

BURNISHED LAW JOURNAL**Shubhransu Das****KIIT School of Law, Bhuneshwar****MISUSE OF ANTI-DOWRY LAWS IN INDIA****INTRODUCTION**

As per Section 2 of Dowry Prohibition Act 1961¹, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage, or by the parent of either party to a marriage or by any other person, , to either party to the marriage or to any other person, at or before or any time after the marriage. The Dowry Prohibition Act 1961 penalizes the giving and taking of dowry². The act of demanding dowry is also banned under Section 4³. Section 4-A⁴ bans all such forms of advertisements at all possible platforms which talk about giving or taking of gifts, properties or share in business as a consideration for marriage. Any agreement which deals with exchange of dowry is void. The Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985 were enacted by the Centre Government as an extension of the power provided to them under Section 9⁵.

Section 304-B and 498A of Indian Penal Code 1860 deal with the offenses of Dowry death and Subjection of cruelty on a woman by her husband and his relatives respectively. Both these offenses are cognizable and non-compoundable offenses that is they are non bailable in nature. The point to be noted is that Section 498A⁶ does not mention the term 'dowry'. However, a direct relation exists between Section 498A and 304-B⁷ due to the common term 'cruelty' used within both the sections. Plus the language of 498A⁸ is such that it covers within its ambit cases of dowry without even mentioning the word. Section 113B of the Indian Evidence Act 1872 raises presumption of Dowry

¹Act No. 28 of 1961

²Section 3, Dowry Prohibition Act 1961

³Dowry Prohibition Act 1961

⁴Ibid

⁵Ibid

⁶Indian Penal Code, 1860

⁷Ibid

⁸Ibid

Death in case a married woman dies unnaturally within seven years of her marriage. Undoubtedly, these laws favor women so as to provide them justice and punish the wrongdoers.

ANALYSIS

The state of Indian women has been mostly pitiable over the years due to the patriarchal societal structure and customary practices but the laws now are such so as to enable the women to misuse them and fulfil their vicious needs⁹. Whenever any problem arises in a marriage, some women tend to take advantage of the anti dowry laws to harass her husband and in-laws which is the reason why most of the cases under these laws are false¹⁰. Incidents are often exaggerated by the wives and cases of over-implication are also extremely evident as from a large number of cases¹¹. As rightly observed by Malimath's Committee¹², The harsh law, far from helping the genuine victimized women has now become a source of blackmail and harassment of husbands and in-laws. Once a complaint (FIR) is lodged with the Police under any anti dowry law specially Section 498A of Indian Penal Code 1860, it becomes an easy for Police to arrest or threaten to arrest the husband and other relatives named in the FIR without considering even for once the intrinsic worth of the allegations and making a preliminary investigation with regards to the complaint. According to a newspaper report¹³, the Supreme Court had expressed deep concern over the wives misusing the Anti-Dowry laws against their Husbands and in-laws. The Court directed that no arrest or any sort of coercive action should be taken on such complaints without ascertaining the veracity of allegations made. Justice AK Goel and UU Lalit said that it was a high time that such frivolous cases are brought in control. In cases of dowry complaints the reigning perception is to be cut down and their account is not to be taken just on the basis of their face value.

The state of women has been mostly pitiable in the society over the years due to the sociological structure and customs, but at this time the laws are such that they can easily misuse the laws favoring her so as to fulfil her own vicious desires¹⁴. With changing times, the mentality of women has also undergone a change. The tendency to adopt to crime against their own family members has risen to an alarming rate and it is certainly not fair to have a preconceived notion that domestic

⁹LalsaMohini, Legitimacy of Section 498A of Indian Penal CodeCri. LJ, Vol-117, April, Pg 127 (2011)

¹⁰ MahaleDeepika, Dowry laws: Loopholes and possibilities of Misuse, ILS Law College (April 23, 5:30 pm) <http://www.lawof.in/dowry-laws-loopholes-possibilities-misuse-dipika-mahale-ils-law-college-pune>

¹¹ 243rd Law Commission Report on Section 498A, IPC Pg 1

¹²Malimath Committee, Reforms of Criminal Justice System, Vol 1, Pg 10-11 (March 2003)

¹³Amit Anand Chaudhary, "No arrest in dowry cases till charges are verified" , Times Of India , (April 24 2020,7:00 pm) <https://timesofindia.indiatimes.com/india/no-arrest-in-dowry-harassment-case-without-verifying-authenticityof-complaint-sc/articleshow/59796255.cms>

¹⁴Supra 10

violence happens to only women¹⁵. As per a newspaper article, almost 80 percent of all Dowry cases filed in India ultimately end in acquittal¹⁶. In the case of *Sushil Kumar Sharma v Union of India*¹⁷, the Supreme Court observed that complaint under section s. 498A¹⁸ was filed only to fulfil personal vendetta and thus it may therefore become necessary for the Legislature to find out ways as to how to tackle the people filing false complaints.

