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# **COMPREHENSIVE ANALYSIS OF DOMESTIC VIOLENCE IN INDIA: LEGAL FRAMEWORKS, JUDICIAL RESPONSES, AND INTERNATIONAL STANDARDS**

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## **ABSTRACT**

Domestic violence remains a pervasive and complex issue in India, impacting individuals across socioeconomic and cultural divides. This paper undertakes a comprehensive analysis of domestic violence within the Indian context, focusing on legal frameworks, judicial responses, and international standards. The introduction sets the stage by highlighting the prevalence of domestic violence in India and its detrimental effects on victims, families, and society at large. The research objectives are outlined, including the examination of legal provisions, judicial efficacy, alignment with international norms, identification of challenges, and recommendations for improvement. The section on legal frameworks and legislative landscape delves into the multifaceted provisions related to domestic violence in Indian law. Key aspects such as cruelty to wives, dowry demands, bail procedures, mediation, and compound ability of offenses are analyzed in detail. The role of the judiciary in combating domestic abuse is scrutinized to understand how courts handle cases of domestic violence. Landmark judgments, legal precedents, and the overall judicial process are evaluated to determine the extent to which victims receive justice and perpetrators are held accountable. The strengths and weaknesses of the judicial system are identified, providing insights into areas for improvement. Alignment with international standards and human rights principles forms a crucial part of the analysis. India's compliance with global legal norms related to domestic violence is examined, highlighting areas of alignment and divergence. The paper explores global measures and best practices in combating violence against women, drawing parallels and offering lessons that can inform India's approach to addressing domestic violence more effectively. Challenges within the current legal and judicial systems regarding domestic violence are identified and analyzed. Issues such as underreporting, lack of victim support, delays in legal proceedings, and gaps in enforcement are discussed. Strategies for improvement are proposed, including legislative reforms,

enhanced training for judicial personnel, victim empowerment programs, and collaborations with civil society organizations.

**Keywords:** Domestic Violence, India, Legal Frameworks, Judicial Responses, International Standards

## 1. Introduction

For a society to survive, continuity and stability are essential. An important social institution that contributes to this stability is marriage. Legislators around the world provide couples certain rights and obligations in order to support the vital stability of society<sup>1</sup>. 'Moksha', or spiritual freedom, is the ultimate aim of human life, according to ancient books like the Mahabharata. The role of a woman is important in this situation<sup>2</sup>. A number of attributes, such as the 'Grihini' (the lady of the house), 'Sachiva' (wise advisor), and 'Sakhi' (friend of her husband), are attributed to the wife in the Ramayana, giving her a glorified appearance. In addition, she is referred to as "Griha Laxmi," "Ardhangini," "half of her husband," and "Samarajyi," which means "partner in ruling." These portrayals highlight how important and diverse a wife's position is in traditional Indian society<sup>3</sup>.

It is common to view female figures as the givers of human life, representing divine attributes like creativity, nurturing, and support. Both "Laxmi" (wealth) and "Saraswati" (knowledge) are symbols for them, signifying important facets of existence<sup>4</sup>. Wives have been put through a lot throughout mythology and history to prove their unshakable loyalty to their husbands. In the Ramayana, for example, *Sita* endured the painful ordeal of 'Agni-Pariksha,' a representation of tremendous suffering. □

However, she also experiences violence of every kind, from birth to death. Even in 2015, having a daughter is still regarded as unlucky. A developing girl child is viewed as an inconvenience to her family. When a girl is young, she is the victim of sexual exploitation. Married women have always experienced a wide range of violent acts of differing severity; as

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<sup>1</sup> Satyajeet Atul Desai and Sir Dinshah Fardunji Mulla, Principles of Hindu Law, Volume 1(20th ed.), New Delhi: LexisNexis Butterworths, 2007 at pg.9.

<sup>2</sup> Taittiriya samhita III 1,2,57, note4, at pg. 546-547.

<sup>3</sup> Ramayana, 11, 37, 23-24; Satpata Brahamana V,1.6.10, note 4, at pg.546-547.

<sup>4</sup> Dr. Suman Rai, Law Relating to Protection of Women from Domestic Violence, (1st ed.), Allahabad: Orient Publishing Company, 2008, p.498.

a result, homes have turned from being the safest places for men to be to the least safe places for women. The issue of violence against women transcends cultural, social class, educational, ethnic, and age borders.

The long-standing practice of men mistreating women horribly gave rise to the feminist movement of the 1970s and 1980s. Action to address these concerns was prompted by this campaign, which brought attention to the widespread acts of violence against women. Legislators in India took action in the 1980s to lessen the pervasive violence against women. This resulted in the establishment of a Joint Committee between the two Houses of Parliament, which examined the Dowry Prohibition Act of 1961 in great detail. According to the report, there is a concerning trend of rising dowry-related fatalities in India, which frequently leads to the suicide of the abused women. Although it has traditionally been a felony against married women, Indian law did not specifically address marital violence until 1983. Rather, husbands' transgressions were dealt with under general sections of the Indian Penal Code (IPC), which deal with acts including murder, aiding and abetting suicide, causing pain, and wrongful detention<sup>5</sup>.

