

Submission

A submission opposing creation of a special dowry law in Victoria

Confidential (personal details)

I hereby request that though I am okay for this submission to be made public, I would request that my name and contact details are not published or made public.

Introduction

Dear Committee members,

We represent _____, an _____ which is involved in the welfare, wellbeing of the families – particularly the ones with Indian ethnicity and from Indian subcontinent

While we accept there is still a prevalence of dowry in residents of Indian ethnicity, we oppose the creation of any law which is ethnicity specific (i.e. Indian ethnicity in this case) and gender specific i.e. it can be filed by only one gender against other gender, in this case can be filed only by a wife against husband and his family members. We think the current Domestic Violence law framework is satisfactory to handle any prevalence of dowry in the society.

We have listed out the reasons for the same and suggestions

Issues

Gender Neutrality – We feel that the proposed dowry will be gender biased and as it can be used only by wife against husband and their families, it will render the husband and his families defense-less and may become a tool for blackmail and extortion by wife.

Racist & Ethnicity specific – We oppose creation of any law which is directed at people of a certain community i.e. Indian sub-continent in this case.

Harassment of Husbands and families: Dowry laws have failed in India and have led to harassment of millions of innocent husbands and their families. The Supreme Court of India, the apex body for justice in India, has called the notorious 498a as a “legal tool for extortion”

Low conviction rate. The conviction rate of some of these notorious laws in India is extremely low <15%, which means 85% of the innocent husbands and their families have

suffered years of extreme harassment to prove something they never, while wife has moved on in her life, remarried and started new life, with no punitive action on the wife for filing a false case.

Jurisdiction issues: It will be very difficult, if not impossible, to prove a dowry related issue which has happened in India or partly happened in India. As in the current dowry laws in India, husband has to bear the brunt shuttling between different jurisdictions to disprove charges across various jurisdictions.

Tool for vengeance: The separation is always messy with strong feeling from both the husband & wife and their families, sometimes vengeful. We have seen in India that in these

Tool for extortion & blackmail: We have seen that once a husband and his family are in the legal net, even though they are falsely accused, there is extreme harassment for years of husband and his family by the legal system and in this case the wife and his family charge exorbitant amounts from husband to “settle” and take back their cases, in some cases for marriages which have lasted 1 month, husbands have paid tens of millions of rupees to these wife to settle.

Innocent until proven guilty: As the old adage goes an accused is “Innocent until proven guilty”, some of these dowry specific laws in India and the system considers it the other way i.e. “Guilty until proven innocent”, which means husband and his families have to go through trauma and harassment with this social taboo of petty criminals who harassed his wife or daughter-in-law for years until they are proven innocent. We fear the same may happen if a dowry specific gender bias laws are made targeting a specific ethnic community.

Giving dowry is crime as well: Dowry has negative connotations but if in India, Dowry is not explicitly sought but as per tradition is given as mandatory gift by Girl’s parents to grooms family. We have seen as per Indian dowry laws that dowry giver is never punished, but the person who received the dowry is punished, which is not fair

Suggestions

- A committee should be setup to **study the negative impacts of notorious IPC (Indian Penal Code) Section 498a and dowry laws in India. Lessons learnt from the same should guide any actions** to update the legal framework in Australia with an eye to fairness and gender equality.
- The committee should assess these notorious gender-biased Indian laws and how they have become tools for extortion and vengeance by disgruntled wives and their families and how to avoid this in any change in India.

- The committee should also seek **the inputs of Men & husbands** in Australia and seek their opinion as well on their issues and how the prevalence of dowry and domestic violence can be reduced
- The committee should study the current framework of domestic violence and other family laws and see how they can be addressed to cater for issues of dowry give and take in Australia.
- The committee should also introduce penal provisions for practice of dowry in **other communities where husband's family has to give dowry to his wife and her parents**. The dowry provisions should also include penal provisions for wife and her parents in this instance for taking dowry.
- If the committee does find that there is in-fact a need to include the provisions of dowry in the current framework, the committee should stress highly on the following to **deter any false cases and undue harassment of husbands and their families**:
 - **Penalization on false and vengeful complaints**
 - Checks and balances in the law that **frivolous complaints are filtered out**.
- The committee also need to fairly assess **how to address the jurisdiction issues** i.e. in case of charges for any events outside Australia how will the jurisdiction be handled in a fair and just manner e.g. the husband and families don't have to suffer travelling geographies to disprove a certain charges.
- The committee also needs to consider that in India dowry is a tradition, while in some cases the Dowry is sought via harassment, in most of the cases some form of dowry is given by bride's family to grooms family as per tradition. So the committed needs to add provisions to also **punish the dowry giver apart from dowry taker**.

