

Judicial Intervention With Regard to Cruelty Against Women : An Analysis of Sec. 498A IPC

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Abstract

Several laws and provisions have been enacted during the last two or three decades to address the concerns of liberty, dignity and equal respect for women based upon the community's perception that women suffer violence or are deprived of their constitutional rights due to several social and cultural factors. A series of debates and persuasions have led to these enactments. The insertion of Section 498A IPC is one such step and it penalizes offensive conduct of the husband and his relatives towards the married woman. The provision together with allied provisions in Cr. P.C. are so designed as to impart an element of deterrence. In course of time, a spate of reports of misuse of the section by means of false / exaggerated allegations and implication of several relatives of the husband have been coming in. Though there are widespread complaints and even the judiciary has taken cognizance of large scale misuse, but it is still on the statute book to deal with the cases of cruelty in matrimonial cases. Present paper discusses meaning of cruelty through judicial interventions and tries to examine its relevance in its maintenance on the statute book.

Introduction

Cruelty is a substantive offence punishable under section 498–A of the Indian Penal Code. It is also an essential ingredient of the offence of dowry death punishable under Section 304–B of the Indian Penal Code and of the presumptive Sections 113–A and 113–B of the Evidence Act. Cruelty for the purpose of all the above said sections must necessarily be such as falls either under clause (a) or clause (b) of the explanation to section 498–A, Indian Penal Code. In other words, the term cruelty in criminal law is well defined with precision and certainly leaving no scope to enlarge its concept by any other method. On the other hand, cruelty has nowhere been defined in any of the matrimonial statutes. Cruelty in matrimonial law is always a changing concept. It is to be determined by the courts on the facts and circumstances in each case and this trend will continue in future too.

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 overlap each other, further it is not uncommon that a conduct which is held to be cruelty in matrimonial law sometimes has also been held to be cruelty in the criminal law.

Definition of Cruelty

No precise definition of cruelty exist nor is it possible to do so. Acts or conduct constituting cruelty can be so numerous and varied that is would be impossible to fit them into any water tight compartments. Cruelty may be subtle or brutal. It may be by words, gestures or by mere silence. The starting point of the definition of cruelty is the following passage in *Russel v. Russel*¹ ‘conduct of such a character as to have caused danger to life limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such danger’.

Until recently, it was both, namely the nature of conduct of the defaulting spouse and its effect on the complaining spouse that was of utmost importance as essential requisites for matrimonial relief on the ground of cruelty. However, the Supreme Court in its momentous decision of a far reaching consequence in *Shobha Rani v. Madhukar Reddy*² has gone further and has given a new dimension to cruelty in matrimonial law. The Supreme Court in this case has observed that besides aforesaid cases (cruel conduct of one spouse and the resultant effect on the other spouse), there may be cases where the conduct complained of itself is bad enough and per se unlawful and illegal and if that be the position, then the impact or the injurious effect on the other spouse need not be enquired into or considered. This was a case where the petitioner wife alleged and proved that the husband demanded dowry and the Supreme Court held that the demand of dowry is prohibited under the law and is itself illegal and therefore, amounts to cruelty, though it may not have had an injurious effect on the wife.

Thus, we see that it is not possible to give any precise definition of the cruelty as the conduct of the human beings is not generally similar and as such, there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case, depending upon human behaviour, capacity or incompatibility to tolerate the conduct complained of. In the case of *Sheldon v. Sheldon*³ Lord Denning observed that “the categories of cruelty are not closed”.

The Royal Commission in England on Marriage and Divorce in its Report (1956) said : “we consider that it is ... not proper to have a detailed definition but to allow the concept of cruelty to remain open to such adjustments as it is desirable to make through the media of judicial decisions so as to accord with the changing social conditions”. The same view has been expressed by the Law Commission of India.

¹ (1897) A.C. 393.

² AIR 1988 S.C. 121.

³ (1966) 2 All. E.R. 257.

Classification of Cruelty

Under the modern Hindu law, cruelty is divided into two heads :

Acts of Physical Cruelty :

Act of physical violence by one spouse to another resulting injury to body limb or health or causing reasonable apprehension of the same have been traditionally considered as cruelty. In fact, this is the original meaning of cruelty, what acts of physical violence will amount to cruelty will differ from case to case, depending upon the susceptibility and sensibility of the party concerned.

Acts of Non-Physical Violence

Various acts of non-physical violence such as harassment, insulting behaviour, cessation of marital intercourse and refusal to provide treatment, food, clothing or accommodation by the husband also form a part of the phenomenon of violence against women. The husband on the other hand usually cite a number of justifications for their behaviour; which include nagging quarreling nature, false allegations about their extra-marital relation and refusal to perform domestic work by the wives. As early as in 1924, it was held that “cruelty in the legal sense need not necessarily be physical cruelty. A course of conduct which if persisted in, would undermine the health of the wife, is a sufficient justification for refusing to the husband a decree for restitution of conjugal rights⁴. In the case of *Braja Kishore v. Krishna*⁵ too, it was held that the cruelty is not necessarily restricted to physical violence but may extend to behaviour which may cause mental pain or injury to mind as well.

