

CRIMINAL LAW II	COURSE BA.LLB 5 <sup>TH</sup> SEMESTER
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## Death caused of a person other than the person intended, Section 301 IPC.

### (Principle of Transfer of Malice)

Section 301 reads as:

If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he never intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely cause.

Section 301 IPC embodies the principle of transfer of or transmigration of malice (motive).

As stated by the Supreme Court in *State of Maharashtra v. Kashirao(2003)* if killing takes place in the course of doing an act which a person intends or knows to be likely cause death, it ought to be treated as if the real intention of the killer had been actually carried out and he will be liable accordingly.

In the case of *Ballan v. State of U.P AIR 1955All 626* it was held that intention of causing death is sufficient to hold the person libel, irrespective of the fact who becomes the victim.

Similarly the doctrine of transfer of malice was applied in the case of *Gyanendra Kumar v . State of U.P AIR 1972SC 502*, in which a person interfering in a dispute was killed by a bullet aimed at another.

# Death due to rash and negligent act

**In this Lecture I have given the definition and scope of the term 'rash or negligent act' as has been interpreted by the Courts of law from time to time. A reading of this lecture will help a layman to get an overview of how an act will fall in the purview of rashness or negligence and attract criminal liability.**

## Introduction

A rash or negligent act causing death or grievous hurt is a punishable offence under the Indian Penal Code (IPC). Section 304-A and Section 338 of the IPC deals with rash or negligent act leading to death or grievous hurt respectively.

**304-A. Causing death by Negligence.** - Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**338. Causing grievous hurt by act endangering life or personal safety of others.** - Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

In order to convict a person under these provisions it must be proved by the prosecution that the rash or negligent act was the direct or proximate cause of death or grievous hurt.

To impose criminal liability under section 304-A, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that the act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans* (immediate or operating cause), it is not enough that it may have been the *causa sine qua non* (a necessary or inevitable cause). That is to say, there must be a direct nexus between the death of a person and the rash or negligent act of the accused.

The expression rash or negligent has not been defined as such but has acquired a definite comprehensible meaning because of its frequent interpretations by the Courts of law.

## Rashness

Any act done without due deliberation and caution and thereby is in all likelihood sufficient to run the risk of causing death or grievous hurt can be said to be rash. The criminality of an act of rashness lies in the commission of an act with recklessness or indifference to consequences. Criminal rashness has been interpreted to mean hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury or knowledge that it will probably be caused. Under the English law, rashness means recklessness.

It may be subjective or objective. In the subjective sense, it means deliberate or conscious taking of an unjustified risk which could be easily foreseen and in the circumstances of the case was unreasonable to take. In the objective sense, it almost amounts to negligence. In other words, rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not and often with the belief that the actor has taken sufficient precaution to prevent their happening.

The imputability arises from acting despite the consequences. Rashness can then, be said to mean doing an act without due care and caution and with the knowledge that such act might cause death or injury but without the intention to cause such death or injury.

## **Negligence**

The expression 'negligence' has been interpreted to mean an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. It involves blameworthy heedlessness on the part of the accused which a normal prudent man exercising reasonable care and caution ought to avoid.

Criminal negligence is the gross neglect and failure to exercise that reasonable and proper care and precaution to guard against injury, either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted.

The imputability in culpable negligence arises from the civic duty of circumspection, that is, when a person is acting without the consciousness that the illegal and mischievous act will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and, if he had, he would have had the said consciousness.

An explanation to the term 'contributory negligence' is required to get a complete picture of the topic. Contributory negligence means contribution to the negligence by the other party also. The doctrine of contributory negligence has no place in the indictment of criminal negligence. Merely by showing that the person who has been wronged was himself negligent does not absolve the accused from the consequences of his rash or negligent act.

In other words, such negligence on the part of the deceased or the injured which resulted in his

own death or grievous hurt, will not be available as a valid defence to the accused if the accused himself had done some act or omission which was rash or negligent and which contributed towards the death or the causing of grievous hurt.

### **Conclusion**

While appreciating the scope of the expression 'rash or negligent' it should be borne in mind that knowledge or intention to cause death or injury is not a mandatory requirement to attract criminal liability. It would be sufficient if the act of the accused was so rash or negligent that a prudent man could have anticipated the consequences.

