CHAPTER 4
PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE UNDER CRIMINAL LAWS

4.1 Introduction

Prior to 1983, every form of violence committed within the family, either in the natal or the spousal home was not considered an offence. Indian law lacked specificity which could bring such an offender to public trial, largely because domestic violence was considered a private affair not open to public scrutiny and State action. The doctrine of 'space' was used to argue that domestic affairs should be confined to the private space of the family. This doctrine stated that there should be a dividing line between both private and public affairs and all matters within the family should be kept out of the interference of law. But the doctrine increased the violence against women within the four walls of the house.

The incidence of domestic violence against women have been increasing over the years. Women are subjected to violence namely cruelty by husband or his relatives, dowry death, grievous hurt and marital rape by their husbands. Criminal Law in India does not specifically recognise domestic violence as an offence, but there are provisions in Criminal Law, which can be invoked in cases of domestic violence. Criminal Law consists of both substantive law and procedural law. Substantive law defines offences and lays down punishment for such offences, whereas procedural law explains how

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1 Srimati Basu, Dowry and Inheritance, 73 (2005).
criminal cases should be investigated and tried. Most offences are contained in the Indian Penal Code. However, there are many other laws that define offences and provide punishments for them. The law of Criminal Procedure is mainly contained in the Code of Criminal Procedure. The Criminal Law offers two options - one is of prosecuting husband/abuser for committing offences. If a woman is facing violence at home, she can approach criminal court, the abuser will be arrested and this would stop violence against the woman. The second is a preventive measure by getting the abuser to execute a bond for keeping the peace.\(^2\)

The Indian Penal Code has about 511 Sections. Many of these Sections define offences that may be relevant to a woman subjected to domestic violence. They range from grave offences, such as dowry death and suicide, to comparatively milder offences, such as assault.\(^3\) In India, the offence of domestic violence has got its recognition by Criminal Law Amendment Act, 1983.\(^4\) This Amendment inserted Section 498A in the Indian Penal Code, punishing husband and his relatives for perpetrating cruelty upon the wife. Cruelty was defined broadly enough to encompass physical as well as mental cruelty. However, initially the police refused to register cases under this provision unless there were allegations of dowry demand and it was after much struggle that women are now able to get the same registered, even if there is no demand of dowry.


However, its linkage with the dowry has considerably reduced its efficacy for women.5

4.2 Protection of Women under Indian Penal Code, 1860

The offences which may fall within domestic violence are given below:

**Offences Posing a Danger to Life**

Murder, culpable homicide not amounting to murder (Sections 300, 304, Indian Penal Code).

Causing dowry death (Section 304B, Indian Penal Code).

Abetment of Suicide (Section 306, Indian Penal Code).

**Offences Posing or Causing Bodily Harm Short of Death**

Hurt and grievous hurt (Sections 319-326, Indian Penal Code).

Wrongful restraint and wrongful confinement (Sections 339, 340, Indian Penal Code).

**Offences with a Sexual Element**

Assault with the intent to outrage modesty (Section 354, Indian Penal Code).

Marital Rape (Section 375, Indian Penal Code).

Sexual intercourse with separated women (Section 376A, Indian Penal Code).

Word, gesture or act intended to insult modesty of woman (Section 509, Indian Penal Code).

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Offences Connected with Property

Criminal breach of trust (Sections 405, 406, Indian Penal Code).

Offences Against Marriage

Bigamy (Sections 494, 495, Indian Penal Code).

Adultery (Sections 497, Indian Penal Code).

Cruelty (Section 498A, Indian Penal Code).

(i) Offences Posing a Danger to Life

(a) Murder (Section 300, Indian Penal Code)

When the death of a woman is caused by acts of domestic violence, provisions on murder and culpable homicide come into play.

Section 300 of the Indian Penal Code designates ‘murder’ as any act that is done intentionally to cause the death of a person or cause bodily injury that is either likely to cause death or is sufficient in the ordinary course of events to lead death. It is also ‘murder’ when the person committing the act knows that such act is as imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death.

(b) Culpable Homicide (Section 299, Indian Penal Code)

Capable homicide is defined as causing death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as to likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of
culpable homicide. Attempt to murder and to commit culpable homicide are also punishable by the Code.

(c) Dowry Death (Section 304B, Indian Penal Code)

The concept and practice of dowry in Hindu marriage, not only poses threat to the fabric of Hindu society and its marriage institution but has rather already damaged it enormously, which if not taken care of imminently it would disrupt the Hindu society forever.

Earlier, it was not feasible to check dowry death. The Dowry Prohibition (Amendment) Act, 1986 introduced a new offence – the offence of dowry death – by inserting a new Section 304-B in the Indian Penal Code. The same Amendment Act has also inserted Section 113-B in the Evidence Act, 1872 to raise a presumption of dowry death to make the substantive law more effective.

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6 Section 299, Indian Penal Code, 1860.
7 Section 307 reads: “Attempt to murder – whosoever does any act with such intention or knowledge and under such circumstances, that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine, and, if hurt is caused to any person by such act, the offender shall be liable to either to imprisonment for life, to such punishment as is here in before mentioned”.
8 Section 308 reads: “Attempt to commit culpable homicide – whoever does any act with such intention or knowledge and under such circumstances that, if by that act caused death he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both, and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine or with both”.
The aforesaid Amendment Act received the assent of the President on September 8, 1986 and was published in the Gazette of India. As per Section 1(2) of the Amendment Act, it was to come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. The said notification came to be published by the Central Government, according to which the insertions as proposed by the Amended Act in the Dowry Prohibition Act, Indian Penal Code, Indian Evidence Act and the Code of Criminal Procedure were to come into force as on November 19, 1986. The insertions have come into force from 19.11.1986.

Section 304-B of the Indian Penal Code states that where the death of a woman is caused by burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such a death shall be called ‘dowry death’, and such husband or relative shall be deemed to have caused such death.

The main ingredients of Section 304-B are:

- The occurrence of an unnatural death;
- Death within a period of seven years from the date of marriage;
- Cruelty ‘soon’ before death and

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13 Gazette of India, Extra, Part -II, Section 1, 1-5 (dated September 9, 1986).
14 Notification Published by the Central Government Vide G.S.R. 1185(E) Dated 5.11.86.
• Death ‘for’ or in connection with any demand of dowry.

If all of the above conditions are present, then there is a presumption that the accused has committed the crime of dowry death.

The Indian Penal Code (Amendment) Bill, 2006

The bill was passed by Parliament in the Fifty-Seventh year of the Republic of India as follows:-

1. In Section 304B of the Indian Penal Code, 1860 (hereinafter referred to as the Penal Code), the following proviso shall be added at the end, namely: -

   “Provided that if death is caused to a girl or a woman, the accused committing such homicide shall be punished with imprisonment for whole life and shall also be liable for fine which may extend to two lakh rupees”.

2. In sub-Section(2) of Section 304-B of the Indian Penal Code, for the words “seven years” the words “ten years” shall be substituted.16

The 18th Law Commission has recommended increasing the minimum sentence from 7 to 10 years in dowry death cases. It has, however, declined the suggestion to increase the maximum punishment from life imprisonment to death sentence. Justice A.R. Lakshmanan, Chairman of the reconstituted Commission, handed over the report on Dowry Death to the Former Union Law Minister H.R. Bhardwaj.17

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17 The Hindu, October 12, 2007 at 7.
The Report examined the question whether Section 304-B of the Indian Penal Code should be amended to provide for dowry sentence to end dowry deaths. This Section provides for a jail term not less than seven years but which may extend to life imprisonment.\textsuperscript{18}

The Law commission found that murder is not the same as the offence of dowry death. Though the death of a bride may be a common element in both offences, the absence of a direct connection between the husband and the death of the wife distinguished dowry death from the offence of murder. Besides, the presumption character of the offence of dowry death and the cardinal principle of proportionality as well as the underlying scheme of the Penal Code go against the proposed prescription of death sentence.\textsuperscript{19}

The report said, “It may be pertinent to point out that where a case of dowry death also falls within the ambit of the offence of murder, awarding death sentence may be legally permissible. The guidelines laid down by the Supreme Court for award of death sentence, especially the dictum of the rarest of rare cases, will, however, have to be adhered to in such cases”.\textsuperscript{20}

The Law Commission said, “there are misgivings and misapprehensions associated with dowry death. It is quite often confused with the offence of murder. There may be instances where the two overlap. This gives rise to the demand for parity in the

\textsuperscript{18} Ibid.
\textsuperscript{19} Ibid.
\textsuperscript{20} Ibid.
matter of sentence in both cases. Nevertheless, the two offences are distinct and independent offences”.

The Law commission said, “there is no justification for amending Section 304-B of Indian Penal Code to provide for death penalty. Such penalty will also not be in conformity with the principle of proportionality”.

