Bombay High Court
Balkrishna Pandurang Moghe vs State Of Maharashtra And Ors. on 5 March, 1998
Equivalent citations: II (1998) DMC 569
Author: A Savant
Bench: A Savant, T C Das
JUDGMENT A.V. Savant, J.

1. Heard all the learned Counsel; Mr. Deshpande for the petitioner-original accused, Mr. Thakur, Asstt. Public Prosecutor for the State of Maharashtra and Mr. R.M. Agrawal for the Union of India and the learned Attorney-General.

2. This is a Revision against the Judgment and Order of conviction and sentence passed by the learned Additional Sessions Judge, Pune, in Criminal Appeal No. 15 of 1986, decided on 21st June, 1987 under which, he confirmed the Judgment and Order passed by the Judicial Magistrate, First Class, Court No. 3, Pune, on 13th February, 1986 in Regular Criminal Case No. 319 of 1984. Under the impugned Judgments, the petitioner has been convicted for the offence punishable under Section 498A of the Indian Penal Code and he has been sentenced to suffer rigorous imprisonment for a period of 18 months and to pay a fine of Rs. 1,500/-, in default, to suffer rigorous imprisonment for six weeks. This Revision was admitted on 23rd June, 1987. By an order dated 30th April, 1993, leave was granted to amend the petition and raise a contention regarding the constitutional validity of Section 498A of the Indian Penal Code. Pursuant to such an amendment being carried out, by an order dated 11th June, 1993, the matter has been directed to be placed before a Division Bench. On 22nd January, 1998, this Court directed the issuance of notice to the Attorney-General since the constitutional validity of Section 498A, IPC was challenged. Mr. Agrawal has appeared for the Union of India and the Attorney-General.

3. Before considering the question of validity of Section 498A, IFC, it is necessary to set out, in brief, the facts of the case. The petitioner Balkrishna married Yogini, on 29th December, 1982. Yogini, the deceased, was educated upto matriculation and, since 1976, was serving at Hind Condenser Company, at Pimpri, near Pune. The petitioner was serving in the College of Military Engineering, at Dapoli, near Pune, as an Assistant in the Library. He was staying with his parents at Block No. 4/180, at the Municipal Colony, Rajendra Nagar, Pune. Soon after the marriage on 29th December, 1982, Yogini started complaining to her parents and brother about the quarrels the petitioner used to pick-up with her on petty matters and beat her. There used to be quarrels between the petitioner and Yogini as to the particular finger to be used for applying 'Kumkum' (vermilion) on her forehead. The petitioner wanted Yogini to use a particular finger only and if she did not abide by such instructions, he used to be irritated and beat her. The petitioner complained that Yogini was not taught good manners and etiquettes. When she was pregnant, dispute arose between the husband and wife as to who should bear the maternity expenses. When she informed the petitioner that her parents were not in a position to bear the maternity expenses, the petitioner got enraged and had beaten her. This was conveyed by Yogini to her brother Ganesh, who has been examined as PW 2. Ganesh went to the petitioner's house and hold him that the maternity expenses of Yogini could be borne out of the Employees State Insurance Scheme benefits. However, the petitioner made it clear that he needed that money for some other purpose. Be that as it may, Yogini was sent to her

mother's place for delivery and on 16th January, 1984 she delivered a girl - Prachi. Even in respect of applying 'Kajal' (black-spot) on Prachi's cheek, there used to be quarrels between the petitioner and Yogini as to the finger to be used.

4. On the 28th March, 1984, the petitioner's father expired, Yogini came back to the matrimonial home. When the petitioner insisted on her selling her gold ring, she took half-day's leave on 15th May, 1984, went to her parent's house and informed them that she wanted to sell her gold ring. Her mother PW 1 Gangabai, who is the complainant, advised her to go back to the matrimonial home and consult her husband.

5. On the 17th May, 1984, while Yogini was feeding her child, the milk bottle fell and broke. The petitioner lost his temper at this and kicked Yogini. When she protested at her being kicked, the petitioner beat her. He thereafter went to attend his office. Yogini had an off-day. She wrote a letter to her father, which is at Exhibit- 14. In the letter, she narrated the incident which had occurred in the morning. She regretted that she was being harassed in the matrimonial home, both by her husband and her mother-in-law. She, therefore, made it clear that she wanted to end her life by burning herself. She regretted that her being ill-treated at the matrimonial home was a matter of concern to her parents. Rather than suffering such a situation, she preferred to put an end to her life. She recorded the fact that her husband was always saying that unless one of the three (petitioner, petitioner's mother and Yogini) dies, there won't be happiness in the home. Her only concern was welfare of her child Prachi. She referred to the fact that there was some amount standing to her credit in the Gratuity Fund and there were some ornaments which should be taken to her maternal home. She then bade farewell to all her relatives. She reiterated that she never enjoyed any happiness in the matrimonial home though it was on the recommendation of some known intermediaries that the marriage was arranged. It was difficult for her to survive there and hence, rather than suffering everyday she preferred to suffer once for all and put an end to her life. In the result, while expressing her regret that her daughter would not have the love of her mother, she prayed that the daughter should be looked after.

