of Police shall investigate any offence punishable under the Act or make arrest thereof. Himachal Pradesh has also substituted the provision as above.

\textsuperscript{65} \textit{The Hindu}, 14\textsuperscript{th} December 2004.  
\textsuperscript{66} \textit{AIR} 1996 SC 2184  
\textsuperscript{67} \textit{Ibid}
Punjab inserted Sec. 8-A as hereunder:

"8-A Institution of Proceedings: No prosecution shall be instituted against any person in respect of any offence committed under this Act without the previous sanction of the District Magistrate or of such officer as the State government may by special or general order appoint in this behalf."

The government of Tamil Nadu also framed the Tamil Nadu Dowry Prohibition Officers and Advisory Board Rules 1998. Dowry prohibition officers were invested with the powers of police officers as per rule 4 of the above Rules. Tamil Nadu gave more powers to dowry prohibition officers and to stop misuse of the Act, brought in new rules called Tamil Nadu Dowry Prohibition Rules 2004 in supersession of the Tamil Nadu Dowry Prohibition Officers and Advisory Board Rules 1998. The Tamil Nadu Dowry Prohibition Rules define police officer as Deputy Superintendent of Police of the division concerned. In Rule 3 it is said that dowry prohibition officers shall exercise jurisdiction and powers u/s. 8-B of the Act. Dowry prohibition officers' approach as defined in the Rules is primarily preventive and remedial and for prosecution he can only recommend. Rule 7 further says that dowry prohibition officers shall submit a report before a competent magistrate and the report shall be deemed to be a report u/s. 173 of CrPC. I do not think in any other statute in India, it has been mentioned that an enquiry should be conducted to collect such evidence from the parties as to the genuineness of the complaint. When the Rule 5 (X) insists that the dowry prohibition officers shall scrutinise the complaint and collect evidence from the parties as to the genuineness of the complaint, we can read between the lines a lot. Moreover, it insists that evidence should be collected from the parties, which means not only on the complainant side but also on the respondent side.68

While disposing of a petition, the High Court of Madras (Justice A.K. Rajan) has said: "It is true that demand of dowry, which originally prevailed among a small sect of people, has not pervaded the entire society due to the educational advancement. Further, due to the constant attempts by various

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68 Ibid
organisations women started complaining about dowry harassment to the police. Of course, it is a healthy sign. But at the same time, it is not uncommon that while such complaints of dowry harassment are made, even innocent in-laws are arrayed as accused. When such false complaints are made, some people, unable to bear such false accusations, go to the extent of committing suicide. This has to be taken note of by the authorities concerned and there must be restraint regarding such complaints against in-laws.”

5.3 Section 497 of Indian Penal Code needs Amendment

Section 497 of Indian Penal Code: Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such cases wife shall not be punishable as an abettor.

Section 497 of the Indian Penal Code punishes adultery. It is very astonishing to note that in this case only the male partner is made liable for punishment. As the sexual intercourse does not amount to rape, necessary implications follows that woman is willing and consenting party to the act of sexual intercourse. Why then women is exempted from liability? Moreover, even if she invites a male for this purpose, she will not be held guilty of any offence. This is very ridiculous. A married woman has a greater duty than a stranger has, to abstain from doing such an act so as to preserve the fidelity towards her husband whom she owes faithfulness on account of marital tie. But in this case, her infidelity is excused completely and only stranger (man) is held liable, even though both parties are equally responsible for commission of this act. This is clear discrimination and this cannot be called protective discrimination either. Excluding her from criminal liability is not based on any convincing logic or reason. Indian Penal Code’s provision of ‘adultery’ exhibits double standards. Ranbir Penal Code, 1932 which is in force in Jammu and Kashmir State

69 The Hindu, 14th December 2004.
penalizes such wife also. In Pakistan, Saudi Arabia, Iran, Egypt etc. both participants i.e. man and woman are punished for adultery. It should be remembered that in ancient Hindu Law Manu had provided for punishment for adulteress.\(^70\)

It is beyond at least my comprehension that why a married women alone has been given a blank cheque of open exemption to indulge in free sex with as many as she likes and yet not be punishable as an abettor even though notwithstanding that it was she who lured them and on the contrary men will be punishable under all the circumstances? Can on earth there is be any such discriminatory law which openly discriminates between men and women and punishes men alone even though women abetted it? At least not in my knowledge have I ever heard of such a law!

The Fifth Law Commission of India in its 42\(^{nd}\) Report, 1971 had recommended the retention of Section 497 in its present form with the modification that even the wife, who has sexual relations with a person other than her husband, should be made punishable for adultery. It also recommended for revision of the current punishment for the same, which is five years, as it felt that it is, “unreal and not called for in any circumstances.” The suggested modification was not accepted by the legislature. Joint Selection Committee suggested equal culpability of both the sexes for their promiscuous behavior, but it was of the view that the old punishment of five years should be retained as it is.\(^71\)

Justice Malimath Committee Report on Reforms of Criminal Justice System in 2003 recommended: “In view of the fact that an adulterous relationship cannot take place without the consent of the married woman, it is highly discriminatory to hold only the man guilty of the offence without making the adulterous women liable for her infidelity.”

Even the Apex Court in *Sowmithri Vs. Union of India*\(^72\) held; it is commonly accepted that it is the man who is the seducer and not the woman.


