Subject: **CRIMINOLOGY**

Production of Courseware

**e- Content for Post Graduate Courses**

**Paper:** **SOCIAL LEGISLATIONS AND CRIME**

**Module:** **EVIDENTIARY AND PROCEDURAL CHALLENGES IN RELATION TO MATRIMONIAL OFFENCES**
Quadrant I- Description of Module

<table>
<thead>
<tr>
<th>Subject Name</th>
<th>Criminology</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paper Name</td>
<td>Social Legislations and Crime</td>
</tr>
<tr>
<td>Module No.</td>
<td>11</td>
</tr>
<tr>
<td>Module Name/Title</td>
<td>Procedural and Evidentiary Challenges in relation to Matrimonial Offences</td>
</tr>
<tr>
<td>Pre-requisites</td>
<td>To create a general understanding of modalities of legal procedure and evidence in Matrimonial offence cases.</td>
</tr>
</tbody>
</table>

Objectives

1. To provide a comprehensive understanding of procedure and evidence collection and presentation in offences related to marriage.
2. To make the learners aware of the procedure to be followed by courts and investigating agencies while handling matrimonial offences.
3. To make the learners understand the role of evidence in the process of judicial decision making in matrimonial offences.
4. To make learners understand and analyse the different provisions of the law dealing specifically with matrimonial offences.

Keywords

Adultery, Bigamy, Mock or Invalid marriages, Criminal elopement, Dowry, Dowry Death, Cruelty, Mental and Physical torture

Quadrant II- E- Text

The institution of marriage was principally the sole concern of the respective religious laws and the State rarely interfered in it. However, with change in time, it was realised that criminal laws should not only be restricted to protection of life, liberty and property of individuals but should also be extended to social institutions like family and marriage. These social institutions soon started becoming the concern of the State and with the arrival of British the prevailing Criminal Justice System was replaced with a new one which was based on Bentham’s utilitarianism principle.

One of the most significant documents codified during the British Raj was the Indian Penal Code (hereinafter IPC) which was drafted by the First Law Commission and which remains to form the backbone of our Criminal Justice System till date. Chapter XX of IPC which
contains offences relating to marriage dealt with infidelity within the institution of marriage. For the first time, offences such as bigamy and adultery was penalised keeping in mind the chastity of women and the sacredness of marriage. Chapter XX-A, containing only one section (s.498A) which deals with cruelty to a woman by her husband or his relatives, was included in IPC by the Criminal Law (Second Amendment) Act 1983 while Section 304-B which deals with Dowry death was included in IPC by Act 43 of 1986.

The following are the primary matrimonial offences in IPC:

- Mock or invalid marriages (ss. 493 and 496);
- Bigamy (ss. 494 and 495);
- Adultery (s. 497);
- Criminal elopement (s. 498);
- Cruelty by husband or relatives of husband (s. 498-A);
- Dowry Death (s. 304-B)

The Present Paper is an endeavour to revisit the above mentioned Matrimonial Offences and examine the procedural and evidentiary challenges that are usually faced by the prosecution while establishing Matrimonial offence in the Court of law.

Before delving into the details of each of the above mentioned matrimonial offences it is necessary to take note of Section 198 of the Code of Criminal Procedure (hereinafter CrPC) which provides for prosecution for offences against marriage.

**Section 198 of the CrPC reads – in material part – as follows:**

(1) No court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

**Provided that**-

(a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

***
(c) where the person aggrieved by an offence punishable under Section 494 of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister.

(2) For the purposes of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code

Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.

I. Section 493 & Section 496 IPC: Mock or Invalid Marriages:

493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage

Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

For conviction under Section 493 IPC the following must be proved by the Prosecution:

- That the accused committed deceit;
- That by such deceit he induced a woman, who is not his wife, to believe herself to be legally married to the accused;
- That thereby she cohabitated or had sexual intercourse with the accused.

In order to establish deception it must be proved that the accused either dishonestly or fraudulently concealed certain facts or made faux assertion knowing it to be false (Raghunath Pandhy v. State of Orissa, 1957). In Dayanidhi Nayak v. State (2002), the accused on promise to marry carried on sexual intercourse with informant for a year and later refused to marry her after she became pregnant. However, the informant neither in her FIR nor in her statement u/s 161 CrPC alleged that she was induced by the accused. It was held that the prerequisite of
deception resulting to consent of woman for sexual intercourse was not made out and therefore, framing of charges u/s 493 against the accused was wrong.

The offence under this Section can also be punished as rape under Section 375 (4) (*Samman v. State of M.P, 1988*).

**496. Marriage ceremony fraudulently gone through without lawful marriage**

Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

For conviction under Section 496 IPC the following must be proved by the Prosecution:

- That the accused went through the ceremony of marriage;
- The accused was aware that despite those ceremonies, he was not thereby legally married to the complainant;
- He went through the ceremony dishonestly or with fraudulent intention.

**A. Section 493 vis-à-vis Section 496:**

Under s. 493, the offense consist in inducing a woman to believe that she is legally married to the accused by deceit and making her to cohabit or have sexual intercourse with the accused in that belief. Under s. 496, the offence consists in dishonestly or with a fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married. Therefore, the offence under s. 496 does not require deception, cohabitation or sexual intercourse as *sine qua non*. Under s. 496 the offence can be committed by either man or woman, while under s. 493, it can be committed only by a man. In both cases, however, it is necessary that a form of marriage which is not valid must have been gone through with a fraudulent intention (*Ratanlal & Dhirajlal, 2011*).

