Legal Terrorism in Domestic Violence – An Indian Outlook

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Abstract: Marriage in India is a voluntary union for life of one man and one woman to the exclusion of all others. It is a social association where the husband has the responsibility to take care of and maintain his wife and not to neglect his duties. But in relation to this great institution, the problem of the “dowry” still persists. Women are ill-treated, harassed, killed or divorced for the simple reason that they do not get a dowry or do not get a sufficiently large one. To safeguard the interest of women against the cruelty they face within the four walls of their matrimonial home, the Indian Penal Code 1860 was amended in 1983 and section 498A was added. This deals with “Matrimonial Cruelty” to a woman. Matrimonial Cruelty in India is a cognizable, non-bailable and non-compoundable offence. Notwithstanding that the practice of demanding dowries was made illegal in India over 50 years ago, the (London) Times on 18 January 2012 reported that a study in 2007 concluded that “there is a dowry-related death in India every four hours”. Official statistics in India show there were 8,391 dowry-related deaths in 2010, and there may well have been more. Why has legislation that criminalises these appalling practices failed to stop them?

Discussion

“Matrimonial Cruelty” is defined in Chapter XXA of the Indian Penal Code (IPC), under section 498A as:

“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 such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation. – for the purpose of this section, ‘cruelty’ means:

(a) any wilful 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 demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

This section was enacted to combat the menace of dowry deaths. It was introduced in the Code by the Criminal Law Amendment Act 1983 (Act 46 of 1983). By the same Act, section 113-A was added to the Indian Evidence Act to raise a presumption regarding abetment of suicide by a married woman. The main objective of section 498-A of the Indian Penal code (IPC) is to protect a woman who is
being harassed by her husband or by relatives of her husband.

Section 113-A of the Indian Evidence Act reads:

“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 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 304-B of the Indian Penal Code (45 of 1860).”

The purpose for which section 498A of the IPC was introduced is well reflected in the Statement of Objects and Reasons in the enactment of the Criminal Law (second Amendment) Act No. 46 of 1983. The increase in the number of dowry deaths is a matter for serious concern. The extent of this evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act 1961. In some of the cases, cruelty on the part of the husband and the relatives of the husband culminated in marital rape, suicide or murder of the helpless woman concerned. For this reason it was proposed to amend IPC, the Code of Criminal Procedure (Cr PC) 1973 and the Indian Evidence Act (IEA) to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their husband, in-laws and his relatives. The avowed object is to combat the menace of dowry death and cruelty.

The act of harassment would amount to cruelty for the purpose of this section. Drinking and persistent late home-coming of the husband when coupled with beatings and demanding a dowry have been taken to amount to cruelty within the meaning of this section, but this section has been held not to include a husband who merely drinks as a matter of routine and comes home late. In a case before the Supreme Court, it was observed that this section has given a new dimension to the concept of cruelty for the purposes of matrimonial remedies and that the type of conduct described here would be relevant for proving cruelty.

Legal meaning of cruelty

It was held in Kaliyaperumal v State of Tamil Nadu, India, that cruelty is a common essential in offences under both the sections 304B and 498A of IPC. The two sections are not mutually inclusive but are distinct offences and persons acquitted under section 304B of IPC for the offence of dowry death can be convicted for an offence under section 498A of IPC. Cruelty is defined in section 498A of IPC. Section 304B of IPC does not contain a definition as such but cruelty or harassment as described in section 498A of IPC applies in section 304B of IPC as well. Under section 498A of IPC, cruelty by itself amounts to an offence, whereas under section 304B of IPC the offence is of dowry death and the death must have occurred during the course of seven years of marriage. But no such period is mentioned in section 498A of IPC.

In the case of Inder Raj Malik v Sunita Malik, 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 related persons to meet any unlawful demand for any property or any valuable security is cruelty. Kinds of cruelty covered under this section include: cruelty by vexatious litigation, deprivation and wasteful habits, persistent demands, extra-marital relations, harassment for non-dowry demand, non-acceptance of a baby girl, false attacks on chastity, taking away children.

The presumption of cruelty within the meaning of section 113A of the Indian Evidence Act 1872 also arose making the husband guilty of abetment of suicide within the meaning of section 306 of IPC, where the husband had an illicit relationship with another woman and used to beat his wife, making it a persistent cruelty within the meaning of Explanation (a) of section 498A of IPC.