\(^{71}\) Sanjeev Sirohi, “Section 497 of IPC Must Be Amended”, *Cri LJ*, p.79, June(2013)

\(^{72}\) AIR 1985 SC 1618
This position may have undergone some change over the years but it is for the legislatures to consider whether Section 497 should be amended appropriately so as to take note of the transformation which the society has undergone. Justice Malimath Committee recommended deletion of section 497 IPC and making adultery a civil offence only. The Fourteenth Law Commission in 1997 in its 156th report on IPC also suggested by Joint Selection Committee. The draft National Policy on Criminal Justice formulated by the Madhava Menon Committee also recommended de-criminalizing adultery.\(^\text{73}\)

Existing Law does not seem that it is competing with present era. Malimath Committee and Report of the Law commission must be taken into consideration. Necessary amendments be made to Sec 497 of IPC, so as to do away with irregularities, and in the interest of doctrine of equality.\(^\text{74}\)

The National Commission of Women had also criticized the British era law of being anti-feminist as it treats women as the property of their husbands and has consequently recommended deletion of the law or reducing it to a civil offence. Besides, even women must have the right to sue anyone having adulterous relationship with her husband and not just men alone as most unfortunately section 497 presently entails. At least now our Government must act and initiate necessary changes in it by either making it gender neutral or decriminalizing it entirely. Media should also play its part in this regard by debating it more vigorously and prominently to draw the attention of our law makers in this regard. No other section of IPC so blatantly discriminates between men and women with men here being at the receiving end and women being at the gaining end. No men can ever stare continuously at women without her consent; leave alone the question of having physical relationship.\(^\text{75}\)

The law is being misused as a bargaining tool by those women who indulge in adultery. When their nefarious acts are exposed they take recourse to misusing this law, thereby deflecting the needle of crime on innocent husband and his family. This law being an exception in criminal law presumes the

\(^{73}\) Supra note 34
\(^{75}\) Supra note 34 p.79
accused as guilty until proven innocent; hence the women’s word is taken as a gospel of truth. And there from begins the saga of unending trials, tribulations and destruction for an innocent man and his family.\textsuperscript{76}

5.4 Protection of Women from Domestic Violence Act 2005: Cruelty to Male

To curb the menace and cruelties to women being the weaker sex several legislations have been enacted in India, i.e. section 498A of the Indian Penal Code, Section 113-A of the Evidence Act, Section 125 of the Code of Criminal Procedure, Dowry Prohibition Act and some other provisions in the Indian Penal Code and also the latest legislation Protection of Women from Domestic Violence Act 2005 was enacted. The latest legislation was enacted in consonance with several International Accords and Conventions under the norms and principles adopted by the United Nations for protection of women. The concept of protection of women against cruelties and tortures have brought, us to a situation where all protective legislations are being enacted for the benefit and protection of women only and the male persons and more particularly male spouse are left at lurch and at the mercy of the women who can use and misuse the legislations to suit their objects and ends. This is of course is not a generalization but from time to time such situations do occur.\textsuperscript{77}

After the Independence of India we have made greater strides in our social, economical, cultural and educational front and also the advancement of science in its various forms had taken us a long leap forward. The women of yesteryears are more and more educated, enlightened, independent excepting in some grey areas of rural India and the women have started enjoying their new found upliftments and overall developments in all possible ways. The developments of education has also taken the women to the road of self – sufficiency and much needed independency but in some areas it has also created more matrimonial rights between the male spouse and the female spouse. For

\textsuperscript{76} Dr. Shobharam Sharma, “Legal Terrorism in India: Need to Change the Law” \textit{Cri LJ}, Vol:117, p.374, December(2011)

every petty action between male and female spouse, legal provisions are used by women for causing distress and harassment to the male spouse and his family members.\textsuperscript{78}

The Protection of Women from Domestic Violence Act 2005 was enforced to protect the women from harassment ranging from physical beating, emotional torture, and sexual abuse, denial of basic amenities, verbal insults of calling of names, maligning characters and other offences but no attention was given by the law-makers to the fact that males can also be subject to such offences in hand of women in certain circumstances and as such the time has now come for re-thinking of the matter of protection of males from the hands of women as well.

Some of provisions of Protection of Women from Domestic Violence Act 2005 are so biased in favour of women, which are misusing by them mostly. Here we will discuss some provisions of the act; can you believe that a phone call can cost you Rs. 20,000? Not an International call, but a domestic call for even a single minute can cost you Rs. 20,000. A Magistrate is empowered to pass a protection order in favour of a wife and prohibit the husband from attempting to communicate the wife including oral, written, electronic or telephonic contact under the Protection of Women from Domestic Violence Act.\textsuperscript{79}

If such husband against whom a protection order is issued makes a phone call to his wife, he has committed an offence under section 31 of this act for which punishment could be not only Rs. 20,000/- but also one year of imprisonment. Moreover, this offence is cognizable and non-bailable. Such husband making phone call to his wife can be arrested without warrant and would not get bail easily as the offence is non-bailable. Does this disproportionate punishment not offend our conscience?\textsuperscript{80}

Under the Protection of Women from Domestic Violence Act, 2005 the aggrieved party is always “any woman”. Man does not come within the purview of such definition. Aggrieved under the Act is only for women. Even the preamble speaks for “rights of woman.” The protection officers and counselors

\textsuperscript{78} Ibid
\textsuperscript{79} Section 18(d) of Domestic Violence Act 2005.
\textsuperscript{80} Section 31 of Domestic Violence Act 2005.
under the rules should preferably be a woman. The “respondent” under the definition means any “adult male person”, which means a complaint can not be directed against the female. Is it not discriminatory? Where is law for the protection of husbands? The whole scheme of the act and the rules made there under appear to be absolutely one–sided.\(^81\)

The worst part of the legal provision is to be found in Section 32(2) of the Act which provides that on the sole testimony of the aggrieved person, in this example the wife, the Court may conclude that the offence has been committed by the accused. This provision is against the principles of natural justice. Such husband even if has not made a phone call and wife says falsely that he has made a phone call to her, the Court convict the husband and punish him for no crime. The Section 32(2) is totally biased in favour of females and against males. Law is irrationally presuming here that females always speak true and males always lie? This is an example of sex-biased law.