Under the Hindu Marriage Act 1955, though cruelty is nowhere defined, “it is a settled rule of law that the expression ‘cruelty’ not only covers the physical or violent acts of spouses but also covers the mental or psychological acts of other partner which creates apprehension in the mind of the complaining partner that it will be harmful or injurious to live with the other party⁶.

After the amendment of 1976 the ‘apprehension’ part of the cruelty has been deleted. Consequently, cruelty about which the amended provision of the Act speaks may extend to behaviour which may cause “pain or injury to the mind as well and so renders the continuance

⁴ Kondal Royal v. Ranganayaki Ammal AIR 1924 Mad 49, at 55.

⁵ AIR 1989 Cal 327.

⁶ Lalita Devi v. Radha Mohan AIR 1976 Raj 1.

in the matrimonial home as an agonizing ordeal”⁷. The following acts of the spouse have been treated as causing mental cruelty to the other partner⁸ :

Wilful and unjustifiable interference by one spouse in the sphere of the life of the other is one species of cruelty in the same way in which rough or domineering conduct or unnatural sexual practices or disgusting accusations of unchastity or adultery, and sometimes even studied unkindness or persistent nagging can in a proper case be regarded as cruelty. The broad test seems to be that any conduct of the spouse which causes pain and injury to the mind and consequent detriment to health of the other spouse may amount to cruelty⁹. Cruelty means delight in or indifference to pain or misery in others. It connotes acts which give unnecessary pain to others or which are savage or merciless. Thus, any conduct of the husband which causes injury to the mind and consequent detriment to the health of wife may amount to cruelty.

Cruelty in Criminal Law

Section 498A¹⁰ is one of the most significant amendments in the Indian Penal Code, which helps women harassed and tortured by husbands and/or in-laws to get relief. The object of the amendment was to punish the husband or her relatives who torture the wife to meet any unlawful demands or drive her to commit suicide.

Under Section 498A of the IPC, “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. The offence is cognizable, non-compoundable and non-bailable.”

By way of explanation, the law clarifies,

“For the purposes 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

⁷ Siddagaugia v. Lakshama AIR 1968 Mys. 115 at 116.

⁸ Ibid.

⁹ Rjender Singh Joon v. Tara Wati AIR 1980 Del. 213 at 214.

¹⁰ Definition of “cruelty” in S. 498A. Explanation: For the purpose of this section “cruelty” means: a) any willful conduct which is of such a nature as is likely to drive a 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.

(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.”

498A can only be invoked by a wife or a daughter-in-law or her relative. The various high courts and Supreme Court in India have repeatedly affirmed that most of the cases where Sec 498A is invoked turn out to be false, as they are mere attempts of blackmail by the wife (or her close relatives) in a strained marriage.

Steps for Making Sec. 498 A Compoundable

The Law Commission of India and the high courts in different states had in the past recommended amendments to the law. It says: “Keeping in view the representations received from various quarters and observations made by the Supreme Court and the High Courts, the Home Secretary, Government of India through his D.O. letter dated 1st September, 2009 requested the Law Commission of India to consider suggesting amendment, if any to s.498A of Indian Penal Code or other measures to check the alleged misuse of the said provision. Thereafter, in the case of Preeti Gupta vs. State of Jharkhand, (2010) the Supreme Court observed that a serious relook of the entire provision is warranted by the Legislature. It is a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over-implication is also reflected in a very large number of cases”.¹¹

The Supreme Court had termed the instances of abuse of Section 498A as Legal Terrorism¹², and Parliament had pondered over the issue time and again. But nothing had happened till now. The broad implication of the recent ruling is endorsement of the assertion that the law is being grossly misused by many married women and their families who have an axe to grind, often financial.

In a recent case of **Arnesh Kumar v. State of Bihar**¹³ the Supreme Court said women are increasingly using the anti-dowry law to harass in-laws and restrained police from mechanically arresting the husband and his relatives on mere lodging of a complaint under Section 498A of the Indian Penal Code. Citing very low conviction rate in such cases, it directed the state governments to instruct police "not to automatically arrest when a case under Section 498A of

¹¹ The Law Commission of India's Report No. 243 on Section 498 A IPC dated August 2012

¹² Sushil Kumar v. Union of India, 2005(6)SCC281

¹³ Special Leave Petition (Cri) No.9127 of 2013

IPC is registered but to satisfy themselves about the necessity for arrest under the parameters (check list) provided under Section 41 of criminal procedure code".

