

DOWRY DEMAND AS CRUELTY- PIERCING THROUGH CIVIL AND CRIMINAL CONTOURS

Utkarsh Kumar Sonkar*

Abstract

Demanding Dowry has a very broad connotation. It is a specific offence under Section 4 of the Dowry Prohibition Act, 1961. When accompanied with cruelty this has been construed under Section 498A the Indian Penal Code, 1860 Subsequently on account of failure of the legislation to halt the menace of dowry amendments were introduced in form of the Marriage Laws (Amendment) Act, 1976, the Dowry Prohibition (Amendment) Act, 1984, the Criminal Law (Second Amendment) Act, 1983 etc. This highlights the menace of the practice of dowry. In this context, an analysis of dowry demand as cruelty becomes pivotal provided the standards *vis-à-vis* civil law i.e., for matrimonial reliefs and criminal laws i.e., sanctioning penalty varies.

Cruelty cannot be put into a strait jacket formula. It has different facets and degrees. Cruelty in matrimonial offences need not be proved beyond reasonable doubt and requires to be proved only on preponderance of probabilities as in civil cases. In the light of judicial interpretation now, dowry demand *per se* amounts to cruelty for civil suits. Even after major amendments of the law and liberal judicial interpretation, many courts have maintained their age-old orthodox approach. With respect to criminal aspect of dowry, Section 4 of DP Act criminalises the very demand of dowry and when such demand is accompanied by cruelty, it amounts to attraction of Section 498A IPC. Dowry prohibition laws are constitutional and have been given a liberal construct by the courts over the years. The current status of cases filed and pending along with the case with-drawl and conviction rate puts forth a very pathetic scene with respect to the women seeking judicial relief in matrimonial affairs. Hence, the construction of dowry demand as a form of extortion is merited. Its advantage lies in cognizability, deterrent effect and addressing the degree of cruelty which the present legislation has failed to remit.

* Student @ National Law School of India University, Bangaluru (Karnataka); Email: utkarshsonkar@nls.ac.in

INTRODUCTION

Demanding Dowry has a very broad connotation. It is a specific offence under Section 4 of the Dowry Prohibition Act, 1961 (hereinafter referred as “DP Act”). When accompanied with cruelty this has been construed under Section 498A the Indian Penal Code, 1860 (hereinafter referred as “IPC”). Demanding dowry is also a form a domestic violence as can be inferred from Section 3(b) of Protection of Women from Domestic Violence Act, 2005. Prior to the advent of dowry prohibition legislation it was treated as criminal breach of trust under Sections 405 and 406 of the IPC. Despite of conferment of improved property rights on women by the Hindu Succession Act, 1956 this evil practice continued. In light of which specific legislations were enforced to eradicate this evil. Dowry was criminalized by the DP Act. Subsequently on account of failure of the legislation to halt the menace of dowry amendments were introduced in form of the Marriage Laws (Amendment) Act, 1976, the Dowry Prohibition (Amendment) Act, 1984, the Criminal Law (Second Amendment) Act, 1983 etc. This highlights the menace of the practice of dowry. In this context, an analysis of dowry demand as cruelty becomes pivotal provided the standards *vis-à-vis* civil law i.e., for matrimonial reliefs and criminal laws i.e., sanctioning penalty varies.

Accordingly, the author has endeavoured to answer the following research questions.

1. What is the nexus between cruelty and dowry demand in context of civil proceedings?
2. What is the requisite standard of proof for determining cruelty with regards to dowry demand as a crime?
3. Can demand dowry be construed as extortion as is required within the parameters envisaged under IPC?
4. What are the advantages of constructing dowry demand as a form of extortion?
5. How have been dowry laws approached in India by the judiciary and what is the correct approach?

DOWRY AND CRUELTY IN CONTEXT OF CIVIL PROCEEDINGS

The *locus classicus* enunciating the basic proposition of this article is *Shobha Rani v. Madhukar Reddi*,¹ where Justice Jagannatha Shetty stated that demanding dowry amounts to cruelty. It was stated that if the conduct complained of is itself bad enough or *per se* illegal or unlawful, then the impact or the injurious consequences of such conduct on other spouse need not be enquired. If such conduct is proved then cruelty is established.² This is the standard which applies to cruelty when it has to be construed as a ground for matrimonial reliefs such as a decree for divorce, judicial separation etc. Reasonability test cannot be employed in cases pertaining matrimonial affairs.³ Every case is to be construed in the light of its peculiar facts and circumstances. This is on account of the fact that the court does not have to deal with an ideal couple because their ideal attitudes will help them overlook mutual faults and

¹ *Shobha Rani v. Madhukar Reddi*, AIR 1988 SC 121.