Conclusion:

We would recommend that the **committee explore the provisions in the current family law and domestic violence framework to deter and dowry related issues**. Any new dowry specific law targeted at Indian families is neither required or is sought by the. We suggest a sub-committee study the negative impacts of notorious dowry law in India IPC Section 498a on the families and harassment of innocent husbands and families in India, to see for themselves how a dowry specific law can create havoc in lives of innocent people and instead of providing justice leads to blatant violation of basic human rights of falsely accused.

References

Ref 1: SC Judgement: "Sushil Kumar Sharma vs Union Of India"

<https://indiankanoon.org/doc/1172674/>

“The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bonafide and have filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignomy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. As noted the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not assassins' weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any strait jacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre- conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumption that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumption are drawn which again are reputable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that in innocent person is not made to suffer on account of unfounded, baseless and malicious allegations
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Ref 2: SC Judgement: “Rajesh Sharma vs The State Of Uttar Pradesh

<https://indiankanoon.org/doc/182220573/>

Section 8, 9 and 10 of the SC judgement talk of the highlight of the dowry law 498a by the various apex and senior courts of the country.

8. Referring to Sushil Kumar Sharma versus Union of India¹, Preeti Gupta versus State of Jharkhand², Ramgopal versus State of Madhya Pradesh³, Savitri Devi versus Ramesh Chand⁴, it was submitted that misuse of the provision is judicially acknowledged and there is need to adopt measures to prevent such misuse. The Madras High Court in M.P. No.1 of 2008 in Cr. O.P. No.1089 of 2008 dated 4th August, 2008 directed issuance of following guidelines:

“It must also be borne in mind that the object behind the enactment of [Section 498-A](#) IPC and the Dowry Prohibition 1 (2005) 6 SCC 281 2 (2010) 7 SCC 667 3 (2010) 13 SCC 540 4 ILR (2003) I Delhi 484 Act is to check and curb the menace of dowry and at the same time, to save the matrimonial homes from destruction. Our experience shows that, apart from the husband, all family members are implicated and dragged to the police stations. Though arrest of those persons is not at all necessary, in a number of cases, such harassment is made simply to satisfy the ego and anger of the complainant. By suitably dealing with such matters, the injury to innocents could be avoided to a considerable extent by the Magistrates, but, if the Magistrates themselves accede to the bare requests of the police without examining the actual state of affairs, it would create negative effects thereby, the very purpose of the legislation would be defeated and the doors of conciliation would be closed forever. The husband and his family members may have difference of opinion in the dispute, for which, arrest and judicial remand are not the answers. The ultimate object of every legal system is to punish the guilty and protect the innocents.”

Ref 3: Very Low conviction rate in dowry law in India

The table below from NCRB shows the conviction rate for dowry law IPC 498a in India is less than 15%

Disposal of cases filed under Sec 498-A of IPC by Courts							
Year	Total Cases where trial completed in that year	Convicted	Acquitted	Withdrawn	Total Cases Pending at the end of the year	Conviction Rate of Cases under 498-A in %	Average Conviction Rate of all IPC crimes in %
2006	31261	6857	24404	5679	206431	21.9	42.9
2007	32622	6831	25791	6364	228614	20.9	42.3
2008	34347	7710	26637	7310	251759	22.4	42.6
2009	37323	7380	29943	7111	278921	19.8	41.7
2010	40751	7764	32987	6601	309991	19.1	40.7
2011	40338	8167	32171	7450	339902	20.2	41.1
2012	46054	6916	39138	8162	372706	15	38.5
2013	45423	7258	38165	8218	412438	16	40.2
2014	46853	6425	40428	8922	443885	13.7	45.1
2015	46217	6559	39658	10318	477986	14.2	46.9