One more example of extreme favourable attitude of law towards females can be found while passing protection order Magistrate can prohibit a man from operating bank lockers or bank accounts held by both the parties, jointly be the aggrieved person and the respondent or singly by the respondent without the leave of Magistrate. The Protection order would be justified only if it prevented the man from operating joint bank lockers or joint bank accounts. But the protection order can go further and also prohibit operating bank lockers or bank account held separately by the man without the permission of the Magistrate. Man is expected to ask permission from the Magistrate every time he wants to withdraw his own money from his separate individual bank account. What more humiliation of a man can be done than this?\(^82\)

Another substantiation of the act being unreasonable and excessive is that in relation to the right of residence wherein by including the divorced wives, former girlfriend and former live-in partners in the list of women facing domestic violence, this act gives enough leeway to women to harass innocent men and turn the heat on their former partners. Now even a traitorous woman

\(^81\) Ibid, P 9
\(^82\) Section 18(c) of Domestic Violence Act 2005.
cannot be thrown out of house as she can easily threaten her husband or in-laws of false domestic violence charges as the act expressly mentions that in case of absence of any other evidence, her sole testimony shall be relied upon by the magistrate in deciding the existence and extent of violence. The act almost gives a legal sanction to any relationship, which is not at all socially acceptable like the live-in relationship. In addition to this the respondent is totally deprived of his legitimate rights over his property as he cannot alienate or dispose it off if an order is passed under the act. On the contrary there is an added liability on his part to arrange for an alternate accommodation to pay the rent for the same.\textsuperscript{83}

The concept of cruelty cannot to attributed to women only and the male can also be a subject thereof from the hands of the women as was rightly pointed out by the Apex Court in a number of cases where the Court held that cruelty or harassment need not be physical but mental torture in a given case and is sufficient to cause cruelty. It can never be safely and conclusively said that the males are beyond the domain of cruelties and tortures caused by women and the definition of cruelties as has been pronounced by judicial decisions are not bestowed on male by women at the present stage of the society where the male domination is fast losing its ground.\textsuperscript{84}

The Parliament now in its wisdom recently appreciated the problem now being faced by male spouses in particular although belated by publishing on Sep. 2004. Mallimath Committee report which has made recommendation for public suggestions and is one of its recommendation felt that a less tolerant and impulsive women may lodge a FIR on trivial acts and as a result the husband and the family members may languish in jail custody. To avoid such cruelties and tortures to males, the time is ripe enough to enact an appropriate legislation to protect the males also from all kinds of cruelties and tortures in the hand of women as and when they are so committed.\textsuperscript{85}

In the grab of providing protection, this legislation in fact, strikes at the

\textsuperscript{83} Protection of women from Domestic violence Act-2005-was it worth the effort\textsuperscript{,} \url{http://www.legalserviceIndia.com/article/1150-protection-of-women/}, visited on 7-4-2013
\textsuperscript{84} Supra note 39, p.243
\textsuperscript{85} Ibid
very foundation of marriage by promoting intolerance and encouraging an unnecessary litigation even for the petty domestic disputes. The law is based on a wrong notion and assumes men as the sole perpetrators of domestic violence. This is altogether a wrong impression and only confirms the gender bias in favour of women created by this law. Giving of such sweeping legal powers to women while withholding protection to male victims is tantamount to systematic legal victimization of men. The law is wholly gender specific and rules-out any possibility of domestic violence against a man. The law confers right in a woman without imposing any liability, while a man is overburdened with discriminative liabilities with total denial rights. 

5.5 Misuse of Medical Termination of Pregnancy Act, 1971

Rampant misuses of modern technology, a collective failure of medical ethics and inability to shed notions of a male heir have pushed foeticide in affluent India to a shocking high. The biggest shift has been in technology. Easy sex determination and latest abortion techniques have reduced the risk rate for women, earlier exposed to fatal complications on terminations of advanced pregnancies. Falling infant mortality rates and later the two-child norm also made male children the most wanted. Tamil writer Vasanthi, author of influential novel Kadas Varai (till the end) agrees that the “new-born culture mindset is that of extreme consumerism, which has trapped even the educated element.” Mothers who don’t want to be mother of girl child often aborted their child by these modern techniques. Sometime with or without the consent of their husbands and family.

Indian Government liberalized its abortion laws by adopting the Medical Termination of Pregnancy Act, 1972. This landmark legislation empowered women by legalizing induced abortion in India under certain conditions.