² *Id.*

³ *Gollins v. Gollins*, (1963) 2 All ER 966.

failures.⁴ Cruelty in matrimonial offences need not be proved beyond reasonable doubt and requires to be proved only on preponderance of probabilities as in civil cases. In this backdrop, an analysis of the expression cruelty is merited.

The expression cruelty has not been defined. In *Russel v. Russel*,⁵ Lord Justice Lopes while defining cruelty observed that to constitute cruelty there must be danger of life, limb or health, mental or bodily or reasonable apprehension of it. A similar definition was given by the court for “legal cruelty” in *Sarvana Perumal v. Shashi Kana Perumal*⁶ while interpreting cruelty under Section 27(1)(d) of the Special Marriage Act, 1954. However this approach of the Indian Courts was changed by the advent of seminal judgement of *Dastane v. Dastane*⁷ where honourable apex court laid down that it is not necessary for cruelty to be construed as of such a character which gives rise to a reasonable apprehension of danger as is put forth by English jurisprudence. The court also stated that harm or injury to health, reputation, the working career or the like would be factored in to determine whether the respondent’s conduct amount to cruelty.

The intention of the legislation through the Marriage Laws (Amendment) Act, 1976 was to liberalize the concept of divorce.⁸ Cruelty simpliciter is made a ground for divorce henceforth.⁹ This amendment was made in the light of 59th Report of Law Commission of India which was prior to *Dastane*’s case and accordingly the old concept of cruelty as danger to life and limb does not hold any ground. Cruelty therefore in matrimonial law may be subtle or brutal, physical or mental, it may be by word, gesture or mere silence, violent or non-violent.¹⁰

In the case of *Sheldon v. Sheldon*,¹¹ Lord Denning observed that the categories of cruelty are not closed. Each case is different and hence a new type of cruelty may crop up in any case. In *Shobha Rani’s case*,¹² the court observed that the cruelty may be mental or physical, intentional or unintentional. Physical cruelty is easy to determine and it is essentially a matter of fact and degree, however in case of mental cruelty enquiry must begin with regards to the nature of the cruel treatment and its impact on the mind of the spouse. It was laid down that persistent demand for dowry by the husband’s parents with the support of the husband amounted to mental cruelty on the wife. It was held that cruelty is required to be proved on the preponderance of probabilities and not beyond reasonable doubt. Intention to injure the other spouse is not a necessary element to constitute cruelty.¹³ In deciding cruelty the court must consider social status, environment, physical and mental conditions of the susceptible

⁴ Narayan Ganesh Dastane v. Sucheta Narayan Dastane, AIR 1975 SC 1534

⁵ Russel v. Russel, 1897 AC 395

⁶ Sarvana Perumal v. Shashi Kana Perumal, ILR (1969) 1 Mad 845

⁷ Narayan Ganesh Dastane v. Sucheta Narayan Dastane, AIR 1975 SC 1534

⁸ Statement of Objects and Reasons, The Marriage Laws (Amendment) Act, 1976 (Act 68 of 1976).

⁹ Justice Ranganath Misra et al, Mayne’s Hindu Law & Usage, 247 (16th edn., 2010)