Numerous significant legislative laws were either adopted or revised to tackle concerns pertaining to domestic violence, abuse, and dowry demands in India. Among the most noteworthy are:

1. Sections 304B, 406, and 498A of the Indian Penal Code (IPC): These sections deal with offenses such as dowry death (304B), criminal breach of trust (406), and cruelty by husband or relatives of husband (498A).
2. Section 198A of the Code of Criminal Procedure (Cr.P.C), 1973: This section deals with prosecution for offenses against marriage.
3. Sections 113A and 113B of the Indian Evidence Act: These sections deal with the presumption of abetment of suicide and dowry death, respectively.

In 1983, the Indian Penal Code of 1860 had a significant modification with the addition of Section 498A, which targets "Matrimonial Cruelty" committed against a woman. The

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<sup>5</sup> Rachana Kaushal, 'Protection of Women from Domestic Violence Act 2005—An Appraisal', *Mainstream*, Vol. XLVIII, No 11, March 6, 2010.

protection of women's interests was significantly advanced by this law provision. The fact that matrimonial cruelty is now classified as a Cognizable, Non-Bailable, and Non-Compoundable offense in India emphasizes how seriously the law takes these kinds of conduct. Under Chapter XXA of the IPC, "Cruelty by husband or relatives of husband of a woman," this section is found. This highlights the emphasis of the legal framework, which is to protect women from abusive behavior in the context of marriage and family<sup>6</sup>.

The troubling problem of dowry deaths prompted the introduction of Section 498A of the Indian Penal Code. This clause was enacted by the Criminal Law Amendment Act, 1983 (Act 46 of 1983) with the intention of addressing the grave issue of abuse and harassment experienced by married women, especially in situations involving dowries. The Indian Evidence Act was amended to include Section 113-A, which establishes a presumption regarding a married woman's assistance in suicide, in addition to Section 498A<sup>7</sup>. The principal aim of Section 498A of the Indian Penal Code is to provide protection to women who are subjected to harassment or abuse by their spouses or relatives. This clause protects women from abusive, harsh, and exploitative dowry demands, among other forms of domestic violence. The goal of the law is to give women who face these serious obstacles inside the context of marriage meaningful legal remedies by designating certain offenses as cognizable, non-bailable, and non-compoundable.

The following are some important international agreements aimed at stopping violence against women. CEDAW, often known as the international bill of rights for women, was adopted by the UN General Assembly in 1979. It provides a definition of discrimination against women as well as the steps that state parties must take to end discrimination in general and violence against women in particular. A proclamation aimed at ending violence against women: The United Nations General Assembly approved this proclamation in 1993. It declares that human rights are violated by violence against women and demands action to stop, look into, and punish such acts. UNSCR 1325, which was adopted in 2000, is focused on women, peace, and security. It demands gender-sensitive approaches to peacebuilding, the protection of women and girls during armed conflicts, and women's involvement in efforts to avoid and resolve conflicts.

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<sup>6</sup> Ratanlal and Dhirajlal, *The Indian Penal Code*, 1860, (30th ed.), Nagpur: Wadhwa and Co., Reprint 2008, Pg. 917.

<sup>7</sup> Ratanlal & Dhirajlal, *The Indian Evidence Act*, 1872, (21st ed.), Nagpur: Wadhwa and Co., reprint 2009, Pg. 560.

## 2. Legal Frameworks and Judicial Standpoints

The interpretation of cruelty outlined in section 498A of the Indian Penal Code, 1860, and its impact according to section 306 IPC can vary based on individual circumstances, including social and economic status. The Supreme Court has clarified that cruelty within the context of this offense need not be limited to physical harm; it can also encompass mental anguish or abnormal conduct in certain situations<sup>8</sup>. Mental cruelty is subjective, depending on the person's tolerance level; some may face it with resilience, while others may suffer silently or even contemplate suicide, particularly if they feel overwhelmed.

The elements of section 498A are straightforward:

- (a) The victim must be a married woman,
- (b) She must have experienced cruelty or harassment, and
- (c) This mistreatment must have been inflicted by her husband or his relatives<sup>9</sup>.

Assault on a woman infringes on her dignity. While not every marital conflict leads to extreme outcomes like suicide, it's crucial not to trivialize the impact of assaults or harassment on women. Judges must be attuned to women's issues, recognizing that the effect of such mistreatment varies based on the specific circumstances of each case. There has been a significant increase in crimes against women, highlighting the need for judicial sensitivity towards these issues to ensure the meaningful implementation of legal protections granted by the Constitution and other laws.

Section 498A was added to the Indian Penal Code in 1983 to provide protection to vulnerable spouses, primarily women, who often face mistreatment in marital relationships. This section addresses situations where cruelty by the husband or his relatives leads the woman towards suicide, contrasting with section 306 IPC, which deals with intentional abetment of suicide. This distinction hinges on the element of "intention" underlying the respective offenses. The accused were charged for administering insecticide to the victim's mouth due to her failure to

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<sup>8</sup> Gananath Pattnaik v. State of Orissa, (2002) 2 SCC 619

<sup>9</sup> Suvetha v. State, (2009) 6 SCC 757

bring dowry from her parents. The trial court convicted them under sections 302 and 498A of the IPC.

However, examination revealed no injuries on the deceased's body, the delay in filing the FIR was unexplained, and the investigating officer did not record statements from neighbours. Consequently, the prosecution failed to establish the guilt of the accused beyond a reasonable doubt, leading to their acquittal of all charges<sup>10</sup>.