6. It is after this letter Exh. 14, which was written in the morning on 17th May, 1984 soon after the incident of the milk-bottle breaking at about 8-00 a.m. that Yogini is alleged to have put kerosene on her person and burnt herself at about 11-00 a.m. She was admitted to the Sasoon General Hospital where two dying declarations were recorded; the first dying declaration is Exhibit-22 which is in the form of the case diary recorded by the doctor at the time of admission of the patient to the hospital, at about 12 noon, and the other is at Exhibit-24 recorded by the Executive Magistrate at about 3-15 p.m. on 17th May itself, the succumbed to her burn injuries at about 2-00 a.m. on 18th May, 1984. The petitioner was in his office when the incident occurred and reached the hospital after being informed of the same. PW 1 Gangabai, mother of the deceased, lodged her complaint at Exhibit-15 on 24th May, 1984.

7. The charge under Section 498A of the Indian Penal Code was framed against the petitioner. The defence of the petitioner was one of denial. According to him, Yogini caught fire due to accidental bursting of stove while cooking food on the stove. He denied ill-treatment or cruelty to her. He denied that he had indulged in any wilful conduct which was of such a nature as was likely to drive

his wife to commit suicide or to cause grave injury or danger to her life, limb or health (whether mental or physical). He denied causing any harassment to his wife and, therefore, contended that he was not guilty of the offence punishable under Section 498A, IPC.

8. At the trial, evidence of PW 1 Gangabai, mother of Yogini, PW 2 - Ganesh, her brother PW 3 - Shripad - husband of her sister, PW 4 Dr. Makarand Deshpande, Medical Officer at the Sasoon Hospital, Pune, PW 5 - Sitaram Khambe, Executive Magistrate, who recorded the dying declaration - Exh. 24, PW 6 Uttam Shinde, the In vestigating Officer, PW 7 Shashikant Chavan, Head Constable and PW 8 Raghunath Shinde, Head Constable was recorded.

9. The learned Judicial Magistrate, First Class, on consideration of the entire evidence on record, came to the conclusion that the petitioner was guilty of wilful conduct which was of such a nature as had driven his wife to commit suicide. The petitioner had, therefore, subjected hiswife to cruelty within the meaning of Section 498A, IPC which had resulted in his wife putting herself on fire. In the result, the learned Magistrate held that petitioner guilty of the offence punishable under Section 498A, IPC and sentenced him to suffer rigorous imprisonment for 18 months and to pay a fine of Rs. 1,500/-, in default, to suffer rigorous imprisonment for six weeks.

10. Being aggrieved by the said order of conviction and sentence, the petitioner had preferred Criminal Appeal No. 15 of 1986. The learned Additional Sessions Judge framed the necessary points for consideration, the principal point being whether the petitioner had subjected his wife Yogini to cruelty within the meaning of Section 498A, IPC. On appreciation of the entire evidence on record, the learned Additional Sessions Judge agreed with the finding of fact recorded by the learned Magistrate and confirmed the same. It was held that cruelty which the petitioner had subjected his wife to, fell within Clause (a) of the Explanation to Section 498A, IPC. In the result, the conviction and sentence imposed by the learned Magistrate was upheld and the appeal was dismissed on 21st June, 1987. These concurrent findings are challenged in this Criminal Revision that was admitted on 23rd June, 1987 and the petitioner is on bail since then.

11. Since the matter has been referred to us for deciding the constitutional validity of Section 498A of the Indian Penal Code, we think it appropriate to reproduce the said section.

"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 wilful 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;

(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."