Though the dowry killing is a crime, there has been an increase in cases relating to dowry death. In *Kundal Balasubramanyam v. State of Andhra Pradesh*,

Of late there has been alarming increase in cases relating to harassment, torture, abetted suicide and dowry deaths of young innocent brides. This growing cult of violence and exploitation of the young brides, though keeps on sending shock waves to the civilized society whenever it happens, continues unabated. There is a constant erosion of the basic human values of tolerance and the spirit of ‘live and let live’. Lack of education and economic dependence of woman have encouraged the greedy perpetrators of the crime.

It is pertinent to note that the Section 304-B, Indian Penal Code does not define cruelty. In fact the standard of cruelty with

\[21 \text{ Ibid.} \]
\[22 \text{ Ibid.} \]
\[23 \text{ (1993) 2 SCC 684.} \]
\[24 \text{ Id. at 687.} \]
respect to this Section depends upon the definition envisaged under Section 498-A of the Indian Penal Code. Cruelty or harassment needs not be a physical. Even mental torture would in the facts and circumstances of a given case amount to cruelty or harassment under Section 498A Indian Penal Code. The term 'wilful conduct' means conduct wilfully done; this may be inferred by direct or indirect evidence. In *Mohd. Hoshan v. State of A.P.*, where the Supreme Court held cruelty merely to be a matter of individual perception. The Court further observed that:

> The impact of complaints, accusation or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not.

This decision of the Supreme Court emphatically concludes that the standard of cruelty under Section 304-B, Indian Penal Code for causing dowry death does not lean against the narrow definition

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26 *Supra* note 2 at 314.
27 *AIR* 2002 SC 3270.
provided under Section 498A of the Indian Penal Code, which by using the phrase 'which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life & limb, health of the woman, subjects the infliction of cruelty to the limits of endurance a reasonable man rather than recognizing individual sensitivities. Cruelty under Section 304-B, Indian Penal Code has thus to be read independently of Section 498-A of Indian Penal Code consonant with the object for which it was introduced. In order to invoke the legal presumption under Section 113-B of the Evidence Act, it is necessary to prove that the deceased was subjected to cruelty or harassment. Further, the presumption under Sections 113-B and 304-B only apply if the offence takes place within seven years of marriage. The Sections read in conjunction shift the burden of proof from the prosecution to the husband or his relatives accused of the offence. This is a departure from the normal rule of evidence and was introduced to strengthen the hands of the prosecution.29

In Pawan Kumar v. State of Haryana,30 Urmil was married to Pawan Kumar on May 29, 1985. Shortly after, there began a demand of scooter and fridge. The husband and parents in-laws ill treated her and harassed her. She was subjected to mental cruelty. Though Urmil informed her relatives, she was pacified and sent back. After a visit to Delhi in April, 1987 where she stayed with her sister she was reluctant to return to her matrimonial home. He came to fetch her on May 17, 1987, there was a quarrel between Urmil and her husband in front of her sister. She however left with her husband and her parting...
words to her sister indicated that she was not likely to be seen again. On May 18, 1987, Urmil was found burnt to death on the first floor of her matrimonial home after a neighbour reported about smoke emanating from the house.\textsuperscript{31} The trial Court convicted the husband and his parents for offences under Sections 304-B, 498A and 306 of the Indian Penal Code. The High Court confirmed the sentence but reduced the husband's sentence from 10 years to 7 years. The Supreme Court found that the evidence clearly established that Urmil was tortured and harassed, it could clearly construed to be a dowry demand within the meaning of Section 304-B. An agreement for dowry would not always be necessary.\textsuperscript{32}

The remaining ingredient which had to be established to complete the offence under Section 304-B, Indian Penal Code was whether Urmil had been subjected to cruelty or harassment soon before her death.\textsuperscript{33} The defence plea was that there was no corroborative evidence to substantiate allegations of cruelty. The Supreme Court made a remarkable and probably unprecedented observation on what constitutes cruelty by observing that mental torture or cruelty would come within the purview of Sections 304-B and 498-A of the Indian Penal Code.\textsuperscript{34} The Court noted that all the ingredients of the offence under Section 304-B were satisfied. The burden of proving that they did not cause the dowry death was placed on the accused by Section 113-B of the Indian Evidence Act. The Supreme Court ruled that the evidence against the husband was

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\textsuperscript{31} Id. at 309-310. \\
\textsuperscript{32} Id. at 318. \\
\textsuperscript{33} Id. at 314. \\
\textsuperscript{34} Id. at 318.
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strong enough to convict him. The evidence against his parents was not cogent to uphold their conviction and acquitted them.\textsuperscript{35}

There can be no direct evidence available for the offence of dowry death, therefore the courts must rely upon circumstantial evidence and infer from the material available. The Supreme Court in \textit{C.V. Govinappa v. State of Karnataka},\textsuperscript{36} held that the conduct of the husband is not trying to put out the flames and not taking her to hospital will be taken as circumstantial evidence against the husband. It is also necessary to establish that cruelty or harassment meted out to the woman was on account of the failure on her part to meet the dowry demands. Along with circumstantial evidence, the courts also rely upon the dying declaration of the deceased. The statement of the deceased regarding circumstances of the transaction, which resulted in her death, would be relevant under Section 32(1) of Evidence Act.

Similarly in \textit{M.D. Anser Ali v. State of Assam},\textsuperscript{37} where in the death of deceased wife was caused as a result of burn injuries within seven years of her marriage. Evidence of witnesses, father and brother of deceased showed that deceased was tortured both mentally and physically by accused husband for non payment/supply of adequate dowry. The Court held that the dying declaration made before witnesses belonged to same family by itself does not discredit their testimony. Conduct of accused in not attempting to put out fire infers that deceased wife did not commit suicide by pouring kerosene on her body. Presumption under Section 113-B of Evidence

\textsuperscript{35} \textit{Id.} at 319.
\textsuperscript{36} (1998) 2 SCC 763.
\textsuperscript{37} 2008 CrLJ (NOC) 999 (Gau).
Act can be drawn as against accused person. The Court held the conviction of accused proper on the basis of evidence of witnesses, father and brother of deceased and circumstantial evidence of not attempting to put out fire.

The offence under Section 304-B can be tried by the Sessions Court and it is a cognizable offence. Where the complaint reveals a case of continuing offence of maltreatment and humiliation in various cities then Section 178(c) of the Criminal Procedure Code applies. Where the charge is only under one Section but the ingredients of another offence are fulfilled, the Court in exercise of its inherent powers under Article 142 of the Constitution of India can give appropriate orders in the interest of justice.  

(d) Abetment of Suicide (Sections 306 and 107, Indian Penal Code)

Domestic violence may sometimes drive a wife to suicide. Then it does not come under dowry death and it is an offence under abetment of suicide.

Section 306 of the Indian Penal Code, 1860 states:

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.

Section 107 of the Indian Penal Code states:

That abetment may take any form of:

(a) instigating someone to commit suicide; or

38 Supra note 2 at 316.
(b) being part of a conspiracy to make a person to commit suicide; or

c) intentionally helping someone to commit suicide.

Someone who has done something that helps another person to commit suicide, is liable only if he or she intended to aid the suicide. If a woman commits suicide subjected to mental harassment and cruelty, the person who harassed the woman is liable for abetment. Where the woman categorically stated in her dying declaration that the accused mother-in-law maltreated her and taunted her for not bringing enough dowry and this led her to take the extreme step, it was held that the accused was guilty of abetment to suicide. In Gurbachan Singh v. Satpal Singh, the Supreme Court has considered constant dowry demands, torture and cruel behaviour and taunts that a woman is carrying an illegitimate child leading to suicide as abetment of suicide.

On Vithal Ziblaji Sonone v. State of Maharashtra, case, dying declaration of wife clearly established that husband was not doing any work, was dependent on earning of wife and was used to drinking and beating wife. Wife committed suicide being fed up with the harassment which showed direct and reasonable nexus of commission of suicide by wife with act of cruelty of husband. The Court held the conviction of husband under Sections 306 and 498A

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42 2008 CrLJ (NOC) 1020 (Bom).
In the case of abetment of suicide, the prosecution has to prove:

(i) that the woman committed suicide within seven years of her marriage; and

(ii) that the husband or/and his relative(s) had subjected her to cruelty which drive her to commit suicide because she or her relatives did not give some property.

(e) **Causing Miscarriage without Woman’s Consent (Section 313, Indian Penal Code)**

Female infanticide or forcing the wife to terminate her pregnancy, is also form of domestic violence recognised as offence under Section 313 of the Indian Penal Code, whoever commits this offence without the consent of the woman, whether the woman is quick with child, or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(ii) **Offences Posing or Causing Bodily Harm Short of Death**

(a) **Hurt (Section 319, Indian Penal Code)**

Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. Causing bodily hurt is a common form of domestic violence.

