



Case Report

Domestic violence: An overview of Sec 498A IPC- A case report

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ABSTRACT

Domestic violence is violence or some form of abuse including mental, physical and sexual abuse in a domestic setting, such as in marriage or cohabitation also commonly known as intimate partner violence. It is a common occurrence throughout the world but in India, it is prevalent here as the issues of dowry, male dominance and living in joint family set ups are the norm here. Therefore, these factors play an additional role in making the women, victims of domestic violence. Not only do the women suffer violence from the husband but also from the family members of the husband specially when the issue is of dowry whether lack of it or an unsatisfactory amount. The statistics do not show the correct picture as things are not reported often due to social stigma attached with it and the whole Indian mentality of worrying about other peoples' opinion. Most of the time, only way the issue reaches the police and courts of law are when either the victim dies due to the injuries, commits suicide or reaches the hospital for treatment. Otherwise the milder forms of abuse are mostly kept well hidden.

Prior to 1983, there was no provision in Indian legislation to deal with specifically with domestic violence. When the Indian Penal Code (45 of 1860), was amended in 1983, Section 498A was inserted. Section 498A deals with 'Matrimonial Cruelty' perpetrated on a woman. Matrimonial Cruelty in India has now been made a cognizable, Non- bailable and Non-Compoundable offence.

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1. Introduction

The declaration on the elimination of violence against women defines "violence against women" as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life."¹

A subset of violence against women, is domestic violence, defined as "violent or aggressive behaviour within the home, typically involving the violent abuse of a spouse or partner".² It is prevalent in India, as the Indian society is well defined by certain norms and practices that might be considered regressive.

The dowry system is a glaring example of such a regressive practice and considered one of the root causes of domestic violence in India. The dictionary definition of dowry being "an amount of property or money brought by a bride to her husband on their marriage".³ In India, the whole concept of a successful marriage is often defined by the amount of dowry the bride brings. If the bride's family is unable to fulfil this demand then the whole cycle of demand for additional dowry and domestic violence ensues. Regular beatings, deprivation of basic needs, emotional abuse like continuous demands for dowry, insults to the women and her family, the cycle keeps on increasing. In most of the instances, the victim keeps quiet in order to avoid emotional and financial distress to her family, her inability to stand up for herself, financial dependence, lack of education and knowledge of her rights and fear of social stigma. Often, the only way these cases reach the police or court of law is when either the victim dies due to the injuries, commits suicide or

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reaches the hospital for treatment.

Though this system of demand for dowry and domestic violence associated with it, is an age old practice yet prior to 1983, there was no provision in Indian legislation to deal with it specifically. When the Indian Penal Code (45 of 1860), was amended in 1983, Section 498A was inserted which deals with 'Matrimonial Cruelty' and is defined as "Husband or relative of husband of a woman subjecting her to cruelty". Matrimonial cruelty has now been made a cognizable, non-bailable and non-compoundable offence.⁴

2. Case Details

The case was of a 29-year-old female in an arranged marriage with demands for additional dowry. She was beaten up regularly by her husband and FIL. Following the beatings, she began to have some neurological problems. When she became pregnant with a female child (sex determination was done illegally) her in-laws and husband pressurized her to abort it, which she refused and was allegedly administered some unknown substance/poison by her MIL.

During this time there were she mentioned 2 specific episodes of violence by her husband and FIL when she was hit on the neck with danda and belt following which her condition start deteriorating. She was taken to a local hospital who referred her to Neurology Department of AIIMS. During her treatment she was put on ventilator and kept in ICU for 2 months.

She alleges that even while admitted, she was subjected to multiple episodes of violence by her husband and FIL who threatened to remove the ventilator if her father didn't pay additional dowry.

She was discharged after 6 months with following diagnosis: LMN Quadriplegia with diaphragmatic weakness and ventilator dependence. She was not taken care of properly in her in laws house, so she went back to her own home and currently she is bedridden on ventilator and residing at her parents' house.

She has lodged an FIR with the police alleging domestic violence and torture with demands for additional dowry.

A medical board of doctors was formed to opine whether her condition was a result of physical violence meted out her. Her treatment papers were reviewed, and in view of unknown substance administered to the victim, samples were collected for toxicological analysis.

At the time this case report was written, the case was still under investigation and deliberation by the board.

3. Discussion

The case discussed shows that the topic of dowry remains closely associated with perpetration of domestic violence over women. Under the Indian Law, the factor "beyond reasonable doubt" forms the basis of prosecution against all

crime and in cases of domestic violence, the violence occurs within the four wall of the marital home, proving her case in front of the Court of Law proves exceedingly difficult for the victim.