In another case, the accused were charged with harassing the deceased, which led to her suicide. They were found guilty under sections 306 and 498A. However, the conviction was deemed inappropriate due to lack of evidence of ill-treatment by the husband or the cause of death being self-immolation. The criminal proceedings under section 482 of the CrPC were terminated to prevent abuse of the legal process. No such termination was justified where the wife was burnt and the allegations in the FIR were not improbable<sup>11</sup>.

A wife filed a complaint against her husband and in-laws for torture and harassment, despite hostile witnesses not supporting her statement. The court held that this did not render her testimony incredible, as cruelty by the husband was proven, leading to the husband's conviction for cruelty alone<sup>12</sup>.

Section 498-A of the IPC states that whoever, being the husband or relative of the husband, subjects a woman to cruelty shall be punished. Harassment with the intention of coercing her or her relatives to meet unlawful demands for property or security constitutes cruelty under this section. In another case, the accused were charged with cruelty and dowry death, indicating that the deceased did not experience a harmonious atmosphere in her marital home due to mistreatment for dowry demands. The post-mortem examination contradicted the defence's claim of an accidental fall, resulting in the conviction of the accused, except the mother-in-law<sup>13</sup>. In a case where death occurred ten years after marriage, no presumption under section 113B of the Evidence Act could be made. Additionally, prosecution under section 498A was deemed improper for a woman living as the deceased's husband's mistress, as she was not related to them<sup>14</sup>. In a separate incident, sufficient evidence was presented to prove that the

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<sup>10</sup> Hardeep Singh v. State, 1996 CrLJ 2733

<sup>11</sup> Gopal Chakraborty v. State, 1996 CrLJ 3358 (P&H)

<sup>12</sup> State v. Regulagadda Anandarao, 1996 CrLJ 4503 (AP)

<sup>13</sup> Naresh Kumar v. State, 2007 CrLJ 4796 (P&H)

<sup>14</sup> Ismail Mian v. State, 2007 CrLJ (NOC) 769 (Jhar)

deceased was subjected to cruelty and burnt with kerosene, leading to the maintenance of the conviction under section 498A<sup>15</sup>.

## 2.1 Relative of Husband

An offense under section 498A involves specific individuals, namely the "husband" or his "relative," who must subject the woman to cruelty as outlined in the provision. The term "relative" lacks a precise legal definition, so its common understanding applies, typically encompassing immediate family members such as father, mother, spouse, children, siblings, and extended family through blood, marriage, or adoption. This term establishes a relational status based on familial ties through blood or legal bonds. Therefore, individuals like a girlfriend or concubine, lacking such legal or blood ties, do not fall under the definition of "relative." The term "relative" implies a specific status that is typically established through blood relations, marriage, or adoption. If there is no marriage between individuals, the concept of one person being considered a relative of another does not apply or become relevant<sup>16</sup>.

In a specific case where a complaint was filed against the husband and his relatives regarding dowry demands, operating under Shia law, it was revealed that the husband had divorced the complaining wife through "talak." According to Shia law, remarriage with a previously divorced spouse is prohibited. Therefore, despite cohabitation, they couldn't legally be considered husband and wife. Consequently, section 498A was deemed inapplicable, leading to the dismissal of the complaint<sup>17</sup>.

## 2.2 Cruelty to Wife

Section 498-A of the Indian Penal Code, 1860, introduced through the Criminal Law (Second Amendment) Act, 1983 and enforced from December 25, 1983, operates prospectively. Any actions taken before December 25 cannot be considered as an offense under Section 498-A IPC and therefore are not punishable under this provision<sup>18</sup>. A husband's failure to take his wife to his place of posting and leaving her at her parental home would not be considered a deliberate

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<sup>15</sup> Shaik Hussain v. State, 2007 CrLJ 3999 (AP)

<sup>16</sup> Suvetha v. State, (2009) 6 SCC 757

<sup>17</sup> Syed Hyder Hussain v. State of AP, (2002) CrLJ 3602 (AP)

<sup>18</sup> Inder Raj Malik v. Sunita Malik, 1986 CrLJ 1510 (1513)

action likely to drive a woman to commit suicide<sup>19</sup>.

In *Chavda Ghanshyamji v. State*<sup>20</sup> the accusation was that the accused individuals had subjected the deceased to cruelty due to unmet dowry demands. However, there was no evidence in the form of a dying declaration on record. The deceased's elder brother-in-law sustained injuries while rushing her to the hospital. As a result, it was concluded that the accused individuals should be given the benefit of the doubt.

### **2.3 Demand of Dowry**

Mere demand of Dowry will not attract an offence under section 498- A of Indian Penal Code, 1860. Since there was no proof that the deceased's suicide was a result of dowry demands or harassment, despite her dying within six months of marriage and under unnatural circumstances, the offense under section 498-A was not applicable<sup>21</sup>. In *Satpal v. State of Haryana*<sup>22</sup> there was an allegation of dowry demand, but apart from a single statement from the deceased's brother, there was no other evidence to substantiate this claim. However, there was clear and compelling evidence that the deceased was humiliated and subjected to cruelty. The court ruled that convicting the accused under section 498A was justified. Still, the convictions under section 304B regarding dowry demand and under section 306 for abetting suicide were overturned.