Expressing exasperation over rampant misuse of Section 498A, a bench of Justices C K Prasad and P C Ghose said if police arrested the accused, the magistrate should weigh the preliminary evidence against the Section 41 checklist before allowing further detention. "The magistrate, while authorising detention of the accused shall peruse the report furnished by the police officer in terms of Section 41 and only after recording its satisfaction, the magistrate will authorize detention," the bench said.

It also said that this check-list for arrest and detention would apply to all offences, which are punished with a prison term less than 7 years. Punishment under Section 498A is a maximum of three years but it had been made a cognizable and non-bailable offence, which made grant of bail to the accused a rarity in courts.

But the court singled out the dowry harassment cases as the most abused and misused provision, though the legislature had enacted it with the laudable object to prevent harassment of women in matrimonial homes.

Writing the judgment for the bench, Justice Prasad said there had been a phenomenal increase in dowry harassment cases in India in the last few years. "The fact that Section 498A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives, The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested".

The Court observed that the rate of charge-sheeting in cases under Section 498A is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal. Describing arrest as a humiliating experience apart from curtailing the freedom, the bench said police have not shed their colonial hangover despite six decades of independence and were still considered "as a tool of harassment, oppression, and surely not considered a friend of public".

Commenting upon the object of section 498A Indian Penal Code Orissa High Court observed – "Section 498A of Penal Code was introduced to combat the menace of dowry deaths. It reflects

the anxiety of the law makers to extend protection to women considered to be the weaker spouses. Drudgery in marital life, indelible cracks in marital relationships sometimes lead women to end their lives. Life is veritable hell for them, leaving them with no alternative than to take this extreme step. Short of physical cruelty, mental cruelty was perpetuated, being conscious that the latter type of cruelty was not punishable. The section was introduced to fill up the Lacuna in law¹⁴.

Because of the misuse of Sec.498A of Penal Code there has been a huge demand of people to make it a compoundable offence.

Justice Malimath Committee's Report on Reforms of Criminal Justice System strongly supported the plea to make Section 498 A a compoundable offence. The Committee observed: "A less tolerant and impulsive woman may lodge an FIR even on a trivial act. The result is that the husband and his family may be 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, especially if the husband cannot pay. Now the woman may change her mind and get into the mood to forget and forgive. The husband may also realize the mistakes committed and come forward to turn over 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 noncompoundable. The doors for returning to family life stand closed. She is thus left at the mercy of her natal family... 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 nonbailable 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."

In **Arvind Singh v. State of Bihar**¹⁵, Supreme Court held that "word 'cruelty' in common English acceptation denotes a state of conduct which is painful and distressing to another. The legislative intent in Section 498-A is clear enough to indicate that in the event of there being a state of conduct by the husband to the wife or by any relative of the husband which can be attributed to be painful or distressing, the same would be within the meaning of the

¹⁴ Baby v. State, (1984) Cr. LJ 1684

¹⁵ (2001) 6 SCC 407.

section”.

Conclusion

The introduction of section 498–A of the Indian Penal Code, has opened a floodgate of complaints by women alleging various kinds of cruelty and harassment from their husbands and in-laws. The available case law, however, shows that the courts have mostly taken a very strict view and section 498A has been defined very narrowly to include cruelty and harassment of a very grave nature. Not only that, some High Court judgments have interpreted 498–A to mean only that kind of cruelty which in fact led a woman to commit suicide. The purpose of the section to punish cruelty, which would include not only harassment for dowry, but would include any wilful conduct, which would be likely to cause grave injury or danger to life, limb or health (both mental and physical) has not been realized.

Under most systems of the personal laws¹⁶ in India, the infliction of physical injury is included in cruelty and cruelty to wife is a ground for judicial separation or divorce. The legal concept of cruelty has varied from time to time and from society to society with the change in social and economic conditions. In early English law intention was considered to be an essential element of cruelty. In the modern law, it is no longer so. At one time it was thought that the objective of matrimonial law was to punish the guilty party rather than to protect the innocent party. The modern law takes the view that the objective is to accord protection to the innocent party. Recent interpretation of cruelty in England and in the United States virtually amounts to acceptance of breakdown theory. Thus, nagging, and scolding and even incompatibility of temperament have been held to be included in cruelty, despite Denning LJ’s warning that *if the doors of cruelty were opened too wide, we should soon find ourselves granting divorce for incompatibility of temperament. The learned judge warned that “the temptation must be resisted lest we slip into a state of affairs where the institution of marriage itself is imperiled”*.

¹⁶ Under the Hindu Marriage Act, 1955; Special Marriage Act, 1954; Indian Divorcer Act 1869; The Parsi Marriage and Divorce (Amendment) Act 1988; The Dissolution of Muslim Marriage Act 1939.