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43 Section 34 reads: “Acts done by several persons in furtherance of common intention – when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as it were done by him alone”.

44 Supra note 39 at 207.
Punishment for Voluntarily Causing Hurt (Section 323, Indian Penal Code)

Whoever except in the case provided for by Section 334, voluntarily causes hurt, shall be punished with imprisoned of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

A hurt may be ‘grievous’ if it results a serious injury such as fracture, loss of hearing or sight, damage to any member or joint, etc. is also a common form of domestic violence.

(b) Grievous Hurt (Section 320, Indian Penal Code)

The following kinds of hurt only are designated ‘grievous’:-

First - Emasculation
Secondly - Permanent privation of the sight of either eye
Thirdly - Permanent privation of the hearing of either ear
Fourthly - Privation of any member or joint
Fifthly - Destruction or permanent impairing of the powers of any member or joint.
Sixthly - Permanent disfiguration of the head or face.
Seventhly - Fracture or dislocation of a bone or tooth.
Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.
Punishment for Voluntarily Causing Grievous Hurt (Section 325, Indian Penal Code)

Whoever, except in the case provided for by Section 335, Indian Penal Code voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

If a person causes hurt or grievous hurt with the use of dangerous weapons or dangerous means, the punishment is more severe. The relevant provisions are contained in Sections 321, 322, 324 and 326 of the Indian Penal Code.

Supra note 2 at 319.

Section 321 reads: “Voluntarily causing hurt - whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said voluntarily to cause hurt”.

Section 322 reads: “Voluntarily causing grievous hurt - whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said voluntarily to cause grievous hurt”.

Section 324 reads: “Voluntarily causing hurt by dangerous weapons or means - whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by mean of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both”.

Section 326 reads: “Voluntarily causing grievous hurt by dangerous weapons or means - whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”.

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Wrongful Restraint and Wrongful Confinement (Sections 339 and 340, Indian Penal Code)

If a woman is stopped from going out of the house or is locked up by her husband or his relative, they could be made liable for the offence of wrongful confinement or wrongful restraint. This is also a form of domestic violence.

(c) Wrongful Restraint (Section 339, Indian Penal Code)

Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Section 341 of the Indian Penal Code provides for punishment, whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to 500, or with both.

If husband does not let his woman enter a particular area or does not let her enter place of work, he is stopping her from proceeding in a direction that she had a right to proceed in. In such a situation Section 339 of Indian Penal Code may be invoked.50

(d) Wrongfully Confinement (Section 340, Indian Penal Code)

Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said ‘wrongfully to confine’ that person.

Section 342, Indian Penal Code provides for punishment - whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to

50 Supra note 2 at 319.
one year, or with fine which may extend to one thousand rupees, or with both.

If a woman is locked up or is threatened by her husband or by his relative(s) that she will be subjected to violence if she leaves her house, then husband or his relative(s) can be punished for wrongfully confinement. The time period for which a woman is confined is not relevant. If a person wrongfully confines a woman for three days or more or ten or more days, he shall be liable for a greater punishment under Sections 343 and 344 of the Indian Penal Code.

(iii) Offences with Sexual Element

(a) Assault or Criminal Force to Woman with Intent to Outrage her Modesty (Section 354, Indian Penal Code)

The Indian Penal Code under Section 354 makes assault or uses of criminal force to be a crime. The term woman in Section 354 would include a female human being of any age. The Indian Penal Code does not define the term modesty. In State of Punjab v. Major

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51 Section 343 reads: “Wrongfully confinement for three or more days – whoever wrongfully confines any person for three days, or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or both”.

52 Section 344 reads: “Wrongfully confinement for ten or more days – whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine”.

53 Section 354 reads: “Assault or criminal force to woman with intent to outrage her modesty - whoever assaults or uses criminal force to a woman, intending to outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both”.

Singh, the Supreme Court appears to have confined ‘modesty’ to sex as it observed:

When any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that act must fall within the mischief of this section.

Bachawat J. also pointed out:

I think that the essence of a woman’s modesty is her sex. The modesty of an adult female is unit large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses modesty capable of being outraged.

Its dictionary meaning is the quality of being modest, decency, etc. The word decent means that which is not obscene, reasonably good, fair, confirming to approved social standards, kinds, respectable. If the dictionary meaning of the word is adhered to, the acts which are indecent, unfair, unkind, unreasonable and do not conform to approved social standards would be naturally deemed outrageous to the modesty of a woman. Such acts may assume a variety of forms. It all depends upon the custom and habits of the people. For instance, uplifting the veil of a woman’s pardah in presence of her father-in-law, she being a village lady, would be regarded as an indecent act outrageous to her modesty. Pulling of hair or hand, pushing, obstructing the way, waylaying, may all come

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55 AIR 1967 SC 63.
56 Webster’s New World Dictionary. 196 (1975).
within the mischief of the provision. Similarly, hurting her by putting a strong armhold around her neck or waist will be covered by the scope and ambit of Section 354, Indian Penal Code. Catching hold of a woman by her arm and dragging her may also amount to an outrage irrespective of the fact that the act is done in the presence of others or not.  

(b) Marital Rape

Women who are physically abused are very often also subjected to a range of sexual humiliation and assaults, or men may use threats of violence in order to make women submit to coercive sex. Women may experience a distressing sweep of sexual violence from dominating sexual behaviour from their partners, to sexual assault, putting pressure on the frequency of sex, sexual activity exclusively on their terms, continually being badgered, bullied or punished into having sex and the ultimate – being raped. The controlling partners self-serving rules and unrealistic exceptions can leave women with no room to express their own sexuality and the fact they have no choice leaves them feeling powerless.

Marital rape is yet another common form of domestic violence. Under Section 375 of the Indian Penal Code, sexual intercourse by a man with his own wife, the wife being over fifteen years of age, is

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not rape, even though it be forcible, against her will or without her consent.\textsuperscript{59}

He is, however, punishable under the Code for raping his own wife, if she is below fifteen years of age.

Excessive and unreasonable demands for sex, or demands for unnatural sex have been considered forms of cruelty and may entitle a woman to a divorce.\textsuperscript{60}

Marital rape violates fundamental right guaranteed to every citizen under Article 21 of the Constitution of India. If she is neither a person nor a citizen under the Supreme Law of the land, then it naturally follows that she is a ‘thing’. She is the property of the husband to use abuse and violate as and when he desires.\textsuperscript{61}

The preamble to the Constitution of India assures, among other things, ‘dignity of the individual’ and Article 21 of the Constitution of India guarantees the right to life and personal liberty to individuals and mandates the State not to, except according to

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59 Section 375 reads: “Rape - A man is said to commit ‘rape’ who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:
First - Against her will
Secondly - Without her consent
Thirdly - With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
Fourthly - With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
Fifthly - With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
Sixthly - With or without her consent, when she is under sixteen years of age.
Exception - Sexual intercourse by a man with his own wife, the wife not being under fifteen of age, is not rape”.
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procedure established by law, deprive a person of his right. It reads: ‘No person shall be deprived of his life or personal liberty except according to procedure established by law’. 62

In Vishakha v. State of Rajasthan, 63 the Supreme Court extended right of privacy to workplaces. It is further submitted, along the same lines, that there exists a right of privacy to enter into a sexual relationship even in a marriage. By decriminalizing rape within a marriage, the marital exemption doctrine violates the right of privacy of a married woman and is hence, unconstitutional.

For the past three decades there has been massive legislative and judicial activity around the world with regard to the law relating to marital rape. Unfortunately, India has been a stranger to the event. Starting with the United States, where marital exemption was abolished through a series of judicial and legislative measures, Australia, Canada, New Zealand, Ireland and Scotland have abolished the marital rape exemptions from their penal statutes. India can also learn from the fact that its neighbour Nepal, a relatively small country also abolished marital rape exemption from its penal statute and made the husband who forces her wife to have sex liable for rape. 64 It is time India should remove this unjust, unfair and unreasonable provision from its statute books.

Section 376, Indian Penal Code states where the wife is below twelve years of age the punishment is the same as provided for rape generally, viz, imprisonment for life or imprisonment of either

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62 Victims of Rape and Their Right to live with Human Dignity and to be Compensated: Legislative and Judicial Responses in India, Journal of the Indian Law Institute, 227 (2005).
63 AIR 1997 SC 3011.
description that may extend to ten years and fine. The punishment provided is milder where the wife is between twelve and fifteen years of age, being imprisonment of either description that may extend to two years or fine or both.

