

witness. In *State of U.P. v. Ramesh Prasad Misra* (supra), the Supreme Court held that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defense may be accepted. In *Balu Sonba Shinde v. State of Maharashtra*, 2003 SCC (CrL) 112, the Supreme Court held that the declaration of a witness to be hostile does not *ipso facto* reject the evidence. The portion of evidence being advantageous to the parties may be taken advantage of, but the Court should be extremely cautious and circumspect in such acceptance. The testimony of hostile witness has to be tested, weighed and considered in the same manner in which the evidence of any other witness in the case. In *Shyama v. State of Rajasthan*, 1977 WLN 278.

In the case of *Vinod v. State* decided on 8.2.2016 the Hon'ble High Court of Delhi has observed that, the evidence of hostile

witness can be considered to the extent, which he supported.

In the case of *Prem Sagar Manocha v. State* decided on 6.1.2016 the Hon'ble Supreme Court had summarized the procedure in initiating proceedings under Section 340 of Cr.P.C., against the witness, who turned down to the prosecution case.

In the case of *Ayyappan v. State by Inspector of Police*, decided on 22.12.2015 Hon'ble High Court of Madras recorded a conviction against the accused for the offence under Section 302 IPC, taking into consideration of the evidence of a hostile witness to the extent which he supported.

**CHILD WITNESS** : A child of tender age can be allowed to testify, if he or she has intellectual capacity to understand questions and give rational answers there to, as was observed in the case of *State of Karnataka v. Shantappa Madivarappa Kalapuji and others*, 2009 (5) SCJ 42

### COMMENTS ON SECTION 498-A, INDIAN PENAL CODE, 1860 AND THE DOWRY PROHIBITION ACT, 1961

By

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Whether the concept of dowry, of law givers/framers/makers/Legislature is completely incorporated under the provisions of Section 498-A of Indian Penal Code, 1860 or under the provisions of the Dowry Prohibition Act, 1961.

The giving of dowry in INDIA in most of the States is in the form of MONEY.

Whether the MONEY comes under the definition of Section 498-A of IPC, 1860 or under the definition of Section 2 of Dowry Prohibition Act, 1961.

#### *Section 498-A, IPC reads as follows:*

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—

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

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 her to meet such demand.

The language employed in Section 498-A, Indian Penal Code, 1860 is *unlawful demand for any property or valuable security*.

In common parlance Section 498-A, India Penal Code is known as *dowry harassment* among our legal community and in general public also.

Having careful perusal of the phraseology of Section 498-A, Indian Penal Code, 1860 we did not find the expression *DOWRY* in it.

Property is not defined in the Indian Penal Code, 1860 or in the Criminal Procedure Code, 1973.

Whether the MONEY comes under the definition of Section 498-A of Indian Penal Code, 1860 or under the definition of dowry as defined under Section 2 of the Dowry Prohibition Act, 1961.

Even in accordance with the Dowry Prohibition Act, 1961, Dowry as defined under Section 2 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, to either party to the marriage or to any other person,

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at or before (or anytime after the marriage) in connection with the marriage of the said parties, but does not include) dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies. *Explanation II.*—The expression “valuable security” has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860).

The legal parlance used in the definition of dowry in the Dowry Prohibition Act, 1961 is *any property or valuable security*.

Property is not defined in the Indian Penal Code, 1860 or in Criminal Procedure Code, 1973.

Section 22, Indian Penal Code, 1860 defines movable property but which does not include MONEY.

Property includes both MOVABLE and IMMOVABLE PROPERTY.

Section 3, Transfer of Property Act, 1882 defines the immovable property as:

“Immovable property does not include standing timber, growing crops or grass” but the Transfer of Property Act, 1882 does not define the Movable Property specifically. Hence we did not find the expression MONEY in the definition of Immovable Property provided under the Transfer of Property Act, 1882.

General Clauses Act, 1897 defines the property – But there is no clarity (Reference about Article 19(1)(f) and Article 31(2) of Indian Constitution which were repealed).

Even as per the *OXFORD Dictionary*: Property means-A thing or things belonging to someone; possessions collectively,

Property is defined in the *CHAMBERS Dictionary* as follows:

Something someone owns.

Further the expression “*Valuable Security*” employed in Section 498-A, Indian Penal Code, 1860 and Section 2 of Dowry Prohibition Act, 1961 is defined under Section 30 of Indian Penal Code, 1860 as follows:

The words “valuable security” denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.—which does not include MONEY.

Hence, in the light of the foregoing provisions, we can rightly draw the inference that the property does not include MONEY.