12. It is relevant to note that it was by the Criminal Law (Second Amendment) Act No. 46 of 1983, which received the President's assent on 25th December, 1983, that Section 498A was inserted in the Penal Code. The Statement of Objects and reasons of the said amending Act referred to the increasing number of dowry deaths, which was a matter of serious concern. The extent of the evil was commented upon by the Joint Committee of both the Houses to examine the working of the Dowry Prohibition Act, 1961. It was found that cases of cruelty by the husband and relatives of the husband which culminate in suicide by, or murder of, the hapless woman concerned, constitute only a small fraction of cases involving such cruelty. An offence in the nature of abetment to commit suicide may also attract the provisions of Section 306, IPC which was already on the statute book. It was, therefore, proposed to suitably amend the Indian Penal Code, Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 to effectively deal with not only the cases of dowry deaths, but also the cases of cruelty to married women by their in-laws. It was with a view to achieving this object that, inter alia, Section 498A was inserted in the Penal Code. The other amendments effected by Criminal Law (Amendment) Act, 1983 were to Sections 174 and 176 of the said Criminal Procedure Code and the insertion of Section 198-A in the Cr.P.C. The necessary amendment in the First Schedule to the Code of Criminal Procedure, inserting Section 498A, was also made. As far as the Indian Evidence Act, 1872 is concerned, after Section 113, Section 113A was inserted raising a presumption against the husband that he or his relative had abetted the suicide by the married woman.

13. Mr. Deshpande, the learned Counsel appearing for the petitioner has raised three contentions before us. The first contention is that the husband or relative of the husband cannot be treated as a class apart from the general class of offenders and such a discretionary treatment given tosthe husband or his relative violates the guarantee of equal protection of laws enshrined under Article 14 of the Constitution. The second contention is that the definition of the word "cruelty" in the two clauses of explanation to Section 498A of IPC is vague and/or obscure and therefore, the said section is hit by the provisions of Article 14 of the Constitution of India. Lastly, it is contended that there is no nexus between the amended provisions of Section 498A of IPC and the object that is sought to be achieved by the said enactment.

14. On the other hand, Mr. Agarwal, the learned Counsel appearing for the Union of India and the Attorney-General contend that there is nothing arbitrary in the amended provisions of Section 498A having regard to the well-settled principles on which a law can be tested on the touch-stone of Article 14 of the Constitution. It is contended on behalf of the respondents that the husband or his relatives have been properly classified and it is not impermissible in law to make a statute separately for a person or class of persons. It is then contended that there is no vagueness or obscurity in the definition of the word "cruelty" contained in Section 498A of IPC, Lastly, it is submitted that looking to the reasons and objects of the Criminal Law (Amendment) Act 46 of 1983 which received the assent of the President on 25th December, 1983, there is a rational nexus between the amended provisions of Section 498A and the object that is sought to be achieved by the said section. We will

examine these contentions in the light of the settled legal position.

15. Since the main challenge to the section is on the ground of violation of provisions of Article 14 of the Constitution, we must bear in mind the relevance of the doctrine of equal protection of laws enshrined in Article 14 of the Constitution. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, or circumstance in the same position. The varying needs of different classes of persons often require separate treatment. The principle enshrined in Article 14 does not take away from the legislature the power of classifying persons for legitimate purposes. Every classification is, in some degree, likely to produce some inequality and mere inequality is not enough to attract the challenge of Article 14 of the Constitution. Differential treatment does not, by itself, constitute violation of Article 14. It can be said to deny equal protection only when there is no reasonable basis for the differential treatment. These principles have been laid down by the Apex Court in (i) Chimnjit Lal Chowdhnri v. The Union of India & Ors., 1950 SCR 869, and (ii) The State of Bombay & Ors. v. F.N. Balsam, 1951 SCR 682.

16. In Shri Krishna Dalmia v. Shri Justice S.R. Tendolkar & Ors., , the Constitution Bench was called upon to consider the validity of some of the provisions of Commissions of Inquiry Act, 1952 and it was alleged that the notification issued under Section 3 was ultra virus the provisions of Article 14 of the Constitution. While considering the challenge on the ground of violation of Article 14, the Apex Court laid down the principles to be borne in mind by Courts in determining the validity of a statute on the ground of violation of Article 14. In para 11 of the judgment (at pages 547 and 548 of the report), the Court observed that it was well settled that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, Apex Court laid down two conditions which must be fulfilled, viz. that (i) the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that differential must have a rational relation to the object sought to be achieved by the statute in question. After laying down these two tests, the Apex Court observed as under :

"11. The principle enunciated above has .been consistently adopted and applied in subsequent cases. The decisions of this Court further establish :

(a) that a law may be constitutional even though it relates to a single in vidual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

The above principles will have to be constantly borne in mind by the Court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the law."

We will consider the validity of the impugned provisions in the light of the propositions of law stated above.