(c) Intercourse by a Man with his Wife during Separation (Section 376-A, Indian Penal Code)

Who ever has sexual intercourse with his own wife, who is living separately from him and under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(d) Word, Gesture or Act Intended to Insult Modesty of Woman (Section 509, Indian Penal Code)

Modesty is to women, what fragrance is to flower. If husband or any male member of family uses any word or picture or gesture or act or sound with intention to insult the modesty of woman can be punished with imprisonment up to one year.

(iv) Offences Connected with Property

(a) Criminal Breach of Trust (Section 405, Indian Penal Code)

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust,
or willfully suffers any other person so to do, commits ‘criminal
breach of trust’.  

If the woman has given her stridhan or other property to her
husband/in laws for safekeeping, they are merely trustees. They are
bound to return the same when demanded by her. If they
misappropriate or dispose of the property, or convert it to their own
use. They commit the offence of criminal breach of trust, and can be
prosecuted for the same.  

Stridhan means women’s property. Stridhan is an absolute
property of Hindu women recognised by law. The term stridhan is a
part of gift given to bride at the time of marriage for her exclusive
use. Husband deemed to be the trustee of stridhan’ – refusal to
return by husband – wife can file criminal complaint against husband
for breach of trust.  

The stridhan property of a married woman cannot acquire the
character of a joint property of both the spouses as soon as she enters
her matrimonial home so as to eliminate the application of Section
406, Indian Penal Code. The position of stridhan of a Hindu married
woman’s property during coverture is absolutely clear and
unambiguous; she is the absolute owner of such property and can
deal with it in any manner she likes – she may spend the whole of it
or give it away at her own pleasure by gift or will without any
reference to her husband. The entrustment to the husband of stridhan
property is just like something which the wife keeps in a bank and

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65 Section 405. Indian Penal Code, 1860.
20.06.2008.

- 179 -
can withdraw any amount in times of extreme distress, in famine, illness or the like, the husband can utilize it but he is morally bound to restore it or its value when he is able to do so. This right is purely personal to the husband and the property so received by him in marriage cannot be proceeded against even in execution of a decree for debt.\textsuperscript{70}

To constitute the offence under Section 406, Indian Penal Code, there has to be proved that one has entrusted property to a person, one has demanded that it be returned to one and the person entrusted with the property refuses to return it to one.\textsuperscript{71}

In \textit{M.S. Anu Gill v. State and Another case},\textsuperscript{72} noting that there was no allegation of entrustment in the complaint, the Court quashed the FIR against the married sister-in-law of the complainant under Sections 498A and 406 of the Indian Penal Code.

To contribute the offence under Section 406, Indian Penal Code there must be clear and specific allegation that the accused was entrusted with some property or domain over it, by the complainant, that the accused has dishonestly misappropriated or converted the same to his own use or that accused refused to return back the articles when the same was demanded by the complainant. Persual of the allegations appearing against the petitioner do not show that the articles of Stridhan were even entrusted to her. In the absence of the allegation of entrustment, question of misappropriation or conversion to her use does not arise. Thus, the most vital ingredient

\textsuperscript{70} www.invlex.com/vid/29683980 accessed on 20.06.2008.\textsuperscript{71}
\textsuperscript{71} Ibid.\textsuperscript{92 (2001) DLT 179.}
to contribute the offence under Section 406, Indian Penal Code is missing. In view of the above, no case under Section 406, Indian Penal Code is spelt out against the petitioner”.

(v) Offences Against Marriage

(a) Bigamy (Sections 494 and 495, Indian Penal Code)

The term polygamy (a Greek word meaning ‘the practice of multiple marriage’) is used in related ways in social anthropology, sociobiology, and sociology. Polygamy can be defined as any ‘form of marriage in which a person has more than one spouse. In social anthropology polygamy is the practice of being married to more than one spouse at the same time. Historically, polygamy has been practiced as polygyny (one man having more than one wife), or as polyandry (one woman having more than one husband) or less commonly as ‘polygamy’ (one person having many wives and many husbands at the same time).

Both polygamy and polygyny were practiced in ancient times among certain sections of Hindu society. Hinduism during the vedic period seems to have neither prohibited polygamy, nor did it encourage it. Historically, kings occasionally took concubines. For example, the Vijaynagara emperor, Krishnadevaraya had multiple ‘wives’. Under Hindu Marriage Law, as understood by the Constitution of India, polygamy is forbidden for Hindu, Jains and Sikhs. However, Muslim in India are allowed to have multiple wives. The common interpretation is that he can marry four times. Whether he can be punished under the Section for marrying fifth

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73 www.delhicourts.nic.in/oct07/sanjeev%20kumar% accessed on 20.06.2008.
time will depend on which school of Muslim Law applies to him. If husband is a Sunni Muslim, the marriage is not void, but only irregular. This means that he can make his fifth marriage valid simply by divorcing one of his current wives. If husband is a Shia Muslim, his fifth marriage is void and he would be guilty of the offence of bigamy. Keeping of second woman or mistress during the subsistence of first wife, the person who commits such act is guilty of domestic violence against first wife. In other words, if the husband of a married woman gets married some one else while the first wife is still married to him or if husband was already married when a woman got married, husband may be guilty of bigamy. By its nature bigamy is considered to be one of the kinds of domestic violence against woman. It has been defined under Sections 494 and 495 of the Indian Penal Code. Section 494 says that husband is guilty of bigamy if:

- He has a wife who is alive
- He has married again
- This second marriage is ‘void’ because of the fact that he is already married.
- The first marriage has not been declared void by any Court.

Husband will not be liable if the first wife has been unknown for a continuous period of 7 years or more.

Section 494 of Indian Penal Code provides that husband shall be punished with maximum imprisonment of seven years plus fine, where husband has hidden the fact that he was already married, the

76 Supra note 2 at 323.
punishment will be ever greater. Section 495 provides that he will be
punished with ten years imprisonment and with fine.\(^{78}\)

In case of bigamy, the prosecution will have to prove that:

- The first marriage was valid under the law that applies to the
  parties.
- The first wife is alive and the marriage is still subsist.
- The second marriage was void because of the existence of the
  first marriage. This means that the second marriage would
  have been valid if the first marriage did not exist.

If husband has converted to Islam only so that he can get
married again, he will be guilty of bigamy in his second marriage
itself. The Apex Court in *Sarla Mudgal v. Union of India*,\(^{79}\) has held
that if a husband has converted to Islam only so that he can get
married again, he will be guilty of bigamy in his second marriage
itself. It means that if a man is already married under Hindu Personal
Law and subsequently he converts to Islam for the purpose of
marrying again, he will be committing domestic violence against his
first wife, which amounts to be an offence is punishable under
Section 495 of the Indian Penal Code.

(b) **Adultery (Section 497, Indian Penal Code)**

When a married man is having a sexual relationship with
another married woman, his act amounts to domestic violence
against his legally married wife. In legal term it is called adultery

\(^{78}\) Sections 494 and 495, Indian Penal Code, 1860.

\(^{79}\) (1995)3 SCC 635.
which is an offence.\textsuperscript{80} The law dealing with adultery is not fair. Section 497 of the Indian Penal Code, is so designed that husband cannot prosecute the wife for defiling the sanctity of the matrimonial home by committing adultery. Thus the law permits neither the husband of the offending wife to prosecute his wife nor does the law permit the wife to prosecute the offending husband for being disloyal to her.\textsuperscript{81} In the contemplation of our law, the wife who is involved in illicit sex outside matrimony with a stranger is a victim of the offence and therefore, she cannot be prosecuted as the another or abettor of the crime. The authors of the Penal Code, when it was originally framed in 1860, justified the special protection and the immunity conferred on the woman involved in the adulterous relationship. More than a century and a quarter has elapsed since then the demand has been made from some women organizations that Section 497 of the Indian Penal Code needs to be recast in an egalitarian mould and in terms which would reflect the change social perspective and meet their human organizations. The Law Commission in its 42\textsuperscript{nd} Report in 1971 had recommended that Section 497 of Indian Penal Code be modified with the important rider that the woman, party to the adultery, shall be liable as an abettor of the offence. The suggested change failed to obtain statutory adoption and so the age old anachronism prevails.\textsuperscript{82}

Under Section 497 of the Indian Penal Code, 1860 a woman’s husband is guilty of adultery if:

\textsuperscript{80} Supra note 77 at 38.
\textsuperscript{82} B.K. Nagla, Women Crime and Law, 95 (1980).
(i) He has sexual relationship with a woman who is married to another person, and

(ii) He knows that she is married, or

(iii) He has reason to believe that she is married, and

(iv) He does not have the consent of husband of that woman to have sexual relationship with her.

(c) Cruelty (Section 498-A, Indian Penal Code)

Certain forms of domestic violence have been made offences in India. Cruelty by a husband or his relatives to a woman is an offence under Section 498A of the Indian Penal Code.

