

Misuse of Anti Dowry Laws - The other side of the coin

"A happy marriage is a harbour in the tempest of life, an unhappy marriage is a tempest in the harbour of life"

Dowry is one of the biggest social evils facing our country, and no civilized society should tolerate this, and every effort should be made to eradicate this evil, people giving and demanding dowry should be punished severely, But other side of the coin, often unlooked upon should not be ignored. And this side of the coin – is the misuse of these provisions by some unscrupulous wives to wreak havoc on husband and family.

In recent years the criminal law of the land have undergone radical changes to provide protection to women, more teeth have been provided to existing laws (DP Act, 498A, 406 IPC etc) and new enactments have been made (DV Act), but unfortunately the remedy is becoming worse than the ailment, which is now a well known fact as the stringent dowry laws have failed to stop the gruesome crimes for dowry/dowry deaths.

These laws which have been proved to be highly unsuccessful (as evident from the low conviction rate) and far from what the law makers desired it to be, are now being misused by some urban women for ulterior motives.

The heinous nature of these laws (498-a, 406) does nothing but to help the unlawful implementation. As these laws are non compoundable & non bailable, the chances of reconciliation between the spouses after litigation are next to nil.

The biased nature of this laws is evident from that fact that unlike almost all laws in INDIA the burden to prove innocence lies on the accused.....this means as soon as the complaint is made..whichever persons are named in the complaint are accused in the eyes of law, Isn't this verdict before trial, now lets embark upon what Section 498 A is :

Section 498a of the IPC is a criminal law in which the wife and her parental family can charge any or all of the husband's family of physical or mental cruelty.

This law is unique to India, it not only discriminates based on gender (man Vs. woman), but also discriminates against women based on their relationship with the husband.

Typically, the charged family members in these cases include:

- Mostly women of all ages (unmarried, married sisters of the husband, his mother and sisters-in-law, elderly grandmothers and aunts)
- Other maternal and paternal relatives and even young children in the family.

For every complaint filed by a woman, there are at least twice as many or more women are accused although the married couple may have never lived with any of the people mentioned in the criminal complaint.

Characteristics of 498-a, Indian Penal Code.

IPC-498a is

- Cognizable – The accused can be arrested and jailed without warrant or investigation
- Non-Compoundable – The complaint cannot be withdrawn by the petitioner (chances of living together again are lost)
- Non-Bailable – The accused must appear in the court to request bail

On a single complaint of the wife, the husband and his entire family can be packed off to behind the bars, with an estimated 40,000 such accusations per year and an average of 5 members of the husband's family implicated in each of these 498-a cases, about 200,000/- people are directly affected by these cases.

Hon'ble Supreme Court and various High Courts have time & again showed concern over this growing menace by observing that "By misuse of the provision (IPC 498a - Dowry and Cruelty Law) a new legal terrorism can be unleashed. The provision is intended to be used a shield and not an assassin's weapon... says the Hon'ble Supreme Court. Merely because the provision is declared constitutional, it does not give licence to unscrupulous persons to wreak personal vendetta [1]

The judicial recognition of blatant misuse of these laws is not anew, way back in 1987, The Hon'ble Court In **BALBIR SINGH VS. THE STATE OF PUNJAB** [2] observed :

"Though the amendments introduced in the penal code are with the laudable object of eradicating the evil of Dowry, such provisions cannot be allowed to be misused by the parents and the relatives of a psychopath wife who may have chosen to end her life for reason which may be many other than cruelty. The glaring reality cannot be ignored that the ugly trend of false implications in view to harass and blackmail an innocent spouse and his relatives, i.e. fast emerging. IT IS THE TIME TO STOP THIS UNHEALTHY TREND WHICH RESULTS IN UNNECESSARY MISERY AND TORTURE TO NUMEROUS EFFECTED PERSONS."

Justice J.D.Kapoor (Delhi High Court) said in his order passed on 30th May, 2003 [3]

" I feel constrained to comment upon the misuse of the provisions (of law) to such an extent that it is hitting at the foundation of marriage itself and has proved to be not so good for the health of the society at large."

"There is a growing tendency to come out with inflated and exaggerated allegations, roping in each and every relation of the husband.

In **Jasbir Kaur v/s State of Haryana**[4] : the Punjab & Haryana high Court rightly observed that an estranged wife will go to any extent to rope in as many relatives of the husband as possible in a desperate effort to salvage whatever remains on an estranged marriage.