17. It is also well settled that when a law is challenged as offending the guarantee enshrined in Article 14 of the Constitution, the first duty of the Court is to examine the purpose and policy of the Act and then to discover whether the classification made by the law was a reasonable relation to the object that the legislature seeks to achieve. The purpose and object of the Act is to be ascertained from the examination of its title, preamble and provisions. There is a presumption of constitutionality of an enactment. It is assumed that the legislature understands and correctly appreciates the needs of its own people. Its laws are directed to problems made manifest by experience and its classification is based on adequate grounds. The burden of showing that a classification rests upon an arbitrary and not a rational basis is upon the person who impeaches the law as a violation of the guarantee of equal protection of laws. Bearing in mind the above guidelines laid down by the Apex Court, we will examine the rival contentions before us.

18. The statement of objects and reasons of the Criminal Law (Second Amendment) Act No. 46 of 1983 opens with the following observations :

"STATEMENT OF OBJECTS AND REASONS The increasing number of dowry deaths is a matter of serious concern. extent of the evil has been commented upon by the Joint Committee of the House to examine the working of the Dowry Prohibition Act, 1961. Case of cruelty by the husband and relatives of the husband which culminate in suicide by, or murder of, the hapless woman concerned, constitute only a small fraction of the cases involving such cruelty. It is, therefore, proposed to amend the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their in-laws."

After setting out the above, para 2 mentions the proposed changes. The Indian Penal Code was proposed to be amended by making cruelty to a woman by her husband, or any relative of her husband, punishable with imprisonment for a term which may extend to 3 years and also with fine. Wilful conduct of such a nature by husband or any relative of the husband as is likely to drive the woman to cc limit suicide or cause grave physical or mental injury to her and harassing a woman by her husband or any relative of her husband with a view to coercing her or any of her relatives to meet any unlawful demand of property was to be made punishable as cruelty. That is why Section 498A came to be inserted in IPC. A perusal of the said provision makes it clear that what is made penal is the conduct of the husband or the relative of the husband who subjects such a woman to cruelty. The word "cruelty" has been defined in the explanation to Section 498A. Clause (a) thereof deals with any wilful 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. Clause (b) deals with 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 is common knowledge that despite prohibition of the pernicious social evil of demand or payment of dowry under the Dowry Prohibition Act, 1961, number of dowry deaths was escalating. It had become a subject of grave concern to the enlightened section of the society. It, therefore, received anxious consideration of the Joint Committee of both the Houses of Parliament. As a result of constant harassment, humiliation, etc. at the hands of the husband or his relatives, the married woman used to become helpless and being unable to bear with it, was driven to commit suicide. The existing law was found to be inadequate even though Section 306 stood on the statute book and Dowry Prohibition Act, 1961 was enacted. It was in this background that Section 498A was inserted in the Penal Code.

19. While appreciating the contentions raised before us, we must also bear in mind the principles to be applied while interpreting the statute which has been challenged on the ground that it is either vague or arbitrary. The rule in Heydon's case (1584) 3 Co. Rep. 7a on page 96 of Craies on Statute Law, 7th Edition says "that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive on enlarging of the common law), four things are to be discerned and considered; (1) What was the common law before the making of the Act, (2) What was the mischief and defect for which the common law did not provide, (3) What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth, (4) The true reason of the remedy. And then the office of all the Judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for the continuance of the mischief and proprivato commodo, and to add force and life to the cure and remedy according to the true intent of the makers of the Act pro bono publico". If this approach is adopted while testing the validity of Section 498A, we have no doubt in coming to the conclusion that classification of the husband and his relatives as a separate class under Section 498A of IPC is not at all discriminatory and there is no violation of the guarantee enshrined under Article 14 of the Constitution. The offence contemplated is of cruelty by husband or his relatives. In the very nature of things, having regard to the social evil that was sought to be remedied, in our view, the classification is proper. In our view, there is a valid justification for classifying the husband and his relatives as a separate class for the purposes of Section 498A of IPC. Normally, the offence is

committed within the four walls of the matrimonial home, where others have no easy access. There is no invidious discrimination nor is there anything obnoxious to the doctrine of equality so as to violate the guarantee enshrined in Article 14 of the Constitution. There is thus no merit in the first contention raised by the petitioner.