Marriages are made in heaven. A bride leaves the parental home for the matrimonial home leaving behind sweet memories therewith in a hope that she will see a new world full of love in her groom's house. She leaves behind not only her memories but also her surname, gotra and maidenhood. She expects not only to be a daughter-in-law but a daughter in fact. In-laws are characterized as out laws for perpetrating a terrorism which destroys matrimonial home.\(^83\)

In order to combat the increasing incidents of torture of women by her husband and his relatives, the legislature enacted Section 498-A of the Indian Penal Code and Section 113A of the Indian Evidence Act.\(^84\) To convict a person for the crime under Section 498A, Indian Penal Code, the prosecution has to prove that the accused committed acts of harassment or cruelty as contemplated


\(^84\) *Supra* note 10 at 105.
by the Section and the harassment or cruelty was the cause of the suicide.\textsuperscript{85}

For the purpose of Section 498-A Indian Penal Code, cruelty means:

- Willful conduct that is likely to drive the woman to commit suicide.
- Willful conduct which is likely to cause grave injury to the life, limb or health of the woman
- Harassment with the view to forcing the woman or her relatives to give some property.
- Harassment because the woman or her relatives did not give some property.

The punishment for cruelty is imprisonment for up to three years and fine. The complaint against cruelty need not be lodged by the person herself. Any relative may also make the complaint on her behalf.

\textbf{Forms of ‘cruelty’ recognised by the Courts}:

- Persistent denial of food;
- Insisting on perverse sexual conduct;
- Constantly locking a woman out of the house;
- Denying the woman access to children, thereby causing mental torture;
- Physical violence;

• Taunting, demoralizing and putting down the woman with the intention of causing mental torture;

• Confining the woman at home and not allowing her normal social intercourse;

• Abusing children in their mother’s presence with the intention of causing her mental torture;

• Denying the paternity of the children with the intention of inflicting mental pain upon the mother, and

• Threatening divorce unless dowry is given.\textsuperscript{86}

Cruelty includes dowry related harassment but it is not confined to dowry related harassment. Section 498A, Indian Penal Code although conceived as a protection against harassment, the wording of the Section was wide enough to apply to other situations of domestic violence. The cruelty under Section 498A, Indian Penal Code has two fold dimensions; (1) it must be willful conduct of such an extreme nature as to force her to commit suicide or inflict upon herself injury which is physical and mental; and (ii) there must be harassment with a view to force her or her relatives to meet unlawful demand for any property. A reasonable nexus has to be established between the cruelty and the suicide. The cruelty established has to be of such gravity as to drive an ordinary woman to commit suicide. The act of taking a child away from mother and beating the woman could amount to cruelty under Section 498-A, Indian Penal Code. Explanation (b) to Section 498-A does not make each and every harassment as cruelty. The harassment has to have a definite object,

\textsuperscript{86} \textit{Supra} note 60.
namely to coerce the woman or any person related to her to meet such demand. In Arun Vyas v. Anita Vyas, the Supreme Court clarified that the essence of the offence under Section 498A is cruelty. It is a continuing offence and on each occasion on which the woman is subjected to cruelty, she has a new starting point of limitation. In State of Karnataka v. Moorthy, the act of the husband is not providing elementary means of subsistence to the wife and his infant child and deliberately and irresponsibly squandering his earnings on gambling, were held to be amounting to cruelty punishable under Section 498-A.

The initial burden of proof is still on the prosecution to show that the woman was subjected to cruelty. It is only after this that the presumption under Section 113 A, Evidence Act applies. The introduction of Section 498A and Section 113-B have not altered the requirement of standard of proof. There is no absolute standard of proof in a criminal trial and the question whether the charges have been met beyond a reasonable doubt would be dependent upon the facts and circumstances of each case. The doubt must be a reasonable and just for coming to a conclusion considering the particular subject matter. In a case whether the cruelty meted out induced the deceased to commit suicide the Court has to see if the woman was hypersensitive to ordinary petulance, discord, and differences. The presumption under Section 113A of the Evidence Act would apply retrospectively, as it is procedural in nature.

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87 Supra note 10 at 106.
88 AIR 1999 SC 2071.
89 2002 CrLJ 1683.
The offence under Section 498A is cognizable and triable by a First Class Magistrate. The bar of limitation to take cognizance of offence under Section 468, Criminal Procedure Code would not apply to matrimonial offences where the allegations are of cruelty, torture etc.\(^{92}\)

In *M. Saravana Porsevi v. A.R. Chandrasekar & Ors.*\(^{93}\) Case, wife/complainant and accused had entered into registered agreement of divorce as per custom. Parties were living separately since 10 years. A complaint of cruelty was filed by wife after this period of 10 years before women cell at Chennai. The Supreme Court observed:

The customary divorce may be legal or illegal. The fact that such an agreement had been entered into or the appellant had received a sum of Rs. 25,000/- by way of permanent alimony, however, stands admitted. The document is a registered one. Appellant being in the legal profession must be held to be aware of the legal implication thereof. If the contents of the said agreement are taken to be correct, in disputably the parties had been living separately for more than ten years. How then a case under Section 498A of the Indian Penal Code can be said to have made out and that too at such a distant point of time is the question, particularly in view of the bar of


\(^{93}\) *AIR 2008 SC 2462.*
limitation as contained in Section 468 of Code of Criminal Procedure. Even it is unbelievable that the appellant was really harassed by her husband or her in-laws.94

The Supreme Court further observed:

If the High Court for exercising its jurisdiction under Section 482 of the Code of Criminal Procedure, the High Court taken into consideration an admitted document, we do not see any legal infirmity therein. If it is a case of customary divorce, the question in regard to the existence of good custom may have to be gone into in a civil proceeding.95

The Supreme Court held that complaint filed after 10 years of divorce is barred by limitation. Proceedings initiated are abuse of process of Court so liable to be quashed.

Initially the police refused to register cases under this Section unless specific allegations of dowry harassment were made. But as a result of constant agitations and interventions, it is now accepted that the Section ought to be used in all situations of cruelty and domestic violence.

Under Section 198A of the Code of Criminal Procedure, the case under Section 498A can be filed only by the aggrieved woman, her father, mother, brother, sister, her father’s or mother’s brother or

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94 Id. at 2463.
95 Ibid.
sister. Anyone else related to her by blood, marriage or adoption may also make the complaint, if the Court permits.

In *Sushil Kumar Sharma v. Union of India*, the Supreme Court has held that Section 498A is constitutionally valid. The petition was filed by the husband who alleges misuse of the provision. It was held by the Court that mere possibility of misuse did not render a provision invalid.

There is a general complaint that Section 498-A of the Indian Penal Code regarding cruelty by the husband or his relatives is subjected to gross misuse and many times operates against the interest of the wife herself. This offence is non-bailable and non-compoundable. Hence husband and other members of the family are arrested and can be behind the bars which may result in husband losing his job. Even if the wife is willing to condone and forgive the lapse of the husband and live in matrimony, this provision comes in the way of spouses returning to the matrimonial home. This hardship can be avoided by making the offence bailable and compoundable. In 2003, the Justice Malimath Committee, submitted a report to the Ministry of Home Affairs on reforms in the Criminal Justice System, recommended that the Section be made bailable and compoundable to give a chance to the spouses to come together.

For years, there has been loud debate and even orders from courts to do away with or, at least, amend Section 498A of the Indian Penal Code, which deals with offence of matrimonial cruelty. This clause is considered to be rampantly abused, with several examples of husbands and their families being arrested without a

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preliminary inquiry on allegation of harassing their wives for a range of reason, including dowry. Now the Ministry of Home Affairs has written to all State Governments, advising them that arrest for an alleged offence under Section 498A should be the last resort not the first step.97

4.3 National Crime Record Bureau, Ministry of Home Affairs, Crime in India, Report 2007

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Cognizable Crimes under IPC</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>1695696</td>
</tr>
<tr>
<td>1996</td>
<td>1709576</td>
</tr>
<tr>
<td>1997</td>
<td>1719820</td>
</tr>
<tr>
<td>1998</td>
<td>1778815</td>
</tr>
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<td>1999</td>
<td>1764629</td>
</tr>
<tr>
<td>2000</td>
<td>1771084</td>
</tr>
<tr>
<td>2001</td>
<td>1769308</td>
</tr>
</tbody>
</table>

A total of 5733407 cognizable crimes comprising of 19,89,673 Indian Penal Code crimes and 3743734 special and local laws (SLL) crimes were reported, showing an increase of 12.4% over 2006 (5102460).

Indian Penal Code crime rate in 2007 was 175.1 as compared to 167.7 in 2006 recording an increase of 4.4% in 2007 over 2006.

Special and Local Laws crime rate in 2007 was 329.4 as compared to 287.9 in 2006 recording an increase of 14.4% in 2007 over 2006.

