CHAPTER – 2.1
THE HISTORICAL BACKGROUND AND LEGISLATIVE INTENT OF SECTION 498A OF IPC

The human life begins with a female. She is the originator. She is considered to be divine, creative, nurturing and supportive. She symbolizes both “Laxmi” and “Saraswati”- Laxmi for wealth and Saraswati for knowledge. But at the same time she is subjected to all types of violence, right from cradle to grave. Birth of a daughter is still considered to be bad luck. A growing girl child is considered as a burden for the family. A female child at the tender age is subjected to sexual exploitation. The married women have all along been receivers of myriad forms of violence of varying proportions, so much so that home becomes the least safe place for women, whereas it has become the safest place for men. Violence against women is a phenomenon that cuts across boundaries of culture, class, education, ethnicity and age. Domestic violence against women means “Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”. All this gave birth to the feminist movement of the 70s and 80s, which focused light on the age old practice of subjecting women to atrocious treatment by male folk. To mitigate the all- pervasive acts of violence against helpless women in India, in 1980s Indian legislatures also decided to act. That led to the formation of Joint Committee of the two Houses of Parliament which made in-depth study of the working of the Dowry Prohibition Act, 1961. The study revealed the phenomenon of ever increasing incidences of dowry deaths in India culminating in

to suicide by women victims. All this is the background of formation of Criminal Law Amendment Committee (1982). This Committee electrified the Government which decided to provide meaningful protection to victims of domestic violence during their life time itself. The avowed object is to combat the menace of dowry death and cruelty.

**Beyond Reasonable Doubt**

Though, marital abuse is an age-old crime against a married woman there was no legislative provision in Indian legislation prior to 1983 to deal with it. During pre-1983 era general provisions of IPC dealing with murder, abetment to suicide, causing hurt and wrongful confinement dealt with violator- husband. The criminal law of this country underlines the importance of “beyond reasonable doubt” as raison d’être, which is an acid test to prove violence against women. But unfortunately, Cruelty/domestic violence/ marital violence couldn’t be proved because of domestic violence takes place in the privacy of home, behind its closed doors. Being so, victim of domestic violence is unable to prove her case “beyond reasonable doubt” by presenting to the Court eye witnesses.

Therefore, in Para.3.2, Chapter 3 under the head ‘DOWRY DEATH AND THE SUBSTANTIVE CRIMINAL LAW’, the 91st Report of Law Commission of India (10th August 1983) on ‘Dowry Death and Law Reforms: Amending the Hindu Marriage Act, 1955, the Indian Penal Code, 1860 and the Indian evidence Act, 1872’, has shifted the burden of proof to the accused who received stringent punishments. This is a far-reaching change introduced in Indian criminal law system.

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8 Supra, note 6
Feminist Movement
In the last quarter of the 20th century, Pune has witnessed many feminist movements. In 1980-82 feminist movements were quite novel and visible, and activists were very passionate. The dowry death of Manjushree Sarda\textsuperscript{12} and the murder of Shaila Latkar were the two prominent cases that triggered street protests in Pune city.\textsuperscript{13} The movements then were aggressive in investigating the causes of women’s harassment. The feminist movement these days is not so visible: This doesn’t mean that it’s over; only that it is manifested in different forms.\textsuperscript{14} In the late 1980s, various legislations providing protection to girls and women were reviewed and laws relating to dowry and harassment were amended. The feminist movement demanded a comprehensive legislation on domestic violence that included psychological violence along with physical violence. In the same period the Bhanwari Devi gang rape incident happened. Although she could not get justice, definition of ‘sexual harassment’ was expanded suitably. The feminist movement in the city gave birth to many organisations and institutions to empower women, among them Rajsatta Andolan, Nari Samata Manch and Masum.\textsuperscript{15}

Determined campaigning and lobbying by women’s organisations led to the enactment of the \textit{Criminal Law (Second Amendment) Act, 1983 (46 of 1983)} which amended the \textit{Indian Penal Code, 1860}, \textit{Code of Criminal procedure, 1973}, \textit{the Indian Evidence Act, 1872} and the \textit{Dowry Prohibition Act, 1961} with the intention of protecting wives from marital violence (cruelty to married women), abuse and extortionist dowry demands.\textsuperscript{16}

\textsuperscript{12}Sharad Sarda v. State of Maharashtra, 1986 CrLJ.
\textsuperscript{14}http://findarticles.com/p/news-articles/dna-daily-news-analysis-mumbai/mi_8111/is_20110420/city-nurtured--feminist-movement-vidya/ai_n57322386/ , as visited on 25 April, 2011, 10.30pm
\textsuperscript{16}Madhu Kishwar, \textit{Supra}, note 10
Criminal Law (Second Amendment) Bill drafted to combat the menace of dowry death and cruelty -

The following changes were proposed to be made in the Criminal Law (Second Amendment) Bill:-

“(i) The Indian Penal Code is proposed to be amended to make cruelty to a woman by her husband or any relative of her husband punishable with imprisonment for a term, which may extend to three years and shall also be liable to a fine. Wilful conduct which is of such a nature by the husband or any relative of the husband as is likely to drive the woman to commit suicide or to cause grave physical injury or mental injury to her, and harassment of a woman by her husband or any relative of her husband with a view to coercing her or any of her relative to meet any unlawful demands for any property would be punishable as cruelty. The offence will be cognizable if information relating to the commission of the offence is given to an officer in charge of a police station by the victim of the offence or a relative of the victim of the offence or in the absence of any such relative, by any public servant authorised in this behalf by the State Government. It is also being provided that no court shall take cognizance of the offence except upon a police report or a complaint made by the victim of the offence or by her father, mother, brother, sister or by her father’s, mother’s, brother or sister or with the leave of the court by any other person related to her by blood, marriage or adoption, (vide clause 2, 5 and 6 of the Bill)."  

