



## Doing Violence To Justice

## Society

When amendments related to law are made with the aim of providing justice to women who are victims of domestic violence, it is reasonable to expect that the law be implemented in its true spirit by lawyers, the investigating agencies and the courts.

However, this reasonable expectation has recently been shattered, and not for the first time. The judgement of the High Court of Delhi in the case of Savitri Vs Ramesh Chand has once again revealed the shortcomings of Section 498A of the Indian Penal Code.

In the early 1980s, amendments were passed to make certain forms of domestic violence criminal offences. While Section 304B of the Indian Penal Code (IPC) was incorporated to deal with murders of newly married-women, section 498A was added in the IPC to cater to women being ill-treated by the husband or his relatives for reasons linked to dowry or otherwise.

It is well settled that this law (498A) also covers mental cruelty, which has been recognized to cause far more injury to the health and well-being of a woman than physical battering. It is another story that establishing this aspect of domestic violence is a burdensome task because of the attitudes of our investigating agencies and the judiciary. The offence as of today is non-bailable and cognizable, and to be tried by a Magistrate of the First Class.

According to the petitioner (the woman) - in the case of Savitri Vs Ramesh Chand - all the members of her husband's family should have been subjected to trial under section 498A. Instead of simply dismissing the petition on its merits, the judge under "constraint" recommends that the law should be reviewed and the offence made bailable and compoundable. His reasoning: The law has been "abused unfortunately" by the investigating and prosecuting agencies and "exploited by the women and their relatives to such an extent that it has proven to be ineffective to curb dowry".

Making the offence compoundable implies that the complainant may withdraw her police complaint at any point of time. In the eyes of the judge, this might give the marriage another chance but it can, just as easily, make the woman even more vulnerable to exploitation in the given Indian context.

In a majority of the cases, a woman filing a petition would (along with her children), be financially dependent on her husband; and she would have approached the police/courts only because of unbearable violence. In all probability, and in most cases - assuming the offence were to be made compoundable - the husband and the woman's in-laws would offer reconciliation so that the woman withdraws the case. Again, given the Indian familial context, the woman is most likely to give in, but by doing so she would end up being far more vulnerable to cruelty and violence.

Since the effect of compounding an offence is that of acquittal, the perpetrators would also know that they cannot be tried again for the same offence. The most likely scenario would then be that the woman would be thrown out the house, left to her meager or nil resources to file claims for maintenance, alimony or custody of her children. If at all she is able to approach the criminal justice system again, her case would be dismissed, she would be regarded as a troublemaker who cannot make up her mind and whose only intention is to harass her husband and in-laws.

In consideration of the large number of women who suffer (and die from) dowry-related problems, there are several questions that need to be addressed. By making the offence less stringent, can the social problem be solved? Wouldn't bailing out the abuser and compounding the offence give more power to the police and the investigating agencies to further misuse the law? Is such a change likely to instill discipline or humane

considerations in the abusive husbands and their relatives? When stringent laws have not succeeded in preventing the social evil, what is the guarantee that diluting the law will act as magic?

The answer - from a practicing gender lawyer - is a resounding NO. Assuming for a moment (without accepting it), that 498A has been or is being misused, the larger issue is: which law is not being misused? And if all our laws are being used or misused, why a hue and cry only about 498A?

And then, who is responsible? The duty, and indeed the onus, of ensuring that the law is not misused is that of the investigating and prosecuting agencies, the lawyers and the courts. It should be considered that the woman who comes out for help does not know the intricacies of law.

There can be no doubt that this law has helped and given hope to millions of Indian women. Perhaps it is only now that women are learning to use the laws put in place for their protection. Where are the statistics and hard figures that show 498A is being misused? Which agency of the state has bothered to undertake such an exercise? Even if some "innocent" men have been roped in, what about the thousands (and may be more) of women who have died, and the cases in which the abusers have gone scot-free? On the contrary, there are several cases that show the abuser and the lawyer having either abused the woman in a way that no evidence is available in her support, or having manipulated evidence so that it goes against the woman.

The need at this stage is to focus on better implementation and to put things in the right perspective. Sensitivity is required to understand why a woman whose marriage has just broken because she has been battered physically, mentally or both, would want to rope in everyone that she can think of.

The judgement blames the woman for having sought redressal for her violations in law. The "rising divorce cases", the "social fabric" and "marriages dying in their infancy" are matters of concern for the judge at the cost of the rising dowry and harassment related murders of women!

The remark (in the judgement) that remarriage becomes difficult is unwarranted and mistaken. The underlying presumption is that marriage is the only option for every Indian woman.

The nature of the law - 498A being criminal - implies that it is not meant to confer rights but to define as offences, behavior that is socially reprehensible, and to impose punishment for such offences.

Legislation on domestic violence is critically important in addressing the problems and agonies faced by Indian women. Besides the fact that we need better and more effective laws and their right implementation, investigating agencies and the judiciary need to keep in step with the larger issue of women's rights.

While no one is against the "family or the institution of marriage", the ground reality is totally against the women of this country. For justice to be accessible to women, we need laws such as the civil law on domestic violence which has been proposed by the women's movement and accepted and recommended by the Parliamentary Standing Committee of the Human Resources Ministry of the Government of India.

— Leena Prasad  
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