In *Preeti Gupta v State of Jharkhand*¹⁹, the Court said that it was no secret that matters are blown out of proportion when the complaints are filed and thus the Court recognized the dire need of looking into the loopholes of Section 498A²⁰ which are being used to exploit innocent men and their families. In *Savitri Devi v Ramesh Chandra and Others*²¹, the Court said that women have been extorting money from her husband and in-laws by putting false allegations on them under Section 498A²² and Dowry Prohibition Act 1961. The Court emphasized on the abuse of these provisions by the investigation agencies, prosecution agencies, woman and her relatives to such an extent that this provision has done more harm to the society than any good. In *Jasbir Kaur v State of Haryana*²³, the Punjab and Haryana High Court rightly observed that any estranged wife would go to all extent to rope in maximum of her husband's marriage so as to salvage whatever remains in an estranged marriage. In *Kanaraj v State of Punjab*²⁴, the Apex court held that it is not possible in all cases that the in-laws and other relatives of the husband are necessarily involved in cases for the fault of the husband. The acts as alleged to be done by these people have to be proved beyond reasonable doubt and no conjectures and implications should play any role in holding them responsible for the acts alleged. In *Kamaljeet Kaur v State of Haryana*²⁵, the Court held that in-laws and relatives of husbands cannot be implicated in cases of disputes between the husband and wife whereby the in-laws have no role to play. In *Satbir Dalal v State*²⁶, it was said that to constitute an offence under Section 304B and 498A of Indian Penal Code 1860, mere bickering would not amount to any offence but the harassment of such nature which would drive a woman to commit

¹⁵ Singh Ajay, Kumar, *Dowry Problems in India : Rethinking Anti Dowry Laws*, September, Pg-256(2009)

¹⁶ Avneet Arora, "80 percent of all dowry cases end in acquittal", SBS Punjabi (April 23 2020, 5:25 pm)
<https://www.sbs.com.au/language/english/80-per-cent-of-all-dowry-cases-in-india-end-in-acquittal>

¹⁷ 2005 6 SCC 281

¹⁸ Indian Penal Code 1860

¹⁹ AIR 2010 SCC 3363

²⁰ Supra 19

²¹ 2003 (69) DRJ 6

²² Supra 19

²³ (1990) 2 Rec Cri R 243

²⁴ 2000 CriLj 2993

²⁵ 2017 SCC Online P&H 2344

²⁶ 2019 SCC Online Del 7006

suicide is an offence. In *Anju v State(NCT for Delhi)*²⁷, for a charge to be framed under Section 498A²⁸ the evidence should be giving rise to grave suspicion and not merely some slight suspicion.

It is another really shocking fact that for married males the rate of suicide between the age of 30 to 44 is 508 per 100,000 persons and for women its 220 per 100,000 persons. For the age group of 45 to 59, it is 1812 per 100,000 persons for males and 550 per 100,000 persons for female²⁹. The judicial pronouncements aforesaid clearly demonstrate and give an idea how the laws have been used as weapons by a certain section of women for fulfilling their ulterior motives. The courts and the Legislature need to find a way out to tackle such fake cases.

MISUSE OF ANTI DOWRY LAWS: SOLUTIONS SUGGESTED AND IMPLEMENTED BY LEGISLATURE AND JUDICIARY

The courts have in different cases over the years as suggested aforesaid have dealt with the loopholes of the Anti-Dowry laws. The main fact which enables the women to misuse the laws is that most of the offenses under different dowry laws are cognizable and non bailable. No requirement of any pre-arrest investigation into the facts of the complaint made further act as a weapon to harass the men. The Supreme Court in various cases has laid down guidelines or legal precedents to restrict the misuse of the anti-dowry laws. In *Pushpender Singh v State*³⁰, it was laid down that for raising presumption of dowry death under Section 113B³¹, it was necessary to establish live and proximate link between the cruelty and the unnatural death of the woman. In *Ramesh Chandra v State of Delhi*³², the Court said that presumption to dowry death under Section 113B³³ can be raised only when the ingredients of Section 304B³⁴ are fulfilled.

