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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CRUELTY VIS-A-VIS SHOBHA RANI V.

MADHUKAR REDDI AIR 1988 SC 121

AUTHORED BY - TUSHAR KAUSHIK

INTRODUCTION

The rate of crime against women is rapidly rising. The efficacy of women's protection under the Indian Constitution and other legal frameworks hinges on the degree to which law enforcement officials are cognizant of the challenges faced by women. One of such sundry crimes is dowry demand. The term dowry has not been defined in Indian Penal Code, 1860¹ rather it has been defined in Dowry Prohibition Act, 1961² as “any property or valuable security given or agreed to be given either directly or indirectly: by one party to a marriage to the other party to the marriage; or by the parents 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 said parties”. Dowry demand is now an instance of cruelty under Explanation (b) to §498A³ of the Indian Penal Code, 1860. The word "cruelty" is used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional.

With the passing of the Criminal Law (Second Amendment) Act of⁴ 1983 on December 25, 1983, §498-A of the Indian Penal Code was added to the existing framework. Protecting the weaker spouse is clearly a concern expressed in this section. The whims and avarices of males have always been available to women, especially in the context of marriage. §498A of the Indian Penal Code contains the following ingredients:

1. The woman must be married.

¹ The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

² The Dowry Prohibition Act, 1961, No. 28, Acts of Parliament, 1961 (India).

³ The Indian Penal Code, 1860, § 498A, No. 45, Acts of Parliament, 1860 (India).

⁴ The Criminal Law (Second Amendment), 1983, No. 46, Acts of Parliament, 1983 (India).

2. She must have been the victim of cruelty or harassment.
3. This cruelty or harassment must have been demonstrated by the woman's husband or a relative of her husband.

As per § 498A whoever subjects a woman to cruelty shall face imprisonment for a term not exceeding three years and a fine. Clause (b) of the Explanation stipulates that harassing a woman with the intent of coercing her or any person related to her for meeting any unlawful demand for property or valuable security or on the basis of her or any person related to her failure to meet such demand constitutes cruelty for the purposes of §498-A IPC.

BACKGROUND

FACTS - The wife, Shobha Rani was a post-graduate in biology. The spouse practiced as a medical doctor. they entered wedlock on December 19, 1982. However, their joy did not last for very long. With resentment, they began writing each other letters. Then they started blaming one another. They considered ending by mutual consent at one point. Unfortunately, though, it never happened. They eventually found themselves in front of the court. Based on cruelty, the wife filed for divorce with the court. The court was however, not concerned with criminal offence either under the Dowry Prohibition Act or under the Indian Penal Code but with a matrimonial conduct which constitutes cruelty as a ground for dissolution of marriage. Thus, such cruelty was required to be proved on the preponderance of probabilities as in civil cases and not beyond a reasonable doubt as in criminal cases.

ISSUE

Whether the demand of dowry amounted to cruelty?

Whether the conduct of respondents amounted to cruelty under s13 of Hindu Marriage Act, 1956?

HISTORY OF PROCEEDINGS

1. The trial court rejected the appellant's case on the ground that there was no satisfactory evidence that the demands were such as to border on harassment.
2. The High Court also rejected her case and held that the appellant appeared to be hypersensitive and imagined too much and too unnatural things, that the demand for money

had. to be viewed from a proper angle, and that there was nothing wrong in the respondent, who was a doctor, asking his rich wife to spare some money.

PROVISIONS OF LAW

3. **Dowry Prohibition Act, 1961** – The Parliament passed the Dowry Prohibition Act, 1961,⁵ which forbade the giving or receiving of dowries, in an effort to stop the detrimental practice of dowries. However, as the evil practice persisted in some areas, the original Act was significantly altered to create the Dowry Prohibition (Amendment) Act, 1984.
4. **Indian Penal Code, 1860 (Old Law)**– Similarly, a completely new offence was added to the Indian Penal Code, 1860, in form of §498A that provided for punishment to “husband or relative of husband of a woman subjecting her to cruelty”, expanding the scope of criminal jurisdiction.
5. **Bhartiya Nyaya Sanhita, 2023 (New Law)** – BNS will become effective from 1st July 2024. In BNS, §86⁶ corresponds to Explanation s498-A and S85 corresponds to §498-A of IPC and provides for punishment for cruelty by Husband or his relative.
6. **Hindu Marriage Act, 1956** – the Act provides for grounds for divorce. Cruelty is one such ground under §13(1) (ia)⁷ of the Act.

APPRECIATION OF EVIDENCE

The parties produced letters exchanged between the parties, i.e. husband and wife. The husband vide letter on 28-02-1983 had written to wife: "Now regarding dowry point, I still feel that there is nothing wrong in my parents asking for few thousand rupees. It is quite a common thing for which my parents are being blamed, as harassment." Further wife stated in her evidence that he in laws used to demand money from her. When she told her husband that she would not ask for money from her parents, the husband replied that she should ask for money from her parents. Due to this she had apprehension that she might be harmed physically or mentally if she continued to refuse the demand and later she did not return back to husband's house.

⁵ The Dowry Prohibition Act, 1961, No. 28, Acts of Parliament, 1961 (India).