20. Coming to the second contention, we are of the view that there is no vagueness or obscurity in the definition of the word "cruelty" as spelt out in the two clauses of the explanation to Section 498A. Clause (a) clearly speaks of any wilful 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. The definition of the word "cruelty" is a statutory innovation made by the Legislature which seeks to manifest its intention with a view to remedying the mischief for which the enactment is made. By its very nature, such a definition has to be artificial but if considered in the light of the objects of the statute and the purpose which the statute seeks to subserve, in our view, there is no vagueness or obscurity in the definition of the word "cruelty" in the two clauses of explanation to Section 498A. Merely because the definition of the word "cruelty" may be in excess of its ordinary dictionary meaning, it cannot be said to be arbitrary and violative of Article 14 of the Constitution. Similarly, as far as Clause (b) is concerned, it speaks of harassment of a 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 a demand. In our view, having regard to the social evil that is sought to be remedied such a wide definition of the word "cruelty" was necessary and there is no vagueness or obscurity in the definition of the word "cruelty" as contained in the two clauses of Section 498A. We, therefore, hold that the definition of the word "cruelty" in the explanation to Section 498A is with a view to remedying the mischief and achieve the object with which the enactment was made. Merely because the said definition is different from the dictionary meaning of the word "cruelty" it is not possible to hold that it is either vague or obscure. There is thus no merit in the second contention.

21. The last contention is that there is no nexus between the amended provisions of Section 498A and the object that is sought to be achieved by the said section. We have already set out the tests laid down by the Apex Court in para 15 above while discussing Ram Krishna Dalmia's case. In para 16 above, we have referred to the approach of the Court in examining the constitutional validity of the provisions on the touch-stone of Article 14. It has to be assumed that legislature understands and correctly appreciates the needs of its own people. In para 17 we have set out the opening observations in the statement of objects and reasons. In the light of the above, we have no hesitation in holding that there is a valid nexus between the amended provisions and the object that is sought to be achieved, namely, to effectively deal not only with the cases of dowry deaths but also the cases of cruelty to married women by their husbands and in-laws. The provision contained in Section 306 of IPC only deals with the abetment of suicide. There was no specific provision dealing with the cruelty to married women by their husbands or their relatives. It was to remedy this defect and plug the lacuna that the amendment has been made by inserting Section 498A. Perusal of the amended provisions in the light of the statement of objects and reasons leaves no doubt in our minds that there is a rational nexus between the amended provisions of Section 498A and the object that was sought to be achieved. We, therefore, reject the third contention as well.

22. We may refer to the two judgments - one of Division Bench of Andhra Pradesh High Court and the other of the Full Bench of Punjab and Haryana High Court on the validity of Section 498A of IPC in Polavarapu Satyanarayana @ Narayan v. Polavarapu Soundaryavalli & two Ors., 1987 (3) Crimes 471, the Division Bench of K. Ramaswamy and Jagannadha Rao, JJ. (as their Lordships then were) considered the challenge to the validity of Section 498A of IPC on the ground that the provisions of Section 498A were violative of Article 14 being arbitrary or vague. The learned Judges held that having regard to the statement of objects and reasons, the classification of husband and his relatives was valid and there was no discrimination against them. Reliance was placed on the observations of the Apex Court in Chiranjit Lal's case (supra) and it was held that the classification must rest upon a real and substantial distinction having a reasonable and just relation to the object which the law seeks to achieve. Since, it was common knowledge that the offences alleged against the husband and his relatives were committed within the confines of the family to which others, normally have no access, it was necessary to make a special provision for them since they constitute a class by themselves apart from the general offenders. In the result, the challenge was negatived.

23. In Krishna Lal &Ors. v. Union of India & Ors., 1994 Cri. LJ 3472, the Full Bench of Punjab and Haryana High Court was called upon to consider the challenge that the classification of the husband and his relatives for the purposes of Section 498A was discriminatory and violative of Article 14 of the Constitution of India. It was further contended that the definition of the word "cruelty" in Section 498A was vague. It was held by the Full Bench that husband and relatives of the husband of a married woman form a class apart by themselves and it amounted to reasonable classification specially when the married woman is treated with cruelty within the four walls of the house of her husband and there is no likelihood of any evidence available. Consequently Section 498A was held to be not violative of Article 14 of the Constitution. Similarly, it was held that there was no vagueness in the definition of the word "cruelty" appearing in Section 498A having regard to the two clauses dealing with 'wilful conduct' of the husband and/or harassment to the married woman.

24. While dealing with the decisions of the Andhra Pradesh High Court and Punjab and Haryana High Court, Mr. Agarwal for the respondents has also invited our attention to a judgment of the Division Bench of this Court in Kanak Vinod Mehta v. Vinod Dulerai Mehta, 1991 Mah. LJ 1064:1 (1992) DMC 403. Reliance has been placed on the observations in para 8 of the judgment to the effect that while considering the provisions of a Central Statute, so far as possible, the same construction should be placed by a High Court upon a Central Statute as has found favour with another High Court. Bharucha, J. (as his Lordship then was) was dealing with the provisions of Section 7(1) of the Family Court Acts, 1984.