In *Tr Ramaiya v State*³⁵, the Supreme Court laid down certain guidelines for the Department of Police to curb the misuse of the law which are as follows:

1. Police has to scrutinize the complaint made before registering the F.I.R

²⁷2019 SCC Online Del 6865

²⁸Indian Penal Code, 1860

²⁹ Crusader, "A Comprehensive Report on the Misuse of Anti-Dowry laws in Marital Disputes", My Nation , (24 April 2020, 4:30 pm)

<http://mynation.net/voice/a-comprehensive-report-on-the-misuse-of-anti-dowry-laws-in-marital-disputes> (Last visited on 23rd April, 2020)

³⁰2015 SCC Del 12748

³¹Indian Evidence Act 1872

³² 2016 SCC OnLine Del 6473

³³Supra 32

³⁴Supra 29

³⁵ M.P. No.1 of 2008 in CrI.O.P. No.10896 of 2008

2. No case under Section 498A of the Indian Penal Code 1860 could be registered without the prior permission of DCP or Additional DCP.
3. Before the registration of F.I.R, all possible efforts for the reconciliation were to be made and if it was not possible for reconciliation to happen, then at the very first instance efforts were to be made to ensure the return of dowry articles and Streedhan.
4. Arrest of the main accused shall be made only after a thorough investigation has taken place and prior approval of the ACP or DCP has been taken.

In a Special Leave Petition³⁶ filed in 2013, the Supreme Court laid down another set of guidelines which were to be followed strictly. They are as follows:

1. Sec 41 of Criminal Procedure Code, 1973 may be circulated with a list of items to be satisfied before the arrest is made. The police officers effecting the arrest should furnish all the details as required under Sec 41³⁷ to the magistrate explaining the expediency to arrest and need for further detention which is to be ordered by the magistrate.
2. The magistrate has to record his reasons in support of his order made regarding the further detention of an accused in written form.
3. In a case whereby the accused is not arrested, a report should be sent to the magistrate by the police recording the reasons for not making the arrest along with the evidences concerned.
4. The Supreme Court hereby recommended the amendment of Sec 498A³⁸ so as to provide protection to the rights of the accused. The amendment which was suggested is as follows:

Sec 498B-Any woman or other person making a false complaint under section 498-B against her husband or his relatives shall be guilty of an offence punishable by law upto two years of imprisonment or a fine which may extend to Rs.15,000/-. An offence under this section shall be non-cognizable, bailable and compoundable.

This particular recommendation of amending Section 498A is the need of the hour. However, it has not yet been considered by the legislature in this country.

CONCLUSION

The practice of dowry during the ancient times was not like what we see today. Dowry was then given to the woman so that she could use it in tough times during her married life. With the advent

³⁶(CrI) 9127 of 2013

³⁷Criminal Procedure Code, 1973

³⁸Supra 26

of modern times, the concept of dowry changed. Dowry became the term used for the gifts and money the bride's family would voluntarily give to the groom's family as a token of love and respect. People began misinterpreting the concept of dowry. The amount of dowry given and taken began to be viewed as a symbol of the families' wealth and status. The brides' family was often pressurized for more dowries even when they could not afford it. It became a common occurrence that the girls in their marital homes were harassed for dowry and in certain extreme cases also killed for non-compliance of the demand made. This was the reason why the Anti-Dowry laws were enacted in a stringent manner. Dowry Harassment is undeniably a social evil. However, the greater evil is the misuse of the laws enacted to curb his social evil.

The foundation of marriage which is the building block of society has somewhat lost its true essence due to dowry harassment and misuse of anti-dowry laws. Women who misuse these laws to fulfill their malafied intentions make things difficult for the real victims. The state should as soon as possible make the necessary amendments so that no more lives of innocent men get adversely affected. As per the present scenario, the legislature and judiciary should also consider the setting up of a Men commission to deal with the atrocities that take place due to such fake dowry cases. The framers of law had made the laws in such a manner so as to protect the women but rather in the present scenario there is exploitation of these provisions. This has shaken the very roots of the institution of marriage in our country. Due to the misuse by a section of women, the innocent ones are also viewed with eyes of suspicion. The only solution to this menace is to amend the laws in such a manner that they do not in any way favor unduly either of the two parties.