A study by Leela Visaria – "Violence against Women in India: Evidence from Rural Gujarat" showed that two-thirds of the married women out of the 450 surveyed, reported some form of psychological, physical, or sexual abuse. Of the total sample, 42 percent experience physical beatings or sexual assault. An additional 23 percent suffer abusive language, belittlement, and threats. About 36-38 percent of women in a Tamil Nadu study and 42-48 percent of women in an Uttar Pradesh study reported violence.⁵

According to the NCRB data, domestic violence figures at the top in violence against women in 2018. Majority of cases under crimes against women, out of total IPC crimes against women were registered under 'Cruelty by Husband or His Relatives' (31.9%). The crime rate per lakh women population is 58.8 in 2018 in comparison with 57.9 in 2017.⁶

Total no of cases registered under Cruelty by Husband or his relatives (Sec. 498 A IPC) was 104165 in 2018 all over India while those registered under Dowry Deaths (Sec. 304B IPC) was 7277 and under Abetment to Suicide of Women (Sec. 305/306 IPC) was 5266.⁶

Kimuna et al. have published domestic violence trends in India, based on the 2005–2006 India National Family Health Survey-III (NFHS-III) data on the 69,484 married women of ages from 15 to 49 from all regions of India. They report 31% of respondents had experienced minor to major form of physical violence in the 12 months prior to the survey, while the domestic sexual violence prevalence rate experienced by the woman was about 8%. Women who lived in cities, had higher household wealth, were Christian and educated had significantly lower risk of physical and sexual domestic violence. In contrast, wives of men who drank alcohol had significantly higher risks of experiencing both physical and sexual violence.^{7,8}

A 1999 study published by the American Journal of Epidemiology identified so-called "stress factors" that are critical to understanding varying rates of domestic violence. These stress-related factor include low educational levels, poverty, young age at time of marriage, having multiple children, socioeconomic class, educational level of both victim and perpetrators, and family structure.⁹

The Indian legal system has formed Section 498A of Indian Penal Code according to the Criminal Law (Second Amendment) Act, 1983 (46 of 1983), specially for dealing with domestic violence. 498A IPC states¹⁰- "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.

Sec 498A IPC is cognizable, non compoundable and non bailable.

One more safeguard that the Indian Law has added in order to protect women from domestic violence is the provision of Indian Penal Code (45 of 1860) Amendment Act, 1986 whereby Section 304B has been added to the Indian Penal Code which addresses dowry death.

Even though the law provides for the security of women, yet there is a big loophole; a lack of awareness in the victims, most of whom do not know that they have the option to approach the law.

4. Conclusion

The act of domestic violence towards women is a human rights violation as well as an illegal act under Indian law which has been formulated to ensure that all its citizens are provided safety and security to live a life of freedom, dignity and respect. Article 15 of the Constitution of India and International Conventions like Convention for Elimination of all forms of Discrimination against Women (CEDAW), which India has ratified recognized the unequal status of women and therefore made special provisions for women to address this inequality. Sections 498A, 304B Dowry Prohibition Act (DPA), Protection of Women against Domestic Violence particularly within the institution of marriage and family.¹⁰

The existing hesitancy amongst the victims of domestic violence to turn to law for such crimes is slowly changing. Domestic violence was often not handled as a legitimate crime instead as a family matter while negating the rights of women as citizens. But now even this trend is changing.

With increasing awareness for Section 498A, there may not be decrease in the number of cases of domestic violence but the reporting and action taken against the perpetrators will hopefully increase.

5. Source of Funding

None.

6. Conflict of Interest

None.

References

1. United Nations - Human Rights; Office of the High Commander - Violence against women. Available from: <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/VAW.aspx>.
2. Available from: https://www.lexico.com/definition/domestic_violence.
3. Available from: <https://www.lexico.com/en/definition/dowry>.
4. Varsha. Bnnlegalcom. Available from: <https://bnblegal.com/article/498a-use-and-misuse/>.
5. Viseria L, Mitra N, Poonacha V, Pandey D. Domestic Violence in India A Summary Report of Three Studies. International Center for Research on Women Washington, DC. Washington, DC; 1999. Available from: <https://www.icrw.org/wp-content/uploads/2016/10/Domestic-Violence-in-India-1-Summary-Report-of-Three-Studies.pdf>.
6. NCRB Data – Crime in India -2018 . Available from: <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf>.
7. Kimuna S, Djamba YK, Ciciurkaite G, Cherukuri S. Domestic violence in India: insights from the 2005-2006 national family health survey. *J Interpers Violence*. 2013;28(4):773–807.
8. Available from: <https://indiankanoon.org/doc/538436>.
9. Choudhary R, Kaithwas M, Rana G. Domestic Violence against Women's in India A study. *PANACEA Int Res J*. 2014;1:49–55.
10. Panda P. Constitutional Validity of Section 498A of IPC. *Indian J Appl Res*. 2016;6(3):143–5.

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