A young woman in her early twenties ended her life with severe burns within 8 months of her marriage due to mistreatment, physical abuse, and demands made by her mother-in-law. The key witness to support the appellant's case was her husband, as he resided in the same household and could provide details about what transpired there, including the nature of the relationship between the appellant and the deceased. However, evidence revealed that the husband sometimes intervened and cautioned the appellant about her treatment of the deceased. Additionally, evidence showed that shortly after the marriage, the appellant began demanding gold, cash, and clothes from the deceased, resorting to physical abuse and mistreatment when her demands were not met. Krishnabai's death occurred within seven years of her marriage, and considering the facts presented in the case, the fundamental elements of Section 113A of

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<sup>19</sup> *Mangat Ram v. State of Haryana*, AIR 2014 SC 1782

<sup>20</sup> *Chavda Ghanshyamji v. State*, 2007 CrLJ 4609 (Guj)

<sup>21</sup> *Ramaiah v. State of Karnataka*, AIR 2014 SC 3338

<sup>22</sup> *Satpal v. State of Haryan*, AIR 1999 SC 1476



the Evidence Act, 1872, in conjunction with Sections 304B and 498A of the Indian Penal Code, 1860, were established against the accused individuals, warranting their prosecution for the offenses punishable under these sections. The Supreme Court upheld the conviction based on these circumstances<sup>23</sup>.

Clause (b) of Section 498-A of the Indian Penal Code, 1860 addresses harassment that involves coercing a woman or her relatives to fulfill an unlawful demand for property or valuable security. To fall under this provision, a complainant must demonstrate that there was an "unlawful demand" for money or valuable security by the husband or any of her relatives.

For instance, if the husband requests the wife to bring jewelry, this request alone does not constitute an unlawful demand, as no law penalizes a mere request without an associated dowry settlement during marriage. It is possible that if the husband makes a demand through his wife, it might be accepted by the father-in-law, making the demand not unlawful. Therefore, subsequent refusal by the father-in-law does not definitively determine whether the demand was made unlawfully unless it fits within the definition of dowry<sup>24</sup>.

## 2.4 Meaning of Cruelty

The Explanation to section 498-A of the Indian Penal Code, 1860, elaborates on the definition of cruelty within this provision. It comprises two clauses, namely Clauses (a) and (b). For section 498-A IPC to be applicable, it must be proven that the cruelty or harassment inflicted on the wife was intended to coerce her into causing serious bodily harm to herself, inducing her to commit suicide, or pressuring her to meet an unlawful demand for dowry. Not all forms of harassment or cruelty fall under the purview of section 498-A IPC<sup>25</sup>. Cruelty can manifest either as mental or physical abuse. Defining "cruelty" precisely is challenging because it is a subjective term. What one person perceives as cruel may not be considered cruel by another individual<sup>26</sup>.

In *Pinakin Mahipatray Rawal v. State of Gujrat*<sup>27</sup> Supreme Court answered to the question whether 'extra marital relationship' amounts to cruelty in negative sense. The mere fact that a

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<sup>23</sup> Tarabai v. The State of Maharashtra, 2015 CrLJ 1326

<sup>24</sup> Ramesh Chand v. State of UP, 1992 CrLJ 1444 (All)

<sup>25</sup> Sarala Prabhakar v. State of Maharashtra, 1990 CrLJ 407

<sup>26</sup> GV Siddaramesh v. State of Karnataka, (2010) 3 SCC 152

<sup>27</sup> Pinakin Mahipatray Rawal v. State of Gujrat, 2013 (3) MLJ (CrI) 700

husband has developed intimacy with another person during the marriage and has failed to fulfill marital duties does not automatically amount to "cruelty" as defined under the explanation to Section 498A of the Indian Penal Code. To fall within the scope of Section 498A IPC, the cruelty must be of such a nature that it is likely to drive the spouse to contemplate suicide. Even if an extramarital relationship is proven, it does not necessarily meet the criteria for cruelty under the first limb of Section 498A IPC. It would be challenging to argue that the mental cruelty was severe enough to drive the wife to consider suicide solely based on the existence of an extramarital relationship. While an extramarital relationship is deemed illegal and morally wrong, as noted in the case of *Pinakin Mahipatray Rawal*, it would take on a different legal significance if the prosecution can present evidence indicating that the accused deliberately conducted themselves in a manner intended to push the wife towards suicide. In the case of *Laxman Ram Mane v State of Maharashtra*<sup>28</sup>, it was established that an illicit relationship of a married man with another woman constitutes cruelty within the scope of Section 498A of the Indian Penal Code. Even if this behavior is not directly categorized as cruelty under Section 498A, it can still serve as evidence of harassment and mistreatment by the accused towards the deceased. Specifically, the act of a husband bringing a concubine into the marital home, living with her as if she were his wife, and engaging in sexual relations in the presence of his wife amounts to "cruelty" as defined under Section 498A of the IPC. This interpretation underscores that actions such as maintaining an illicit relationship can contribute to the overall atmosphere of cruelty and harassment within a marriage, thus falling within the purview of Section 498A<sup>29</sup>.

