As a matter of fact, the judgments of today are different in many and every aspect of yester years judgment. Advocates who were in real sense leader of the Bar in professional excellence were disturbed and persuaded to accept to adorn the Bench. During their tenure as an Advocate they aspire for a legal perfection by laying their hand on Halsburys Laws of England, *Corpus Juris Secundum* and Treatise on various Laws by English and American Authors like *Lindleys*, *Austin* and several others apart from knowledge of Law Lexion basing upon which they use to formulate Point of Law. The facts pertaining to the case and the issues involved and concluded were to be on their fingertips. Equally so the Bench adorn by such Advocates as Judges in their own right with an open mind and a clear legal vision express their opinion in a form of judgment with perfection to hold good as a Law of the Land based upon wisdom in separating chaff from the grain. Neither such Bar nor such Bench is within the sight in the present days. There is no pick and chose now but only a promotion of the Juniors attached to the chambers of the then Advocates who have become a Judge, and only those Advocates who served the politician outside the arena of Courts and those who are nearest and dearest to the class of people who yields extraordinary power - otherwise known as extra constitutional power of influence. The present judgments are as could be seen so voluminous that all the cases referred for and against find place virtually appearing like a complication of all the judgments on the earth. In the concluding para it ends as "It is HELD" therefore "I HOLD". In other words the judgments are "HELD" and "HOLD" judgments. If that be the case, a Senior Advocate could do better if not worst if their services are utilized and appointed them as Chairman of Tribunals. One Man Commission Arbitrators and so on. By appointing Senior Advocates, the work of Court will not suffer for want of Judges. Equally so the greatest human weakness otherwise known as desire to attach themselves to the various Forums by the Judiciary after retirement will vanish. In other words if it is not a feasible proposition to utilize the services of Senior Advocates the distinction conferred on some Advocates as Senior Advocates leaving behind the others as ordinary Advocates is a classification without reason and purpose to achieve. In fine either hold them (Senior Advocates) as distinct as they should by utilising their services or remove such distinction which serves neither any purpose nor does it contribute efficiency either among the Advocates or the legal profession.

SEEKING A NEW PARADIGM FOR VICTIMS SAKE

By

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We see a problem only in the way we wanted to see it. We are bound to see a problem in the way our mind is conditioned to think. The orientation of the adjective law, so far as crimes and criminals is concerned, is accused oriented and therefore it is presumed that accused is innocent until his guilt is proved. To prove the guilt, it is not enough to produce evidence in abundance. The evidence must be adduced in the manner that is provided in the Code of Criminal Procedure. Though it is well-

known that the procedure is only a handmaid to establish the substantive rights and procedure shall not be interpreted to hamper rendering substantial justice, we reached a paradoxical stage where procedure is given precedence over the substantive rights. In the process we have, momentarily, forgotten that realisation of justice is the basic function of law and the justice system shall strive to achieve justice. The criminal justice paradigm is accused oriented. A new paradigm of thought which is victim oriented is more desirable for vindication of justice. In the present humble endeavour I shall try to display the troubles and travails of a married woman in the present criminal justice system more particularly within the context of Section 198 Cr.PC. and urge for a paradigm shift to alleviate the misery and to realise real justice.

Poverty is a prominent feature of Indian society. 36% of population is below the poverty line. Even those above the poverty line find it difficult to mobilise financial resources to fight a cause for justice. Seeking justice through a Court of law has become a luxury since one has to spend huge amount of money in this venture. It is a matter of some solace for the victims of any crime that the State takes up their cause and investigates into it and procures evidence and adduces it in the Court of law to prove the guilt of the law violator. The victim, theoritically, can sit back cool at home and need not spend either money or energy to prove the guilt of the accused. They philosophy behind state prosecution for crimes is that crime is an attrocity not only against the individual but also against the entire society. Any one can report a crime to the police and on such report, the police swings into action. However all is not well as there are certain limitations to the said principle. One such limitation is in Section 198 Cr.PC.

For a long time matrimonial violence is a neglected area for law makers. Long drawn battles of social activists, academicians resulted in Section 498-A (brought under Criminal Law second Amendment Act, 1983), Section 304-B (brought by Act 43 of 1986 *i.e.,* Dowry Prohibition Amendment Act, 1986) being brought into Indian Penal Code, 1860.

