

lent or otherwise made over to such member or person, during the course of the Banking Business of such Co-operative Bank.

(The SLPs are filed by the respective Co-operative Banks and obtained *status-quo* orders and the said SLPs are pending).

MATRIMONIAL CRUELTY

By

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Cruelty to a woman is a global phenomena. It is the worst form of exploitation of womanhood, which is the reflection of growing social violence and injustice. This problem is growing day by day by acquiring new dimensions.

Since this offence is committed in the privacy of residential houses and in secrecy direct evidence is not easy to get that is why Legislature introduced Section 113-B to our Indian Evidence Act.

Section 498-A defines cruelty or torture by the Husband or relatives of husband of a woman subjecting her to cruelty. 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 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.

There should be a nexus between her death and the dowry related harassment.

The Essential Ingredients of Section 498-A:

- (1) The woman must be married
- (2) She must be subjected to cruelty
- (3) That cruelty must be subjected by her husband or relatives of her husband.

The precaution must prove the following Points to constitute an offence under Section 498-A :

- (1) The woman was subjected to cruelty or harassment either by her husband or by the relatives of her husband.
- (2) Such cruelty was committed with a view to driver her—
 - (i) to commit suicide or
 - (ii) to cause grave injury or danger to her life, limb or health, whether mental or physical
- (3) Such harassment was caused—
 - (i) With a view to coercing her or any person related to her to meet any unlawful demand or any property or valuable security.
 - (ii) On account of failure by such woman or any person related to her to meet such unlawful demand.

Jurisdiction : Where the woman was harassed cruelly, she has to file her complaint to the court of that territorial jurisdiction.

Nature of the offence : Section 498-A is a Non-bailable offence. It is cognizable 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.

The object for which Section 498-A was introduced is amply reflected in the statement of objects and reasons while enacting criminal law (Second Amendment) Act No.46 of 1983. This was clearly stated by the Supreme Court in the case of *Sushil Kumar Sharma v. Union of India and others*, 2005 (2) ALD (Crl) 633 (SC).

As clearly stated therein the increase in number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry prohibition Act, 1961. In some cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, which constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend Indian Penal Code, the Code of Criminal Procedure, 1973 and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married woman by the husband, in-laws and relatives. The avowed object is to combat the menace of dowry death and cruelty. The same Criminal Law (Amendment) Act, 1983 (Act No.46 of 1993) added Section 113-A that is presumption as the abetment of suicide by a married woman and section 113-B that is presumption as to dowry death to the Indian Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to

married woman by the husband, in-laws and relatives so that the accused should not escape from the eye of the law. Even though Sections 498-A and 304-B create distinct offences, "Cruelty" is the common element in both of them.

But these provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and has to be proved. The explanation to Section 498-A gives the meaning of 'Cruelty'. In Section 304-B 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 498-A under which 'cruelty' by itself amounts to an offence.

One other provision which is relevant to be noted is Section 306 IPC. The basic difference between the two sections i.e. Section 306 and Section 498-A is that of intention. Under the latter, cruelty committed by the husband or his relations drag the woman concerned to commit suicide, while under the former provision suicide is abetted and intended.

In India cruelty is a ground for dissolution of marriage under the following Acts.

- (1) **The Hindu Marriage Act, 1955:** Under Hindu Marriage Act, 1955 cruelty is a ground for divorce and for Judicial Separation. Section 13(1) (a) speaks about cruelty as a ground for obtaining divorce. Which runs as "The other party has, after the solemnization of the marriage treated as the Petitioner with cruelty.
- (2) **The Special Marriage Act, 1954 :** Section 27(d) speaks about cruelty as a ground for obtaining divorce. Which runs as "The respondent has, since the solemnization of marriage treated the petitioner with cruelty.