Heavy misuse of MTP Act, 1971 has caused the female foeticide and law for gender justice has become a weapon for sex determination in India. Female

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87 Dr.Supinder kaur, Female Foeticide a frightful reality, (2009), p. 35
foeticide is an organized crime by parents, doctors, clinics and above all society.\textsuperscript{89}

Science and technology are for betterment of mankind but those sophisticated techniques are misused by human beings themselves for destruction of humanity. Ultrasound machines are needed to watch natural growth and development of foetus and health of mother. But if those machines are used for detecting sex of foetus followed by abortion then it is not defect of machine but those persons who are operating these machines. Mothers are also culprits who want illegal abortion after knowing that foetus is a girl child. Female infanticide has existed in India for centuries and modern scientific devices have given another chance of killing before birth i.e. female foeticide.\textsuperscript{90}

Law cannot change human mind. We have to think scientifically about our future. As sons are chosen as first choice for parents only to enhance the lineage of their family, then whole generation will be finished automatically if girls are not left in the society. Now the time is to change our mindset and also to go against all the social taboos and religious dogmas. Apart from those, parents avoid girls as they were worry about their marriage and their modesty at society in future. Then if we can wipe out dowry system or abolish the outrage the modesty of women from society then automatically girl child can take safe birth.\textsuperscript{91}

6. Judicial Response to Misuse of Legal Protection by Women

Ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. The investigating agencies and the courts start with the presumption that the accused persons are guilty and that the complainant is speaking the truth. The role of investigating agencies and the court is that of watch dog and not of bloodhound. It is generally accepted that criminality amongst women is more damaging to wider society that’s why women are less

\textsuperscript{90} Lily Srivastva, \textit{Law & Medicine}, (2010), p.81
likely to be suspected of crime. When suspected they are less likely to be charged and prosecuted and finally if prosecuted our criminal justice system treats them lightly in matter of punishment.  

Systems of law differ in scope, jurisdiction, application etc for legitimacy. The well documented, culturally rich history of India is full of incidents that have used laws for emancipation of women. Every aspect of law has an impact on life of men and women. It is important for law makers to look at system in its entirety.

The significance of the court’s directives goes beyond what happens to S.498 A. The conception as the silent suffering sort who could do no wrong has influenced the administration of justice in both open and subtle ways. The presumption of innocence is not available to accused but assumption of women’s innocence is apparent in laws. When judges come to an issue relating to women, they will invariably rely on their common sense of knowledge, derived from their social acquaintances. In India women are considered as weaker section who can never do any wrong rather who are harassed by men.

Just as certain persons are thought to have a high probability of indulgence in criminal behaviour, so also some other may have a greater likelihood of being victimized. Indian judiciary is giving a lot of attention to the women victims but in these days men are victims and women are committing cruelty to husbands and their family. The administration of criminal justice, which is not much concerned with ‘men victim’ must be changed so that justice can be done towards the male victims.

But as time changes, judicial observations and remarks are showing anguish over the law. Here are some recent judicial observations. The Supreme Court, in a relatively recent case, Sushil Kumar Vs. Union of India held that object of the provision is prevention of dowry menace. But as has been rightly

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95 Ahmad Siddqui, Criminology, (2005), p.544
96 AIR 2005 SC 3100
contended 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 ignomy suffered during the prior to trial.

As observed in Malavi Hussain Haji Abraham Umarji Vs. State of Gujarat\(^{97}\), Padma Sundra Rao and others Vs. State of Tamil Naidu and others\(^{98}\) while interpreting a provision the Court only interprets the Law and can not legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.

Apparent attempts by the bride’s side to implicate the groom’s kith and kin after things go wrong between the couple have not escaped the Punjab and Haryana High Court’s notice.

Taking note of the disturbing trend involving misuse of the process of law, Justice Harbans Lal observed it has been authoritatively pronounced that it is general tendency on the part of the girls to involve all the family members and near relations whenever there arises any difference between the couple and thus, the provisions of section 406 and 498-A of the Indian Penal Code are being misused flagrantly.\(^{99}\)

The assertion, bringing out the sorry state of affairs, came on a petition filed by Krishna Wanti and five others through Counsel R S Bajaj. The Petitioners had challenged the order passed by Trial court, summoning them under section 319 of Code of Criminal Procedure.

Bajaj said initially the FIR in the matter was registered against the boy, his family and near relations. On the investigation, the allegations were found to be false. Accordingly, the Police filed the challan only against husband Ashok Kumar. Subsequently, however, on an application filed by the complainant, the groom’s old mother and his married sister-in-laws, maternal uncle and paternal

\(^{97}\) AIR 2004 SC 3946

\(^{98}\) AIR 2002 SC 1334

\(^{99}\) “Legal lacunae being misused in dowry cases” The Tribune , 30th September 2010
uncle were also summoned. Referring to the provisions of law, Bajaj argued before summoning anyone as an accused under section 319 of the Code of Criminal Procedure, it was essential for the court to be satisfied that the evidence adduced on behalf of the prosecution, if un-rebutted, would lead to conviction of the persons sought to be added as accused in the case. In the present case, the “satisfaction” was totally missing. The court also did not take into consideration the fact that it was general tendency on the part of the bride to involve the family and the near relations.100

As such the provisions of section 406 and 498-A of IPC dealing with subjecting a married woman to cruelty and criminal breach of trust were being blatantly misused. The present case was classic example. After hearing the arguments, Honorable Justice Harbans Lal directed the setting aside of the order passed by the trial court, summoning six relations of the groom. The suggestions were also made to correct the situation by Delhi High Court in Savitri Devi Vs. Ramesh Chand101 which are as follows.

- Marital offences should be bailable
- Offences to be compoundable
- Investigation by civil authorities
- Minor children not to be arrested.

In this case Delhi High court through Justice J.D. Kapoor recommended to the authorities and law-makers to have a review of the situation and legal provision.

Supreme Court in Sushil Kumar Sharma Vs. Union of India102 and others has suggested the following remedial measures by stating that the courts have to take care of the situation within the existing framework.

- The courts and the investigation agencies should not deal with the allegations casually.