25. We have already referred to the decision of (i) Division Bench of Andhra Pradesh High Court in Polavarapu Satyanarayana @ Narayan v. Polavarapu Soundaryavalli & two Ors., (supra) and (ii) Full Bench decision of Punjab and Haryana High Court in Krishnalal's case. We are in respectful agreement with the ratio of the said two decisions in so far as the challenge to the validity of Section 498A of IPC on the ground of Article 14 being violated is concerned. In the result, we do not find any merit in the challenge to the constitutionality of Section 498A of IPC.

26. We have not come across any decision of the Apex Court directly dealing with the validity of the provisions of Section 498A of the IPC. We may make a reference to some decisions where a reference is made to the said provision. In Brij Lal v. Prem Chand & Anr., , the Apex Court was considering the correctness of the judgment of Punjab and Haryana High Court acquitting the husband of the offence punishable under Section 306 of IPC. In para 24 of the judgment, the Apex Court referred to the amendment inserted by the Criminal Law (Amendment) Act, 1983 and observed as under :

"...The degradation of society due to the pernicious system of dowry and the unconscionable demands made by greedy and unscrupulous husbands and their parents and relatives resulting in an alarming number of suicidal and dowry deaths by women has shocked the Legislative conscience to such an extent that the Legislature has deemed it necessary to provide additional provisions of law, procedural as well as substantive, to combat the evil and has consequently introduced Sections 113A and 113B in the Indian Evidence Act and Sections 498A and 304B in the Indian Penal Code."

27. In Ashok Kumar v. State of Rajasthan, , the Apex Court was dealing with the murder of Asha Rani who was burnt by her in- laws small house with atleast 6 inmates. In para 4 of the judgment, the Apex Court observed as under:

"4. Asha Rani was thus murdered. Why ? Sadly for Rs. 5,000/- or an auto rickshaw which her father of seven daughters could not afford even though he suffered the ignominy of her being beaten in his presence by her in-laws at his own house. Bride burning is a shame of our society. Poor never resort to it. Rich do not need it. Obviously because it is basically an economic problem of a class which suffers both from ego and complex. Unfortunately, the high price rise and ever increasing cost of living coupled with enormous growth of consumer goods effacing difference between luxury and essential goods appear to be luring even the new generation of youth, of the best service, to be as much part of the dowry menace as their parents and the resultant evils flowing out of it. How to curb and control this evil ? Dowry killing is a crime of its own kind where elimination of daughter-in-law becomes immediate necessity if she or her parents are no more able to satiate the greed and avarice of her husband and his family members, to make the boy available, once again in the marriage market. Eliminate it and much may stand resolved automatically. Social reformist the legal jurists may evolve a machinery for debarring such a boy from re-marriage irrespective of the member of family who committed the crime and in violation penalise the whole family including those who participate in it. That is social ostracism is needed to curtail increasing malady of bride burning."

28. In Smt. Shanti & Anr. v. State of Haryana, , a case of dowry death, the Apex Court was dealing with a conviction under Section 304B of IPC. The question arose as to whether the provisions of Sections 304B and 498A of IPC were mutually exclusive. In para 4 of the judgment, the Apex Court discussed the said provisions since there was acquittal under Section 498A of IPC. However, in para 6 of the judgment, it was observed as under:

"Therefore, the mere acquittal of the appellants under Section 498-A, IPC in these circumstances makes no difference for the purpose of this case. How- ever, we want to point out that this view of the High Court is not correct and Sections 304B and 498A cannot be held to be mutually exclusive.

These provisions deal with the two distinct offences. It is true that "cruelty" is a common essential to both the sections and that has to be proved. The Explanation to Section 498A gives the meaning of "cruelty". In Section 304B there is no such explanation about the meaning of "cruelty" but having regard to the common background to these offences we have to take that the meaning of "cruelty or harassment" will be the same as we find in the explanation to Section 498A under which "cruelty" by itself amounts to an offence and is punishable. Under Section 304B as already noted, it is the "dowry death" that is punishable and such death should have occurred within seven years of the marriage. No such period is mentioned in Section 498A and the husband or his relative would be liable for subjecting the woman to "cruelty" any time after the marriage. Further it must also be borne in mind that a person charged and acquitted under Section 304B can be convicted under Section 498A without charge being there, if such a case is made out. 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 sections and if the case is established they can be convicted under both the sections but no separate sentence need be awarded under Section 498A in view of the substantive sentence being awarded for the major offence under Section 304B."