(ii) Provision is being made for inquest by Executive Magistrates and for post-mortem in all cases where a woman has, within seven years of her marriage, committed suicide or died in circumstances raising a reasonable suspicion that some other person has committed an offence. Post-mortem is also being provided for in all cases where a married woman has died within seven years of her marriage and relative of such woman has made a request in this behalf, (vide clause 3, and 4 of the Bill)."
(iii) The Indian Evidence Act, 1872 is being amended to provide that where a woman has committed suicide within a period of seven years from the date of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty, the court may presume that such suicide had been abetted by her husband or by such relative of her husband (vide clause 7 of the Bill).”

The avowed object of the Bill was to combat the menace of dowry death and cruelty.

The Act may be called THE CRIMINAL LAW (SECOND AMENDMENT) ACT, 1983 (46 of 1983), (26 December 1983)


a) It is how the interest of woman was safeguarded when the Indian Penal Code (45 of 1860), was amended in 1983 whereby S.498A was inserted. Section 498A deals with ‘Matrimonial Cruelty’ perpetrated on a woman. Matrimonial Cruelty in India has now been made a Cognizable, Non-bailable and Non-Compoundable offence. Chapter XXA of I.P.C. deals with Sec. 498A under the title: OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND.

“Sec. 498A: Husband or relative of husband of a woman subjecting her to cruelty- Whoever, being the husband or the relative of the husband of a woman, subjects her to cruelty shall be punished with imprisonment for a term, which may extend to three years and shall also be liable to a fine. Explanation – For the purpose of this section, "cruelty" means- (a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demands for any property or valuable security or is

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19 Ibid, note 17
on account of failure by her or any person related to her to meet such demand.”\textsuperscript{21}

Hence Section 498 A was enacted to combat the menace of dowry deaths.\textsuperscript{22} \textit{Criminal Law (Second Amendment) Act, 1983 (46 of 1983)} has given effect to Section 498A of IPC. In the Code of Criminal Procedure, in the ‘first Schedule – Classification of offences’, after the entries relating to Section 498A, the following entries have been inserted, namely.\textsuperscript{23}

<table>
<thead>
<tr>
<th>Section</th>
<th>Offence</th>
<th>Punishment</th>
<th>Cognizable or non-cognizable</th>
<th>Bailable or non-bailable</th>
<th>by what Court triable</th>
</tr>
</thead>
<tbody>
<tr>
<td>498A</td>
<td>Punishment for subjecting a married woman to cruelty</td>
<td>Imprisonment for three years and fine</td>
<td>Cognizable if information relating to the commission of the offence is given to an officer in charge of a police station by the person aggrieved by the offence or by any person related to her by blood, marriage or adoption or if there is no such relative, by any public servant belonging to such class or category as may be notified by the State Government in this behalf</td>
<td>Non-bailable</td>
<td>Magistrate of the first Class-I</td>
</tr>
</tbody>
</table>

But analysis of Sec 498A would be incomplete without understanding the history of criminal law reform in India. The demand for criminal law reform came about because of the large number of women that were dying in their matrimonial homes due to dowry-related harassment. Therefore, the initial demand was for a law to prevent only dowry related violence.\textsuperscript{25}

b) Amendment of Section 174 Cr.P.C. : Police to enquire and report on suicide, etc - In the \textit{Code of Criminal Procedure, 1973 (2 of 1974)}, hereinafter referred to as the Code of Criminal Procedure), in Section 174, in sub-Section (3), for the words “when there is any doubt regarding the cause of death, or

\textsuperscript{21} Chapter XXA (containing Section 498A) inserted by \textit{Criminal Law (Second Amendment) Act, 1983, inserted by Act 46 of 1983 ; sec.2 (w.e.f.25-12-1983)}
\textsuperscript{22} Supra, note 6
\textsuperscript{23} Supra, note 21
\textsuperscript{24} Supra, note 21
when, for any other reason, the police officer considers it expedient so to do, he shall”, the following have been substituted, namely:

**Section 174 (3) “When-**

i. The case involves suicide by a woman within seven years of her marriage; or

ii. 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 committed an offence in relation to such woman; or

iii. The case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

iv. There is any doubt regarding the cause of death; or

v. The police officer for any other reason considers it expedient so to do, he shall.”

Subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.”