A man marrying another woman while his wife is living is bigamy and he is punishable under Section 494 IPC. In many cases the rift between spouses sprout from the time of entrance of another woman into the life of the man. A protest from the first wife will invite physical abuse. The husband finds several excuses for his deviance. He counts his wife in terms of money and harasses her for not bringing enough wealth with her. He hurts her mentally and physically. He brings the new lady and says that he gets peace with her. Any revolt of the first wife is brutally handled by physical abuse. First wife aloofs herself or virtually she is driven out of the house. She is humiliated and is torn. In most of the cases she is illiterate, economically unsound and may not have any relative or a friend to support her. If she intends to wage a legal battle against her errant husband, she finds herself in some more trouble. If she comes to Court with her grievance, she has to prove it beyond all reasonable doubt. Since she alleges bigamous marriage of her husband, she has to prove that her husband underwent a marriage in accordance with all legal ceremonies. The pity is that even if the husbands admits of his second marriage, the law compels her to prove the second marriage and her evidence should show that the second marriage was performed after observing all the sastric ceremonies and customs-scribed rituals (1983 Cri.LJ 1719). It is not difficult to visualise the difficulties a destituted woman has to over come to prove the second marriage of her husband. For instance in a case where she lives in Andhra Pradesh and the husband got his second marriage performed at Bombay. The

husband being conscious of bigamous marriage might not have invited many to witness it and might have got married secretely. To prove such a marriage, the first wife has to go all the way to Bombay and work like a detective and collect oral and documentary evidence to establish her claim. How difficult it is for a common Indian woman to surmount the language baricade and the economic constraints in achieving her target. A woman in this country is without any power or money. To collect evidence, she requires certainly the assistance of others. this would add further financial burden to her as she has to maintain her assistant. Even if she goes to Bombay how many are there to help her cause and how many of them would come to Andhra Pradesh and depose in a Court of law in her favour. All these are not figments of any imagination but they are stark realities. If her trecherous husband denies his very marriage with his first wife, it would add further burden to her as she will have to prove even her marriage with her husband which would have taken place a long time ago. To find out what could be the appropriate evidence to prove her accusation, she undoubtedly needs legal help from a trained Advocate which means further dent on her purse. Yet, law contemplates her to do all this on her own. Why is that she has to do all this? What happened to police? Are police not created to investigate this crime, collect evidence and prove the accusation in the Court? It may be true that the police can do this in any other case but not in case of bigamy. The stumbling block is Section 198 Cr.PC. This provision mandates every Magistrate not to take cognizance of the offence under Section 494 IPC, except upon a complaint filed by the wife or certain other persons mentioned therein.

Detection of crime, collection of evidence, and production of witnesses and documents require a trained hand. Precisely police are made for it. Any grievance brought before a Magistrate straight away can be ordered to be dealt with by police under Section 156(3) Cr.PC under the direction of Magistrate. But in a case of Section 494 IPC the Magistrate is crippled in doing so. Any such reference under Section 156(3) Cr.PC by the Magistrate to the police is held invalid in State by S.H.O., *Byndoor Police Station v. Chandrakantha Mogera,* 2000 (1) ALT (Crl.) 113 (Karnataka High Court. If, for instance a Magistrate referred the case under Section 156(3) Cr.PC and the police investigated and challenged the accused and if the Magistrate took cognizance on such a police report, the very cognizance is vitiated as per the judgment in *Darla Sreenivas v. Darla Sridevi*, 1999 (2) ALD (Crl.) 951 = 2000 (1) ALT (Crl.) 265 (Andhra Pradesh High Court). If the Magistrate, oblivious of all these things, conducts trial, the entire trial is vitiated, as could be seen from the ratio laid down in *D. Vijaya Laxmi v. D. Sanjeeva Reddy*, 2000 (2) ALD (Crl.) 200 (Andhra Pradesh High Court) and *Deokabi v. Namdeo Dhoke,* 1995(1) ALT (Crl.) NRC 24 (Bombay High Court).

In the above referred cases, the allegations of the first wife against her husband are under Section 494 IPC as well as Section 498-A IPC. Though the prohibition of Section 198 Cr.PC is applicable only for the offence under Section 494 IPC and not applicable to Section 498-A IPC the law Courts took the above stand, years elapsed in the legal battle and the destitute first wife who was already torn found her case in shambles. For her to start the litigation afresh is physically and financially very daunting. Her face is wan and lined by years of stress and she feels justice is a mirage and is caught up in the legal cobweb. Is there no way out for her malady? There is, if the legal minds wish to think different. The difficulty is always with orientation and perception. Volumes

of literature was written and rewritten on the accused and his rights. Plethora of precedent came out from law Courts rescuing the accused on finding any lapse in observations of his procedural rights. Innovative life is given to the "Right to life" enshrined in Article 21 of the Constitution. This accused biased adversarial system tends to uphold his case perhaps much to the chagrin of the victims. Very little is thought about victim. The reorientation of our perception of crime and society would enable us to perceive things differently and pursue the cause deliberately to render substantial justice to the victim and thereby to the society. In the present context let us examine the very law that is available to find out a way out from the shackles of Section 198 Cr.PC.