29. Finally in the State of Punjab v. Iqbal Singh & Ors., , the Apex Court was dealing with the offence punishable under Section 306 of IPC viz. Abetment of suicide where suicide was by the wife. The deceased had set herself and her 3 children ablaze in the afternoon of 3rd June, 1983 at the residence of her husband Iqbal Singh. Dealing with the change introduced by the Criminal Law (Second Amendment) Act No. 46 of 1983 it was observed in Para 6 as under :

"6. Before we come to grips with the question at issue it is necessary to notice a few legislative changes introduced in the Penal Code to combat the menace of dowry deaths. The increasing number of such deaths was a matter of serious concern to our law-makers. Cases of cruelty by the husband and his relatives culminated in the wife being driven to commit suicide or being done to death by burning or in any other manner. In order to combat this menace the legislature decided to amend the Penal Code, Criminal Procedure Code and the Evidence Act by the Criminal Law (Second Amendment) Act, 1983 (No. 46 of 1983). So far as the Penal Code is concerned, Section 498A came to be introduced whereunder "cruelty" by the husband or his relative to the former's wife is made a penal offence punishable with imprisonment for a term which may extend to three years and fine. The explanation to the section defines "cruelty" to mean (i) wilful 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 her life, limb or health, or (ii) causing harassment of the woman with a view to coercingher or any person related to her to meet any unlawful demand for any property or valuable security."

30. We are dealing with a referred matter. Normally on answering the question referred, we would have placed the matter before the learned Single Judge hearing Criminal Revision Applications. However, the revision application is of 1987. By consent of the learned Counsel before us, we have heard the revision application itself on merits. Apart from Mr. Deshpande and Mr. Agarwal, we have also heard Mr. Thakur, the learned APP on merits of the revision application. We have already indicated, at the outset the evidence that was led. Charge under Section 498A has been held proved on the basis of the oral evidence of the mother of the deceased namely PW1 Gangabai, brother of the deceased PW 2 Ganesh and husband of the sister of the deceased namely PW 3 Shripad. These 3

witnesses spoke about the conduct of the petitioner which amounted to cruelty within the meaning of Clause (a) of the explanation to Section 498A of IPC. In addition to the evidence of these three witnesses on the question of wilful conduct of the husband which amounted to cruelty within the meaning of Clause (a) of the explanation, reliance has also been placed on the letter Exh. 14 written by the deceased just before she committed suicide on 17th May, 1984. The letter was written soon after the incident occurred at 8 a.m. in the morning when on account of triffle issue like the breaking of a milk bottle, the petitioner kicked Yogini and when she questioned him, she was further assaulted. She was already fed up with the cruelty meted out to her by the petitioner and his mother. Handwriting of the deceased in the letter Exh. 14 has not been disputed by the petitioner. This apart, the 3 witnesses named above have identified the handwriting of the deceased in the letter Exh. 14. They have deposed to the fact that the deceased was complaining of the cruelty in the matrimonial home at the hands of the petitioner and his mother. She had repeatedly complained to her parents and her brother. Evidence of these three witnesses has been appreciated by the two Courts below and Mr. Deshpande invited our attention to the relevant portion in the evidence of these witnesses. We find nothing to doubt the veracity or their version. There is no error of law in the appreciation of their evidence. There is no perversity in the approach of the two Courts below in appreciating their evidence on the question of the cruelty on the part of the petitioner. The contents of the letter leave no doubt whatsoever that Yogini was treated with cruelty by the petitioner and his mother. She was repeatedly complaining to her parents and was fed up with the cruelty to herself and botheration to her parents who were repeatedly called at the matrimonial home. She, therefore, clearly stated in the letter that, rather than suffering every day, it was better to put an end to her life once for all. She referred to her husband's remarks that there would not be happiness in the matrimonial home unless one of the three, namely, petitioner, his mother or the deceased, dies. Only thing which was bothering Yogini was her infant child. She, therefore, begged of her parents to take care of her infant child .Oral evidence before usfully corroborates the contents of the letter and we have no hesitation in accepting Exh. 14 reflecting the true state of affairs. In that view of the matter, it is not possible to find fault with the appreciation of evidence made by the two Courts below.

31. Mr. Thakur, the learned APP for the State, reminded us of the limitations on the powers of this Court to re-appreciate the evidence in a criminal revision against the concurrent findings of fact. It is true that Section 401 of Code of Criminal Procedure dealing with the powers of the High Court in a revision states that the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307. It is also true that under Section 386 of the Code of Criminal Procedure while dealing with an appeal from conviction, the Appellate Court has a power to reverse the findings and sentence and acquit or discharge the accused or order the accused to be re-tried by the Court of competent jurisdiction or, alter the findings, maintaining the sentence or, with or without altering the findings, alter the nature or extent, or the nature and extent, of the sentence but not so as to enhance the same. However, it is well settled that this power under Section 401 is not to be exercised merely for the purpose of re-appreciating the evidence on record because the High Court is likely to come to a conclusion different from the one arrived at by the two Courts below.