Constitutional weightage of section 498A of IPC

In Inder Raj Malik v Sunita Malik it was contended that this section is ultra vires Article 14 and Article 20(2) of the Indian Constitution. There is the Dowry Prohibition Act which also deals with similar types of cases; therefore, both decrees together create a situation commonly known as double jeopardy. But the Delhi High Court held.
that this section does not create a situation for double jeopardy. Section 498-A is distinguishable from section 4 of the Dowry Prohibition Act because in the latter the mere demand of a dowry is punishable and cruelty in addition is not necessary, whereas section 498-A deals with an aggravated form of the offence. It punishes such demands for property or valuable security from the wife or her relatives which are combined with cruelty to her. Hence a person can be prosecuted in respect of both the offences punishable under section 4 of the Dowry Prohibition Act and Sec 498A of IPC.

This section gives wide discretion to the courts in the matter of interpreting the wording of the laws and also when deciding on appropriate punishment.

Section 498A of IPC is taken by Indian courts to safeguard women who are facing cruelty in their matrimonial home. Nine out of ten cases are always related to dowry, where the woman is continuously threatened with demands for more money and property which if not provided result in the married woman being tortured, threatened, abused, both physically and verbally, and harassed. An example is seen in the case of Ram Kishan Jain & Ors v State of Madhya Pradesh, India7 where due to excessive dowry demands, the woman was forcibly administered Calmpose tablets and later even had the arteries of both her hands cut near the wrist. Sometimes, dowry may not be the only cause, but the woman for various reasons such as her natural dark skinned complexion or family status is tortured to death.

In the case of Surajmal Banthia & Anr v State of West Bengal, India,8 the deceased was ill-treated and tortured for several days and even deprived of food at times. Her father-in-law also behaved indecently with her on several occasions. This is the treatment several young brides face when they move out of their parents’ home and into their in-laws’ house. It is the duty of the court to prevent any of these abusers from escaping punishment. The increasing rate of bride-burning in pursuit of more dowry and the brutal torture of young wives, together with the total escape of the abusers from conviction and punishment, is a clear indication that the court has failed to take adequate measures to implement section 498A of IPC properly.

In many judgments, the court failed to take account of mental cruelty caused to the woman, concentrating only on signs of physical cruelty. If the evidence does not show that the woman was physically harassed, then the court does not look into the case. What the court does is label the woman as hyper-sensitive4 or as having low tolerance levels or of being of unstable mind.4

Also section 498A of IPC does not only deal with dowry deaths but also with any wilful conduct on the part of the husband which causes harm to the wife’s “life, limb or health (whether mental or physical)”. To prove that cruelty was caused under Explanation (a) of section 498A of IPC, it is not important to show or contend that the woman was beaten up. Even abusing her verbally, denying her conjugal rights or not speaking to her properly9 would fall into the ambit of mental cruelty.

In the case of BommaIlaiah v State of Andhra Pradesh, India10 the husband of the complainant tortured the woman physically by forcing her to have sexual intercourse with him. He inserted his fingers and a stick into her vagina, causing severe pain and bleeding, but the court found the husband of this woman guilty only under section 325 of IPC and not section 498A of IPC. Why? Her life was at risk, both physically and mentally. Why didn’t the honourable court notice this?

The court in another case failed to punish the guilty party under section 498A of IPC even though medical reports clearly concluded that the woman’s death was caused by throttling. This was simply because, according to the court, even though there had been dowry demands in the past, they were probably too long ago to be linked to the death for “proximity”.11

Who decides this issue of proximity? The effect on a woman’s health or life may be profound and may cause her mental unrest later on. There is a pressing need for women’s emancipation and the ever-increasing numbers of dowry deaths and harassment need to be stopped, but sadly women today are still tortured and the court, which should be their ultimate refuge, is not reliably protecting them or coming to their rescue.

Section 498A of IPC and its legal misuse

In the wake of modernization, education, financial security and new-found freedom, the radical feminist lobby can however use 498A as a weapon. Many
unfortunate husbands and in-laws have become victims of their vengeful daughters-in-law. Most cases where section 498A of IPC is invoked turn out to be fabricated as they are mere blackmail attempts by the wife or her close relatives, when faced with a strained marriage. In most cases of section 498A of IPC, the complaint is followed by demands for huge sums of money to settle the case out of court.

Over the last two decades or more of criminal law reform, a common argument made against laws relating to violence against women in India has been that women should not misuse these laws. The police, civil society, politicians and even judges of the High Courts and Supreme Court of India have offered these arguments of the “misuse” of laws strongly. The 2003 Malimath Committee report on reforms in the criminal justice system also notes, significantly, that there is a “general complaint” that section 498A of the IPC is subject to gross misuse; it uses this as justification to suggest an amendment to the provision, but provides no data to support the contentions or to indicate how frequently the section purports to being misused. It is important therefore that such “arguments” are properly responded to, and that there is a clearer and properly documented picture of the impact of criminal provisions that were enacted to protect women.