Plz. refer the following case laws

Cherubin Gregory v. State of Bihar AIR 1964 SC 205

Juggan khan v. State of MP AIR 1965 SC 831.

Sayed Akbar v. State of Karnataka AIR 1979 SC1848

**Jacob Mathew v. State of Punjab (2005)6 SCC1 (Impt.)**

## Dowry death and Cruelty by husband and his relatives

Section 304B was inserted in IPC with effect from November 19, 1986 by the Dowry Prohibition (Amendment) Act, 1986 (for short, '(Amendment) Act, 1986'). Thereby substantive offence relating to 'dowry death' was introduced in the IPC. The provisions under section 304- B,IPC, are more stringent than that provided under section 498-A of the Penal Code. The offence is cognizable, non-bailable and triable by a Court of Session.

Section 304-B IPC reads as follows:

"304B. Dowry death.--(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purposes of this sub- section," dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961 ).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

For making out an offence of 'dowry death' under Section 304B, the following ingredients have to be proved by the prosecution:

(a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

(b) such death must have occurred within seven years of her marriage;

(c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(d) such cruelty or harassment must be in connection with the demand for dowry.

Pertinently, for the purposes of Section 304B IPC, 'dowry' has the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (for short, '1961 Act').

Section 2 of the 1961 Act defines 'Dowry' as follows:

"2. Definition of `dowry'.- "Dowry" means any property or valuable security given or agreed to be given either directly or indirectly--

(a) By one party to a marriage to the other party to the marriage; or

(b) 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, at or before or any time 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. However, customary payments and gifts are not dowry as held by Supreme Court on 31<sup>st</sup> Jan 2008.

Explanation I--.....(Omitted).

Explanation II--The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860)."

1961 Act was enacted to prohibit the giving or taking of `dowry' and for the protection of married woman against cruelty and violence in the matrimonial home by the husband and in-laws. The mere demand for `dowry' before marriage, at the time of marriage or any time after the marriage is an offence. 1961 Act has been amended by the Parliament on more than one occasion and by the (Amendment) Act, 1986, Parliament brought in stringent provisions and provided for offence relating to `dowry death'. The amendments became imperative as the dowry deaths continued to increase to disturbing proportions and the existing provisions in 1961 Act were found inadequate in dealing with the problems of dowry deaths. The definition of `dowry' reproduced above would show that the term is defined comprehensively to include properties of all sorts as it takes within its fold `any property or valuable security' given or agreed to be given in connection with marriage either directly or indirectly. In *S. Gopal Reddy v. State of A.P.*, the Supreme Court stated as follows :

“ The definition of the term `dowry' under Section 2 of the Act shows that any property or valuable security given or "agreed to be given" either directly or indirectly by one party to the marriage to the other party to the marriage "at or before or after the marriage" as a "consideration for the marriage of the said parties" would become `dowry' punishable under the Act. Property or valuable security so as to constitute `dowry' within the meaning of the Act must therefore be given or demanded "as consideration for the marriage".

The definition of the expression `dowry' contained in Section 2 of the Act cannot be confined merely to the `demand' of money, property or valuable security "made at or after the performance of marriage". The legislature has in its wisdom while providing for the definition of `dowry' emphasised that any money, property or valuable security given, as a consideration for marriage, "before, at or after" the marriage would be covered by the expression `dowry' and this

definition as contained in Section 2 has to be read wherever the expression 'dowry' occurs in the Act. Meaning of the expression 'dowry' as commonly used and understood is different than the peculiar definition thereof under the Act. Under Section 4 of the Act, mere demand of 'dowry' is sufficient to bring home the offence to an accused. Thus, any 'demand' of money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives or vice versa would fall within the mischief of 'dowry' under the Act where such demand is not properly referable to any legally recognised claim and is relatable only to the consideration of marriage. Marriage in this context would include a proposed marriage also more particularly where the non-fulfilment of the "demand of dowry" leads to the ugly consequence of the marriage not taking place at all. The expression 'dowry' under the Act must be interpreted in the sense which the statute wishes to attribute to it.....The definition given in the statute is the determinative factor. The Act is a piece of social legislation which aims to check the growing menace of the social evil of dowry and it makes punishable not only the actual receiving of dowry but also the very demand of dowry made before or at the time or after the marriage where such demand is referable to the consideration of marriage. Dowry as a quid pro quo for marriage is prohibited .....