100 Ibid
101 2003 Cri. LJ 2759 (Delhi)
102 AIR 2005 SC 3100
The Courts should not follow any strait jacket formula, any pre conceived notion or view.

Justice Markendey Katju has rightly expressed his opinion in *Som Mittal Vs. Govt. of Karnataka*. The experiences have shown that the absence of the provision for anticipatory bail has been causing great injustice and hardship to the citizens of U.P., for instance, often false FIRs are filed e.g. under section 498-A of Indian Penal Code. There are some reported incidents. Many cases remain unreported. But it is unfortunate that no authentic data is available of its misuse. However, courts all over the country are experiencing that misuse of matrimonial offences has reached to drastic level, which have reflected in remarks made by the higher courts in several cases.

Similarly in *Preeti Gupta Vs. State of Jharkhand*. Hon’ble Supreme Court has observed that it is a matter of common experience that most of these complaints under section 489A, IPC are filed in the heat of the moment over trivial issues without proper deliberation. We came across a large number of such complaints which are not even bona fide and are filed with oblique motive. Court also advised members of bar to maintain its noble traditions and they should treat every complaint under S.498A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. At the time of filing the complaint the consequences are not properly visualized by complainant that such complaint can lead to harassment by relatives, pain and agony to accused and his relatives. Allegations of harassment by relatives, being at faraway places, should be scrutinized with great care. Criminal trial leads to immense suffering for all concerned. Even ultimate acquittal in the trial may not enable to wipe out the deep scars of suffering of ignomity. It is high time that the legislatures must take into consideration the pragmatic realities and make suitable changes in the existing law.

A copy of this judgement is directed to be sent to the law commission and to the Union Law Secretary, Government of India who may place it before the
hon’ble Minister of Law and Justice to take appropriate steps in the larger interests of society.

The Apex Court, in the case of *Kanaraj Vs. State of Punjab*\textsuperscript{105} observed as: “for the fault of the husband, the in-laws or other relatives cannot in all cases held to be involved. The acts attributed to such persons have to be proved beyond reasonable doubt and they can not be held responsible by mere conjectures and implications. The tendency to rope in relatives of the husband as accused has to be curbed.”

Karnataka High Court, in the case of *State Vs. Srikanth*\textsuperscript{106} observed as “Roping in of the whole family including brothers and sisters-in-laws has to be depreciated unless there is a specific material against these persons, it is down right on the part of the police to include the whole of the family as accused.”

Supreme Court, in case of *Mohd. Hoshan Vs. State of A.P*\textsuperscript{107} observed as “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.”

Delhi High Court, in *Savitri Devi Vs. Ramesh Chand*\textsuperscript{108} observed as: these provisions were though made with good intentions but the implementation has left a very bad taste and the move has been counterproductive. There is growing tendency amongst the women which is further perpetuated by their parents and relatives to rope in each and every relative including minors and even school going kids nearer or distant relatives and in some cases against every person of the family of the husband whether living away or in other town or abroad and married, unmarried sisters, sister-in-law, unmarried brothers, married uncles and

\textsuperscript{105} 2000 Cri. LJ 2993  
\textsuperscript{106} 2002 Cri. LJ 3605  
\textsuperscript{107} 2002 Cri. LJ 4124  
\textsuperscript{108} 2003 Cri. LJ 2759
in some cases grandparents or other relatives of husband.

Punjab and Haryana High Court, in Bhupinder Kaur and others Vs. State of Punjab case observed as: “From the reading of the FIR, it is evident that there is no specific allegations of any act against petitioners, which constitute offence under section 498-A, I.P.C. I am satisfied that these two persons have been falsely implicated in the present case, who were minor at the time of marriage and even at the time of lodging FIR. Neither of these two persons was alleged to demand of dowry article nor they alleged to have ever demanded any dowry article. No specific allegation of demand of dowry, harassment and beating given to the complainant by the two accused has been made. The allegations made are vague and general. Moreover, it cannot be ignored that every member of the family of the husband has been implicated in the case. The initiation of criminal proceeding against them in the present case is clearly an abuse of the process of Law.”

Section 498-A of IPC is incorporated by the Legislatures basically in the interest of women and to safeguard them from harassment. But, it has become somewhat counterproductive. In several cases, women are harassed, arrested and humiliated on the complaints given under section 498-A IPC. The truth or otherwise of the allegations is subject to proof. For giving complaint absolutely no authentic and prima facie material like medical evidence is required, but on such complaints, in several of cases, number of women are being arrested. In cases of arrest of married young women are being arrested. In cases of arrest of married young women, they might face some problem from their husband and in-laws. In case unmarried women are arrested their marriage prospectus would be badly affected and if Government servants are arrested their service prospectus are affected. In the present case, only one woman is alleged to victim; but at least four women might have to go to jail even before trial, effecting their reputation, subjecting them to rude treatment in police station etc.110

In order to prove offence under section 304-B with the aid of presumption

109 2003 Cri.LJ 3394
under section 113-B of Indian Evidence Act, the prosecution must prove that soon before the death there was cruelty or harassment. In the case on Mangal Ram vs. State of MP\(^\text{111}\) there was no material to infer that the deceased was subjected to cruelty soon before her death. Similar view was taken in Sham Lal vs. State of Haryana\(^\text{112}\) the ingredients for the offence under section 304-B were laid down in the case of Shambu Raj vs. State of Rajasthan\(^\text{113}\) it appeared that it was a love marriage; there was simple ceremony and no demand of dowry made; no specific allegation in the FIR regarding demand of dowry. She was immediately taken to private clinic; the husband also sustained burn injuries and hence held that the accused was not liable to be convicted.