In a similar set of circumstances in a case where a destitute first wife lodged a written information with police accusing her husband under Sections 498-A IPC and 494 IPC. Police investigated and filed a charge-sheet. The learned Magistrate framed charges. Challenging the legality of the procedure the husband moved the Honourable High Court of Orissa contending violation of Section 198 Cr.PC. It was found favour with. Challenging that the State moved the Honourable Supreme Court of India. Their Lordships of the Apex Court held that Section 198 Cr.PC. is no obstacle since one of the offences alleged by the wife is under Section 498-A IPC and therefore there is no bar of Section 198 Cr.PC for the Magistrate to take cognizance of offences under Sections 498-A and 494 IPC on the basis of police report and to proceed further. Thus the view adopted by the Apex Court is against the stand taken by various High Courts. Going by this principle, there is no bar for the Magistrate under Section 198 Cr.PC to proceed on a police report, when the case is under Sections 498-A and 494 IPC. Be that as it may.

In Chapter XXXV Section 460 Cr.PC is kept mandating irregularities which do not vitiate proceedings. Clause (e) says that even if there is irregularity in taking cognizance of an offence under clause (a) or clause (b) of sub-section (1) of Section 190 of Cr.PC erroneously, the proceedings shall not be set aside merely on the ground of not being so empowered. A Magistrate takes cognizance on a private complaint as per sub-clause (a) of clause (1) of Section 190 Cr.PC. He takes cognizance on a police report under sub-clause (b) of clause (1) of Section 190 Cr.PC. Reading of Section 460 Cr.PC tends to give an impression that any cognizance taken by a Magistrate on a police report instead of on a complaint by itself cannot be condemned as a grave illegality since the legislative wisdom in Section 460 Cr.PC treats it as something of no legal significance. Even the spirit of Section 465 Cr.PC, which is a part of Chapter XXXV Cr.PC, shows that certain irregularities cannot be a ground for vitiating the criminal proceedings unless it is shown that failure of justice occasioned due to such irregularities. Even "Failure of justice" mentioned in Section 465 Cr.PC is to be determined in each case based on the facts and circumstances of that case (*vide CBI v. V.K.Sehgal,* 2000 (1) ALT (Crl.) 1 SC). In most of the cases there could possibly no prejudice that could have been caused to the accused or any miscarriage of justice could have occured merely because a case is tried on a police report, instead of on a private complaint. The fact remains that either in a private prosecution or in a State prosecution initiated at the request of a destitute wife, her evidence on oath remains the same. The difference between the two kinds of prosecution lies in the procedural steps only. The procedural steps by themselves do not contain nay moral virtue and confer any inalianable rights on the accused. Be that as it may.

Section 198(1) Cr.PC says that cognizance shall be taken only upon a

complaint made by the person aggrieved by the offence. The word 'complaint' used therein is always understood to mean only as defined in Section 2 clause (d) Cr.PC. When so considered, it goes to show that an offence under Section 494 IPC can be taken cognizance of only on such a private complaint. At this juncture it may be recalled that Section 2 Cr.PC opens with a concessional clause that if context otherwise requires the definition contained in Section 2(d) can be ignored. Taking cue from this, it was held that the word 'complaint' used in Section 198 Cr.PC does not connote the meaning assigned to it under Section 2 clause (d) Cr.PC and it has been used in the ordinary sense of the terms *i.e.,* the expression of grief, statement of injury suffered by the victim. It was further held that it is easy for a house-wife to lodge a report at the police station and leave the investigation to the police rather than to file a written complaint. It was also held in the judgment that the Legislature do not appear to have thought anything otherwise than what was held above. This new air of thought came from the Honourable Allahabad High Court in *Mahendra Kumar Jain v. State of U.P.,* 1998 Crl.LJ 544. Whether the destitute first wife files a complaint in the Court or lodges a written information with the police or the complaint filed by her is referred to the police under Section 156(3) Cr.PC by the Magistrate, all this is only with reference to her grievance. In which way her grievance can be taken cognizance of is circumscribed by Section 198 Cr.PC. The judgment just referred seeks sans of these legal nonsenses and wants to address her problems for the sake of justice.

The cordinal principle of interpretation is that Law must change with the changing society, keeping in view various problems facing the society from time to time. Interpretation must keep pace with the new developments in the society and it must be in that time frame. While a paradigm which is victim oriented could certainly change the legal scene; the permanent panacea lies with the legislative amendment to Section 198 Cr.PC in a manner that is more suited to the contemporary needs in the society. Triumph of justice being the motto of law hoping for a change is not a hope against hope.

POWERS OF JUDICIAL MAGISTRATES TO ORDER INVESTIGATION AND TAKING COGNIZANCE IN PREVENTION OF CORRUPTION ACT AND OTHER ACTS

By

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I like to discuss the scope and object of the prevention of Corruption Act, 49 of 1988 and the Powers of Judicial Magistrates in ordering Investigation and taking cognizance of the offences under the Act. The P.C. Act, 88 was enacted with the objects and reasons to make the existing Anti-Corruption Law more effective by widening their coverage and by strengthening the provisions. The long title of the PC Act reads as follows :

> "An Act to consolidate and amend the law relating to the law prevention of corruption and for matters connected therewith".