**II. SECTION 494 & SECTION 495 IPC: BIGAMY:**

**494. Marrying again during lifetime of husband or wife**

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife,
shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Exception:** This section does not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

**For conviction under Section 494 IPC the following must be proved by the Prosecution:**

- That the complainant was legally married to the accused;
- That the accused entered into the second marriage during the subsistence of the first;
- Both marriages were valid and were strictly according to law governing the parties (*L. Obulamma v. L. Venkata Reddy, 1979*).  

### 495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted

Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine

**For conviction under Section 495 IPC the following must be proved by the Prosecution:**

- That the accused committed an offence of bigamy (as given under s. 494 IPC);
- That the accused concealed the subsistence of former marriage from the person with whom the subsequent marriage was entered into.

#### a. Valid Marriage

Section 494 opens with the words “Whoever, having a husband or wife living, marries”. The expression “whoever marries” has been interpreted to mean “whoever marries validly” or “whoever marries and whose marriage is a valid one”. Therefore, the expression “marriage”
would mean marriage valid in form though not in law. (Subir Kumar v. State of W.B., 1991). Hence, to establish the offence of bigamy it must first be proved that both the marriages have been solemnised after due observance of rites and ceremonies. Various personal and customary laws necessitate the conducting of certain ceremonies and rites in order to constitute a valid marriage. What ceremonies are necessary depends upon the customs of the community to which the parties belong.

The word “solemnized”, in relation to marriage, means to celebrate the marriage with proper ceremonies and in due form (Ratanlal & Dhirajlal, 2011). Merely following certain ceremonies with the intention of going through marriage is not sufficient (Kanwal Ram v. Himachal Pradesh Administration, 1966). Therefore, the vital features of the ceremonies must be proved (Gopal Lal v. State of Rajasthan, 1979).

In Bhaurao Shankar Lokhande v. State of Maharashtra (1965) the accused had undergone a Gandharve Vivah and the prosecution advocated that this was one of the customary forms of marriage among Maharashtrians. The court acquitted the husband of the offence of bigamy on the ground that the valid solemnization of the alleged second marriage was not proved because the ceremonies which were essential were not performed and therefore, the second marriage was void. Quoting from Mulla's Hindu Law, the Court stated that one of the essential ceremonies to be performed in the Hindu marriage is the Saptapadi around the vivahamandap and invocation before the sacred fire. The court observed: “Prima facie, the expression ‘whoever … marries’ must mean ‘whoever ... marries validly’ or ‘whoever ... marries and whose marriage is a valid one’. If the marriage is not a valid one, according to the law applicable to the parties, no question of its being void by reason of its taking place during the life of the husband or wife of the person marrying arises. If the marriage is not a valid marriage, it is not marriage in the eye of Law...”

Burden to prove both the marriages as ingredients of the offence of bigamy is on the prosecution and both the marriages should be a valid marriage (Rajlakshmi Mohapatra v. Prafulla Mohapatra, 1974). First marriage must be strictly proved. However, during the survival of first marriage the second marriage would normally be done in secrecy knowing well that it is an offence, and therefore if the Court insists on strict proof it would amount to encouraging perjury. But the endeavour of the Court is to discover the real truth and to convict the accused if there is a valid second marriage. The current legislation is insufficient
to convict an accused under Sections 494 and 495 IPC without there being a substantial proof of alleged second marriage.

b. Admission

Admission is a strong evidence in a civil proceeding unless explained or shown to be erroneous but same is not the case with criminal prosecution. In adultery or bigamy case mere admission is not sufficient to prove the factum of marriage. The essential ceremonies constituting the marriage must be proved.

In (Priya Bala v. Suresh Chand, 1971) the Supreme Court held that even an admission made by the accused that he entered into a second marriage was not sufficient and the prosecution must prove that the second marriage was performed with all essential ceremonies.

There is, however, a strong presumption in favour of the validity of marriage if from the time of such marriage the parties are accepted by the people concerned as man and wife or there is a continuous co-habitation for a number of years and such presumption applies also to the question whether the formal requisites of a valid marriage ceremony were satisfied. (Rabindra Nath Dutta v. State, 1969). But this presumption is rebuttal and if there are circumstances which undermine or destroy that presumption the Court cannot disregard them. (Gokal Chand v. Parvin Kumar, 1952).

c. Abetment of bigamy

In a prosecution for abetment of bigamy the prosecution has to first prove that the person who is alleged to have committed bigamy was married lawfully once and has gone through a second valid marriage ceremony and then has to prove that the person alleged to have abetted the bigamy knew, when he arranged or assisted at the second marriage, that the person who was remarried had contracted a valid first marriage and that husband or wife of the first marriage was still living (Shafiullah v. Emperor, 1934).

d. Complaint by aggrieved person

In view of Section 198 CrPC except upon a complaint by a person aggrieved no court can take cognizance of an offence u/s. 494 or 495 IPC. This is subject to Clauses (a) to (c) of Section 198 (1) Cr.P.C. It has to be noted that the women with whom the second marriage was contracted is also a victim and hence would be considered as an aggrieved person within the meaning of Section 198 CrPC (Urmila Devi v. Bhimarao, 1990). However, if the second
wife knowingly entered into a void marriage then she is not aggrieved and hence no complainant lies at her instance. (Sarada v. Gopalswami Rao, 1967)

e. **Religious conversion to commit Bigamy**

There were cases where in order to legitimize the second marriage, married Hindu men started converting into Islam along with the woman they wanted to get married and marry her in accordance with the provisions of Muslim Law. The Hindu law was silent on the legitimacy aspect of second marriage solemnized under a different religion. This exploitation of the personal laws along with the freedom of conversion was severely condemned by the Supreme Court

In Sarla Mudgal v. Union of India (1995), and in Lily Thomas v. Union of India (2000), the apex court held that the second marriage of a converted Muslim (originally a Hindu) man solemnized under Muslim Law would be counted as a second marriage for the purpose of the offence of bigamy and such person would be liable to be punished.