32. As indicated earlier, at the behest of the learned Counsel for the petitioner, we have gone through the evidence and we find no illegality or perversity in the approach or findings of the two

Courts below. We may only refer to few decisions on the limitations of the powers of this Court in a Criminal Revision. In Duli Chand v. Delhi Administration, , the Apex Court held in para 4 that the jurisdiction of the High Court in Criminal Revn. Application is severely restricted and it cannot embark upon a re-appreciation of the evidence. Similarly in Pathumma & Anr. v. Muhammad, , the Apex Court held that High Court was in error in making reassessment of the evidence and holding that the child was not an illegitimate child while dealing with the application for maintenance under Section 125 of the Code of Criminal Procedure. The High Court had, in its revisional jurisdiction, substituted its own findings and disturbed the findings recorded by the learned Magistrate on the question of fact. This was not approved by the Apex Court and order of the High Court was set aside. In State of Karnataka v. Appa Balu lngale & Ors., 1993 Cri. LJ 1029, the Apex Court held that when the Trial Court and the Appellate Court had, on appreciation of the evidence on record, reached a concurrent finding that charge against the respondent accused was proved beyond reasonable doubt, ordinarily it was not open to the High Court to interfere with the concurrent findings of fact recorded by the two Courts below by re-appreciating the evidence in a revisional jurisdiction. The Apex Court, therefore, allowed the appeal and set aside the order of the High Court and restored that of the Appellate Court.

33. Bearing in mind the above limitation on our powers as a Court of Revision, we find no illegality on perversity in either the approach or findings of the two Courts below. There is ample evidence on record to come to the conclusion that the petitioner is guilty of wilful conduct which amounts to cruelty within the meaning of Clause (a) of explanation to Section 498A of IPC. No extraordinary circumstances are brought to our notice so as to warrant interference in the concurrent findings recorded by the two Courts below. In the result, we uphold the conviction of the petitioner for the offence punishable under Section 498A of IPC.

34. For considering the question of sentence, by consent, the matter is adjourned to Friday the 3rd April, 1998 at 11.00 a.m.

35. Heard Counsel for the parties on the question of sentence. The petitioner has filed an affidavit dated 30th March, 1998 before us in which he has stated that an amount of Rs. 25,000/- has been deposited by him on 21st March, 1998 in fixed deposit in the name of his daughter Miss Prachi Balkrishna Moghe with Bank of India, Navi Peth Branch, Pune-30. The said deposit is due to mature on 21st March, 2003 and the maturity value is Rs. 45, 153/- as mentioned in Receipt No. 373599 with L.F. No. 22/1231 Account No. 3214. The original receipt has been produced for our perusal. The xerox copy of the said receipt has been filed alongwith the affidavit dated 30th March, 1998 which is taken on record today and marked "X" for identification.

36. The incident in question is of 17th May, 1984. The petitioner is looking after his only child namely Prachi. He has not re-married. Prachi was borne on 16th January, 1984. She will attain majority on 16th January, 2002. He is the only person who is presently looking after the welfare of his daughter. In the circumstances, rather than sending the petitioner to imprisonment for 18 months as ordered by the Trial Magistrate and confirmed by the learned Sessions Judge, we think interests of justice and in particular the welfare of the minor girl Prachi would be better served by reducing the sentence of imprisonment to the period already undergone by the petitioner namely 35

days. Accordingly, we modify the order of sentence of imprisonment by reducing the period of imprisonment from 18 months to the period of 35 days already undergone by the petitioner. The order of payment of fine of Rs. 1,500/- is maintained. It is brought to the notice of the Court that the fine has already been paid.

37. As far as the deposit of Rs. 25,000/- is concerned, in order to secure the interests of the minor girl Prachi, we give the following directions.

38. The Registrar of this Court will forthwith inform the Manager of the Bank of India, Navi Peth Branch, Pune-30 that the amount of Rs. 45,153/- which is the maturity value of the said Fixed Deposit of Rs. 25,000/- on 21st March, 2003, will be paid not to the petitioner but to Miss Prachi Balkrishna Moghe who attains majority on 16th January, 2002.

39. In view of the above, Criminal Revision Application is disposed of by making the rule partly absolute in the above terms.