In **Kanaraj vs. State of Punjab** [5] the Hon'ble Apex Court observed:

"for the fault of the husband the in-laws or other relatives cannot in all cases be held to be involved. The acts attributed to such persons have to be proved beyond reasonable doubt and they cannot be held responsible by mere conjectures and implications. The tendency to rope in relatives of the husband as accused has to be curbed"

Karnataka High Court, in the case of **State Vs. Srikanth** [6] observed "Roping in of the whole of the family including brothers and sisters-in-law has to be depreciated unless there is a specific material against these persons, it is down right on the part of the police to include the whole of the family as accused"

The Hon'ble Supreme Court, In **Mohd. Hoshan vs. State of A.P.** [7], observed "Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusation or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of the sensitivity, degree of courage and endurance to withstand such cruelty. Each case has to be decided on its own facts whether mental cruelty is made out"

Delhi high Court, in **Savitri Devi vs. Ramesh Chand** [8], categorically stated "These provisions were though made with good intentions but the implementation has left a very bad taste and the move has been counter productive. There is a growing tendency amongst the women which is further perpetuated by their parents and relatives to rope in each and every relative including minors and even school going kids nearer or distant relatives and in some cases against every person of the family of the husband whether living away or in other town or abroad and married, unmarried sisters, sisters-in-law, unmarried brothers, married uncles and in some cases grand parents or as many as 10 or 15 or even more relatives of the husband."

Punjab and Haryana High Court, in **Bhupinder Kaur and others vs. State of Punjab and others**[9], held :
“From the reading of the FIR, it is evident that there is no specific allegation of any act against petitioners Nos.2 and 3, which constitute offence under s.498-A I.P.C. I am satisfied that these two persons have been falsely implicated in the present case, who were minors at the time of marriage and even at the time of lodging the present FIR. Neither of these two persons was alleged to have been entrusted with any dowry article nor they alleged to have ever demanded any dowry article. No specific allegation of demand of dowry, harassment and beating given to the complainant by the two accused has been made. The allegations made are vague and general. Moreover, it cannot be ignored that every member of the family of the husband has been implicated in the case. The initiation of criminal proceedings against them in the present case is clearly an abuse of the process of law”

The Hon'ble Supreme Court, in a relatively recent case, **Sushil Kumar Sharma vs. Union of India and others**[10]

“The object of the provision is prevention of the dowry menace. But as has been rightly contented by the petitioner that many instances have come to light where the complaints are not bonafide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing framework.

But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not an assassin's weapon. If cry of “wolf” is made too often as a prank assistance and protection may not be available when the actual “wolf” appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre-conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.”

Justice Malimath Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs, 2003 observed the following and gave the recommendation to amend the law immediately:
“16.4.4 In less tolerant 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, if the husband cannot pay. She may change her mind and get into the mood to forget and forgive. The husband may realize the mistakes committed and come forward to turn 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 can not do so as the offence is non compoundable. The doors for returning to family life stand closed. She is thus left at the mercy of her natal family.

It is pertinent to note here that, the real sufferers of the evil of dowry, the rural Indian women are not even sensitized about their rights, and fail to make use of these laws.

But Some Indian Urban educated women have turned the tables and are using these laws as weapon to unleash personal vendetta on their husbands and innocent relatives.

Despite the various guidelines/recommendations of the Supreme Court of India and Justice Malimath Committee that the working of these laws should be reviewed and reformed with change in time, so that innocents are protected, and false complaints made with malafide intention are not registered, the suggested amendment to the law has been largely ignored. Unconstrained, this social evil is threatening the foundation of the Indian Family system. Feminists are now demanding even more teeth to the existing women laws, and more & more laws are being enacted for women. But the real sufferers are not sensitized enough to make use of these laws, and these laws are getting misused in the hands of some clever Indian wives.

The latest addition in a women's legal artillery is The Protection of Women from Domestic Violence Act – This law is absolutely pro-women and anti-men, this law assumes every man as a virtual torturer” and considers only women as victims. This law is highly vague, and speaks of verbal/economical & emotional abuse, which are impossible to quantify & ascertain. Many husbands and their family members, falsely implicated in these cases have committed suicide after being jailed, unable to bear the social trauma.

Nearly 44.7% of the suicide victims were married males while only 25% were married females. This clearly shows the ratio of victims of domestic violence and gender abuse.[11]

It is high time for law makers/law enforcing agencies/judges to pay heed and review these laws in public interest to check the growing misuse of these laws to ensure impartial justice and to protect the pious and sacred institution of marriage.

Note: We are a group of law students from universities across India, working to provide free legal assistance to the weaker sections of the society, The related information is now available at :

www.lawstudentscollective.blog.com

[1] <http://www.hindu.com/2005/07/22/stories/2005072202631500.htm>

[2] 1987 (1) CRIMES - 76.

[3] (20 May 2003)

[4] (1990)2 Rec Cri R 243

[5] 2000 CriLJ 2993

[6] 2002 CriLJ 3605

[7] 2002 CriLJ 4124

[8] 2003 CriLJ 2759

[9] 2003 CriLJ 3394

[10]JT 2005(6) 266

[11] Source: <http://ncrb.nic.in/ADSI-03.pdf>