Thus the message was strongly expressed by the Supreme Court that it would not permit the misuse of personal laws for illegitimate purposes.

f. **Miscellaneous:**

- Sanction of Central Government is mandatory for prosecution carried in India in respect of bigamy or any offence committed abroad (Ranjit v. Parul, 1980).

- Some other person can with the leave of the Court file a complaint alleging bigamy on behalf of the aggrieved person but then the aggrieved person must be a minor below 18, or an idiot or lunatic or suffering from sickness or infirmity unable to file complaint, or the aggrieved person was serving in the armed forces.

- If a woman despite being married earlier, during the lifetime of her spouse is alleged to have contracted a bigamous marriage with a second man and the essential ceremony solemnizing the second marriage is not proved, but is found to cohabit with the second man, charge under Section 494 or 495 may fail, but he may on proper charge being framed be hauled up for adultery. (Ratanlal & Dhirajlal, 2011)

### III. **SECTION 497 IPC: ADULTERY:**

497. Adultery
Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall be punishable as an abettor.

The cognizance of this offence is limited to adultery committed with a married woman, and only the male offender would be made liable to punishment. Thus, under the Code, adultery is an offence committed by an outsider/third person against a husband in respect of his wife. It is not committed by a married man who has sexual intercourse with unmarried women, or with a widow, or even with a married woman whose husband consents to it. Another important feature is that the wife who consents to sexual intercourse with one outside the wedlock cannot be prosecuted either as principle or abettor. Nor can the wife prosecute her husband for adultery (Ratanlal & Dhirajlal, 2011).

For conviction under Section 497 IPC the Prosecution must prove:

- Firstly, that the woman with whom the accused intended to have sexual intercourse was the lawful wife of another man i.e. it must be first established that she has been married under any one of the recognised forms of marriage or in any special form of marriage recognised by law or custom which governs the parties to the marriage.

- Secondly, that the accused had knowledge or had reason to believe that she is the wife of another man and that the intercourse was without the consent or connivance of the husband (Ibrahim Hussainji v. State of Madhya Bharat, 1956).

a. **Circumstantial evidence**

It is the first principle of criminal law that where a statute creates a criminal offence the ingredients of that criminal offence must be proved beyond reasonable doubts, and that where the commission of an act without consent or without authority is made a criminal offence, and the statute does not expressly burden the accused with the proof of such consent or authority, it is a necessary part of the case for the prosecution to negative by evidence such consent or authority (Ratanlal & Dhirajlal, 2011). However, adultery can very rarely, if ever, be proved by the direct evidence of witnesses who saw the parties in flagrante delicto and witnessed the act. In most cases, the evidence is circumstantial in character and devolves
on the situation spoken to in regard to which the act is alleged, and the probabilities relating to that situation (Subbarama Reddiar v. Saraswathi Ammal, 1966). Therefore, direct evidence is not necessitated to establish adultery, in fact direct evidence, if produced in the court, could be negative. The reason is that adultery is a secret act and it is highly improbable that there could be a witness to such a secret act (Pattayee Ammal v. Manickam Gounder, 1967).

In the case of Samuel Bahadur Singh v. Smt. Roshni Singhit was held that:

“The Court usually infers adultery from the fact that the respondent wife shared a bed or bedroom for the night with a person of opposite sex other than the petitioner or from the fact that the respondent had been carrying on an association with a person of the opposite sex other than the petitioner and there is evidence of illicit affection or undue familiarity between them coupled with an opportunity for them to have committed adultery.”

As mentioned above direct evidence of adultery is usually not available, circumstantial evidence is required to be produced in courts. However, it is to be noted that the circumstances should be such that it should lead to a requisite conclusion that adultery was in fact committed.

In the case of Thimmappa Dasappa v. Thimmavva Kom Thimmappa (1972), the Karnataka High Court held:

“if a husband proves beyond reasonable doubt that his wife has been seen absenting herself from his house for a long time and has been seen in the company of a total stranger to his family and that no reasonable explanation is given by her or that she has given a false explanation for her having been seen in the company of that stranger at different places or in a room will give rise to a reasonable inference that she has contacted illicit connection with that man and has been living in adultery. The standard of proof required in such a case is similar to the one in a criminal case. The evidence must be independent, disinterested, cogent, reliable and worthy of credit.”

b. Reason to believe wife of another

It must be proved that the alleged adulterer had reasons to believe that the lady with whom he had coitus was the wife of another man. It is not necessary that the adulterer should know whose wife the woman is, provided he knew she was a lawfully married woman.
c. **Sexual intercourse:**

The attempt to commit adultery must not be confused with the act itself and if there is no penetration, some lesser act of sexual gratification does not amount to adultery.

d. **Connivance**

It is not sufficient for the prosecution to prove the act of adultery. The prosecution must also prove that the husband did not connive at it. Connivance is a willing consent to a conjugal offence, or a culpable acquiescence in a course of conduct reasonably likely to lead to the offence being committed. It means a voluntary ignorance to some act or conducts which is more than a mere negligence. It entails an anticipatory consent to adultery committed by other spouse. The absence of consent or connivance is to be inferred from facts and circumstances of the case. Strict proof of absence of connivance is not necessary (*State of Rajasthan v. Bhanwaria, 1965*).