The legal question regarding the status of a second wife who inflicts cruelty on the first wife is notable. The issue revolves around whether a second wife, married during the existence of a legal marriage, can be regarded as a relative of the husband. Furthermore, it questions whether an offense under Section 498A of the Indian Penal Code, 1860, can be applied to such a second wife if she causes harm to the legally wedded first wife. The ruling determined that a second wife who is recognized as the wife by the husband, his relatives, friends, and society at large can indeed be considered a relative of the husband for the purposes of Section 498A IPC. Therefore, if such a second wife inflicts cruelty on the legally wedded first wife of the husband, an offense under Section 498A can be charged against her. This decision highlights the legal

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<sup>28</sup> *Laxman Ram Mane v. State of Maharashtra*, 2010 (13) SCC 125

<sup>29</sup> *Chami v. State*, 2013 (1) KLT 835

recognition of the relationship dynamics and responsibilities even in cases of polygamous relationships<sup>30</sup>.

## **2.5 Grant of Bail**

The accused constable husband set the deceased on fire after his mother poured kerosene on her. This information was disclosed in the dying declaration made by the deceased. The presence of the husband (a Police Constable) in the house was established by witness evidence, and prima facie material on record indicated the involvement of both accused in the alleged offense. The court decided that the bail granted to the mother-in-law did not require interference, but the bail of the husband could be canceled due to his position as a police constable, which could potentially influence prosecution witnesses<sup>31</sup>.

## **2.6 Mediation**

There has been a significant rise in matrimonial disputes in recent times. Marriage, being a sacred ceremony, is intended to provide a foundation for the young couple to build a peaceful life together. However, minor marital disagreements often escalate into serious conflicts, leading to the commission of severe crimes involving even the elders of the family. This situation renders those who could have mediated and resolved the issues helpless, as they are dragged into criminal cases as accused parties. There are numerous other reasons, which I won't delve into here, that highlight the need to discourage matrimonial litigation. Parties involved should consider resolving their differences amicably through mutual agreement rather than prolonging disputes in court. Legal battles can take years to conclude, causing parties to lose valuable time and energy in pursuing their cases across different courts, especially during their youthful years<sup>32</sup>.

## **2.7 Compoundability of Sec. 498- A**

The offense under section 498A is generally not compoundable, except in the State of Andhra Pradesh where a state amendment has made it compoundable. In the case of *Ramgopal v State of Madhya Pradesh*, the Supreme Court requested the Law Commission and the Government

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<sup>30</sup> *John Idiculla v. State*, 2005 CrLJ 2935 (Ker)

<sup>31</sup> *Latif Khan v. State*, 2008 CrLJ 3246 (Bom)

<sup>32</sup> *GV Rao v. LHV Prasad*, AIR 2000 SC 2474

of India to assess whether the offense punishable under section 498A of the Indian Penal Code, 1860 could be made compoundable. The Commission provided a comprehensive report (237th Report) titled "Compounding of IPC Offenses," recommending that the offense under section 498A should be made compoundable with the permission of the court. However, as of now, it has not been made compoundable<sup>33</sup>.

## **2.8 Dying Declaration and Sec. 498 – A**

In cases where the cause of death of the deceased is not disputed, a dying declaration made by the deceased cannot be considered as evidence of cruel acts committed by the accused for the purpose of holding them guilty under section 498A of the Indian Penal Code, 1860<sup>34</sup>.

In a specific legal case, the accused faced charges under section 306 IPC for abetment of suicide. The trial court convicted the accused based on this charge. However, on appeal, the High Court ruled that the offense under section 306 IPC was not established as there was no proof that the deceased's death was a result of suicide. Despite this, the High Court found the appellant guilty under section 498A IPC based on testimony from the deceased's family members, including her father, mother, sister, and another relative, as well as two written letters from the deceased detailing physical abuse by her husband.

The Supreme Court's analysis of this case highlighted that for a statement of a deceased person to be admissible in court, whether written or verbal, it must pertain to the cause of their death or the circumstances leading directly to their death, especially in cases where the cause of death is in question. However, in cases solely dealing with offenses under section 498A IPC, where the death itself is not the primary issue, such statements may not be admissible under section 32(1) of the Indian Evidence Act, 1872. Therefore, the statements from the deceased and the witnesses in this case could not be connected directly to the circumstances surrounding her death, and as a result, were not admissible as evidence in the context of the charges related to section 498A IPC<sup>35</sup>.

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<sup>33</sup> Ramgopal v. State of Madhya Pradesh, 2010 (13) SCC 540

<sup>34</sup> Kantilal Martaji Pandor v. State of Gujrat, AIR 2013 SC 3055

<sup>35</sup> Inderpal v. State of MP. (2001) 10 SCC 736

## **2.9 Punishment**

Despite the implementation of stringent laws aimed at improving the situation for women nationwide, incidents such as bride burning, cruelty, suicide, sexual harassment, rape, and suicides by married women continue to rise steadily. This alarming trend necessitates a significant overhaul of the existing system, including the imposition of harsh penalties on offenders, to effectively address these issues.

In a recent case, X tragically lost her life within three years of her marriage due to the relentless harassment inflicted upon her by her mother-in-law and sisters-in-law. The harassment stemmed from her inability to conceive a child, leading to a horrific act where kerosene was poured on her, resulting in her death by burning. Given the compelling evidence presented by the prosecution, there should be no leniency shown towards the appellants, who are the deceased's sisters-in-law and played a role in orchestrating the fatal act carried out by her mother-in-law<sup>36</sup>.

## **2.10 Protection of women from Domestic Violence Act, 2005**

The enactment of the Protection of Women from Domestic Violence Act, 2005 aimed to safeguard the rights of women who are victims of violence within the family context. The Act blends civil rights protection with penal provisions to ensure more effective support for women facing various forms of domestic abuse. Section 3 of the Act defines "domestic violence" broadly, covering situations akin to the definition of "cruelty" outlined in section 498A of the Indian Penal Code, 1860.