As per the Rules of Interpretation of Statutes *i.e.*, as per Grammatical Rule or Golden Rule or Literal Rule of Construction—When the phraseology of an Enactment/Act is clear and unambiguous and capable of one and only one interpretation, it is not competent to the Court/Judge to modify the language of the statute in order to bring to it in accordance with his own views as to what is right and reasonable. In other words, Literal Interpretation warrants that the Judge should not go beyond the letters of the law (*Litera Legis*). The whole task before the Court is to gather the intention of the Legislature and this intention should be gathered only from the words they have used. The Court should not add anything to it on the ground that the true “*Sententia Legis*” is not completely or correctly expressed in the words. This principle was recognized by the Roman Jurists also. ‘PAULUS’ wrote—QUUM IN VERBIS NULLA AMBIGUITA EST NON DEBIT ADMIT VOLUNTATION QUAESTA.

—When there is no ambiguity in the words, the question of intention ought not to be admitted.

—There is no ambiguity in the verbatim of Section 498-A of Indian Penal Code, 1860 and Section 2 (Definition of Dowry) of Dowry Prohibition Act, 1961.

Suppose if the complaint of the *de facto* complainant (Victim/Wife or some any other person on her behalf) or First Information Report or Statements of List of witnesses recorded under Section 161, Criminal Procedure Code, by the Probing Agency, during the course of the investigation, or the charge-sheet/Final Report filed by the police, are comprising mere allegation about giving of MONEY to the accused at the time of the performance of the marriage and allegation regarding demand of additional MONEY subsequent to the performance of the marriage and there is no allegation against the accused persons with regard to demand of any specific (Land, House, Car *etc.*) property or subjecting the wife to cruelty, then what is the fate of the prosecution? Whether the prosecution will succeed in convicting the accused?, this is a question of law to be decided by the Court of law, so far as my knowledge is concerned that the prosecution absolutely will not succeed?, why because Section 498-A, Indian Penal Code, 1860 and Section 2 (Definition of Dowry) of the Dowry Prohibition Act, 1961 are containing only *the* phraseology, *unlawful demand for any property or valuable security*, as I have already discussed *supra*, in the light of the statutory provisions in this aspect, the money is not at all property and does not covering under the definitions of Section 498-A, Indian Penal Code, 1860 or under Section 2 (Definition of Dowry) of the Dowry of the Dowry Prohibition Act, 1961.

But the Hon’ble Courts of law are convicting the accused, interpreting the MONEY is also PROPERTY.

But so far as my knowledge is concerned that, there are no direct verdicts of the Hon’ble Constitutional/apex Courts of Law,

regarding the concept of “MONEY IS NOT AT ALL PROPERTY”.

Suppose if the constitutional Court pass the judgment, wrongly interpreting the provisions of the Act/Enactment/Legislation/ Statute and subsequently nobody challenges the same, can the same operates as PRECEDENT.

Views are expected from the legal

fraternity and from legal luminaries/jurists (Both Bench and BAR) in this regard.

I am learner and expressed mere my opinions and I have no intention to criticize the Hon'ble Courts of law, and the process of administration of justice.

(If any errors crept in the above discussion, please bring to my notice as to rectify myself and don't hesitate to make a call to me).

## UNIVERSAL DECLARATION OF HUMAN RIGHTS

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The Universal declaration of Human Rights was adopted by United Nations General Assembly in 1948 and modified further in 1966 and 1976. The international Bill of Human Rights is a mile stone in the history of Human Rights.

The Universal Declaration confirmed the basic principles of Human Rights in specific manner. It covered not only civil and political rights, but with social and economic rights also.

The declaration consists of a preamble and 30 Articles. The provisions are classified into four categories:

- (1) General (Articles 1 and 2)
- (2) Civil and Political Rights (Articles 3 to 21)
- (3) Economic, Social and Cultural Rights (Articles 22 to 28)
- (4) Concluding Articles (29 to 30)

**1. GENERAL :** Articles 1 and 2 of the declaration relate to the brotherhood and impartial treatment. Article 1 declares that all human beings are born free and equal in dignity and rights. Article 2 ensures No

discrimination on the ground of race, colour, sex language religion *etc.*,

**2. Civil and Political Rights:** Articles 3 to 21 relates to civil and political Rights, such as Right to life and liberty (Article 3)

- Prohibition of Slavery and
- Slavery trade (Article 4)
- Prohibition of torture and
- Inhuman treatment (Article 5)
- Rights to Equality before Law and Legal Remedies (Articles 6 to 11)
- Right to freedom of movement to leave any country and return to his country (Article 13)
- Right to Privacy (Article 12)
- Right to seek Asylum (Article 14)
- Right to Nationality (Article 15)
- Right to Marriage (Article 16)
- Right to Own Property (Article 17)
- Right to freedom of thought, conscience and Religion (Article 18)