The Court in *In Re: C.S. Subramaniam (1953)* stated that where a husband was aware about his wife's extramarital affair and did nothing to stop it, then such conduct of husband would amount to tacit consent. The Court held:

“We are satisfied from the evidence that the complainant was no longer interested in his wife leading a chaste life. In fact he was anxious to get a divorce ... We are driven to the conclusion that it mattered to him nothing as to what his wife did after he had filed the divorce suit. He allowed her to have her own mode of living without any kind of hindrance on his part ... As the necessary ingredients of the offence have not been proved we find that the petitioner is not guilty of the offence with which he is charged and we acquit him and set him at liberty”.

e. **Miscellaneous:**

- **Validity of Section 497:** s.497 is often challenged on grounds that it is a flagrant instance of 'gender discrimination', 'legislative despotism', 'romantic paternalism' and 'male chauvinism'. However in (*Sowmithri Vishnu v. Union of India and Anr, 1985*) it was held that the arguments that the definition should be recast by extending the ambit of the offence of adultery, so that, both the man and the woman should be punishable for the offence of adultery, go to the policy of the law, not to its constitutionality and hence is unquestionable, unless, while implementing the policy, any provision of the Constitution is infringed. Hence, it is for the
legislature to consider whether s. 497 should be amended appropriately so as to take note of
the transformation, which the society has undergone.

➢ Section 497 IPC is so designed that a husband cannot prosecute the wife for defiling the
sanctity of the matrimonial tie by committing adultery. The provision which disables the wife
from prosecuting the husband for such an offence is embodied in Section 198(1) read with
Section 198(2) of the CrPC which carves out an exception to the general rule that anyone can
set the criminal law in motion. Thus the law permits neither the husband of the offending
wife to prosecute his wife nor does the law permit the wife to prosecute the offending
husband for being disloyal to her. Thus both the husband and the wife are disabled from
striking each other with the weapon of criminal law (V. Revathi v. Union of India (UOI) and
Ors, 1988).

➢ Though it is true that the erring spouses have no remedy against each other within the
confines of Section 497 IPC, that is to say, they cannot prosecute each other for adultery,
each one has a remedy against the other under the civil law, for divorce on the ground of
adultery. 'Adulter' under the civil law has a wider connotation than under the Penal
Code (Ratanlal & Dhirajlal, 2011).

➢ The law punishes the 'outsider' who breaks into the matrimonial home and violates the
sanctity of the matrimonial tie by developing an illicit relationship with one of the spouses
subject to the rider that the erring 'man' alone can be punished and not the erring woman.
Therefore, neither the husband can prosecute the wife and send her to jail nor can the wife
prosecute the husband and send him to jail (W. Kalyani v. State tr. Inspector of Police and
Anr, 2012).

IV. SECTION 498 IPC:

498. Enticing or taking away or detaining with criminal intent a married
woman

Whoever takes or entices away any woman who is and whom he knows or has reason
to believe to be the wife of any other man, from that man, or from any person having
the care of her on behalf of that man, with intent that she may have illicit intercourse
with any person, or conceals or detains with that intent any such woman, shall be
punished with imprisonment of either description for a term which may extend to
two years, or with fine, or with both.
For conviction under Section 498 IPC the following must be proved by the Prosecution:

- There exists a valid marriage between the complainant and the woman concerned;
- That the accused had knowledge or reason to believe the woman to be the wife of any other man;
- That the accused has taken away or enticed away the woman from her husband or from any person having the care of her on behalf of the husband;
- That the accused has taken or enticed away or detained or concealed the said woman with the intent that she may have illicit intercourse with any person outside the wedlock, not necessarily the accused himself.

a. “Takes”

The taking away of wife does not mean taking by force and means something different from enticing. “Taking” implies there is some influence, physical or moral, brought to bear by the accused to induce the wife to leave her husband. It is sufficient that the accused personally and actively aided the wife to break loose from her husband’s house or from the custody of any person who was taking care of her on behalf of the husband, when this is done with the intention stated in this section (State of H.P. v. Mt. Kala, 1957).

b. “Enticing”

The word enticement has not been defined in the Code but to entice is to take away by arousing desire or lust. There must be tangible evidence that the accused took or enticed away the woman within the meaning of the section (Norman O’connor v. Emperor, 1935).

c. “Detains”

The word “detains” means “keeps back”. The keeping back need not necessarily be by physical force, it may be by persuasion or by allurement and blandishment. There should be something in nature of control or influence which can be properly described as a keeping back of the woman. Proof of some kind of persuasion is necessary (Alamgir v. State of Bihar, 1959). It cannot properly be said that a man detains a women if she has no desire to leave and on the contrary desired to stay with him.
d. “Any person”

The words “with intent that she may have illicit intercourse with any person” and particularly the words “any person” postulate that it is not necessary that accused should have intention to commit sexual intercourse himself. The woman may have illicit intercourse with any person outside the wedlock and not necessarily the accused himself.

V. **SECTION 498-A IPC: CRUELTY:**

**498A. Husband or relative of husband of a woman subjecting her to cruelty:**

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

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

(a) 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, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.
It may be noted that Section 125 CrPC provides for giving maintenance to the wife and some other relatives. The word 'wife' has been defined in Explanation (b) to Section 125(1) of the CrPC as follows:

“Wife includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.”

In Vimala v. Veeraswamy (1991), a three-Judge Bench of the Supreme Court held that Section 125 of the Code is meant to achieve a social purpose and the object is to prevent vagrancy and destitution. Explaining the meaning of the word 'wife' the Court held:

“The term 'wife' in Section 125 of the Code of Criminal Procedure, includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a wife is thus brought within the inclusive definition of the term 'wife' consistent with the objective. However, under the law a second wife whose marriage is void on account of the survival of the first marriage is not a legally wedded wife, and is, therefore, not entitled to maintenance under this provision.”
In a subsequent decision of this Court in Savitaben Somabhat Bhatiya v. State of Gujarat and Ors(2005), this Court held that however desirable it may be to take note of the plight of an unfortunate woman, who unwittingly enters into wedlock with a married man, there is no scope to include a woman not lawfully married within the expression of 'wife'. The Bench held that this inadequacy in law can be amended only by the Legislature.