Crime Against Women

97 *The Indian Express*, November 3, 2009 at 1.
Although Women may be victims of any of the general crimes such as ‘Murder’, ‘Robbery’, ‘Cheating’, etc, only the crimes which are directed specifically against Women are characterised as ‘Crimes Against Women’. Various new legislations have been brought and amendments have been made in existing laws with a view to handle these crimes effectively. These are broadly classified under two categories.

(i) The Crimes under the Indian Penal Code (IPC)

(a) Rape (Section 376 IPC)

(b) Kidnapping & Abduction for specified purposes (Sections 363 - 373 IPC)

(c) Homicide for Dowry, Dowry Deaths or their attempts (Section 302/304-B IPC)

(d) Torture - both mental and physical (Section 498-A IPC)

(e) Molestation (Section 354 IPC)

(f) Sexual Harassment (Section 509 IPC)

(g) Importation of girls (upto 21 years of age) (Section 366B IPC)

(ii) The Crimes under the Special and Local Laws (SLL)

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep peace with the emerging requirements. The gender specific laws for which crime statistics are recorded throughout the country are -

- 193 -
(a) Immoral Traffic (Prevention) Act, 1956
(b) Dowry Prohibition Act, 1961
(c) The Child Marriage Restraint Act, 1929
(d) Indecent Representation of Women (Prohibition) Act, 1986
(e) Commission of Sati (Prevention) Act, 1987

Reported Incidents of crime

A total of 1,85,312 incidents of crime against women (both under IPC and SLL) were reported in the country during 2007 as compared to 1,64,765 during 2006 recording an increase of 12.5% during 2007. These crimes have continuously increased during in 2003, 1,54,333 cases in 2004, 1,55,553 in 2005, 1,64,765 cases in 2006 and 1,85,312 cases in 2007. Andhra Pradesh, accounting for nearly 7.2% of the country’s population, has accounted for 13.3% of total incidents of crime against women in the country by reporting 24,738 cases. Uttar Pradesh, with nearly 16.6% share of country’s population has accounted for 11.3% of total crime against women by reporting 20,993 cases in 2007.

Trend Analysis

The crime head-wise details of reported crimes during 2003 to 2007 along with percentage variation are presented in Table-5(A). The crime against women has increased by 12.5% over 2006 and by 31.8% over 2003. The IPC component of crimes against women has accounted for 94.4% of total crimes and the rest 5.6% were SLL crimes against women.
The proportion of IPC crimes committed against women towards total IPC crimes has increased continually during last 5 years from 7.6% in 2003 to 8.8% during 2007.

**Table-5 (A)**

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Crime Head</th>
<th>Year</th>
<th>Percentage variation in 2007 over 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2003</td>
<td>2004</td>
</tr>
<tr>
<td>1.</td>
<td>Rape (Section 376 IPC)</td>
<td>15847</td>
<td>18233</td>
</tr>
<tr>
<td>2.</td>
<td>Kidnapping &amp; Abduction (Section 363 to 373 IPC)</td>
<td>13296</td>
<td>15578</td>
</tr>
<tr>
<td>3.</td>
<td>Dowry Death (Section 302/304B IPC)</td>
<td>6208</td>
<td>7026</td>
</tr>
<tr>
<td>4.</td>
<td>Torture (Section 498A IPC)</td>
<td>50703</td>
<td>58121</td>
</tr>
<tr>
<td>5.</td>
<td>Molestation (Section 354 IPC)</td>
<td>32939</td>
<td>34567</td>
</tr>
<tr>
<td>6.</td>
<td>Sexual Harassment (Section 509 IPC)</td>
<td>12325</td>
<td>10001</td>
</tr>
<tr>
<td>7.</td>
<td>Importation of Girls (Section 366B IPC)</td>
<td>46</td>
<td>89</td>
</tr>
<tr>
<td>8.</td>
<td>Sati Prevention Act, 1987</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>9.</td>
<td>Immoral Traffic (Prevention) Act, 1956</td>
<td>5510</td>
<td>5748</td>
</tr>
<tr>
<td>10.</td>
<td>Indecent Representation of Women (Prohibition) Act, 1986</td>
<td>1043</td>
<td>1378</td>
</tr>
<tr>
<td>11.</td>
<td>Dowry Prohibition Act, 1961</td>
<td>2684</td>
<td>3592</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>140601</td>
<td>154333</td>
</tr>
</tbody>
</table>
Crime Head-Wise Analysis (Indian Penal Code)

Rape (Section 376 Indian Penal Code)

An increasing trend in cases of rape has been observed during 2003-2007. These cases reported a substantial increase of 15.0% in 2004 over 2003, a marginal increase of 0.7% in 2005 over 2004, an increase of 5.4% in 2006 over 2005 and an increase of 7.2% in 2007 over 2006. Madhya Pradesh has reported the highest number of Rape cases (3,010) accounting for 14.5% of total such cases reported in the country, however, Mizoram has reported the highest crime rate 8.5 as compared to National average of 1.8.

Rape cases have been further categorised as Incest Rape and other Rape cases.

Incest Rape

Incest cases have decreased by 6.0% from 431 cases in 2006 to 405 cases in 2007 as compared to 7.2% increase in overall Rape
cases. West Bengal (114) has accounted for the highest 28.1% of the total such cases reported in the country.

**Rape Victims**

There were 20,771 victims of Rape out of 20,771 reported Rape cases in the country. 9.5% (1,972) of the total victims of Rape were girls under 15 years of age, while 15.2% (3,152) were teenaged girls (15-18 years), nearly two-third (11,984) (57.7%) were women in the age-group 18-30 years, 3,530 victims (17.0%) were in the age-group of 30-50 years while 0.6% (133) were over 50 years of age.

Offenders were known to the victims in as many as 19,188 (92.5%) cases. Parents/close family members were involved in 2.1% (405 out of 19,188) of these cases, neighbours were involved in 36.0% cases (6,902 out of 19,188) and relatives were involved in 7.5% (1,448 out of 19,188) cases.

**Kidnapping & Abduction (Sections 363-373 Indian Penal Code)**

These cases have reported an increase of 17.2% as compared to previous year 2006 (17,414). Uttar Pradesh (3,363) has accounted for 16.5% of the total cases at the National level. Delhi UT has reported the highest rate at 7.0 as compared to the National average of 1.8.

**Dowry Deaths (Sections 302, 304B Indian Penal Code)**

These cases have increased by 6.2% over the previous year 2006 (7,618). 25.7% of the total such cases reported in the country were reported from Uttar Pradesh (2,076) alone followed by Bihar (1,172) (14.5%). The highest rate of crime (1.3) was reported from Bihar as compared to the National average of 0.7.
Torture (Cruelty by Husband & Relatives) (Section 498A Indian Penal Code)

'Torture' cases in the country have increased by 20.3% over the previous year 2006 (63,128). 14.9% of these were reported from Andhra Pradesh (11,335). The highest rate of 15.7 was reported from Tripura as compared to the National rate at 6.7.

Molestation (Section 354 Indian Penal Code)

Incidents of Molestation in the country have increased by 5.8% over the previous year 2006 (36,617). Madhya Pradesh has reported the highest incidence (6,772) amounting to 17.5% of total such cases as well as the highest rate (9.9) as compared to the National average of 3.4.

Sexual Harassment (Section 509 Indian Penal Code)

The number of such cases has increased by 9.9% over the previous year 2006 (10,950). Andhra Pradesh has reported 30.3% of cases (3,316) followed by Uttar Pradesh 26.3% (2,882). Andhra Pradesh has reported the highest crime rate 4.1 as compared to the National average of 1.0.

Importation of Girls (Section 366-B Indian Penal Code)

A decrease of 9.0% has been observed in such cases as 61 cases were reported during the year 2007 as compared to 67 cases in the previous year (2006). Only Bihar (56) and West Bengal (5) have reported such cases accounting for 91.8% and 8.2% respectively of total such cases at the National level.
Crime-Head wise Analysis
(Special Laws)

Immoral Traffic (Prevention) Act

Cases under this Act have registered a decline of 21.4% during the year as compared to the previous year (4,541). 33.6% (1,199) cases were reported from Tamil Nadu whereas Daman & Diu reported the highest crime rate of 2.7 as compared to the National average of 0.3.

Sati Prevention Act

The practice of Sati is on the wane in modern times. No case was reported across the country during the year 2007 as in 2006.

Indecent Representation of Women (Prohibition) Act

A decline of 23.2% was noticed in cases under this Act as compared to previous year 2006 (1,562). Andhra Pradesh with 1,005 cases has accounted for 83.8% of total such cases at the National level which has also reported the highest crime rate of 1.2 as compared to the National average rate of 0.1.