¹⁰ Narayan Ganesh Dastane v. Sucheta Narayan Dastane, AIR 1975 SC 1534

¹¹ Sheldon v. Sheldon 1966 (2) All ER 257 at 259

¹² Shobha Rani v. Madhukar Reddi, AIR 1988 SC 121

¹³ Ram Krishna Hegde v. Prameela, ILR (1979) 1 Kant 322

innocent spouse, the customs and manners of the parties.¹⁴ With regards to mental cruelty the whole of the matrimonial relationship has to be accounted for.¹⁵ In *Siraj Muhammad Khan v. Hafezunnisa*,¹⁶ it was held that after the persistent demands of dowry which caused reasonable apprehension in the mind of the wife that she was likely to be physically harmed, she was justified in not living with her husband and cannot be charged of desertion. Mental cruelty may consist of verbal abuses and insults by using foul and abusive language which disturbs mental peace,¹⁷ however every conduct which causes mental tension is not mental cruelty. It must be shown that the conduct affected the health or is likely to affect the health.¹⁸ The Supreme Court has taken this matter with utmost importance. In *Romesh Chandra v. Savitri*,¹⁹ the honourable apex court went to the extent of granting a decree of divorce exercising its power in the light of Article 142 of the Constitution of India when it was found that marriage was dead both emotionally and practically, and continuance of such marital alliance would prolong the agony and would constitute cruelty.

Despite the liberal stance taken by various courts the Calcutta High Court has taken an orthodox view where it interpreted cruelty for purpose of Section 13(1)(i-a) of Hindu Marriage Act, 1955 to be of two types viz., physical and mental. It went to the extent of holding that physical cruelty consists of *physical violence* and *bodily danger* and hence a solitary incident of *beating resulting in minor injuries* would not amount to cruelty.²⁰ A single act of violence will amount to cruelty only if it is *grossly violent*.²¹

DOWRY DEMAND AS A CRIME

A relatively strict construction ought to be given to dowry demand as a crime provided it attracts penal consequences and has the potential of curtailing the liberty of a person. However, it has been argued that the interpretation which has been given at the judicial frontiers have virtually resulted in diluting this stringent requirement. Prior to approaching the nuanced argument, a backdrop of constitutional challenge to dowry prohibition laws is put forth.

Constitutionality of Dowry Prohibition Laws

The constitutional validity of Section 498A IPC has been challenged at various occasions and it has been contented that the above section and Section 4 of the DP Act creates a situation of double jeopardy hence, should be struck down in the light of Article 20(2) of the Constitution of India. It is submitted that, Section 498A IPC is distinguishable from Section 4 of the DP Act as the latter makes a mere demand of dowry punishable and element of cruelty is not

¹⁴ *Ruplal v. Kantaro Devi*, AIR 1970 J&K 158

¹⁵ *Id.*

¹⁶ *Siraj Muhammad Khan v. Hafezunnisa*, AIR 1981 SC 1971

¹⁷ *Simarjit Kaur v. Bakshish Singh*, 1995 (2) HLR 487 (P&H)

¹⁸ *Suresh Kumar v. Suman*, AIR 1983 All 225

¹⁹ *Romesh Chandra v. Savitri*, AIR 1995 SC 851

²⁰ *Pranab Biswas v. Mrinmayee Dev*, AIR 1976 Cal 156

²¹ *Sulekha v. Kamala*, AIR 1980 Cal 370

requisite. Section 498A is essentially an aggravated form of the offence of demanding dowry.²²

Interpretation of Section 4 of the DP act over the years

At the outset the judges took a very narrow interpretation of Section 4 of DP Act. In the cases of *Indersain v. State*²³ and *Kashi Prasad v. State*²⁴ the Delhi and Patna High Courts respectively held that the mere demand of dowry if not accompanied with the consent of the person from whom the demand is made would not invite penal consequences. The apex court in *L.V.Jadhav v. Shankerrao*²⁵ rejecting such contention observed that the object of Section 4 is to discourage the very demand of dowry, hence a liberal construct to satisfy that object of the statute needs to be adopted. It was put forth that,

“There is no warrant for taking the view that the initial demand for giving of property or valuable security would not constitute an offence and that offence would take place only when the demand was made again after the party on whom the demand was made agreed to comply with it”.

The incidents of demanded dowry should not be construed in a narrow manner. In *Madhusudan Malhotra v. Kishore Chand Bhandari*,²⁶ the *prima facie* furnishing of a list of ornaments and other household articles such as refrigerator, furniture, electric appliances etc. at the time of the settlement of the marriage were held to be demanding dowry under the DP Act. Recently, the honourable division bench of Justice Bhaskar Bhattacharya and Justice J.B.Pardiwala of Gujarat High Court has went to the extent of saying that even demanding money for business purposes is as good as demanding dowry.²⁷

Liberal interpretation to Section 498A IPC

With regard to curbing the menace of dowry Section 304B, 498A of IPC and Section 113B of Indian Evidence Act, 1872 were introduced. The objective of the legislation was to prevent harassment of the women who enters into a marital relationship with a person and later become victim of the greedy for money.²⁸ Legislation enacted to curb and alleviate the social evil rampant in the society must be interpreted with element of realism and not pedantically or hyper-technically. On account of this Section 498A has been constructed liberally for matters pertaining *first*, the interpretation of expression “husband”, *secondly*, requisite standard of proof and *third*, compoundability of the offence.