However, the question has also to be examined from the point of view of The Protection of Women from Domestic Violence Act, 2005. Section 2(a) of the Act states:

"aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

Section 2(f) states:

"domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

Section 2(s) states:

"shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent...

In the aforesaid Act of 2005 the Parliament has taken notice of a new social phenomenon which has emerged in our country known as live-in relationship. The expression 'domestic relationship' includes not only the relationship of marriage but also a relationship 'in the nature of marriage'. The question, therefore, arises as to what is the meaning of the expression 'a relationship in the nature of marriage'. Unfortunately this expression has not been defined in the Act.

In D. Velusamy v. D. Patchaiammal (2010), the Supreme Court has held that:

In our opinion a 'relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married:
The couple must hold themselves out to society as being akin to spouses.

- They must be of legal age to marry.
- They must be otherwise qualified to enter into a legal marriage, including being unmarried.
- They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

In our opinion a 'relationship in the nature of marriage' under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a 'shared household' as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a 'domestic relationship'.

In the above mentioned premises, not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned above must be satisfied, and this has to be proved by evidence.

No doubt the view taken by the Court would exclude many women, who have had a live in relationship, from the benefit of the 2005 Act, but then it is not for the Court to legislate or amend the law. Parliament has used the expression 'relationship in the nature of marriage' and not 'live in relationship'. The Court in the grab of interpretation cannot change the language of the statute.

[Section B: Interested Witness]

When a woman is subjected to ill-treatment within the four walls of her matrimonial house, it is usually witnessed only by the perpetrators of the crime. They would surely not depose about it. It is common knowledge that independent witnesses like servants or neighbours refrain from getting involved. Even though it is true that chances of exaggeration by the interested witnesses cannot be ruled out, it is for the trained judicial mind to find out the truth. Witnesses are prone to exaggeration. If the exaggeration is of such nature as to make the witness wholly unreliable, the court would obviously not rely on him. If attendant circumstances and evidence on record clearly support and corroborate the witness, then merely because he is interested witness he cannot be disbelieved because of some exaggeration, if his evidence is otherwise reliable. ([Vajresh Venkatray Anvekar v. State of Karnataka, 2013])
c. **Requirement of specific allegations in FIR:**

It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law.

In Kans Raj v. State of Punjab (2000), it has been held that there is a tendency in cases of 498-A IPC and 304-B IPC to rope in a large number of in-laws of the victim wife along with the husband. In para 5 of the law report it has been observed:

“...In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case.”

The Supreme Court in Geeta Mehrotra and Anr. v. State of U.P. and Anr (2012) has held that if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial.

However, the courts are expected to adopt a cautious approach in matters of quashing the proceedings specially in cases of matrimonial dispute where the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant. (*Ramesh v. State of Tamil Nadu, 2005*)

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d. **Delay in lodging F.I.R:**

The Court in Vajresh Venkatray Anvekar v. State of Karnataka (2013) noted that six hours delay in lodging the F.I.R. cannot be taken against the prosecution. The Court held:

“When a man looses his daughter due to cyanide poisoning, he is bound to break down. He would take time to recover from the shock. Six hours delay cannot make his case untrue. It is also not proper to expect him to give all minute details at that stage. The F.I.R. contains...
sufficient details. It is not expected to be a treatise. We feel that the comments on alleged delay in lodging the F.I.R. and its contents are totally unwarranted.”

e. Period of Limitation:

The general rule of limitation is based on the Latin maxim: *vigilantibus, et non, dormientibus, jurasubveniunt* (the vigilant, and not the sleepy, are assisted by the laws). That maxim cannot be applied in connection with offences relating to cruelty against women (Sanapareddy Maheedhar and Anr. v. State of Andhra Pradesh and Anr, 2008).

For deciding whether the learned Magistrate could take cognizance of offence under Sections 498A IPC read with Sections 4 and 6 of the Dowry Act after expiry of three years, it will be useful to notice the scheme of Chapter XXXVI of the Code of Criminal Procedure. Section 468 which finds place in that Chapter creates a bar against taking cognizance of an offence after lapse of the period of limitation. Sub-section (1) thereof lays down that except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in Sub-section (2), after the expiry of the period of limitation. Sub-section (2) specifies different periods of limitation for different types of offences punishable with imprisonment for a term exceeding one year but not exceeding three years, the period of limitation is three years. Section 469 specifies the point of time with reference to which the period of limitation is to be counted. Section 470 provides for exclusion of time in certain cases. Section 472, which deals with continuing offence declares that in case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues. Section 473, which begins with non-obstante clause, empowers the Court to take cognizance of an offence after the expiry of the period of limitation, if it is satisfied that the delay has been properly explained and it is necessary so to do in the interest of justice.

In Venka Radhamanohari v. Vanka Venkata Reddy (1993) the Supreme Court considered the applicability of Section 468 to the cases involving matrimonial offences, referred to the judgment in Sarwan Singh's case and observed:

It is true that the object of introducing Section 468 was to put a bar of limitation on prosecutions and to prevent the parties from filing cases after a long time, as it was thought proper that after a long lapse of time, launching of prosecution may be
vexatious, because by that time even the evidence may disappear. This aspect has been mentioned in the statement and object, for introducing a period of limitation, as well as by this Court in the case of Sarwan Singh. But, that consideration cannot be extended to matrimonial offences, where the allegations are of cruelty, torture and assault by the husband or other members of the family to the complainant. It is a matter of common experience that victim is subjected to such cruelty repeatedly and it is more or less like a continuing offence. It is only as a last resort that a wife openly comes before a court to unfold and relate the day-to-day torture and cruelty faced by her, inside the house, which many of such victims do not like to be made public. As such, courts while considering the question of limitation for an offence under Section 498A i.e. subjecting a woman to cruelty by her husband or the relative of her husband, should judge that question, in the light of Section 473 of the Code, which requires the Court, not only to examine as to whether the delay has been properly explained, but as to whether 'it is necessary to do so in the interests of justice.