It was rightly observed by the Apex Court in Madhu Kisawar vs. State of Bihar\(^\text{114}\) law is the manifestation of principles of justice, equity and good conscience. Rule of law should establish a uniform pattern for harmonious existence in a society where every individual would exercise his right to the best of his advantage to achieve excellence, subject to protective discrimination. The best advantage of one person could be the worst disadvantage to another. Law steps into iron out such creases and ensure equality of protection to individuals as well as group liberties. Justice, equality and fraternity are trinity for social and economical equality. Therefore, law is the foundation on which the potential; of society stands.

Higher Courts of the country has laid down several guidelines, through judicial pronouncements, to protect the liberty of the citizens and harassment of innocent persons in the hands of unscrupulous litigants. They are discussed in detail hereinafter:

6.1 Matters under Section 498-A, IPC are essentially civil in nature

When a criminal case is instituted either on complaint or on police charge sheet, summons are issued for the appearance of the accused or if accused does

\(^{111}\) 1999 (3) Crimes 409 (M.P)  
\(^{112}\) AIR 1997 SCW 1614  
\(^{113}\) 1998(3) Crimes 573(Raj)  
\(^{114}\) AIR 1996 SC 1864
not appear, processes to compel his appearance are taken as provided under the code. However due to fault in police system, most of the times, summons are not served properly and courts are bound to issue coercive process against the accused. Higher Courts have stressed on the duty of the trial courts while issuing processes. Hon’ble Supreme Court has held that matters under section 498-A, IPC are civil in nature and are private in nature.\(^{115}\) Therefore, in such matters it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process.\(^{116}\)

6.2 No Casual Arrest

Arrest of a person is deprivation of his most cherished right of life and personal liberty, therefore, arrest should be made in exceptional cases. Hon’ble High Court of Allahabad has moved one step ahead by issuing directions to police authorities to make arrest only after complying with newly amended provisions of Ss. 41 and 41-A of the Code.\(^{117}\) Further, the Division Bench of Hon’ble High Court of Allahabad has directed to Magistrates to exercise great caution and care while granting remand in cases of matrimonial disputes. Remand has to be refused where arrest is made without complying with newly amended provisions of Ss 41 and 41 A of the Code and accused has to be released on bail.\(^{118}\)

6.3 Mediation and Conciliation

Higher Courts have issued directions that matrimonial matters be referred to mediation and conciliation and every effort be made by the police and trial courts to settle the disputes by these measures. Court has specially directed to Magistrates to refer the matter to mediation and conciliation centre when an application u/s 156(3) of the code is filed in the court.\(^{119}\) And when magistrates comes to the conclusion that no such compromise or settlement is possible only in those cases order for registering FIR be passed. Hon’ble Supreme Court has

\(^{115}\) Ram Gopal Vs. State of M.P, 2010, SCALE 711
\(^{117}\) In Re: Matrimonial Disputes, Criminal Misc. Writ Petition No-3322 of 2010, order dated, 30-09-2011.
observed that learned members of Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must make serious endeavour to help the parties in arriving at an amicable solution of the problem.\textsuperscript{120}

6.4 Recommendation for Re-look

Since courts are seriously concerned with larger public interest, Hon’ble Supreme Court has observed that there is serious need to re-look of entire provisions. Merely because the provision is constitutional, does not give a license 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. Hon’ble Court has directed the Law Commission of India to consider proper steps and for suitable legislative amendments.\textsuperscript{121}

6.5 Quashing of Proceedings where amicable settlement is arrived

Since offence under section 498-A of IPC, being non-compoundable, in cases of compromises, proceedings of all related cases may be quashed under section 482 of Code of Criminal Procedure by the Hon’ble High Court. This has been recommended by Hon’ble Supreme Court in \textit{B.S. Joshi Vs. State of Haryana}\textsuperscript{122}, \textit{Manoj Sharma Vs. State}\textsuperscript{123}. In the later case it was observed that where the dispute is purely personal in nature, (i.e. the element of the offence being a crime against society is secondary), and the wife decides to compound the offence, as there would be little likelihood of conviction, quashing of the offence should not be refused on the hyper-technical view that the offence was not compoundable.

6.6 Recommendation to make section 498-A, IPC to be compoundable

At present offence u/s 498-A, I.P.C. is non-compoundable and therefore,

\textsuperscript{120} Preeti Gupta Vs. State of Jharkhand, AIR 2010 SC 3363, para 31
\textsuperscript{121} Sushil Kumar Vs. Union of India, AIR 2005 SC 3100
\textsuperscript{122} AIR 2003 SC 1386
\textsuperscript{123} 2008 SC (Suppl) 1171
even after the compromise between the parties, accused has to face trial, however, it results in acquittal due to hostility of witnesses. If the offence u/s 498-A, IPC is made compoundable, it will save the time of trial courts and also the time of litigants. Hon’ble Supreme Court has suggested making suitable amendments in this regard. In *Ram Gopal Vs. State of M.P*¹²⁴ a copy of judgement has been send to Law Commission of India to consider the matter. Hon’ble High Court of Allahabad has also issued the same directions to State of U.P. Hon’ble High Court has suggested that offence u/s 498-A, I.P.C should be made compoundable with the permission of the court.