While dealing with the term 'dowry' in Section 304B IPC, Supreme Court in the case of [Kamesh Panjiyar @ Kamlesh Panjiyar v. State of Bihar](#) held as under :

“ The word "dowry" in Section 304-B IPC has to be understood as it is defined in Section 2 of the Dowry Act. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third "at any time" after the marriage. The third occasion may appear to be unending period. But the crucial words are "in connection with the marriage of the said parties". As was observed in the said case "suicidal death" of a married woman within seven years of her marriage is covered by the expression "death of a woman is caused ... or occurs otherwise than under normal circumstances" as expressed in Section 304-B IPC."

In view of the nature of the dowry offences that are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence necessary for conviction is not easy to get. Accordingly, the Amendment Act 43 of 1986 has inserted section 113-B in the Evidence Act, 1872 to strengthen the prosecution hands by permitting a certain presumption to be raised if certain fundamental facts are established and the unfortunate incident of death has taken place “within seven years of marriage”.

Section 113-B of the Evidence Act states that if it is shown that soon before the death of a woman such woman has been subjected to cruelty or harassment for, or in connection with, any demand for dowry, **the court shall presume** that such person has caused the dowry death under Section 304-B of IPC. Thus as stated by S.C in *Satbir Singh v. State of Haryana* AIR 2005SC 3546, once the prosecution is able to establish the ingredients of dowry death under section 304-B, IPC, the burden of proof of innocence shifts on defence.

**CRUELTY:-**

The meaning of cruelty for the purpose of section 304B has to be gathered from the language as found in section 498A, IPC and as per Explanation clause of that 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 etc., or harassment to coerce her or any other person related to her to meet demand. Cruelty includes both physical and mental torture. Cruelty and harassment in connection with dowry demand, as stated by the Apex Court in Pawan Kumar v. State of Haryana AIR 1998 SC958 is proved when demand for scooter and fridge, made soon after the marriage by the husband and his relatives. The deceased's failure to meet the demand leading to repeated taunts and maltreatment. Quarrel taking place between husband and deceased, regretting that it would be difficult to see her face in future, are clear proof of cruelty and maltreatment by husband and family members. The accused was accordingly held liable under Section 304-B of IPC.



## **Cruelty by husband or relatives of husband: Section 498-A IPC**

### **Introduction:**

The issue of women's rights and family law reform has been increasingly entangled within the polemics of politics and minority rights. It is true that the hardships and sufferings experienced by woman of all communities, minority as well as majority, cannot be overlooked with the help of persuasive or effective freedom of religion. The life of an average Hindu woman has always been difficult and pitiable due to existing social customs and practices of time.

**Indian Penal Code, 1860**, refers to 'cruelty by husband or relatives of husband' and includes section 498-A.

that whoever being the husband or relative of the husband of woman, subjects such woman to cruelty shall be punished with the imprisonment for a term which may extend to three years and also be liable to fine.

Explanation- For the purpose of this section, "cruelty" means-

- (a) Any willful conduct which is of such 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
- (b) Harassment of the woman where such harassment is with view to coercing her or any person related to her meet any unlawful demand for any person related to her to meet such demand.

The section was enacted to combat the menace of dowry deaths. It was introduced in the code by the Criminal Law Amendment Act, 1983 (Act 46 of 1983). By the same Act section 113-A has been added to the Indian Evidence Act to raise presumption regarding abetment of suicide by married woman. The main objective of section 498-A of I.P.C is to protect a woman who is being harassed by her husband or relatives of husband.