Under Section 174 (3) of Cr.P.C. it is incumbent upon the police to send a dead body of a married woman to the civil surgeon concerned for post-mortem examination. This is because the law treats the death of a married woman within 7 years of her married life as a ‘suspicious circumstance’. In this case the civil surgeon has to certify the cause of death and not to an individual police officer.

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26 *Supra*, note 17

27 *Supra*, note 17

c) **By virtue of Criminal Law (Second Amendment) Act, 1983 (46 of 1983)**

*Section 176: Inquiry by Magistrate into cause of death, has been inserted*

– In Section 176 of the Code of Criminal Procedure, in Sub-Section (1), for the words “When any person dies while in the custody of the police”, the words, brackets and figures “When any person dies while in the custody of the police or when the case is of the nature referred to in clause (i) or clause (ii) of Sub-Section (3) of Section 174” have been substituted.  

‘Section 176 (1)\(^{30}\) [When any person dies while in the custody of the police or when the case is of the nature referred to in clause (i) or clause(ii) of Sub-Section (3) of Section 174], the nearest Magistrate-empowered to hold inquests shall, and in any other case mentioned in Sub-Section (1) of Section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.\(^{31}\)

But with effect from the **Code of Criminal Procedure (Amendment) Act, 2005 Section 18 (25 of 2005) 23rd June, 2005** the words “when any person dies while in the custody of the police” have been omitted.\(^{32}\) And added clause (A) of Sub-Section 1 of Section 176

[(1A) Where, - (a) any person dies or disappears, or (b) Rape is alleged to have been committed on any woman, while such person or woman is in the custody of the police or in any other custody authorized by the Magistrate or the Court, under this Code, in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.]\(^{33}\)

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\(^{29}\) *Supra*, note 17

\(^{30}\) Inserted by Criminal Law (Second Amendment) Act 46 of 1983, Sec.4 (w.e.f.26-12-1983), *Supra*, note 17

\(^{31}\) *Ibid*, note 30


d) A new provision, Section 198A Cr.P.C. has also been added by virtue of Criminal Law (Second Amendment) Act, 1983 (46 of 1983) viz-

CHAPTER XIV- CONDITIONS REQUISITE FOR INITIATION OF PROCEEDINGS

[Section198A. Prosecution of offences under Section 498A of the Indian Penal Code

‘No Court shall take cognizance of an offence punishable under Section 498A of the Indian Penal Code except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.’  

But this addition is subject to limitations on initiation of prosecution. By this provision, the State is hesitant to intervene in matters related to family and marriage. This hesitation on the part of the State continues even if it may cost the woman’s life. But unfortunately at long last the State machinery comes into operation *suo moto* only after the woman loses her life.35


e) By virtue of Criminal Law (Second Amendment) Act, 1983 (46 of 1983) Section 113-A has been added to the Indian Evidence Act, 1872 (Act 1 of 1872) which reads as follows:-

“Sec.113-A, Presumption as to abetment of suicide by a married woman-

When the question is whether commission of suicide by a woman has been abetted by her husband or any relatives 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 any relatives of her husband had subjected her to cruelty, the court may presume that suicide had been abetted by her

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34 Inserted by Criminal Law (Second Amendment) Act, 46 of 1983, Sec.5 (w.e.f.26-12-1983), *Supra*, note 17

husband or any relatives of her husband. **Explanation-** For the purpose of this Section, “cruelty” shall have the same meaning as in S.498A of IPC (45 of 1860).”

Hence substantive Sections 498A IPC and presumptive Section 113-A of the Indian Evidence Act, 1 of 1872 have been inserted in the respective statutes by Criminal Law (Second Amendment) Act, 46 of 1983.

Section 498A IPC and Section 113-A of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113-A of the Evidence Act is seven years; presumption as to abetment of suicide by a married woman arises when a woman committed suicide within a period of seven years from the date of marriage.

**f)** The Section 113-A requires proof that (1) her husband or relatives subjected her to cruelty and (2) the married woman committed suicide within a period of seven years from the date of her marriage.

“If these facts are proved, the Court ‘may’ presume abetment of suicide. The words are not ‘shall’ presume. Such a presumption can be drawn only after the court has taken into account all the circumstances of the case. The inference would then be that the ‘husband or relatives’ abetted her suicide.”

The Supreme Court, in the *State of West Bengal vs. Orilal Jaiswal* considered the question as to ‘standard of proof’. The requirement of proof ‘beyond reasonable doubt’ does not stand altered even after the introduction of Sec. 498-A in the Indian Penal Code and Section 113-A in the Evidence Act.

The need was felt for insertion of Section 498A, 406 and 304B in the Indian Penal Code, and for insertion of Sections 113-A and 113-B in the Indian

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36 Inserted by Criminal Law (Second Amendment) Act 46 of 1983, Sec.7(w.e.f.26-12-1983), *Supra*, note 17
37 [http://lawcommissionofindia.nic.in/reports/185threport-partiiib.pdf](http://lawcommissionofindia.nic.in/reports/185threport-partiiib.pdf) as visited 19th July 2012, 12pm
38 *AIR 1994 SC 1418*
39 *Supra*, note 37
Evidence Act. During the same period, two amendments to the Dowry Prohibition Act of 1961 were made, once in 1983 and again in 1986 whereby dowry-giving and dowry receiving were made cognizable offences.  