### 6.7 Liberal and Human approach towards Accused

Higher Courts of the country are alive to the changing needs and pragmatic realities of the society. Analysis of some recent judgments of Hon’ble Supreme Court reflects that, Court has adopted humane approach towards accused persons, who are falsely implicated. The Court has held¹²⁵ that ‘girl friend’ or ‘concubine’ of the husband is not covered within the term “relative of husband”. It may be a ground of Judicial separation but not cruelty u/s 498-A, IPC similarly; it has been held that ‘petty quarrels’ does not amount to cruelty u/s 498-A I.P.C. In the instant case wife gave birth to a male child and husband did not even come to see the child. It was held to be no cruelty.¹²⁶

Thus we can see a change in the approach of Apex Court as it is also feeling the seriousness of the problem of misuse of legal provisions and in its several decisions it has emphasized the responsibility of courts and prosecution and to proceed in these type of cases very cautiously. Justice Katju has rightly suggested in this case to invoke the safeguards of anticipatory bail so as to innocent family members could not be harassed.

### 7. Women Organizations and cruelty to men

Chairperson of National Commission for women Girja Vyas has cautioned against indiscriminate use of the anti-dowry legislations and advised women to

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¹²⁴ 2010 SCALE 711
¹²⁵ *U. Sovetha Vs. State by Inspector of Police*, AIR 2009 (Supp) 1451
¹²⁶ *Manju Ram Kalita Vs. State of Assam*, AIR 2009 SC (Supp) 2056
resolve their marital problems through mutual discussion. Feminist argue that in each of the aspect like marriage, divorce, child custody etc, male dominating society has been able to device methods based on interpretation of texts or by placing it in a social context to reinforce inequalities. Gender inequality of one type tends to encourage or sustain gender inequalities of other kind.  

On the other hand harassed husbands argue that crime against women cell or other organizations have become place of harassment for innocent husbands and their family members. Wives approach organizations not for the settlement but to negotiate huge alimony and to obtain her streedhan back. Women organization use dowry laws against husband to pressurizing them to sign an agreement that compel him to live separately with his wife agreeing to her unjustified demands. These organizations are reluctant to act against the wife because they are working for her benefit. Women organizations are chasing big funds in the name of welfare of women from Government or other International organization and they wrongly manipulate data and facts. They are promoting family bound terrorism by recommending amendments in various laws to make more biased laws that can be misused by women, any amendment should be considered only after proper review of all sections of society.

8. Demand by Various Organizations for Protection of Husbands

The Save Indian Family Foundation (SIFF) comprises young, angry “harassed” husbands who claim they represent 25 NGOs and 40,000 equally “tortured” persons like them. Their grouse: they were being “betrayed” by those who framed laws and enforced them, that the law erroneously assumed all wives were “innocent girls” who could only be sinned against, and are not sinners.

Seeking equality for men, again SIFF raised issue of gender bias on the International Men’s Day in Chandigarh on 19th Nov. The SIFF along with Parivar Raksha Samiti, Chandigarh, demanded institution of ‘men welfare ministry’, ‘National commission for men’, abolition of anti – male gender

129 Swagta Sen, Arvind Chabra,”Unhappily Harried”, *India Today*, 31st Aug 2009
biased laws and replacing the word wife in law with spouse.\textsuperscript{130}

The Representatives of the SIFF stated that though the government earned 82 percent of taxes from men, it has not spent a single rupee for their welfare or enacted a single law to protect men. On the other hand more than 98\% of men are in armed forces while less than 28 percent serve in media industry. The prostitution industry is dominated by 99.98 percent women against 0.02 percent of men while 70 percent of women are employed in reception, office telecom, school, bank etc, jobs having ease of work with fewer burdens.\textsuperscript{131}

Victims of misuse of anti-dowry laws and provisions of Indian Penal Code 1860 are demanding that legislations should be amended and there should be such measures by courts, so that women are not able to misuse these laws. Members of Save India Family Foundations and other organizations are demanding that section 498A of I.P.C should be declared unconstitutional because it is a violative of concept of equality given in Indian Constitution and there are chances of its misuse.\textsuperscript{132}

In \textit{Sushil Kumar Sharma Vs. Union of India}\textsuperscript{133} A petition under Article 32 of Constitution was filed to declare S.498A of Indian Penal Code to be unconstitutional and ultra vires or in alternative to formulate guidelines so that innocent persons are not victimized by the unscrupulous making false allegations and further stringent actions should be taken by Court against persons making false allegations under s. 498A. Apex court held that mere possibility of abuse of a provision of a law does not per se invalidate legislation. It must be presumed; unless contrary is proved that application of particular law would be done ‘not with an evil eye and unequal hand’. In case of possibility of abuse of law ‘action’ not the section may be illegal. Court by upholding the provision of Law may still set aside the action, order or decision and grant appropriate relief to the aggrieved person.

Organizations for protections of men are also demanding the setting up of

\textsuperscript{130} “Anti-Dowry Laws or ‘Frame-Up’ for Men ?”, \textit{The Tribune}, 19\textsuperscript{th} November 2009
\textsuperscript{131} \textit{Ibid}
\textsuperscript{133} 2005 SCC (Cri) 1473.
the welfare ministry for men. They are also asking for a commission to address men’s issues. Not only men but family of victim husbands are also harassed by wives by attack of anti dowry laws specially sec. 498A. A circular issued by the Commissioner of Police states that any arrest under S. 498A and S. 406 of Indian Penal Code will be made with prior permission of a Deputy Commissioner of Police. Arrest of a person should be an exception and not a rule. Now this measure will prove to be deterrent in arresting innocent people. Now mere naming anyone in FIR is not sufficient to arrest anyone.134

According to the various men’s right movement in India, the laws suffer from the following shortcomings:135

• Gender bias: The laws do not recognize cruelty and domestic violence against men. The police in India almost never register complaints of extortion or violence against men in domestic relationship, whereas registering a complaint under S. 498A (where a woman is the aggrieved party) is widespread.