To operationalize its objectives, the Act establishes a comprehensive system to protect women facing domestic violence. One key aspect is the appointment of Protection Officers, overseen by a Judicial Magistrate of First Class. These officers play a pivotal role by reporting domestic incidents to the Magistrate, police stations, and service providers. They are tasked with assisting victims, providing essential services like shelter, medical aid, legal support, and representing victims in seeking relief before the Magistrate.

The Act ensures swift action by mandating the Magistrate to hear applications for relief within three days of receipt. Additionally, the Magistrate may order counselling for both the

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<sup>36</sup> Ashabai v. State of Maharashtra, AIR 2013 SC 341

respondent and the aggrieved person, involving qualified service providers as per Act standards. A welfare expert, preferably a woman, can also aid the Magistrate in decision-making.

Under section 18, the Magistrate can issue a protection order if convinced that domestic violence has occurred or is likely. This order prohibits the respondent from further violence or aiding such acts. The Act also empowers the Magistrate to issue residence orders, grant monetary reliefs, and take interim measures as deemed necessary, including ex-parte orders under section 23.

Breaching a protection order constitutes a cognizable and non-bailable offense, punishable with imprisonment up to one year (section 31). The Act supplements existing laws and preserves the right to file a complaint under section 498A IPC (Indian Penal Code) per section 5 of the Act.

The interplay between this Act and proceedings under section 498A is significant in two aspects: first, it facilitates swift protective measures by the Magistrate to prevent further victimization after an initial complaint under section 498A; second, it enables early initiation of counseling supervised by the Magistrate, promoting timely intervention and support for victims of domestic violence.

### **3. Global Measures to Combat Violence Against Women**

#### **3.1. Article 5 of Universal Declaration of Human Rights**

Article 5 of the Universal Declaration of Human Rights (UDHR) emphasizes the fundamental right of every individual to be free from torture and any form of cruel, inhuman, or degrading treatment or punishment. This article reflects the international community's commitment to upholding human dignity and preventing the abuse of individuals by prohibiting such practices. It serves as a foundational principle in human rights law, promoting respect for the inherent worth and rights of every person<sup>37</sup>.

#### **3.2. Beijing Declaration and the platform for action during 4 – 15 September, 1995**

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<sup>37</sup> <http://www.un.org/en/documents/udhr/index.shtml>.

During September 4-15, 1995, the Beijing Declaration and Platform for Action marked a significant milestone in global efforts towards gender equality and women's empowerment. The declaration and platform were adopted at the United Nations Fourth World Conference on Women held in Beijing, China.

The Beijing Declaration reaffirmed the fundamental principles of equality, non-discrimination, and the promotion of women's rights as human rights. It emphasized the importance of women's full participation in all spheres of life, including political, economic, social, and cultural domains. The declaration called for the elimination of all forms of discrimination and violence against women and girls, recognizing these as obstacles to achieving equality and development.

The Platform for Action outlined strategic objectives and actions to be taken by governments, international organizations, civil society, and the private sector to advance gender equality and empower women worldwide. It identified critical areas such as women's rights to education, healthcare, employment, and participation in decision-making processes. The platform emphasized the importance of addressing structural barriers and promoting women's economic independence, access to resources, and representation in leadership positions<sup>38</sup>.

### **3.3. The Vienna Declaration and Programme for Action**

The World Conference on Human Rights, convened on 25 June 1993, emphasized the critical need to eliminate violence against women across public and private spheres. It underscored the urgency of addressing sexual harassment, exploitation, and trafficking of women, while also targeting gender bias in legal systems. The conference called for eradicating conflicts between women's rights and harmful traditional practices, cultural biases, and religious extremism.

Furthermore, the conference urged the General Assembly to adopt a draft declaration on violence against women and encouraged states to combat such violence in alignment with the declaration's provisions. It stressed that violations of women's human rights during armed conflicts contravene fundamental principles of international human rights and humanitarian law. Specific egregious violations like murder, systematic rape, sexual slavery, and forced pregnancy demand particularly robust responses. The conference also emphasized the

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<sup>38</sup> Dr. Suman Rai, *Law Relating to Protection of Women from Domestic Violence*, (1st ed.), Allahabad: Orient Publishing Company, 2008, p.96.

elimination of all forms of discrimination against women, whether overt or hidden, highlighting the interconnectedness of these issues with broader human rights principles<sup>39</sup>.

### **3.4. Convention on Elimination of All Forms of Discrimination against Women (CEDAW)**

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is an important international treaty adopted by the United Nations in 1979. Often referred to as the Women's Rights Act, the CEDAW fights to eliminate discrimination against women and girls around the world. It sets clear expectations for countries to take measures to combat discrimination in all areas of life, from education and health to political participation and employment. As of April 20, 2024, 189 countries have ratified the Convention, making it one of the most widely adopted human rights agreements. Work does not stop there – the Expert Committee monitors how countries will respect the commitments of the CEDAW.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a strong testimony to the global struggle for gender equality. CEDAW, adopted by the United Nations in 1979, is often hailed as the international treaty on women's rights. It does not just proclaim high-level ideals, but establishes legal frameworks and clear obligations to actively eliminate discrimination against women and girls. This discrimination can take many forms, from restrictions on education opportunities to unfavourable workplace salaries and a lack of political representation. CEDAW has addressed these issues directly and has called on countries to take action in a wide range of areas. In April 2024, 189 countries had ratified CEDAW, demonstrating widespread recognition of its importance. But CEDAW is not a static document. A dedicated expert committee monitors, the countries are responsible for their commitments, and ensures that progress in gender equality continues. CEDAW is a powerful tool and beacon of hope, leading to lasting change for women and girls around the world<sup>40</sup>.