All this was done in accordance with 91st Report of the Law Commission of India (1983) on ‘Dowry Deaths and Law Reform; Amending the Hindu Marriage Act, 1955 the Indian Penal Code, 1860 and the Indian evidence Act, 1872’  

185th Report of the Law Commission of India (March 2003) on Review of the Indian Evidence Act, 1872. Even in this case, where a person is prosecuted for taking or abetting dowry or for demanding dowry, the burden of proof was placed solely on the accused.

Notwithstanding, the above, dowry deaths continued unabated. Inclusion of Section 498-A of IPC in 1983 for combating dowry death did not have any salutary effect on this menace.

By virtue of Indian Penal Code (45 of 1860) Amendment Act, 1986 (43 of 1986) Section 304-B has been added to the Indian Penal Code which reads as follows -

“[Section 304-B Dowry death —

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

Explanation.- For the purposes of this Sub- Section," dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961 ).

40 Supra, note 37
41 http://lawcommissionofindia.nic.in/51-100/Report91.pdf, as visited 19th July 2012, 2pm
42 Ibid, note 41
(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.\[43\]

But the assumptions under Section 304-B and its formulation are also far from being unproblematic. It assumes that a woman is harassed in marriage only for dowry or that harassment for dowry alone is worthy of legal protection. A woman in India may be harassed because she is of dark colour or because some disaster befell the household with her entry into the marital household or that she is infertile or that she has failed to give birth to a son and so on. If she is found dead in the circumstances mentioned in Section 304-B, conviction of her husband or his relatives for murder or abatement to commit suicide is almost impossible in the absence of enough proof. As the harassment and death occurs in the husband's house, proof of such harassment or how actually the death occurred, is not available to the prosecution. The same problem was faced in case of harassment for dowry and that is why the presumption of harassment was laid down in the case of dowry death. However, death of a woman in unnatural circumstances preceded by harassment for any reason other than dowry has not been taken cognizance of by the Legislature. It may be noted that Section 304-B applies if a woman harassed for dowry dies 'within seven years of her marriage'. If she survived the torture and bore the harassment for seven long years but dies in abnormal circumstances after that, her death is dealt with at par with other deaths in similar circumstances. The assumption of the law is that once the magic seven years of marriage are over, either the torture/harassment ceases or it was non-existent in the household for the woman to have survived that long or it was not grave for the woman to have endured it. Prima facie, no presumptions may be raised if a woman dies of burns etc. or in circumstances other than normal even if there was

\[43\] Inserted by Act 43 of 1986, Sec.10(w.e.f.19-11-1986)
proof that she was being harassed for one or the other reason before her death.44

The researcher is of the opinion that the married woman’s death may occur even after the magic figure of seven years. In that event the judge, while delivering judgments, may consider incidence of torture or harassment at the hands of the husband or his relatives on account of dowry.

As pointed out in a feminist analysis:

“The Section 304-B further poses new interpretational challenges. When can a person be said to have died "otherwise than in normal circumstances"? Suicide may be included and sudden heart failure excluded; but what about a woman who dies in the absence of proper medical care? Further, what is the meaning of 'soon before her death'? When will an instance of harassment be ‘soon’ enough to qualify for proving this requirement of dowry? If a woman was being harassed for dowry for three years but was not so harassed for the last one, two or six months before her mysterious death, will earlier harassment constitute 'soon before her death'? A comparison of the penal, procedural and evidentiary provisions relating to Sections 498-A and 304-B shows that the State has followed the policy of symbolic intervention in the private sphere of family at the request of the woman aggrieved by severely injurious conduct of her husband or his relatives. A married woman is required to lose her life for the State to swing into action. Even though the State responded to the demand of the women's movement of the early and mid-Eighties and amended the laws relating to rape, marital rape and dowry

44 Supra, note 35
harassment, the provisions fell short of women's expectations.”

On 21 July, 1994 in *Keshab Chandra Panda vs State* the Orissa High Court (A Bench consisting of justice A. Pasayat) categorically observed Section 498A vis-a-vis Section 304-B In Para 8:

“It is to be noted that Sections 304B and 498A IPC cannot be held to be mutually exclusive. These provisions deal with two distinct offences. It is true that cruelty is a common element essential to both the Sections and that has to be proved. The Explanation to Section 498A gives the meaning of "cruelty". In Section 304B there is no such Explanation about the meaning of "cruelty". But having regard to common background to these offences, it has to be taken that the meaning of "cruelty or harassment" is the same as prescribed in the Explanation to Section 498A under which "cruelty" by itself amounts to an offence. Under Section 304-B it is "dowry death" that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498A. A person charged and acquitted under Section 304B can be convicted Under Section 498A without that charge being there, if such a case is made out. If the case is established there can be a conviction under both the Sections.”