In Arun Vyas v. Anita Vyas (1999) the Supreme Court again considered the applicability of Section 473, Cr.P.C. in cases relating to matrimonial offences and observed:

It is true that the expression 'in the interest of justice' in Section 473 cannot be interpreted to mean in the interest of prosecution. What the court has to see is 'interest of justice'. The interest of justice demands that the court should protect the oppressed and punish the oppressor/offender. In complaints under Section 498A the wife will invariably be oppressed, having been subjected to cruelty by the husband and the in-laws. It is, therefore, appropriate for the courts, in case of delayed complaints, to construe liberally Section 473 Cr.P.C. in favour of a wife who is subjected to cruelty if on the facts and in the circumstances of the case it is necessary so to do in the interests of justice.

The ratio of the above noted judgments is that while considering the applicability of Section 468 to the complaints made by the victims of matrimonial offences, the court can invoke Section 473 and can take cognizance of an offence after expiry of the period of limitation keeping in view the nature of allegations, the time taken by the police in investigation and the fact that the offence of cruelty is a continuing offence and affects the society at large. To put
it differently, in cases involving matrimonial offences the court should not adopt a narrow and pedantic approach and should, in the interest of justice, liberally exercise power under Section 473 for extending the period of limitation (*Ramesh v. State of Tamil Nadu, 2005*).

**f. Quashing of the criminal proceedings in non-compoundable offences relating to matrimonial disputes**

The inherent powers of the High Court under Section 482 of the Code are wide and unfettered. It is the duty of the courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of the Constitution enables the Supreme Court to quash criminal proceedings in matrimonial disputes. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the court is satisfied that the parties have settled the same amicably and without any pressure, for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings (*Jitendra Raghuvanshi and Ors. v. Babita Raghuvanshi and Anr, 2013*).

**VI. SECTION 304-B IPC: DOWRY DEATH:**

*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 purpose 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."
The primary ingredient to attract the offence Under Section 304B is that the death of a woman must be a "dowry death". "Dowry" is defined by Section 2 of the Dowry Prohibition Act, 1961, which reads as follows:

**Section 2 Dowry Prohibition Act:**

**Definition of "dowry":** In this Act, "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 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 the said parties, but does not include] dower or *mahr* in the case of persons to whom the Muslim Personal Law (*Shariat*) applies.

**Explanation II:** The expression "valuable security" has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860).
Elements of the definition of ‘dowry’ as per Section 2 of the Dowry Prohibition Act

Dowry must first consist of any property or valuable security. The word "any" is a word of width and would, therefore, include within it property and valuable security of any kind whatsoever.

Such property or security can be given or even agreed to be given. The actual giving of such property or security is, therefore, not necessary.

Such property or security can be given or agreed to be given either directly or indirectly.

Such giving or agreeing to give can again be not only by one party to a marriage to the other but also by the parents of either party or by any other person to either party to the marriage or to any other person. It will be noticed that this clause again widens the reach of the Act insofar as those guilty of committing the offence of giving or receiving dowry is concerned.

Such giving or agreeing to give can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnized.

Such giving or receiving must be in connection with the marriage of the parties. Obviously, the expression "in connection with" would in the context of the social evil sought to be tackled by the Dowry Prohibition Act mean "in relation with" or "relating to".
In Gurdip Singh v. State of Punjab (2013), the Supreme Court held that though the expression “presumed” is not used under Section 304-B IPC, the words “shall be deemed” carry, literally and under law, the same meaning since the intent and context requires such attribution and it is a “mandatory presumption” or, in other words, of “shall presume” variety. Additionally, Courts have held that the terms “relative of the husband” in a criminal statue like Section 304-B should be restrictively interpreted and the phrase refers only to a person related by blood, marriage or adoption (Punjab v. Gurmit Singh, 2014).

The Supreme Court has, however, spoken sometimes with divergent voices both on what would fall within "dowry" as defined and what is meant by the expression "soon before her death".

a. “Dowry”

In Appasaheb v. State of Maharashtra (2007), the Supreme Court construed the definition of dowry strictly, as it forms part of Section 304B which is part of a penal statute. The court held that a demand for money for defraying the expenses of manure made to a young wife who in turn made the same demand to her father would be outside the definition of dowry. This Court said:

A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the Appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. (at page 727).

Appasaheb’s (Supra) judgment was distinguished in at least four other judgments (Raminder Singh v. State of Punjab, 2014), however, it was followed in Vipin Jaiswal v. State of Andhra Pradesh (2013). It is obvious that Section 304B is a stringent provision, meant to combat a social evil of alarming proportions. Can it be argued that it is a penal statute and, should, therefore, in case of ambiguity in its language, be construed strictly?

The Supreme Court in Rajinder Singh Vs. State of Punjab (2015) discussed in length as to how a statute of this kind needs to be interpreted. The Court was of the view that the judgment in
Appasaheb's case (Supra) followed by the judgment of Vipin Jaiswal (Supra) did not state the law correctly. The Court held that the statute must be given a fair, pragmatic, and common sense interpretation so as to fulfill the object sought to be achieved by Parliament. Therefore, any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise.