### **Historical Background:**

The beginning of 19th century plays an important role in degrading Indian women till its depth. The fear of insecurity not only envisaged in unmarried young women but also married women. In India, "family" has always been prime importance. Marriage being an important social institution since Vedic period was biased against women. It was regarded as the social alliance between two families instead of two persons. The bride was expected to serve her husband and his family and ensure their happiness and well being. There was no question of her happiness, expectation or content. There were three main objectives of Hindu marriage: dharma or religious duties to be performed by the couple, proja or procreation, and rati or conjugal love.

The exploitation of woman began with the child marriage. A girl too young to take life seriously, a girl too young to understand the meaning of 'life' and 'marriage', had to step into the world of thorns. She was subjugated by her mother-in-law and other members of her husband's family, most of the time including even her husband. She was expected to observe 'purdah', not to speak to elders, speak in low voice to younger members of family, not to speak or meet her husband except midnight and bear all harsh words and sufferings for even minor fault and above all never to express her sorrows or utter a word of distress to anyone.

1. A woman had no freedom, neither personal nor economic. Traditionally, the Hindu woman had distinct economic right called 'stridhan'.
2. In order to partially set off the disability suffered under the notion of joint ownership by male members, the smritikars assigned a special category of property to women termed as 'stridhana'.
3. The first mention of this term is found in Gautama Dharma sutra. He provided not only for the women's separate property but also distinct and separate rules for its succession. But the definition of 'stridhana' changed over from time to time, granting all the rights and power to husbands. Consent of the girl was not considered to be relevant and hence, she was left with no choice, except to accept all pains and marry.

The traditional concept of marriage has greatly changed and Hindu marriage is considered to be of dual nature i.e. of both religious sacrament and contract, where mutual consent and benefit of both the parties are duly aided by different legal provisions and reforms. Attempts to bring about changes in the status of women either through legislation or judicial activism can achieve little success without a simultaneous movement to transform the social and economic structures and the culture (values, ideologies and attitudes) of society.

4. One of those attempts to bring changes in status of women and relieve her from her sufferings, pains and gloomy environment is given under chapter XX-A of **Indian Penal Code, 1860**.

### **Indian Evidence Act:**

Sec. 113-A, Presumption as to dowry death- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation- For the purpose of this section 'dowry death' shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860).

The object for which section 498A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting Criminal Law (Second Amendment) Act No. 46 of 1983. As clearly stated therein the increase in number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some of cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, which constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short 'the Cr.P.C') and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of

cruelty to married women by the husband, in-law's and relatives. The avowed object is to combat the menace of dowry death and cruelty.<sup>5</sup>

The act of harassment would amount to cruelty for the purpose of this section. Drinking and late coming habits of the husband coupled with beating and demanding dowry have been taken to amount to cruelty within the meaning of this section, but this section has been held not to include a husband who merely drinks as a matter of routine and comes home late. <sup>6</sup> In a case before Supreme Court it was observed that this section has given a new dimension to the concept of cruelty for the purposes of matrimonial remedies and that the type of conduct described here would be relevant for proving cruelty.

### **Meaning of Cruelty:**

It was that cruelty is a common essential in offences under both the sections 304B and 498A of IPC. The two sections are not mutually inclusive but both are distinct offences and persons acquitted under section 304B for the offence of dowry death can be convicted for an offence under sec.498A of IPC. The meaning of cruelty is given in explanation to section 498A. Section 304B does not contain its meaning but the meaning of cruelty or harassment as given in section 498-A applies in section 304-B as well. Under section 498-A of IPC cruelty by itself amounts to an offence whereas under section 304-B the offence is of dowry death and the death must have occurred during the course of seven years of marriage. But no such period is mentioned in section 498-A.

In the case of '*Inder Raj Malik vs. Sunita Malik*', it was held that the word 'cruelty' is defined in the explanation which inter alia says that harassment of a woman with a view to coerce her or any related persons to meet any unlawful demand for any property or any valuable security is cruelty.

Kinds of cruelty covered under this section includes following:

- (a) Cruelty by vexatious litigation
- (b) Cruelty by deprivation and wasteful habits
- (c) Cruelty by persistent demand
- (d) Cruelty by extra-marital relations
- (e) Harassment for non-dowry demand
- (f) Cruelty by non-acceptance of baby girl
- (g) Cruelty by false attacks on chastity
- (h) Taking away children

The presumption of cruelty within the meaning of section 113-A, Evidence Act, 1872 also arose making the husband guilty of abetment of suicide within the meaning of section 306 where the husband had illicit relationship with another woman and used to beat his wife making it a persistent cruelty within the meaning of Explanation (a) of section 498-A.