²² Inder Raj Malik v. Sunita Malik, 1986 CriLJ 1510.

²³ Indersain v. State, 1981 CriLJ 1116.

²⁴ Kashi Prasad v. State, 1980 BBCJ 612.

²⁵ L.V.Jadhav v. Shankerrao, AIR 1983 SC 1219.

²⁶ Madhusudan Malhotra v. Kishore Chand Bhandari, (1988) Supp. 1 SCC 424.

²⁷ Press Trust of India, *Demanding money for business is as good as demanding money for dowry – HC*, Business Standard, (July 31, 2014), available at http://www.business-standard.com/article/pti-stories/demanding-money-for-business-is-as-good-as-demanding-dowry-hc-114073101899_1.html (Last accessed on February 20, 2016).

²⁸ Reema Aggarwal v. Anupam, AIR 2004 SC 1418.

With regard to first proposition, in the case of *Reema Aggarwal v. Anupam*,²⁹ the apex court interpreted the expression “husband” in Section 498A IPC when the legitimacy of the marriage was in question. It was observed that such expression need to be narrowly construed when dealing with claims for civil rights and property, however, a liberal approach is necessary when matters for curbing a social evil like demanding dowry are concerned. *Heydon* rule, which is suppression of mischief rule was applied by the court. This is a rule which envisages purposive interpretation with a view of suppressing the mischief which would crop up if the literal rule is allowed to cover the field. This rule has been endorsed in Indian jurisprudence by a plethora of cases.³⁰ In this case the husband subjected his second wife to cruelty on account of demand for dowry. The thrust is mainly on cruelty under Section 498A IPC. It was held that provisions of Section 498A IPC will apply to any person who under feigned status of husband in marital relationship subjects the women to cruelty or coerces her in any manner for purposes enumerated in Section 498A IPC. Similar approach was undertaken in a claim of maintenance by second wife under the Hindu Adoption and Maintenance Act, 1956.³¹ These cases impliedly overrule cases which presuppose existence of valid marriage for offence of cruelty and dowry demand on account of mathematical niceties of law.³²

In the context of second proposition, in the case of *State of West Bengal v. Orilal Jaiswal*,³³ it was stated that in criminal trial the degree of proof is much higher than that required in a civil proceeding. The requirement of proof cannot lie in surmises and conjectures. Though the court observed that requirement of proof was beyond reasonable doubt but held that there was no absolute standard of proof in a criminal trial. The proof beyond all reasonable doubt must depend on the facts and circumstances of the case as well as the quality of evidences adduced. In *Eater v. Bater*,³⁴ Lord Denning observed that the doubt must be of a reasonable man. Standard should be the one as adopted by a just and reasonable man for arriving at a conclusion in context of a particular subject matter. In *Gurbachan Singh v. Satpal Singh*,³⁵ Justice Sabyasachi Mukherjee stated that

“exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law.”

In the light of the above jurisprudence, it is concluded that to meet the ends of justice the standard of proof required for dowry prohibition legislation has diluted from the requisite of beyond reasonable doubt³⁶ to that of a standard of reasonable man. This analysis is endorsed

²⁹ *Id.*

³⁰ *Bengal Immunity Co. Ltd. v. State of Bihar*, AIR 1953 Pat 87; *Goodyear India Ltd. v. State of Haryana*, AIR 2001 SC 2603; *Ameer Trading Corpn. Ltd. v. Shapoorji Data Processing Ltd.*, AIR 2004 SC 355.

³¹ *Narinder Pal Kaur Chawla v. Manjeet Singh Chawla*, AIR 2008 Delhi 7.

³² *Raghothaman v. State of Karnataka*, II (2004) DMC 622.

³³ *State of West Bengal v. Orilal Jaiswal*, AIR 1994 SC 1418.