⁶ The Bharatiya Nyaya Sanhita, 2023, § 86, No. 45, Acts of Parliament, 2023 (India).

⁷ The Hindu Marriage Act, 1955, § 13, No. 25, Acts of Parliament, 1955 (India).

JUDGMENT ANALYSIS

The court in the present case was concerned with the complaint of the wife about dowry demand by the husband or his parents. The court noted that Dowry Prohibition Act, 1961 was passed by the Parliament for the purpose of curbing the evil of dowry demand. However, the same has not been effectively implemented and even today it is practiced in various communities. The Dowry Prohibition (Amendment) Act, 1984 was enacted with considerable changes in the parent Act. Likewise the Penal Code, 1860 was amended by introducing an entirely new offence hitherto unknown to criminal jurisprudence. § 498A was introduced. This introduced a new dimension to the concept of cruelty. Now harassment of the woman with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security would also constitute cruelty.

The honorable court while analyzing the reasoning adopted by the trial court and High Court held that reasoning adopted by the courts was wrongly founded. Both the trial court and the High Court rejected the claim of wife on ground of lack of satisfactory evidence that demand amounted to harassment. The trial court reasoned that the demand of money had to be seen with the perspective that it was not wrong for a husband to ask for money when he was in need of same. The High court on same lines termed the wife as hypersensitive such that she imagined too unnatural things. The Supreme court after observing the reasoning of both the courts came to conclusion that the present case was different in the sense that it was not a case of demand by husband for his personal expenses. Thus, the lower courts proceeded on a wrong basis. The husband in present case admitted to the demand of dowry by his parents and said it was not wrong to demand dowry. The husband therefore was a party to the demand. Further it was improper on part of court of justice to discredit wife as being and prone to exaggeration. The court held that it was necessary to bear in mind that when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. Customs and manners must be kept aside as should be precedent. The court quoted Lord Denning's observation in *Sheldon v. Sheldon*⁸, "the categories of cruelty are not closed".

⁸ (1966) 2 All ER 257, 259.

The honorable court aptly held that every case has different facts and circumstances. The conduct of human beings is not generally similar and among the human beings there is no limit to the kind of conduct which may constitute cruelty. In coming times new type of cruelty may emerge in any case depending upon the human behavior, capacity, or incapability to tolerate the conduct complained of. Thus the realm of cruelty is capricious and formless.

While ascertaining the meaning of the word, the court noted that whether what should be the nature of cruelty and whether it should be only intentional, willful, or deliberate and whether it was necessary to prove the intention in matrimonial offence. The court answered the same in negative. Cruelty may be of any kind and any variety. It may be different in different cases. It is in relation to the conduct of parties to a marriage. That conduct which is complained of as cruelty by one spouse may not be so for the other spouse. The court relied on *Gollin v Gollin*⁹ in which Lord Evershed said that he could not agree to the notion that malignity is a necessary component of "cruelty" in marital procedures. But if malignity were to be shown as matter of fact, that would indeed be crucial in establishing allegation of cruelty. The term "cruelty" has been used in reference to human action or behaviour. It is the behaviour in relation to or in respect of marital duties and responsibilities. It refers to one person's behaviour that has a negative impact on another. The brutality could be mental or physical, intentional or unintentional. If it is physical, the court will have no trouble determining it. It's an issue of fact and degree. If it is mental, the problem is complex. First, the investigation must focus on the nature of the cruel treatment. Second, consider the psychological impact of such treatment on the spouse. Whether it generated reasonable concern that living with the other might be detrimental or damaging.

The reasoning adopted by the court was well founded in the case of cruelty as there may be instances of cruelty by the unintentional but inexcusable conduct of any party. The cruel treatment may also result by the cultural conflict of the spouse. Cruelty does not require any particular intention in order to be considered as a matrimonial offence. Cruelty may be proved simply if it could be inferred from the behavior or violent act that was reported that the aim was to damage, harass, or hurt. The relief to the party cannot be denied on the ground that there

⁹ (1963) 2 All ER 966, 972.

has been no deliberate or willful ill-treatment. Thus after appreciating the evidence as per the circumstances of the case the court held that demand of dowry amounted to cruelty.

Finally, it is a matter of inference, taking into account the nature of the activity and its impact on the complaining spouse. However, there may be circumstances where the conduct complained about is bad enough to be considered unlawful or criminal. The impact or detrimental effect on the other spouse does not need to be investigated or evaluated. In such circumstances, cruelty will be demonstrated if the act is proven or confessed.

CONCLUSION

In conclusion it can be said that cruelty against women is largely undefined arena as cruelty can take different forms in different times in different societies. It should not be construed by judges through the lens of their standard of life rather the specific instance of the case. Judges need to be aware of the problems that women face. There are no generalizations on this topic; the impact on a woman varies greatly depending on the specific facts and circumstances of each instance. As per § 498A one of the types of cruelty is dowry demand from wife by the husband or his relatives. The harassment caused to women by acts and conduct of her new family has a very deep impression on her mind. Further it is often found that demand might take form of physical criminal force and there is always an apprehension to the woman that she might be harmed if she does not meet demand. Thus, the purpose of the addition of a new criminal offence in form of s498A was to protect and safeguard spouse from cruelty.

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