- (3) ***Dissolution of Muslim Marriage Act, 1939:*** Section 2 (viii) runs as “A woman married under Muslim law shall be entitled to obtain divorce for the dissolution of her marriage that her husband treats her with cruelty, that is to say—
- (a) Habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment or
 - (b) Associates with women of evil repute or leads an infamous life, or
 - (c) Attempts to force her to lead an immoral life or
 - (d) Disposes of her property or prevents her exercising her legal rights over it or
 - (e) Obstructs her in the observance of her religious profession or practice
 - (f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran.
- (4) ***The Indian Divorce Act, 1869:*** A Christian spouse can seek Divorce under this Act. Cruelty of in any form is not a ground of divorce for the husband. But the husband’s cruelty coupled with adultery is a ground for the wife. The relevant part of Section 10 says that any wife may present a petition to the District Court or to the High Court praying that her marriage may be dissolved on the ground that since the solemnization of the marriage her husband has been guilty of incestuous adultery or of adultery coupled with such cruelty as without adultery would have entitled to divorce a mense et toro Section 22 takes cruelty a ground for Judicial separation.
- (5) ***Parsi Marriage and Divorce Act, 1936 :*** Section 32(E) runs as “that the defendant has since the marriage voluntarily caused held that grievous hurt to the plaintiff or where the defendant is the husband has compelled the wife to submit herself to prostitution”. Cruelty is a ground for Judicial separation under Section 34 which runs as follows: that the defendant has been guilty of such cruelty to him or her or their children, or has used such personal violence or has behaved in such a way as to render it in the judgment of the court improper to compel him or her to live with the defendant.
- (6) ***The English Matrimonial Causes Act, 1973 :*** Worded the cruelty as “the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent”. Originally, when cruelty was ground for Judicial separation alone under Section 10(1)(b) of the Hindu Marriage Act, 1955, the petitioner was required to show that the respondent had treated him or her with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party.
- The Marriage Laws (Amendment) Act, 1976 which makes cruelty a ground for divorce, has changed the wording of the clause thus: “Respondent has treated the petitioner with cruelty”.
- The above all statutory provisions except Section 32(e) of Parsi Marriage and Divorce Act, 1933 given similar meaning regarding the cruelty and implies both physical and mental cruelty as grounds for dissolution of

marriage. As far as the proof of the factum of physical cruelty is concerned, the courts face no problem. The general test applied here is whether there is any physical violence or whether there is any act which is likely to cause any physical harm to life or limb or health of the petitioner from the respondent either directly or indirectly. But, while construing 'Mental cruelty' the courts enjoy complete discretion, some times this discretion may lead to unscrupulous precedents.

When a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatized as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. The judges and lawyers, therefore should not import their own notions of life.

In the recent past the courts in India have categorized some of the acts which constitute the act of cruelty. For instance they are compelling the wife to adopt the life of a prostitution this was held in *Henderson v. Henderson*, AIR 1970 Mad. 104, Neglect of and apathy unto the spouse when he or she is seriously ill or hospitalized this was held in *Rajendra Singh v. Taravati*, AIR 1980 Del. 213, Humiliating in a public place or in the presence of one's friends or colleagues this was held in *N. Sreepada Char v. Vaantha Bai*, AIR 1970 Mys 232.

CONCLUSION: No hard and fast rules can be laid down as to what acts or conduct will amount to cruelty. The cruelty

in one case may not amount to cruelty in another case. Before declaring any act as cruelty, the Court has to consider the parties social status, economic conditions, culture of the parties, the education, their mental and physical conditions, their standard of life *etc.*

In *Reema Aggarwal v. Anupam and others*, 2004 (1) ALD (CrI) 452 (SC), for prosecuting a person under Sections 498-A and 304-B a valid Marriage between him and the victim woman need not be proved. It is enough if he enters into a marital relationship with the woman and under the colour of such proclaimed status of husband subjects her to cruelty or coercion.

In *S. Balusula Rao v. J. Subbayamma*, 1997(2) ALD (CrI) 905 (A.P) = Cr. 4668, it was held that if the relatives of the woman commit an offence under Section 498-A at the instigation of some other person who is not member of their family. Section 109 of I.P.C gets attracted. Section 109 is a separate and distinct offence. These are few cases to show judicial activism.

SUGGESTIONS: Besides the above legal provisions and Judicial activism the issue of dowry deaths need to be addressed from social dimensions also.

The mass media has to play an important role in eradication of the worst form of exploitation of womanhood, which is a reflection of growing social violence and injustice.

Jurists, Intellectuals, Politicians, Legislatures, Lawyers, Judges and the Officials who are connected with the effective implementation of dowry laws must play an important role to put an end to this evil practice once for all.