As in the case of Savitri Devi v Ramesh Chand and others, the court held clearly that there was a misuse and exploitation of the provisions to such an extent as to undermine the foundation of marriage itself, proving to be not so good for the health of society at large. The court believed that the authorities and lawmakers needed to review the situation and legal provisions to prevent such misuse from taking place.

In a recent judgment of the Delhi Sessions court, India, in connection with Mrs Veena v Mr Sanjay Kumar and others, the additional sessions judge stated that the court did not find any independent corroboration for the alleged dowry harassment. The honourable court stated that the provisions of section 498A of IPC are not a law for taking revenge, seeking recovery of dowry or for forcing a divorce, but a penal provision to punish wrongdoers.13

This section was intended for the protection of married women from unscrupulous husbands but is clearly misused by a few women; again this is strictly condemned in Saritha v R. Ramachandran where the court noticed the reverse trend and asked the Law Commission and Parliament to make the offence a non-cognizable and bailable one. It is the duty of the court to condemn wrongdoings and protect the victim, but what happens when the victim turns into the abuser? What remedy does the husband have there?

On this ground, the woman gets to divorce her husband and re-marry or even gain financial compensation. Many women’s rights groups argue against the idea of making the offence a non-cognizable and bailable one as they believe this gives the accused a chance to escape conviction. But it would give a fair chance to the man and above all help serve the ends of justice. Justice must protect the weaker party and ensure that the wronged person is given a chance to claim back his/her due. When women accuse their husbands under section 498A of IPC by making the offence non-bailable and cognizable, if the man is innocent he is denied the chance of obtaining justice quickly, and “justice delayed is justice denied”. Therefore, the lawmakers must provide a route which makes this section non-biased towards any individual and provides the means for the guilty to be punished and the wronged person to obtain justice.

**Conclusion and suggestions**

Domestic violence and abuse by spouses and family members are complex behaviours. Unfortunately, the social organisation of courts, the police and legal structures tend to systematically devalue domestic violence cases. Section 498A was introduced into the Indian Penal Code in 1983 to deal with this problem but the reforms of the past 28 years have not been adequately evaluated by the government as to how well they have worked. How far have they ever deterred a husband and his family from causing or attempting a dowry death or crime? How many such abusers have been prosecuted and punished for domestic cruelty and/or violence, whether or not they are linked to dowry demands, since the time when such behaviour has been made a criminal offence? A programme of research and development is now urgently required to advance the current state of knowledge on the effects of legal sanctions on domestic violence. The narrow study carried out by law enforcement agencies on
the deterrent effects of legal sanctions for domestic violence is not sufficient and stands in stark contrast to the extensive efforts of activists, victim advocates and criminal justice practitioners to mobilise law and government policy to stop domestic violence. It is also very important for further studies to be done to correct general misconceptions that women are misusing the law by filing false cases against their husbands and in-laws in order to harass them and get them convicted. The perspective of the state and its agencies needs to change from that of protecting the husbands and in-laws against potential “misuse” of the laws of domestic violence, to that of implementing their real purpose – to recognise that such violence is a crime and to protect women who have the courage to file complaints against their abusers.

The position of women in India is still bad and unequal and must be improved. They need rights in law in order to take their full place in society and to achieve their potential. But at the same time they must recognise the rights of others and not just be out for their own ends. The educated woman of today must agree with the mantra of equality and fight for it but the trend is slowly going into reverse. Are women taking undue advantage of the fact that they are referred to as the “weaker sex” and, using some of the rights enacted to protect them, violating others’ rights? Not all marital relationships are successful. In fact, many relationships which appear to succeed are based on compromise.

However, increasingly, women in India are taking matters into their own hands and using modern technology where they have access to it (but of course many of the poorest women do not). An Indian matrimonial search website with two million members has recently launched an “app” for Angry Brides on its Facebook page. Quoted in The Times article of 18 January 2012, Ram Bhamididi, the senior vice president at Shaadi.com, said: “The Angry Brides game is our way of throwing a spotlight on the nuisance of dowry.” Players of the game assume the guise of a bride and have to hit three dodging grooms – a pilot, a builder and a doctor – using a variety of readily available household objects, including a frying pan, tomatore, broomstick and shoe. The game is apparently a variation on the hit “Angry Birds”, which pits a multicoloured flock of birds against a group of green pigs!

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