Reference can also be made to Reema Aggarwal v. Anupam (2004) in which the Court while construing the provisions of the Dowry Prohibition Act, in the context of Section 498A, gave an expansive meaning to the word 'husband' occurring in Section 498A to include persons who entered into a relationship with a woman even by feigning to be a husband. The Court held:

... Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabitate with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304B or 498A Indian Penal Code, viewed in the context of the very object and aim of the legislations introducing those provisions. (at page 210)

b. “Soon before her death”

The words "soon before" appear in Section 113-B of the Evidence Act and also in Section 304-B IPC. For the presumptions contemplated under these sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words "soon before" is, therefore, important. The question is how "soon before"?

The Courts in plethora of cases (Rajinder Singh Vs. State of Punjab, 2015) have held that the scope of the words "soon before" would depend on the facts and circumstances of each case. The cruelty or harassment differs from case to case. Every instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may
remain etched in her memory for a long time. Therefore, "soon before" is a relative term. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough. Thus, there must be a nexus between the demand of dowry, cruelty or harassment, based upon such demand and the date of death. The test of proximity will have to be applied. But, it is not a rigid test. It depends on the facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law.

The Supreme Court in Dinesh v. State of Haryana(2014) held that the term "soon before" is synonyms with the term "immediately before". However, it was held not to be a correct reflection of the law in Rajinder’s case (Supra). "Soon before" was held not to be synonymous with "immediately before" in Rajinder’s case.

c. Suicide as dowry death- “otherwise than under normal circumstances”

The Supreme Court has effectively laid to rest the many doubts that were raised continuously about the nature of death for which S.304-B would be applied. A landmark decision was given in Public Prosecutor, Andhra Pradesh High Court v. T. Punniah(1989) where suicide, though committed by the victim herself, was considered to fall under "dowry death" as envisaged under Section 304-B.

The court once again reiterated in the same case that irrespective of the mode of death, if the death occurs within seven years and the death is unnatural homicidal or suicidal-this Section would apply. The Court rejected the contention of the counsel of the accused who argued that the medical evidence showed that the death was due to asphyxia on account of hanging, and that Section 304-B does not apply to cases of suicide. The court held that Section 304-B applies where the death of a woman is caused by burns or bodily injury or occurs otherwise than under normal circumstances, provided other conditions are satisfied. Since the death of the deceased was on account of hanging, it was still death otherwise than under normal circumstances, and even if she had committed suicide by hanging, the death would still fall
under Section 304-B as long as it can be shown that she was subjected to cruelty or harassment by the in-laws in connection with any demand for dowry.

The view that S.304-B can also be applied to suicide was reiterated by the Supreme Court in Shanti vs. State of Haryana(1981) The court stated "in the result [that] the death was unnatural, either homicidal or suicidal, and even assuming that it was a case of suicide, even then it would be death which had occurred in unnatural circumstances." In such a case, Section 304-B is applied and this position is not disputed.

A. Section 113-A & 113-B of Indian Evidence Act:

As the dowry related offences targeting the young women take place within the matrimonial home and, often, the culprits are the husband and the in-laws, there will be practically no direct evidence available to nab the guilty. The traditional principles of criminal justice based on the presumption of innocence of the accused and requirement of proof beyond all reasonable doubt which were the quintessence of the justice delivery system, proved to be the undoing of the system in tackling organised crimes and other special offences. To meet the extraordinary situation, Sections 113-A & 113-B were added to the Indian Evidence Act, 1872 (hereinafter IEA).

1) SECTION 113-A IEA:

**Presumption as to abetment of suicide by a married woman:** When the question is whether the commission of suicide by a woman had been abetted by her or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

**Explanation:** For the purpose of this section. "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code.

A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) suicide has been committed within a
period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the above said circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. The Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory, it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the above said three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the Court shall have to have regard to all the other circumstances of the case. The consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. The expression 'The other circumstances of the case' used in Section 113-A suggest the need to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. (Bhanuben and Ors. Vs. State of Gujarat, 2015)

The phrase 'May presume' used in Section 113-A is defined in Section 4 of the Evidence Act, which says “whenever it is provided by this Act that Court may presume a fact, it may either regard such act as provided, unless and until it is disproved or may call for proof of it.”

The Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trail for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstances individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty. (State of West Bangal vs. Orilal Jaiswal and Anr, 1994)

2) **SECTION 113-B IEA:**

**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 had 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 purposes of this section, "dowry death" shall have the same meaning as in Section 304-B of Indian Penal Code (45 of 1860).

If all of the conditions mentioned in Section 304-B are present, then there is a presumption that the accused has committed the crime of dowry death. This presumption is created by Section 113-B of IEA inserted by Act 43 of 1986. Not only Section 304-B enjoins a statutory presumption of the guilt of the husband on the proof of the eventualities as mentioned therein, Section 113-B of the Evidence Act fortifies such presumption in the probative perspectives. Both sections supplement each other to effectuate the legislative mandate of statutory presumption of guilt, the contingencies warranted being present. (*M. Narayan v. State of Karnataka, 2015*)

**B. Retrospective Application of Section 113-A & 113-B:**

The Supreme Court delivered a landmark decision in Gurbachan Singh v. Satpal Singh, (1990) which made the application of Section 113-A & 113-B retrospective. It surmises that the provisions of this Section do not create an offence and since no new offence is created, it is merely a matter of procedure of evidence and hence it may be made retrospective.

*d. Importance of Circumstantial Evidence in a Dowry Death:*  
Several observations have been made by the Supreme Court on the appreciation of evidence and the judicial attitude that should be adopted towards dowry death, given the circumstances that surround the commission of the crime. In Prakash v. State of Punjab (1992), the court noted that it was its duty, in cases of death because of torture and demand for dowry, to examine the circumstances of each case and evidence produced by both parties, for the purpose of investigating how the death took place. While judging the evidence and the circumstances of the case, the court has to be conscious of the fact that a death connected with dowry takes place inside the house where the husband's family are the only witnesses present. Therefore, the finding of guilt on the charge of murder has to be recorded on the basis of circumstances of each case and the evidence produced before the court.
The Supreme Court also observed that the legislative intent behind the incorporation of Section 113-A in the Evidence Act and Section 304-B in the IPC were to strengthen prosecution for a crime in which witnesses are not generally available because the crime is committed within the privacy of the home.