Dowry Prohibition Act

The cases under this Act have increased by 24.8% as compared to the previous year 2006 (4,504). One-fourth (26.0%) cases were reported from Orissa (1,460) followed by Bihar (978) accounting for 17.4% of total cases at the national level. The highest crime rate was also reported from Orissa at 3.7 as compared to 0.5 at the National level.
4.4 Protections under the Criminal Procedure Code, 1973

Criminal justice system is procedural law i.e. Code of Criminal Procedure, 1973. It explains as to how criminal proceedings are to be undertaken and suggests how to use substantive law. It also provides machinery for investigation of case and its trial before the criminal Court.

(i) Bond to Keep the Peace (Section 107, Criminal Procedure Code)

Wherein the wife who does not want to take drastic rather strenuous action against her abuser husband she can adopt moderate course and can obtain an order from Court compelling her husband to give a bond for keeping the peace. Under this bond the husband of such a woman has to give undertaking to discontinue acts of violence at home and furnish securities and sureties to the Court as a guarantee for keeping peace at home. In case of breach of bond the husband has to surrender his security to the Court and if he fails to do so, he may be imprisoned. Section 107 of the Code of Criminal Procedure, 1973 provides the procedure for getting the husband to execute a bond for keeping the peace.\textsuperscript{98}

It is submitted that in some cases the ‘bond for keeping the peace’ could prove effective relief to the victims specially where situation and relationship between husband and wife is not beyond reconciliation and there is room for amicable settlement of problem. On the other hand the fear of imprisonment and social repercussion may be deterrent elements to stop violence against wife.\textsuperscript{99}

\textsuperscript{98} Supra note 77 at 41.
\textsuperscript{99} Id. at 41-42.
(ii) Right to Maintenance (Section 125, Criminal Procedure Code)

A woman may apply under Section 125 of the Criminal Procedure Code against her husband, father or son to pay her maintenance. Imprisonment will be ordered only if the husband willfully defaults on the maintenance orders issued under this provision. While maintenance under Section 125 of Criminal Procedure Code used to be limited to a maximum of Rs. 500 per month, this has been recently amended. At present, there is no upper limit to the maintenance that can be awarded under this Section. A Court may grant a monthly maintenance at such rate as it deems fit.\(^{100}\)

(iii) Special Provisions for Rape Victim

In *State of Punjab v. Gurmit Singh*,\(^{101}\) the Apex Court has observed that as far as practicable the cases of rape should be trialed in camera and by a woman Judge or Magistrate. The same was also realized by the Parliamentarians and the proviso has been inserted by the Code of Criminal Procedure (Amendment) Act, 2008 in Section 26 of the Cr.P.C. which prescribe the Court by which the offences are triable. The section provides that any offence under section 376 and sections 376A to 376D of the Indian Penal Code shall be tried as far as practicable by a Court presided over by a woman.

Section 157 deals with the procedure for investigation. During investigation the police records the statement of suspects, witnesses and the victim. Section 157 provides that in relation to an offence of

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\(^{101}\) AIR 1996 SC 1393.
rape, the recording of statement of the victim shall be conducted at
the residence of the victim or in the place of her choice and as far as
practicable by a woman police officer in the presence of her parents
or guardian or near relatives or social worker of the locality.

Speedy justice is a fundamental right as an ingredient of
Article 21 of the Constitution of India, the Supreme Court has
advanced a step further and held that the provision of speedy justice
is an obligation of the State, otherwise the operation of legal system
would not promote ‘justice’ which is assumed in the preamble.\textsuperscript{102} Reasonably expeditious trial is a fundamental right of the accused.\textsuperscript{103} Similar provisions has been prescribed under section 309 of Cr.P.C.
that the criminal proceedings shall be held expeditiously and in
particular it directs that once an inquiry has begun the hearing shall
be continued from day to day unless there are exceptional reasons
for an adjournment which should be recorded in writing. Section 309
further provides that when the inquiry or trial relates to an offence
under sections 376 to 376D of the Indian Penal Code, the inquiry or
trial shall, as far as possible, be completed within a period of two
months from the date of commencement of the examination of
witnesses.

(iv) **Protection of Women in Cases of Arrest**

In Section 46 of the principal Act, in sub-Section (1), the
following proviso shall be inserted by the Code of Criminal
Procedure (Amendment) Act, 2008, namely: provided that where a
woman is to be arrested, unless the circumstances indicate to the

\textsuperscript{102} \textit{S. C. Advocate-on-record Association v. Union of India}, AIR 1994 SC 268(Para 505-07).

\textsuperscript{103} \textit{Hussainara Khatoon v. State of Bihar}, AIR 1979 SC 1360.
contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.

(v) Detention of Women in Police Lockup

It is contemplated that after a person is arrested without warrant, an investigation by the police ought to be completed within 24 hours, but when the same is not completed within the prescribed time i.e., 24 hours the accused has to be produced before the nearest Judicial Magistrate for a remand to custody to enable him to continue or complete the investigation. Section 167 provides that where accused woman is under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.

Section 54 provides the medical examination of the arrested person by medical officer. It provides that when any person is arrested, he shall be examined by a medical officer in the service of Central or State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made: Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner. The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence.

104 Section 57 of Criminal Procedure Code.
upon the person arrested, and the approximate time when such injuries or marks may have been inflicted. Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case may be, to the arrested person or the person nominated by such arrested person.

Section 173 provides that investigation should be completed as soon as possible without any unnecessary delay and the ‘final’ or last report to be submitted ‘as soon as’ the police investigation is completed. It further provide that the investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station. The police report should be submitted in the form prescribed by the State Government which states the names of the parties; the nature of the information; the names of the persons who appear to be acquainted with the circumstances of the case; whether any offence appears to have been committed and, if so, by whom ; whether the accused has been arrested; whether he has been released on his bond and, if so, weather with or without sureties; whether he has been forwarded in custody under section 170; whether the report of medical examination of the woman has been attached where investigation relates to an offence under section 376, 376A, 376B, 376C or 376D of the Indian Penal Code.

Section 327 provides that the place where a trial is held should be deemed an open court in which all persons have right to be present but, the proviso confers a discretion in a particular case to exclude the public or any particular person from the proceedings. Section 327(2) provides throughout. The Code of Criminal
Procedure (Amendment) Act, 2008 has inserted a proviso that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.

(vi) Section 174(3), Criminal Procedure Code

Section 174(3) of the Code of Criminal Procedure, 1973 as amended in 1983 makes a ‘post-mortem’ mandatory in a number of cases of suicide when:

(a) The case involves the suicide by a woman within seven years of her marriage; or

(b) The case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person has committed an offence in relation to such woman; or

(c) The case relates to the death of a woman within seven years of her marriage and any relation of the woman has requested for it; or

(d) There is a doubt regarding the cause of death; or

(e) the police officer for any other reason considers it expedient to do so.

Section 176 of the Code of Criminal Procedure as amended in 1983 makes inquiry by a Magistrate mandatory if the cause of death falls under (a) or (b) of sub-section 3 of Section 174 of the Code.¹⁰⁵

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4.5 **Protection under the Evidence Act, 1872**

To make the amendments in the Indian Penal Code more effective, amendment in the Indian Evidence Act, 1872 was considered to be necessary.\footnote{Mamta Rao, *Law Relating to Women and Children*, 114 (2005).} India has adopted the English system of criminal jurisprudence requiring everything to be proved by the prosecution. However, there are certain types of offences where it may not be possible to obtain direct evidence or even proof of incriminating facts to bring an offender to justice. It is in such types of offences, that the device of inserting presumptions can be used to bridge the gulf between one fact and another, so that on the proof of one fact the proof of another fact can safely be presumed. The importance of incorporating presumptions in criminal law is well-recognised all over. The same have been incorporated not only in some of the Sections of the Indian Evidence Act since its inception but also in several other statutes in criminal law in India.

Presumptive evidence is an indirect mode of proving that which otherwise might not be provable or easily provable by relieving the prosecution of its difficult task of proving certain things which are essential ingredients of certain offences. In case of presumptions, the existence of certain facts is presumed by the Court provisionally or conclusively either because common sense demands such presumptions or because a rule of law enjoins it. Thus, the sole purpose of the presumption is to relieve the prosecution of the burden of proving a fact which is an essential ingredient of a particular offence.\footnote{Supra note 15 at194.}
(i) **Presumption (Sections 113A, Evidence Act)**

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.108

(ii) **Presumption (Section 113B, Evidence Act)**

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

**Explanation:** For the purpose of this section ‘dowry death’ shall have the same meaning as in Section 304B of the Indian Penal Code.

The presumption under the Section 113-A is a permissive, optional and a discretionary presumption and even though the essentials mentioned therein are proved, it is open to a Court to draw or not to draw the presumption of the offence of the abetment of suicide punishable under Section 306 of the Indian Penal Code. Of course, the discretion so used in one way or the other must be a judicial discretion, depending on the facts and circumstances of a particular case. The Court is expected in such a case to be guided by its own judicial experience, knowledge and strong common sense.