### **Constitution Validity of Section 498-A**

It was contended in the case of *Inder Raj Malik v. Sunita Malik*(1986) Cr LJ 1510 that this section is *ultra vires* Article 14 and Article 20 (2) of the Constitution. There is the Dowry Prohibition Act which also deals with similar types of cases; therefore, both statutes together create a situation commonly known as double jeopardy. But Delhi High Court negatives this contention and held that this section does not create situation for double jeopardy. Section 498-A is distinguishable of the Dowry Prohibition Act because in the latter mere demand of dowry is punishable and existence of element of cruelty is not necessary, whereas section 498-A deals with aggravated form of the offence. It punishes such demands of property or valuable security from the wife or her relatives as are coupled with cruelty to her. Hence a person can be prosecuted in respect of both the offences punishable under section 4 of the Dowry Prohibition Act and this section.

This section gives wide discretion to the courts in the matters of interpretation of the words occurring in the laws and also in matters of awarding punishment. This provision is not *ultra vires*. It does not confer arbitrary powers on courts.

See also *Polavarpu Satyanarayana v. Soundarvalli*,1998 Cr LJ 1538(A.P)

In the leading case of 'Wazir Chand vs. State of Haryana ', involving the death by burning of a newly married woman, the circumstances did not establish either murder or an abetted suicide and thus in-laws escaped the jaws of section 300 and 306, but they were caught in the web of this newly enacted section for prevention of harassment for dowry. Not to speak of the things they are persistently demanding from the girl's side, the fact that a large number of articles were taken by her father after her death from her matrimonial abode showed that there was pressure being exerted on-in laws and continued to be exerted till death for more money and articles.

The other face of the coin:

Though section 498-A aims at protection and safety of woman from her husband's and his relatives cruelty and harassment, this shield is used as a weapon by many females for their own purposes. Many women's are using this section against their husband's and his relatives without any attempt or cruelty practiced. Indian law has always laid emphasis on protection of the innocent. It has always been emphasised that ten guilty person's can be acquitted rather punishing a single innocent person. But this section is being misused and innocents are punished.

Abuse of section 498-A has always been a matter of discussion in Rajya Sabha. It was observed there that, Section 498-A has become an instrument of oppression in the hands of certain people who are seeking to get minor children; aged in-laws are being arrested on absolutely whimsical allegations. The issue is not only of compounding it, the question is how you ensure a just investigation of such complaints. Low police officers are investigating it in a manner that is ruining the sanctity of families; minor children and girls are hauled up. This is a scathing indictment of how this law which was intended to sub serve a noble purpose has in fact, been prostituted.

It was also stated that, in many cases, there are complaints where the provisions of section 498-A are misused or abused or excessively used. And for that, the investigating agency is the only agency which can remedy this. From time to time, these instructions are issued even from the Government of India, and the State Governments are already cognisant of this fact. But, for the investigating officer, the problem arises when a case is registered and the persons have been mentioned in the FIR; it becomes difficult for him. Till such time, he really satisfies himself.

During that period, some harassment is certainly made; it is expected from the investigating officers, it is expected from the police officers. They are sensitised on this matter by the State Government, and also by the Central Government, that they should see to it that they are not harassed.

Observing that anti-dowry laws were being increasingly misused by wives to harass their husbands and in-laws, the Delhi High Court has urged the Government to review their provisions. Judge J.D.Kapoor urged the review while rejecting a plea by a woman petitioner, Savitri Devi, seeking the arrest of her brothers in-law and sister in-law for allegedly harassing her by demanding more dowries. Kapoor said in his order passed: "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". The judge observed: "There is a growing tendency to come out with inflated and exaggerated allegations, roping in each and every relation of the husband. If one of them happens to be of higher status or of vulnerable standing, he or she becomes an easy prey for better bargaining and blackmailing.