• Vague definitions of Dowry and Stridhan.

• Presumption of guilt. S. 304B, IPC assumes that if the accidental death of a wife happens within 7 years of marriage, it should be assumed to be murder, unless the husband can prove his innocence. Similarly, The Dowry Prohibition Act (section 8-A) states that “where any person is prosecuted for taking or abetting the taking of any dowry under Sec 3, or the demanding of dowry under Sec 4, the burden of proving that he had not committed an offence under those sections shall be on him.”

• Duplication of existing laws: Laws already exist to deal with offences against intimidation, violence, extortion and murder. A “dowry death” can be considered a murder, and a demand for dowry can be considered a murder, and a demand for dowry can be considered extortion under existing laws. The additional laws, instead of reforming the police, mostly

134 Hindustan Times, June 2008
serve to shift the burden of proof onto the accused.

- A corrupt police force which often does no investigation before arresting innocent people.

- Human Rights violations: In most cases involving Non-Resident Indians, their passports are impounded and they are restricted from travelling outside the country.

- No penalties, in practice, for false complaints or perjury.

  The language, content and structure of this law has enabled implication of thousands of innocent families in the false cases. A complaint without any authenticity and without any weight of evidence, is enough to arrest the husband, in-laws anyone else name in the complaint, irrespective of whether a crime occurred or not. This has led to arrest of lakhs innocent citizens (thousands of families), with many committing suicide as they are unable to bear the indelible stigma on their honour and reputation. Statistics corroborate the above contention that: 5,01,020 people arrested under section 498A of IPC; 2,94,147 people competed trial under section 498A of IPC; and 58,842 people convicted (out of this many must have appealed to higher courts).136

9. Conclusion

   Law is multidimensional. It has social, economic and historical dimensions in addition to legal dimension. Law is not always just, reasonable or rational. A reasonable and rational law a century back may not be equally reasonable and rational law now. Law requires to be given a fresh look periodically. Law requires to be pruned as per needs. The journey of law may not always be linear and in right direction. Sometimes, it may travel in erratic manner. The academicians need to expose and reveal unnatural and unreasonable growth of law. With view to granting equal status to women, laws consciously or unconsciously are drafted having effect of sex-bias.

   The sole object of the women protective laws was to give legal protection to married women against victimization by dowry greedy in-laws or by stronger

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sex. Women protective laws have been justified with respect to the status of women in older times. But now the society has progressed to such an extent that criminality amongst women have achieved a higher stand in society and certainly have become influential but with respect to law is still where it was in older times. The repeatedly misuse of legal protection can lead to new legal terrorism.

The women protective laws have now become a handy weapon for many women to blackmail, harass, humiliate and falsely implicate the innocent members of the in-laws family in dowry demand cases and extract money from them before finally setting the marital dispute. Laws like Indian Penal Code, section 498-A and Domestic Violence Act 2005 have number of provisions to intimidate men and their families. The effect of these laws are unjustified power in the hands of women to harass the husbands and their family members in domestic disputed which irreparably damages the life of husbands and their relatives and sometimes also becomes the reason for their death.

Judiciary also demands that if provisions of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. While it is true that women protective laws are marking effectively for the well being of the women, there are allegation that these laws have been misused by errant women, and police officers for nefarious ends. Under the Dowry Prohibition Act both giving and taking are punishable offence but no one has been penalized till date for giving dowry. The repeatedly misuse of anti-dowry laws can lead to new legal terrorism that have been made by the Malimath Committee Report. The gross misuses are reported in respect of dowry related I.P.C. provisions. To prevent the abuse of these provisions the Malimath Committee recommended that the sections be made bailable and compoundable to give a chance to the spouses to come together. Undoubtedly, the dowry prohibition act is also being misused, it can be said that all laws are capable of and subject to abuse and misuse.

The solution does not lie in dismissing the all existing laws. It is desirable to provide an opportunity to estranged spouses to settle their dispute amicably. To amend certain existing laws at the extent through which that laws can’t be
The Indian justice system is still in search of an effective way to legally mitigate the dowry death and domestic violence issued that has troubled the nation for so long. While the Dowry Prohibition Act of 1961 proved completely ineffectual due to its unenforceability, the stringency of Section 498-A went too far, creating a problem of legal abuse and uncovering a much deeper problem of gendered social tensions and resentment within Indian society. These facts raise the fundamental question of whether the Indian judiciary should continue to regulate the dowry practice? However, in many regards, the last word on the efficacy of 498A and the current set of dowry laws has not yet been spoken. A number of women have been able to free themselves from abusive relationships due to the law’s favorable language, even though the problem of dowry deaths undoubtedly continues. The catalyst of the dowry death phenomenon is social in nature, and under current conditions of limited law enforcement in India, can only be eliminated through large-scale social change. While the place of the law is surely to regulate social customs from causing harm, in the context of Section 498-A, the value of harshly criminalizing this aspect of family law. For the time being, the Supreme Court of India has promised to force the government to reassess the law. Until then, it can only be hoped that the law enforcement of India mitigates the adverse effects of 498A, while realizing its potential to keep the Indian family from further crises.

The object of the protective legal provisions was prevention of the crimes against women, but 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 license 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. Till then the Courts have to take care of the situation
within the existing frame work. As noted above the object is to strike at the roots of crime against women. But by misuse of the protective legal provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not an assassin's weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears.

It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre-conceived notion or view. It is submitted that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a blood hound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.