## **4. Conclusion & Suggestion**

Having gone through a number of legal literature pertaining to Domestic Violence against

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<sup>39</sup> The Vienna Declaration and Programme of Action, the general assembly conference, A/CONF.157/23, 12th July 1993, as adopted by the World Conference on Human Rights on 25 June 1993, [http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/a.conf.157.23.en](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en).

<sup>40</sup> Declaration on the Elimination of Violence against Women, The General Assembly Resolution, A//RES/48/104, December 20th, 1993, <http://www.un.org/documents/ga/res/48/a48r104.htm>.



women in India such as Section 498 – A of Indian Penal Code, 1860, Protection of Women from Domestic Violence Act, 2005, so many judgments of Supreme Court of India and High Courts and analyzing socio legal scholarly articles and research studies, it can be said that position of women pertaining to domestic abuse is miserable in contemporary times when digitalization and technological advancements is at its peak. Be it physical abuse, mental abuse, verbal abuse or economic abuse or abuse at workplace, women has to face everything, does not matter the home walls or workshop.

As per NCRB and NCW data, India has witnessed 6304 cases reported relating to Domestic Violence in which most of the cases have been registered from State of Uttar Pradesh. In 2022, number of reported cases were more in comparison of 2023 i.e. 6970 while in 2021 the figure had been 6633. Though in these preceding years the numbers of cases were less than COVID period. During COVID 19, crime relating to women with reference to Domestic Violence were more. Such data shows that a rich relation does not exist between husband and wife and the purpose of sacred relation not only between two human beings but families gets failed.

There are several reasons for Domestic Violence observed during the course of this research study. Most unique reason observed is that the families of bride have not been able to fulfill the dowry demands of *Dulha* and his family. It has been observed that this reason has led to death of newly married girls, physical and mental harassment from year to year, suicide, and even murder and culpable homicide of bride. Most of the heinous cases of such nature are unregistered. Neither they nor their parents get the FIR registered in police stations by reason of maintaining social prestige. In many rural areas of India, brides have been left as they have been subject to mental cruelty more and instead of getting them to see the Doctors or Psychiatrist, they been titled to *Dakin* or *Dakini* and *Apsakuni* or *Kulachini* .

Other reasons observed is more dreadful than Dowry Demand i.e. gender inequality for newly born baby. At many places it has been seen that where women have not been able to get the boy child born or mothers have born girl child, they have been subject to cruelty. The situation has been more complex where women can't get the child born by reason of any medical complexities. They become subject to harassment as they could not contribute in *Vansh-Vridhi*. There are end numbers of reasons observed by courts, society and social scientists but no everlasting solution subsist for such cause.

As far as substantive and procedural law relating to Domestic violence is concerned, under chapter XX A titled as “Of cruelty by Husband or Relatives of Husband” Indian Penal Code, 1860, added by 1983 amendment, Section 498 - talks about Husband or relative of husband of a woman subjecting her to cruelty which is as follows:-

*“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”*

Explanation to this Section states that: - (a) Willful conduct that may lead to suicide or serious injury to a woman's life, physical or mental health, is considered a serious offense. (b) Harassment of a woman is when it coerces her or her family to meet an unlawful demand for property or valuable security.

Both physical and emotional abuse are included in the definition of cruelty. Numerous elements are involved, including the woman's education, social background, aberrant conduct, persistent mocking or tormenting, having a concubine, and repeated false accusations of her chastity. Unlawful demand for dowry and harassment of woman if they fail to satisfy the demands. It might also take the form of verbal abuse rather than a physical attack on the woman's body. The Indian Evidence Act, 1872 (IEA) was amended with Section 113B, which states that if it can be demonstrated that a woman was cruelly or harassed prior to her death by someone in connection with a dowry demand, it will be assumed that the harasser was the reason behind the woman's death.

Section 198A of Code of Criminal Procedure, 1973 provides for Prosecution of offences under section 498A of Indian Penal Code, 1860. It states that a court cannot consider an offense covered by section 498A of the IPC, 1860, unless: (1) A police report with the details of the offense, or (2) A complaint submitted by the individual who was wronged, or by her parents, siblings, brother or sister of the mother or father. Any other person who is connected to you by blood, marriage, or adoption may also make a complaint, but only with the court's permission.

Latest development relating to Domestic Violence against women is that Section 85 and 86 of Bhartiya Nyay Sanhita, 2023 (w.e.f. from July 01, 2024) has the same provision as in Section 498 A of Indian Penal Code 1860. Further Parliament of India enacted Protection of Women from Domestic Violence Act, 2005 on September 13, 2005 which came into force on October

10, 2006. The object of this act is to safeguard women's right provided under Constitution and victims of offences relating to domestic violence and of such nature. Section 2(g) and 3 of the act defines the term "Domestic Violence". Explanation I of Section 3 of the Act has categorized four kinds of Domestic Abuse i.e. (a) Physical Abuse, (b) Mental Abuse, (c) Verbal and Emotional Abuse, and (d) Economic Abuse.