He added:" The ground realities have persuaded this court to recommend to the authorities and law makers to have a review of the situation and legal provisions." Judge Kapoor, in his order said the provisions of the anti-dowry laws "were made with good intentions but the implementation has left a very bad taste and has been counter-productive."

According to the anti-dowry laws, a non-bailable warrant is issued against the accused if a woman alleges she is being harassed by her husband and/or his relatives for dowry. People found guilty can be sent to jail for up to three years and/or fined. Savitri Devi had filed a case urging her brothers-in-law and sister-in-law be arrested for demanding dowry. City Court rejected the plea, but ordered the framing of charges against Savitri Devi's husband and father-in-law. She then challenged the lower court's order in the High Court.

Judge Kapoor agreed with the lower court's decision and found no evidence of harassment against Savitri Devi's brothers-in-law and sister-in-law. "The only allegation against the respondents is that they did not like the customary gifts the petitioner had brought", said Kapoor. This, according to him, did not amount to cruelty or harassment. "The petition is highly misconceived and is being used as a tool to hold the entire household to ransom and jeopardy," he said. He also pulled up the investigating agencies not doing their work properly.

Misuse of section 498-A has also been called as legal terrorism by the Supreme Court of India. 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. A new legal terrorism can be unleashed by the misuse of the provision. The provision is intended to be used as a shield and not as 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 strait jacket 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. 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 unfolded, baseless and malicious allegations.

Supreme Court also contended that 'false case by wife amounts to mental cruelty'. It was also found that the allegations made in the police complaint by the respondent were "void" and that such void allegations without proving the same amounted to cruelty. It was found that given the falsity of the allegations against the appellant he was entitled to a decree of divorce on the ground of cruelty of the Act.

In a landmark judgment, the Delhi High Court has ruled that lodging false dowry complaints against men amounts to cruelty and can be a ground for dissolution of marriage. The court granted divorce to a man who alleged mental cruelty by his wife.

The act of appellant in filing a false complaint case and getting her husband and other in-laws arrested clearly amounts to cruelty. The statement of the appellant and her brother before CJM points towards falsity of the complaint.

In the present case the situation is still worse. Not only the wife made a false complain and got the husband and other in-laws arrested, she also took money and then resiled from the agreement.

Delhi High Court also added that Section 498-A and 406 of IPC should be made bailable. The Chief Justice said that, "for the foregoing reasons, the petition is highly misconceived and is being used as a tool to hold the entire household to ransom and jeopardy. Petition is dismissed. I feel constrained to comment upon the misuse of the provisions of Section 498-A/406 IPC 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 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 case against every person of the family of the husband whether living away or in other town or abroad and married, unmarried sisters, sister-in-laws, unmarried brothers, married uncles and in some cases grand-parents or as many as 10 to 15 or even more relatives of the husband. Once a complaint is lodged under Section 498-A/406 IPC whether they are vague, unspecific or exaggerated allegations or there is no evidence of any physical or mental harm or injury inflicted upon woman that is likely to cause grave injury or danger to life, limb or health, it comes as an easy tool in the hands of Police and agencies like Crime against Women Cell to hound them with the threat of arrest making them run here and there and force them to hide at their friends or relatives houses till they get anticipatory bail as the offence has been made cognizable and non-bailable. Thousands of such complaints and cases are pending and are being lodged day in and day out."

"To start with, marital offences under Sections 498-A/406 IPC be made bailable, if no grave physical injury is inflicted and necessarily compoundable. If the parties decide to either settle their disputes amicably to salvage the marriage or decide to put an end to their marriage by mutual divorce, they should be allowed to compound the offences so that criminal proceedings don't chase them if they want to start their marital life afresh or otherwise."

Several other cases have raised a debate on whether the stringent and well meaning provisions of the laws governing dowry and cruelty against women were actually being increasingly misused to settle scores. "Husbands and their families are harassed by the stringent and outdated Dowry Act as majority of the cases these days are either exaggerated claims or are simply fabricated. This results in endless mental torture to the boy's family who have no way out," says Neena

Tiwari, president of an NGO, Nari Jagriti Manch, which has started "crime against men" cell five months ago to provide counselling to the 'suffering husbands'.

**Thank you**