Inherent in Section 113-B is a powerful presumption, whereby the court presumes the accused to have committed the offence of dowry death if the prosecution can successfully show the existence of all the conditions required under Section 304-B. Accordingly in Hemchand v. State of Haryana (1994) the judge observed that a reading of Section 304-B would show that when a question arises whether a person has committed the offence of dowry death what is necessary to be shown is that soon before her unnatural death, which took place within 7 years of marriage the deceased had been subjected to cruelty and/or harassment for or in connection with demand for dowry. At this stage the presumption under Section 113-B is applied. Therefore, irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death. In the above case, the prosecution proved unnatural death without direct evidence connecting the accused with the actual death. Nevertheless, the court convicted him but decided that the absence of direct evidence was a mitigating factor in his favour and thereby ordered a reduced sentence.

*e. Dying Declaration in Dowry Death Cases:*

A dying declaration or a statement is made by a person who after making the statement dies. Such a statement is an exception to the general rule that hearsay evidence is not admissible evidence, unless such evidence is tested by cross examination. A dying declaration, made by the person on the verge of death has a special sanctity to it, as at that moment a person is considered most unlikely to make an untrue statement. Therefore, a dying declaration has a sacrosanct status, as it is verbal testimony given by the deceased victim.(Sarkar, 2007)

Once the statement of the deceased victim and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes an important piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment, such a dying declaration, by itself can be the basis for recording a conviction even without looking for corroboration(Rao, 2015).
Non-verbal Dying Declaration:

In addition to the admission of dying declarations as a form of corroborative evidence, the Supreme Court went a step further in Meesala RamaKrishna v. State of Andhra Pradesh, (1994) where it said that a dowry death recorded on the basis of nods and gestures is not only admissible but also possesses evidentiary value to the extent that the recorder can ensure that the victim can clearly understand the questions.

f. Miscellaneous:

It has to be noted that causing dowry death under Section 304-B attracts the lesser punishment of seven years to life imprisonment and not life imprisonment or death as under Section 302 IPC (Punishment for Murder) because under the former Section the Court proceeds on the basis of a presumption and not positive proof. However, if there is a positive proof that the husband or his relative killed the woman, the husband or relative will be liable for murder and not merely dowry death under Section 304-B.

C. Section 498A IPC vis-à-vis 304-B IPC:

The Supreme Court in Smt. Shanti v. State of Haryana, (1991) points out the differences between sections 304-B and 498-A of the IPC and that though they may contain offences that have cruelty as the root-cause, they are essentially separate and distinct, and charges have to be filed under both. The Supreme Court held that "cruelty" is a common condition in both the sections and it had to be proved. In Section 498-A cruelty is explained but no such explanation is given in Section 304-B. Given the common background of these offences, the meaning of cruelty and harassment under S.304-B falls under the same interpretation as S.498-A, under which cruelty, by itself, is punishable. The difference between the two Sections, the Supreme Court said was that in Section 304-B, the incidence of death is punishable when it occurs within seven years of marriage. No such period is mentioned in Section 498-A and the husband and the in-laws are liable any time after the marriage. This meant that the person charged and acquitted under Section 304-B can be convicted under Section 498-A. But from the point of view of practice and procedure and to avoid technical defects it is necessary in such cases to frame charges under both the Section.
VII. CONCLUDING REMARKS:

A plain reading of matrimonial laws and the judicial precedents that is set with regards to it shows that maximum efforts and focus have been given in protecting the sanctity of marriage and disabling the spouses from striking each other with the weapon of criminal law. However, like most of the laws, there exists some or the other core concerns which needs to be taken care of in order to ensure justice.

In case of bigamy the insistence on part of the Courts that the marriage should be solemnised properly by conducting all necessary ceremonies has defeated the very spirit of monogamy advocated by the law. The accused can escape the clutches of law if either of the marriage is not solemnized properly. Therefore, the Court has to give liberal interpretation of the word 'Solemnization' which will definitely serve a larger interest.

As far as adultery is concerned, the Courts have time and again refused to entertain the validity of Section on grounds that it is a “policy matter” and therefore the sole concern of the legislature eventhough it is quiet explicit that the law is tilted in favour of males.

In dowry and cruelty cases a woman is subjected to ill-treatment within the four walls of her matrimonial house and the ill-treatment is witnessed only by the perpetrators of the crime who would certainly not depose about it. Therefore, it is quite often difficult to prove the commission of such offence. In such cases the Court should be extremely careful and vigilant and should not adopt a narrow and pedantic approach and should, in the interest of justice, liberally exercise its power and resources to get into the core of the matter and find out the truth.

To conclude, it is an undisputed fact that the Criminal Law in India contemplates the ethics of the then prevailing British regime. Patriarchy has been the philosophical foundation of almost all the offences governing the relationship between men and women. This unquestionably requires reconsideration in the time where our society is moving forward towards the path of gender equality. But while doing so, we should be careful that such a move does not swing the pendulum to the other extreme. There needs to have a rational approach to all these problems so that justice is ensured and the conflicting interests are reconciled correctly. While the judiciary has its own restrictions, while interpreting the Criminal law, in so far as changing the philosophical foundation of law is concerned, it is therefore for the Parliament
to review all the “Matrimonial Offences” from a pragmatic point of view so as to make it consistent with the need of time.

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