With changing needs of society and as per the facts and circumstances of the case, Supreme Court of India and High Courts have interpreted Section 498 A of Indian Penal Code, 1860 and provisions of Protection of Women from Domestic Violence Act, 2005. In *K.V Prakash Babu v. State of Karnataka*, 2016 it was observed that the definition of mental cruelty varies depending on the background and social status of individuals, leading to unique interpretations. Generalizing this concept is challenging, yet it can be better understood by considering specific established facts<sup>41</sup>. In *Gurcharan Singh v. State of Punjab*, 2017, it was held that mental cruelty is the *sine qua non* for entering a finding of cruelty against the person charged<sup>42</sup>. In *Krishna Bhattacharjee v. Sarathi Choudhury*, 2016, the court emphasized that obtaining a decree of judicial separation does not remove a wife's status as an aggrieved person under the Domestic Violence Act. The court distinguished between the effects of a divorce decree and a judicial separation decree, highlighting that the parties' status remains unchanged in the latter case<sup>43</sup>. In *Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade*, 2011, the Supreme Court clarified the definition of 'respondent', allowing an aggrieved wife or a woman in a relationship akin to marriage to file a complaint against a relative of her husband or male partner<sup>44</sup>. Furthermore, in *Hiral P Harsora v. Kusum Narottamdas Harsora*, 2016, the Supreme Court struck down the phrase "adult male" preceding "person" in Section 2(q) of the Act. The court reasoned that such language created unjust distinctions among individuals in similar situations, contradicting the Act's intended objectives<sup>45</sup>.

Global efforts to combat violence against women are rooted in key international declarations and conventions. The Universal Declaration of Human Rights (UDHR) Article 5 underscores the right of every individual to be free from torture and cruel treatment, forming a foundational principle in human rights law. The Beijing Declaration and Platform for Action, adopted in

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<sup>41</sup> *KV Prakash Babu v. State of Karnataka*; AIR 2016 SC 5430.

<sup>42</sup> *Gurucharan Singh v. State of Punjab*; AIR 2017 SC 3869.

<sup>43</sup> *Krishna Bhattacharjee v. Sarathi Choudhari*; (2016) 2 SCC 7055

<sup>44</sup> *Sandhya Manoj Wankhede v. Manoj Bhimrao Wankhede*; 2011 AIR (SCW) 1327

<sup>45</sup> *Hiral P Harsora v. Kusum Narottamdas Harsora*; 2016 (10) SCC 165

1995, marked a significant step towards gender equality and women's empowerment. It emphasized equality, non-discrimination, and the elimination of violence against women while outlining strategic objectives for governments and organizations. The Vienna Declaration and Programme for Action, from the 1993 World Conference on Human Rights, highlighted the urgent need to address violence against women, including sexual harassment and exploitation, within legal and cultural frameworks. It called for robust measures to protect women's rights during conflicts and combat discrimination. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979, is a crucial international treaty promoting women's rights globally. It sets clear expectations for countries to eliminate discrimination in various areas and has been widely ratified, with ongoing monitoring to ensure compliance and progress.

Moving forward, several recommendations can enhance India's response to domestic violence. Strengthening legal frameworks through amendments and robust implementation mechanisms is essential to ensure the effective protection of survivors and the prosecution of perpetrators. Additionally, investing in awareness campaigns, training programs, and support services can empower survivors to seek help and navigate the legal system. Collaboration between government agencies, NGOs, and community stakeholders is vital for creating a coordinated response to domestic violence and fostering a culture of zero tolerance.

Continuous training and sensitization programs should be provided to law enforcement officials, judiciary, healthcare professionals, and social workers. This training should focus on recognizing signs of domestic violence, understanding survivor needs, handling cases with sensitivity, and effectively implementing legal provisions. Increase the accessibility and availability of support services such as shelters, counseling centers, legal aid clinics, and helplines for survivors of domestic violence. These services should be well-funded, staffed with trained professionals, and equipped to provide comprehensive support including legal assistance, mental health support, and rehabilitation.

Integrate education on gender equality, respectful relationships, and conflict resolution into school curricula and community outreach programs. Promote awareness campaigns through media, social platforms, and community events to challenge stereotypes, promote gender-sensitive attitudes, and encourage reporting of domestic violence incidents. Explore the use of technology for improving access to justice and support services. Develop mobile apps or online

platforms for reporting abuse, accessing information about rights and services, and connecting survivors with relevant resources. Leverage technology for remote counseling, evidence collection, and tracking cases to ensure timely interventions. Foster partnerships with local communities, NGOs, religious leaders, and grassroots organizations to create community-based interventions and support networks. Empower community leaders to advocate for zero tolerance towards domestic violence, provide peer support to survivors, and facilitate dialogue on gender equality and women's rights. Consider reforms to strengthen legal protections for survivors, including provisions for emergency protective orders, expedited legal processes, and stricter penalties for perpetrators. Establish specialized courts or fast-track mechanisms to handle domestic violence cases efficiently, ensuring timely justice and protection for survivors. Invest in robust data collection mechanisms and research initiatives to gather comprehensive data on the prevalence, trends, and impact of domestic violence. Use data-driven insights to inform policy decisions, allocate resources effectively, and evaluate the effectiveness of interventions over time.