To strengthen legal crusade against dowry, the Indian Penal Code (45 of 1860) Amendment Act, 1986 (43 of 1986) was amended to add Section 113-B Indian Evidence Act, 1872 (Act 1 of 1872) which reads as follows:

“[Section 113-B: Presumption as to dowry death - When the question is whether a person has committed dowry death of a woman, and it is shown that soon before her death such a woman

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45 *Supra*, note 35
46 1995 CriLJ 174, 1994 II OLR 430
47 *Ibid*, note 46, Para.8
had been subjected by such person to cruelty or harassment for, or in connection with, any demand of 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 Sec. 304-B of Indian Penal Code (45 of 1860).\(^{48}\)

Under the **Section 113-B**, it is first necessary to prove that such a woman has been subjected by such person to cruelty or harassment and secondly, such cruelty should have been or in connection with any demand for dowry and thirdly that this must have been soon before her death. If these are proved, the court ‘shall presume’ the person caused the dowry death. Of course, the words ‘shall presume’ mean that the court is, in such circumstances, bound to presume that such person had caused the dowry death but still the presumption is rebuttable.

In this connection, it may be noted that there are a few differences between Section 113-A and Section 113-B of the Indian Evidence Act, 1872.

<table>
<thead>
<tr>
<th><strong>Section 113A</strong></th>
<th><strong>Section 113B</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The Legislature used the words ‘may presume’</td>
<td>The Legislature used the words ‘shall presume’</td>
</tr>
<tr>
<td>The Legislature used the words ‘having regard to all the circumstances of the case’</td>
<td>The Legislature does not use the words ‘having regard to all the circumstances of the case’</td>
</tr>
<tr>
<td>Does not use the words ‘soon before her death’</td>
<td>uses the words ‘soon before her death’</td>
</tr>
</tbody>
</table>

**Explanation:** For the purpose of this Section, “cruelty” shall have the same meaning as in S.498A of IPC (45 of 1860)

**Explanation:** For the purpose of this Section, ‘dowry death’ shall have the same meaning as in Sec. 304-B of Indian Penal Code (45 of 1860)

Section 498A and Section 113-A were introduced in IPC and Indian Evidence Act, 1872 respectively by Criminal Law (Second Amendment) Act, 1983 (46 of 1983). Section 498A was introduced in IPC with a view to prevent cruelty to a married woman by her husband or his relatives.

\(^{48}\) Ins. by Act 43 of 1986, Sec.12 (w. e. f. 1-5-1986)
The purpose was to punish husband or his relatives for causing harassment and torture to the wife to coerce her to satisfy unlawful dowry demands.

Section 113-A was introduced in Indian Evidence Act, 1872 with a view to punish husband or his relatives who abetted her suicide by subjecting her to cruelty within a period of seven years from the date of her marriage.

Thus the implication of the term ‘Cruelty’ under Section 113-A is the same as in Section 498A of IPC (45 of 1860).

From the above, it is very clear that the purpose of both the Sections is the same i.e. to protect a married woman from unlawful dowry demands made by her husband and his relatives. When the purpose of law is the same, why is it that the treatment in law is not the same? In Section 113-A conviction is possible if the suicide is committed within seven years of her marriage whereas under Section 498A of IPC no such time limit is prescribed. In other words, conviction is possible under Section 498A of IPC even if cruelty is perpetrated beyond the magic figure of seven years. It is therefore difficult to understand the logic, if any, behind this unequal treatment.

Even if a married woman commits suicide even beyond the period of seven years, her husband or his relatives should be convicted under Section 113-A. Implication of the term ‘cruelty’ under Section 113-A is the same as in Section 498A of IPC (45 of 1860).

The 185th Report of the Law Commission of India (March 2003) on Review of the Indian Evidence Act, 1872 49 did not think that Section 113-B should use the words ‘may presume’ or ‘having regard to all the circumstances of the case’. Having regard to the fact that in spite of all

49 http://lawcommissionofindia.nic.in/reports/185thReport-PartIIIB.pdf, as visited 19th July 2012, 12pm
the new provisions introduced in 1986, dowry deaths are still a regular feature, the existing provision of ‘shall presume’ must, according to the Law Commission of India, be retained. As stated earlier, even so, the presumption is rebuttable.\(^5^0\)

Section 498 A was enacted to combat the menace of dowry deaths. It was introduced in the Indian Penal Code by the Criminal Law Amendment Act, 1983 (Act 46 of 1983) and by the same Act, Section 113-A has been added to the Indian Evidence Act with a view to raise presumption regarding abetment of suicide by married woman.\(^5^1\)

‘Cruelty’ in matrimonial law is always a changing concept. It is to be determined by Courts on the facts and circumstances in each case, and this trend will continue in future too. Thus, ‘Cruelty’ as understood in matrimonial law and ‘Cruelty’ as defined under criminal law differs from each other in many respects. However, they do sometimes coincide and sometimes overlap.\(^5^2\)

In the case of ‘Inder Raj Malik vs. Sumita Malik’\(^5^3\) it was held that the word ‘Cruelty’ is defined in the Explanation which inter alia says that harassment of a woman with a view to coerce her, or any person related to her, to meet any unlawful demand for any property or any valuable security is Cruelty. Kinds of Cruelty covered under Section 498A of IPC include:
(a) Cruelty by vexatious litigation, (b) Cruelty by deprivation and wasteful habits, (c) Cruelty by persistent demand, (d) Cruelty by extra-marital relations, (e) Harassment for dowry, (f) Cruelty by non-acceptance of a baby girl, (g) Cruelty by false attacks on chastity, (h) Taking away children.