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108 Section 113A, Indian Evidence Act, 1872.
Thus in a case for the offence under Section 306, if the essentials mentioned in Section 113-A are proved, then as per the first para of Section 4, Evidence Act, the Court may either regard abetment of suicide as proved unless and until it is disproved or may call for proof of abetment of suicide. Thus if the Court adopts the second view, there is an end of the matter as the Court in that case is not inclined to raise the presumption that the accused abetted the commission of the suicide and will be acquitting the accused of the aforesaid charge unless there is positive evidence that he abetted (i.e. instigated, aided, etc.) the same as required under Section 107 of the Indian Penal Code. In such a case, the question of the accused rebutting the presumption of abetment of suicide does not arise at all as the Court is disinclined to raise the presumption under this Section. If on the other hand, the Court chooses to adopt the first course, it means that the court will be raising presumption under Section 113-A that the accused abetted the commission of suicide, unless and until the same is disproved. This means that the presumption so raised by the Court is rebuttable and it is for the accused to rebut the presumption so raised.109

On the other hand, the presumption under the Section 113-B is a compelling presumption of law and on proof of the essentials stated therein, the presumption becomes mandatory and obligatory and the Court has no opinion or choice but to raise the presumption that the accused has committed the offence of dowry death punishable under Section 304-B of the Indian Penal Code. However, even if such a presumption is mandatory, it is a rebuttable

109 Supra note 15 at 195.
presumption and it is always open to the accused to rebut the said presumption of dowry death.110

The apex Court in Kans Raj v. State of Punjab,111 observed that no presumption under Section 113B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty and harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence if the course of conduct relating to cruelty and harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not to state before the death of the woman.112

In the present case, it has been proved that the death of Sunita Kumari by suicide had occurred within 7 years of her marriage and such death can not stated to have occurred in normal circumstances. The term normal circumstances apparently means natural death.113 The Apex Court further observed that the High Court appears to have adopted casual approach in dealing with a specified heinous crime considered to be a social crime.114

Crime against women is an extremely complex phenomenon, deeply rooted in gender based relations, age-old practiced particularly. Any strategy to eliminate gender violence must therefore confront the underlying cultural beliefs and social structures that perpetuate it. Therefore closing the gap between the laws on the books and their implementation is the biggest challenge

110 Id. at 211.
111 2000(5) SCC 207.
112 Id. at 211.
113 Ibid.
114 Id. at 225.
for the judiciary in India. As long as crime against woman continues, we cannot claim to be making legal progress towards equality, development and peace.

**4.6 Malimath Committee Report**

(i) **Offences Against Women (Chapter 16 of Malimath Committee Report)**

(a) **Maintenance of Wives, Children and Parents (Section 125, Criminal Procedure Code)**

Section 125 of the Code provides for giving maintenance to the neglected wife, child etc. The object is to prevent starvation and vagrancy by compelling the person to perform the obligation which he owes in respect of his wife, child, father or mother who are unable to support themselves.\(^\text{115}\)

A woman in a second marriage is not entitled to claim maintenance as in law a second marriage during the subsistence of the first marriage is not legal and valid. Such a woman though she is *de facto* the wife of the man in law she is not his wife. Quite often the man marries the second wife suppressing the earlier marriage. In such a situation the second wife can’t claim the benefit of Section 125 for no fault of her. The husband is absolved of his responsibility of maintaining his second wife. This is manifestly unfair and unreasonable. The man should not be followed to take advantage of his own illegal acts. Law should not insensitive to the suffering of such women. Therefore the Committee suggests that the definition of

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\(^{115}\) Committee on Reforms of Criminal Justice System (Government of India, Ministry of Home Affairs), March, 189 (2003).
the word ‘wife’ in Section 125 should be amended so as to include a woman who was living with the man as his wife for a reasonably long period, during the subsistence of the first marriage.\textsuperscript{116}

(b) Marrying again During Life Time of Husband or Wife
(Section 494, Indian Penal Code)

Bigamy is made an offence under Section 494, Indian Penal Code. The second marriage is void by reason of it taking place during the subsistence of the first marriage. In other words, it would be bigamy only when the marriage is otherwise valid. In \textit{Bhan Rao Shankar Lokhande v. State of Maharashtra},\textsuperscript{117} and \textit{Kunwal Ram v. State of Himachal Pradesh},\textsuperscript{118} the Supreme Court has held that in order to attract Section 494, Indian Penal Code the prosecution has to prove that the second marriage was validly performed as per the customary rights of either party under their personal laws. If there is any lapse in following customary rules, the second marriage would be regarded as void. It is not always easy to prove long after the marriage that all the rituals were duly performed. Thus, the second wife will be denied the right to receive maintenance. To overcome these practical difficulties a suitable provision be incorporated to the effect that if the man and the woman were living as husband and wife for a reasonably long period they shall be deemed to have married in accordance with customary rites of either party thereto.

\textsuperscript{116} Ibid.
\textsuperscript{117} AIR 1965 SC 1564.
\textsuperscript{118} AIR 1966 SC 619.
This shall be rebuttable presumption and the finding shall not be binding in civil proceedings.\textsuperscript{119}

(c) \textbf{Adultery (Section 497, Indian Penal Code)}

A man commits the offence of adultery if he has sexual intercourse with the wife of another man without the consent or connivance of the husband. The object of this Section is to preserve the sanctity of the marriage. The society abhors marital infidelity. Therefore there is no good reasons for not meeting out similar treatment to wife who has sexual intercourse with a married man.

The Committee therefore suggests that Section 497, Indian Penal Code should be suitably amended to the effect that “whosoever has sexually intercourse with the spouse of any other person is guilty of adultery”.\textsuperscript{120}

(d) \textbf{Cruelty by Husband Or Relative of Husband (Section 498, Indian Penal Code)}

This provision is intended to protect the wife from being subjected by the husband or his relatives to cruelty. Cruelty for the purpose of this Section means willful conduct that is likely to drive the woman to commit suicide or cause grave injury or damage to life, limb or health, mental or physical. It also includes harassment by coercing to meet unlawful demands. This is a very welcome measure. But what has bothered the Committee are the provisions which make this offence non-bailable and non-compoundable.\textsuperscript{121}

\textsuperscript{119} \textit{Id.} at 189-190.
\textsuperscript{120} \textit{Id.} at 190.
\textsuperscript{121} \textit{Ibid.}
The woman who lives with the husband and his family after marriage is expected to receive affection and caring and not cruelty and harassment. True to the Indian tradition, the woman quietly suffers without complaining, many inconveniences, hardships and even insults with the sole object of making the marriage a success. She even tolerates a husband with bad habits. But then, when her suffering crosses the limit of tolerance she may even commit suicide.\textsuperscript{122} For the Indian woman, marriage is a sacred bond and she tries her best not to break it. As this offence is made non-bailable and not compoundable it make reconciliation and returning to marital home almost impossible.\textsuperscript{123}

If the woman victim lodges an F.I.R. alleging commission of offence under Section 498-A, her husband, in-laws and other relatives of the husband would be arrested immediately. If she has no independent source of income she has to return to her natal family where also support may not be forthcoming. Her claim for maintenance would be honoured more in default than in payment especially if the husband has lost his job or is suspended from his job due to the arrest. Where maintenance is given, it is often a paltry sum. (Thus the woman is neither here nor there. She has just fallen from the frying pan into the fire). Even when there is a divorce, or reconciliation, the criminal case continues as Section 498-A is non-compoundable.\textsuperscript{124}

A less tolerant impulsive woman may lodge an FIR even on a trivial act. The result is that the husband and his family may be

\textsuperscript{122} \textit{Ibid.}
\textsuperscript{123} \textit{Id. at 191.}
\textsuperscript{124} \textit{Ibid.}
immediately arrested and there may be a suspension or loss of job. The offence alleged being non-bailable, innocent persons languish in custody. There may be a claim for maintenance adding fuel to fire, if the husband cannot pay. She may change her mind and get into the mood to forget and forgive. The husband may realize the mistakes committed and come forward to turn a new leaf for a loving and cordial relationship. The woman may like to seek reconciliation. But this may not be possible due to the legal obstacles. Even if she wishes to make amends by withdrawing the complaint, she cannot do so as the offence is non-compoundable. The doors for returning to family life stand closed. She is thus left at the mercy of her natal family.\footnote{Ibid.}

This Section, therefore, helps neither the wife nor the husband. The offence being non-bailable and non-compoundable makes an innocent person undergo stigmatization and hardship. Heartless provisions that make the offence non-bailable and non-compoundable operate against reconciliations. It is therefore necessary to make this offence (a) bailable and (b) compoundable to give a chance to the spouses to come together.\footnote{Ibid.}