³⁴ *Eater v. Bater*, (1950) 2 All ER 458.

³⁵ *Gurbachan Singh v. Satpal Singh*, AIR 1990 SC 209.

³⁶ *Henry Campbell Black*, BLACK'S LAW DICTIONARY, 945 (2nd edn., 1995).

by the apex court in *Trimukh Maruti Kirkan v. State of Maharashtra*.³⁷ In *Prakash Chander v. State*,³⁸ Justice Y.K.Sabharwal stated that in cases of demand of dowry ordinarily only the near relative can know as to what is demanded and what is given or not given, such matters do not come to the knowledge of independent witnesses. It is hence natural that the incidents of cruelty, harassment or demand or dowry remain within the personal knowledge of the near relatives. They are therefore best persons to depose about the same.

With reference to the third proposition it is submitted that despite the fact that Section 498A is a non-compoundable offence, provided it is a means to satisfy the social objective of curbing the menace of dowry and fructifying matrimonial relationships the courts have inclined to take a different perspective. Section 320 of Cr.P.C provides the list of offences which can be compounded. In the light of this, it is abundantly clear that offences under Section 498A IPC and Section 4 of DP Act cannot be compounded. Regardless of this a division bench of Justice Ranjana Desai and Justice N.V. Ramana in their seminal judgement of *Manohar Singh v. State of Madhya Pradesh*,³⁹ has held that since, a genuine compromise has been accomplished amongst the husband and wife and the above offences are personal in nature having no repercussions on society they can be compounded. In this case the estranged couple reached a compromise when husband agreed to pay Rupees 2,50,000 as compensation in addition to the costs of litigation.

In light of the arguments advanced with respect to the interpretation of expression “husband”, requisite standard of proof and compoundability of the offence, it becomes abundantly clear that the stringent requirements of the criminal offence are watered down to further the objective of the statute.

Current status of Dowry as a crime in India

With regards to offences under DP Act in 2012 a total of 24461 cases were put forth for trial out of which conviction was done merely in 677 cases and 515 cases were withdrawn. The result is a conviction rate of trifling 2.76%.⁴⁰ In the year 2012 a total of 87,633 cases were brought for trial under Section 498A of IPC out of which conviction is done only in 6,916 cases which implies a conviction rate of mere 7.89%. The number of cases withdrawn amounts to 8,162.⁴¹ In the year 2013, 4.5% of crimes registered under IPC are pertaining to cruelty by husband or his relatives towards the wife out of which the charge sheet is filed

PROOF BEYOND A REASONABLE DOUBT - The burden of proof that is put forward by the prosecution used to determine a person's guilt or innocence. The defendant is always presumed to be innocent unless the burden of proof is undeniable.

³⁷ *Trimukh Maruti Kirkan v. State of Maharashtra*, (2006) 10 SCC 681.

³⁸ *Prakash Chander v. State*, 1995 CriLJ 368.

³⁹ *Manohar Singh v. State of Madhya Pradesh*, 2014 (8) SCALE 638.

⁴⁰ National Crime Records Bureau, *Cases registered and their disposal under IPC crimes*, (2012) available at [http://ncrb.nic.in/CD-](http://ncrb.nic.in/CD-CII2012/Additional_Tables_CII_2012/Additional%20table%202012/Cases%20registered%20and%20their%20disposal%20under%20IPC%20crimes%20during%20-%202012.xls)

CII2012/Additional_Tables_CII_2012/Additional%20table%202012/Cases%20registered%20and%20their%20disposal%20under%20IPC%20crimes%20during%20-%202012.xls (Last accessed on February 20, 2016).

⁴¹ *Id.*

merely in 92.3% of cases.⁴² This indicates the social reality of our country where, even when the women seek protection of law, she is harassed by her own family and friends to quit litigation. In *Rajesh v. Bhavna*,⁴³ wife was compelled to withdraw her criminal litigation on account of pressure, undue influence and fear of welfare of her son. In *S. Gopala Reddy v. State of Andhra Pradesh*,⁴⁴ Supreme Court expressed its trauma in the alarming increase in cases pertaining to harassment, torture, abetted suicides and dowry deaths of young innocent brides in spite of stringent penal provisions to curb such instances. This problem is also highlighted in Law Commission 202nd Report which deals with proposals to amend Section 304B of IPC.