\(^{50}\) Ibid, note 49
\(^{52}\) Dr. Preeti Misra, Domestic Violence against Women Legal Control and Judicial Response, (1\textsuperscript{st} ed.), New Delhi: Deep & Deep Publications Pvt. Ltd., 2006.
\(^{53}\) 1986 CriLJ 1510, 1986 (2) Crimes 435, 1986 RLR 220
The presumption of Cruelty within the meaning of Section 113-A, Indian Evidence Act, 1872 also arose making the husband guilty of abetment of suicide within the meaning of Section 306 of IPC\textsuperscript{54} where the husband had illicit relationship with another woman and used to beat his wife, making it persistent Cruelty within the meaning of Explanation (a) of Section 498-A.

**Constitutional validity of Section 498-A of I.P.C**

In *Inder Raj Malik and others vs. Mrs. Sumita Malik*\textsuperscript{55} it was contended that this Section is violative of Article 14\textsuperscript{56} and Article 20 (2)\textsuperscript{57} of the Indian Constitution inasmuch as it gave an arbitrary power to the police as well as to the court.\textsuperscript{58} It was further contended that Section 498-A acted against the principle of ‘double jeopardy’ enshrined in Article 20 (2) of the Indian Constitution inasmuch as demand of dowry or any property was punishable also u/S. 4 of the Dowry Prohibition Act.\textsuperscript{59} Dowry Prohibition Act makes demand of dowry punishable and existence of element of cruelty is not necessary; whereas Section 498-A deals with aggravated form of the offence. It inter alia, punishes such demands of property or valuable security from the wife or her relatives as are coupled with cruelty to her. Hence a person can be prosecuted in respect of both the offences, punishable under Section 4 of the Dowry

\textsuperscript{54} 'Section 306 of IPC- Abetment of suicide -- 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 ten years, and shall also be liable to fine.'

\textsuperscript{55} Ibid, note 53

\textsuperscript{56} Article 14 in The Constitution Of India 1949- Equality before law- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

\textsuperscript{57} Article 20 in the Constitution of India 1949- Protection in respect of conviction for offences - (1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence (2) No person shall be prosecuted and punished for the same offence more than once (3) No person accused of any offence shall be compelled to be a witness against himself

\textsuperscript{58} Supra, note,53, Para.21

\textsuperscript{59} 'Section 4 of DPA,1961- Penalty for demanding dowry.- If any person demands directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.’ [Substituted by Act 63 of 1984, S.4, for S.4 (w.e.f. 2-10-1985)]
Prohibition Act. However, the court did not accept this contention, and said that it was only a wide discretion to the courts in the matter of interpretation of the words occurring in the laws and also in matters of awarding punishment. This provision is not ultra virus. It does not confer arbitrary powers on courts.  

By the effect of the 91st Report of the Law Commission of India (1983) on ‘Dowry Deaths and Law Reform; Amending the Hindu Marriage Act, 1955 The Indian Penal Code, 1860 and the Indian evidence Act, 1872’ at present, Cruelty as ground for dissolution of marriage by a decree of divorce are laid down in Section 13 of the Hindu Marriage Act, 1955. The grounds inter alia include adultery, cruelty, desertion, conversion to another religion, unsoundness of mind, virulent and incurable form of leprosy, venereal disease in a communicable form, renouncement of the world and ‘not heard of as being alive’ for a period of seven years or more. Section 27 of the Special Marriage Act, 1954 also lays down similar grounds.

Interpretation of ‘Cruelty’ by the Apex Court;

1) The Supreme Court in Dr. N.G. Dastane v. Mrs. S. Dastane, has referred to this aspect of cruelty like this:

"The inquiry, therefore, has to be whether the conduct charged as cruelty is of such a character as to cause in mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent. It is not necessary, as under the English law that the cruelty must be of such a character as to cause 'danger' to life, limb or health or as to give rise to a reasonable apprehension of such a danger. Clearly danger to life, limb or health or a reasonable..."
apprehension of it is a higher requirement than a reasonable apprehension that it is harmful or injurious for one spouse to live with the other.”\textsuperscript{64}

2) On 19 November, 1993 in \textit{V. Bhagat vs D. Bhagat} the Supreme Court, (Bench consisting of justice Jeevan Reddy, B.P., Kuldip Singh)\textsuperscript{65} laid down the following definition of ‘Mental cruelty’:

“16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”\textsuperscript{66}

\textsuperscript{64}Ibid, note 63, Para. 30
\textsuperscript{65}AIR 1994 SC 710, 1994 SCC (1) 337
\textsuperscript{66}Ibid, note 65, Para.16
“The word "cruelty" is to be used in relation to human conduct or human behaviour. It is the conduct in relation or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional.”\(^{67}\)