CONSTRUCTION OF DOWRY DEMAND AS EXTORTION

In light of ever increasing cases of dowry demand and the consequent failure of special law to address the same, the author has endeavoured to provide a solution in the existing legal framework. The construction of dowry demand as extortion and consequent invocation of the provision dealing with the offence of extortion have the potential of filling the void in the present law on account of their cognizability, deterrent effect and addressing the degree of cruelty.

Extortion is defined under Section 383 of IPC. It has four essential ingredients, *first*, the accused must be put in fear of injury to that person or any other person,⁴⁵ *secondly*, putting of a person in such fear should be intentional,⁴⁶ *third*, on account of inducement property or valuable security or anything signed which may be converted to valuable security must be delivered and *lastly*, inducement must be dishonest.⁴⁷ This offence is carried out by overpowering the will of the owner.⁴⁸ Dishonestly here means with an intention to cause wrongful loss.⁴⁹ The provisions of extortion under IPC extend from Section 383 to 389. These encompasses various degree of the offence of extortion and attempts to commit extortion. According to the 1st Law Commission Report, with regard to extortion, it was observed that it is a question of fact for the courts to determine whether the injury threatened of was of such a nature to produce the effect intended and whether in the surrounding circumstances that party was truly put in fear and believed injury to be inevitable if he/she did not comply.⁵⁰ Section 2 of the Dowry Prohibition Act defines dowry. It uses similar terms as “*property*” and “*valuable security*”. Demanding dowry fulfils the requisites of Section 385 and 387 of IPC as *first*, it is intentional. *Secondly*, dowry can be indirectly given or agreed to be given, as fear of injury under Section 383 can be contemplated to that person or any other

⁴² National Crime Records Bureau, *Figures at a glance*, (2013) available at <http://ncrb.nic.in/> (Last accessed on February 20, 2016).

⁴³ *Rajesh v. Bhavna*, 2008 (6) ALL MR 131

⁴⁴ *S. Gopala Reddy v. State of Andhra Pradesh*, AIR 1996 SC 2184

⁴⁵ *Indrasana Kuer v. Sia Ram Pandey*, 1970 CriLJ 647 (Pat)

⁴⁶ *Mahadeo Tukaram v. Crown*, AIR 1950 Nag 240

⁴⁷ *R.S.Nayak v. A.R.Antulay*, AIR 1986 SC 2045

⁴⁸ *Ratanlal & Dhirajlal*, RATANLAL AND DHIRAJLAL'S THE INDIAN PENAL CODE, Vol. 2, 1953 (32nd edn., 2013)

⁴⁹ *Mahadeo Tukaram v. Crown*, AIR 1950 Nag 240

⁵⁰ 1st Report of the Law Commission of India, Liability of the State in Tort, 306 (1956)

person. Section 4 of DP Act in a way restricts the scope of extortion as amongst one party to a marriage and the other. The Dowry Prohibition (Amendment) Act, 1984 amended the definition of dowry and substituted the words “*in connection with the marriage*” for the words “*as consideration for the marriage*”. This was done with a view to widen the definition of dowry in the Act. Hence, the intention of the legislature is to make the law more stringent. Accordingly, the construction of dowry demand as extortion gains legitimacy.

Section 385 of IPC seeks to punish an attempt to commit extortion when the attempt has failed, the offence of extortion is not complete and the property or valuable security is not delivered. The fear of injury contemplated in Section 385 IPC need not necessarily be bodily harm or hurt.⁵¹ It includes injury to mind, reputation and property of a person.⁵² Whether a person has in fact been put in fear of injury is a matter which a court must decide considering the age, sex and situation of the person threatened.⁵³ A similar interpretation has been given to the cases of cruelty. Section 387 of IPC is an aggravated form of an attempt of extortion. The fear of death or grievous hurt should not necessarily be instantaneous.⁵⁴ This is analogous to cases of dowry demand where there exists the demand which is not met. Dowry demand if not met often leads to killing of the wife by husband and in-laws.⁵⁵ In most cases of dowry demand, the threat is to drive the women out of the house⁵⁶ which essentially comes within the ambit of fear of injury as envisaged by provisions of extortion. This can be equated to the situation, where oral or supposed influence by a member of a certain establishment inducing other members to give him money against their will and threatening in case of refusal, the loss of their situation was treated as extortion.⁵⁷ In the light of above arguments that appreciate the similarity between dowry demand and extortion it is submitted that dowry demand can be placed on equal footing as extortion for the purposes of criminal law.

Advantages of construction of dowry demand as extortion

In light of construing demanding dowry as a form of extortion the following advantages emerge. *First*, provisions of IPC dealing with extortion are cognizable offences whereas Section 498A IPC and Section 4 of DP Act are not. The cognizance of Section 498A can only be taken if information regarding the crime is given by any person who is related to the aggrieved by blood, marriage, adoption or public servant notified by State Government on this behalf. Similar is the case with Section 4 of DP Act. This amounts to only limited cognizability. Construction of dowry demand as extortion will lead to the unearthing of cases where women or her relatives do not resist such demands on account of social realities that prevail in our country. *Secondly*, construction of dowry demand as extortion IPC enhances the deterrent effect of the law and hence helps in achieving the objective of dowry prohibiting

⁵¹ Habib Khan v. State, AIR 1952 Pat 379

⁵² P.S.A. Pillai, CRIMINAL LAW, 763 (11th edn., 2012)

⁵³ N.D. Basu, INDIAN PENAL CODE, Vol. 2, 2470 (11th edn., 2011)

⁵⁴ Basu, *supra* note 53, at 2477

⁵⁵ Trimukh Maruti Kirkan v. State of Maharashtra, (2006) 10 SCC 681

⁵⁶ Arun Kumar Sharma v. State of Bihar, (2010) 1 SCC 108

⁵⁷ Basu, *supra* note 53, at 2470

legislations.⁵⁸ *Third*, it also helps in addressing the degree of cruelty which cannot be effectively addressed by Section 498A as a maximum of 3 years sentence can be awarded. This is particularly useful in cases where the degree of cruelty is extreme and a mere sentence of 3 years is inappropriate. Such construction can also provide a proper remedy where course of action is not available due to legal technicalities such as limitation period provided by Section 468 of Cr.P.C.

CONCLUSION

Cruelty cannot be put into a strait jacket formula. It has different facets and degrees. Cruelty in matrimonial offences need not be proved beyond reasonable doubt and requires to be proved only on preponderance of probabilities as in civil cases. In the light of judicial interpretation now, dowry demand *per se* amounts to cruelty for civil suits. Even after major amendments of the law and liberal judicial interpretation, many courts have maintained their age-old orthodox approach. With respect to criminal aspect of dowry, Section 4 of DP Act criminalizes the very demand of dowry and when such demand is accompanied by cruelty, it amounts to attraction of Section 498A IPC. Dowry prohibition laws are constitutional and have been given a liberal construct by the courts over the years. The current status of cases filed and pending along with the case with-drawl and conviction rate puts forth a very pathetic scene with respect to the women seeking judicial relief in matrimonial affairs. Dowry demand can be construed as a form of extortion. Its advantage lies in cognizability, deterrent effect and addressing the degree of cruelty which the present legislation has failed to remit.

The author tends to emphasis on the importance of the “*object of the legislation*” via the arguments advanced in the article. It can be concluded that matters pertaining to family law need to be addressed with the demands of the society and not by engaging in hyper-technicalities of law. The author submits following recommendations. *First*, offences under Section 498A and DP Act are made cognizable. *Secondly*, the expression “*solemnize*” be given an explanation as to depicting a relationship which is of the nature of marriage to avoid the mathematical niceties of law which at times let the accused to go scot free. *Third*, the penal sanction under Section 498A is enhanced so as to combat with the degree of cruelty and slacking deterrent effect of the law. Further, in light of Justice Verma Committee Report all marriages in India should be registered in presence of a Magistrate to ensure that there has been no demand for dowry and parties have consented to marriage.

⁵⁸ Narsingh Prasad Singh v. Raj Kumar, AIR 2001 SC 1828, The Honourable apex court observed that it is virtually a matter of shame to civilization and indiscriminate attacks and violence against married women for obnoxious and anti-social demand of dowry and the accused are let off imposing free-bite sentences like “till rising of the court” or “sentence already undergone” without verifying whether the accused has undergone any sentence. The result is that violence against women continues unabated as the law loses its deterrent effect.