3) 31 March, 1999 the Supreme Court (Bench consisting of justice V. N. Khare, R. P. Sethi) in \textit{S. Hanumantha Rao vs S. Ramani} \(^{68}\) considered the meaning of ‘cruelty’ in the context of the provisions under Section 13 of the Hindu Marriage Act, 1955 and observed that:

“Mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between the wife and the husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. In other words, the party who has committed a wrong is not expected to live with the other party.”\(^{69}\)

Indian women were used to be subjected to domestic violence strictly within four corners of her house,\(^{70}\) but the criminalization of dowry death and domestic violence in the form of Sec 498A of IPC in 1983 & Sec 304B of IPC\(^{71}\) in 1986 and corresponding provisions of

\(^{67}\)Ibid, note 66, Para.17, \textit{Shobha Rani v.Madhukar Reddi}, Justice K. Jagannatha Shetty, speaking for the Division Bench, held: (SCC pp. 108-09, Para. 4 and 5)

\(^{68}\)AIR 1999 SC 1318

\(^{69}\)Ibid, note 68


\(^{71}\)‘Sec.304B Dowry death.— (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961). (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life’. Inserted by Act 43 of 1986, sec.10(w.e.f.19-11-1986)
Section 113A & 113B of the Indian Evidence Act, 1872\textsuperscript{72} brought the issue of domestic violence right into public domain in India and therefore, the foregoing amendments in law corrected historical, legal, and moral disparities in the legal protection afforded to the abused women.\textsuperscript{73}

Or, we can say, this was the first when that an attempt was made to consider domestic violence against women a criminal offence.\textsuperscript{74}

The civil law does not address this phenomenon.

But there are problems in effective implementation of these laws. The police often exercise discretion in avoiding arrest while responding to domestic violence incidents and emphasise on mediation and conciliation. Public prosecutors fail to actively pursue cases of domestic violence under Sec 498A, as often women turn hostile during the prosecution and agree to drop the charges. Sentences tend to be less serious for those convicted of domestic violence. The result of these processes has been a higher dismissal rate for domestic violence cases at the prosecution stage itself compared to other violence cases and less serious sentences.\textsuperscript{75}

The fact is that, on the one hand, the State tries to glorify the position of women by virtue of its policies and laws, but on the other hand, the Patriarchal norms and values institutionalized by the State disable

\textsuperscript{72} \textit{Section 113B of Indian Evidence Act, 1872 Presumption as to dowry death.}—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860). \textit{Inserted by Act 43 of 1986, Sec.12(w.e.f.1-5-1986)}


\textsuperscript{74} Supra, note 70

\textsuperscript{75} Supra, note 70
the State to implement the concept of equality which is enshrined in the Constitution.\textsuperscript{76}

This drawback suffered by the State relegates women to a secondary position in Indian society which continues for ages together and all this is reflected in feminist writings.\textsuperscript{77}

As mentioned earlier, before 1983 there were no specific provisions to take into account the real problem of domestic violence in its totality, that is, in terms of its magnitude, type and of course nature of perpetrators. All these provisions target only the ‘husband’ and ‘in-laws’ as perpetrators or else only the violence faced by the daughter-in-law was addressed. The domestic violence faced by the daughter, sister, mother, girl friends etc. was all missing and they were denied legal protection. Since the crime is committed within four walls of the house, getting witnesses to corroborate their evidence is extremely difficult. Beside complaints can be registered only after an offence has been committed. But in cases of domestic violence the woman is living with her assaulter and on whom she is emotionally dependent. The main objective of Section 498-A of I.P.C is to protect a woman who is being harassed by her husband or relatives of husband. Sec.498A can be an effective deterrent to violent husband only if judiciary and the police interpret it in the right spirit. The refusal of police to register a complaint U/S.498A, unless dowry harassment is specifically mentioned in the FIR, has affected women adversely.\textsuperscript{78}

A large number of cases registered under 498A are subsequently withdrawn, though not necessarily because they were false. The Section does not protect a woman’s right to the matrimonial home, or offer her shelter during the proceedings; she may have no other choice but to work out reconciliation. At this point, she is forced to withdraw the complaint. This is because her husband would make reconciliation as a precondition for any negotiation. e.g. If she has decided to opt for a divorce and the husband is willing for a mutual-consent divorce, again withdrawal of a complaint becomes a precondition for such settlement. In most cases, criminal proceedings are quashed as a result of a settlement or compromise by presenting, with mutual consent, a joint petition in a High Court u/s 482 Cr. P.C.79

4) Notwithstanding the foregoing amendments in law, the State fails to implement them in actual practice.80 As a result male batterers are rarely arrested, prosecuted, or sentenced as severely as other violent offenders.81 This pathetic position of victims of domestic violence in India is confirmed by several organizations and NGOs.82 Also Ms. Agnes explained her stand by redefining the highest number of laws on violence against women and its implementation. She pointed out that legislation on this issue is unable to give justice to women in distress. The legislation suffers from many loopholes through which perpetrators of crime find an escape route. The reason for this dismal picture is that legislators are indifferent to the issues involved. The worst effect of all this is that experienced lawyers advise women in

79 Section 482 of The Code of Criminal Procedure, 1973- Saving of inherent power of High Court- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.
81 Supra, note 73
82 Supra, note 73
distress not to approach judiciary for a solution but find their solace elsewhere.\textsuperscript{83}

But in the Article, “Women’s Access to justice: Domestic Violence, Governance and Human Rights”, published by the Indian Police Journal (April-June, 2007), its author Shri Vineet Kapoor maintains that the police and the justice system are not to be blamed for domestic violence against women and violation of their human rights. It is the patriarchal social order which needs to be blamed for this. This view held by Shri Vineet Kapoor is also reinforced by different Agencies of the State, its policies and civil society at large.\textsuperscript{84}

In India, National Crime Record Bureau (NCRB) registered cases of cruelty against women by husbands and his relatives for every 9 minutes. The Indian National Commission in 2003-04 for Women recorded 902 cases of dowry harassment and 310 cases of matrimonial disputes.\textsuperscript{85}

5) In the year 2005, the Government of India advised the Centre for Social Research (CSR) to undertake a study to assess the situation of domestic violence. So CSR undertook a study and its outcome is quite revealing. Nearly 5 crore married women in India are victims of domestic violence (DV). Only 0.1% (1 out of 1,000 DV cases) of these is reported. Out of 100 cases that are ordered for investigation under 498A, only in 2 cases the accused got convicted, as aggrieved women do not fight their cases till the end. Of 100 cases, 80 are


\textsuperscript{84} Indian Police Journal (April-June,2007), Vol.LIV No.2, as available on www.bprd.gov.in as visited 20\textsuperscript{th} Jan 2010

settled at the women cell/anticipatory stage and of the remaining 20, only 11-12 go to trial. In that sense, the actual conviction rate is close to 20%.\footnote{http://www.csrindia.org/attachments/Research\%20-%\%20498A.pdf, as visited on 20\textsuperscript{th} April 2011, 10 pm} It is, therefore, proposed to enact a law providing for a Civil law remedy which is intended to protect women from domestic violence. This is because women in India are woefully reduced to the status of Depressed, Oppressed and Abandoned beings.\footnote{Amrita Nikore (Acting President Legal Aid Centre For Women , New Delhi ), Position Of Women, Legal News &Views , Vol 21 No 23, March 2007, pg. 9}

Violence against women is a phenomenon that cuts across boundaries of culture, class, education, ethnicity and age.\footnote{UNICEF, Innocenti Research Centre, ‘Domestic Violence against Women and Girls’, Florence, Italy: Innocenti Digest No. 6 June 2000, ISSN: 102-3528, Available on, http://www.unicefirc.org/publications/pdf/digest6e.pdf as visited on 22 Nov.2015} Domestic Violence is now being considered as a human rights issue by international community also. Domestic violence is undoubtedly a human rights issue and a serious deterrent to a peaceful family which forms a unit of any society. There are some International Instruments to curb violence against Women. The U.N. declared the decade of 1980-1990 a Decade for Women. Art. 55 and 56 of the U.N. Charter cast a legal obligation on the UNO (United Nations Organization) to promote respect for the principle of equality and observance of Human Rights. \textbf{Art. 5} of Universal Declaration of Human Rights (UDHR) states that “no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment”. This principle has been accepted in the Constitution of India too.\footnote{U.N.Report, Supra, note 4} There had been \textbf{three United Nations World Conferences on women}. The first Conference held during the International women's year in Mexico in 1975, led to the declaration of the U.N. Decade for Women (1976-85) by the U.N. General Assembly. At the second Conference held in Copenhagen in 1980, the participants adopted a programme of action for the second half of the United Nations Decade for Women. The third Conference which took place in Nairobi in 1985, at the end of
the decade, adopted Nairobi Forward Looking Strategies for the Advancement of Women for the year 2000.90

The Vienna Accord of 1994 stresses the importance of working towards the elimination of violence against women in public and private life and urges the eradication of all forms of discrimination against women.91 The fourth World Conference on women was held in Beijing during 4-15 Sep 1995. The world community reaffirmed the rights of women as an integral part of the international human rights paradigm. During this Conference, 189 UN member-states adopted the Beijing Declaration and Platform for Action, specified the need to take steps to eliminate violence against women. Under its guidance, the Government of India undertook some steps to protect women against domestic violence.92 One of the major gains of the Beijing Conference was the recognition given to the NGO (Non Governmental Organization).93 The United Nations Committee on Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in its general recommendation no.XII (1989), has recommended that State parties should act to protect women against violence of any kind, especially occurring within the family. The Committee also recommended taking all legal and other measures necessary to provide effective protection to women against gender-based violence.94

The above analysis proves that there exists a burning need to transform Legislative intent into ground reality. Following Chapter show how Section 498A, IPC reflects such a legislative intent and history.

90 R. Ravati, Supra, note 2, pp39
92 http://www.un.org/womenwatch/daw/beijing/platform/declar.htm, as visited on 26th April,2011, 10.30pm
93 Dr. Suman Rai, Supra, note 1, pp 96
94 http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm, as visited on 26th April, 2011, 10.40 pm