

**Q- What do you mean by Defamation? What are the exception which may be set up Against the charge of Defamation?**

**Ans-Section 499. Defamation.** - Whoever, by words either spoken or intended read, or by signs or by visible representations, makes or publishes any to automation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

*Explanation 1.* - It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

*Explanation 2.*-It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

*Explanation 3.* -- An imputation in the form of an alternative or expressed ironically, may amount to defamation

*Explanation 4.* -No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

#### *Illustrations*

(a) A says-"Z is an honest man, he never stole B's watch", intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it falls within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

**First Exception.-Imputation of truth which public good requires to be made or published.** - It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

**Second Exception. – Public conduct of public servants.** - It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

**Third Exception.-Conduct of any person touching any public question.** - It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further

#### *Illustration*

It is not defamation on A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any

situation in the efficient discharge of the duties of which the public is interested

**Fourth Exception. - Publication of reports of proceedings of Courts.-** It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

*Explanation* - A justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section

**Fifth Exception.-Merits of case decided in Court or conduct of witnesses and others concerned.** - It is not, defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

*illustration*

(a) A says-"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further

(b) But if A says="I do not believe what Z asserted at that trial because I know him to be a man without veracity." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's conduct as a witness

**Sixth Exception. --Merits of public performance.** - It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public or respecting the character of the author so far as his character appears in such performance, and no further.

**Explanation** - A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

*Illustrations*

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech, in public submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z-Z's book is foolish: Z must be a weak man. Z's book is indecent; Z must be a man of impure mind. A is within the exception, if he says in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says "I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine" A is not within the exception,

inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

**Seventh Exception.-Censure passed in good faith by person having lawful authority over another.-** It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

*Illustration*

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of the department censuring in good faith those who are under his orders; a parent censuring in good faith of a child in the presence of other children; a school-master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier-are within this exception.

**Eighth Exception.- Accusation preferred in good faith by authorised person.-** It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation

*Illustration*

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master, if A in good faith complains of the conduct of Z, a child, to Z's father-A is within this exception.

**Ninth Exception. - Imputation made in good faith by person for protection of his or other's interests.** -It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it or not any other person, or for the public good.

*Illustrations*

(a) A, shopkeeper, says to B, who manages his business-"Sell rating to Z unless he pays you ready money, for I have no opinion of his honesty. A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception)

**Tenth Exception. -Caution intended for good of person to whom conveyed or for public good.**- It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

**Section 500, Punishment for defamation.**-Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both

**Section 501. Printing or engraving matter known defamatory.**-Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person shall be punished with

simple imprisonment for a term which may extend to two years or with fine or with both.

**Section 502. Sale of printed or engraved substance containing defamatory matter.** - Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both

**Introduction.** - Goodwill is an increasingly important factor in life which is becoming more and more dependant on social contacts and co-operative pursuits. We cannot ignore that others do not have or do not like to have dealing with us. The reputation of a person consists in the opinion of other persons about him. A man's opinion of himself cannot be called his reputation. It has as many sides as life itself - personal, social, professional, financial, etc. An injury to reputation is the most harmful of all injuries. It may hit a man on any and all planes of life. It has an extensive range of potential harm. It may do anything from personal pain, domestic crisis, a crash in business to political downfall. The pain it causes, if nothing else may be enough to keep one man apart from another. It may provoke a breach of the peace and disturb public tranquillity. The law cannot, therefore, allow it. All systems of jurisprudence have recognised reputation as one of the four cardinal rights of man, the other three being rights relating to person, property and liberty. Artificial persons also have reputation.

Section 44 defines an injury as harm illegally caused to any person in body, mind, reputation or property. Harm which can be legally caused is not punishable. A man may suffer from the disclosure of the fact that he has been convicted of theft and public good may require such disclosure. Harm caused by such disclosure is permitted by law for one thing it is true for another it

may prevent the harm likely from association with such person and put men on their guard against him. Defamation is an offence against reputation. It consists in an accusation or imputation and the accusation must amount to an injury before it can be an offence under the law; it is the illegal harm-harm not excused or permitted by law. The accusation must be such as to lower the person accused in the opinion of others. Abusive language in a quarrel does not have such effect; it dies with the quarrel. A notorious burglar is one who has already fallen from popular grace, a communication that he is a thief will not lower him down in the opinion of others : he has lost their goodwill already. It is not defamation to accuse a person who has no reputation to lose in respect of the matter which the accusation relates

### **Defamation as harm**

No imputation is said to harm a person's reputation, unless imputation directly or indirectly in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state or in a state generally considered as disgraceful (Explanation 4, Section 499). The defamation accusation may thus relate to the physical, moral, intellectual social fiscal or professional aspects of life. Thus, by itself is quite a comprehensive list of varied aspects of life with which defamation may be concerned. The complainant organised a public meeting. The accused was not invited to it but he went there, and cried, in a loud, insolent tone that the complainant who was a zamindar was not only a liar but was ungentlemanly, barbarous and tyrannic in the presence of the raiyats of the complainant. The patna high court held that the words amounted to insult and not defamation.



**Question:-What provisions are made relating to cruelty by husband or relatives of husband under section 498-A of Indian penal code?**

**Answer:- OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND**

This section is enacted by our Legislature for the womenfolk, who have been exploited for centuries together and they have been denied of their riches and just place and position in society in a dignified manner.

The object of Section 498-A was discussed by the Supreme Court in *Bs. Joshi v. State of Haryana*, where the Supreme Court observed :

"The object of Section 498-A of the Indian Penal Code was to prevent torture to woman by her husband or his relatives in connection with demand of dowry.

**Husband or relative of husband of a woman subjecting her to cruelty (Section 498-A)**

"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 purposes 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; 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" (Section 498-A).

Recently a large number of dowry deaths came to light and it was a matter of serious concern for the women organisations and also for the legislature. The matter was debated and the working of the Dowry Prohibition Act, 1961 attracted adverse criticism in both the houses of the legislature. Finally it was thought expedient to add the present section in the Indian Penal Code. Adequate amendments have also been made in the Criminal Procedure Code and the Indian Evidence Act to meet the situation.

This section makes it punishable to practise cruelty upon a married woman by her husband or any relative of the husband. The explanation appended to this section also defines cruelty. Cruelty means-(i) any wilful conduct on the part of the husband or his relative that drives the wife to commit suicide or grave mental or physical injury; or (ii) harassment or coercion of the woman to meet any unlawful demand for any property or other valuable security.

The punishment prescribed under the section is three years imprisonment with fine.

In *Shobha Rani v. Madhukar Reddy*, the Supreme Court had an occasion to observe that Section 498-A of the I.P.C. introduces an entirely new offence hitherto unknown to criminal jurisprudence. A new dimension has been given to the concept of cruelty. *Wazir Chand v. State of Haryana*, is, perhaps, the first Supreme Court decision regarding conviction of the accused under this new provision resorting to Clause (b) of the Explanation appended to that section. There was ample evidence that repeated demands were made inter alia by the father-in-law and the husband of the newly married wife, her parents and her

brother for articles of dowry and money. There was also evidence that the wife made statements after her marriage and right upto the time, she died that she and her parents were being harassed by the husband and in-laws for dowry. A large number of dowry articles were taken back by wife's family members after her death from husband's residence. An amount of Rs. 20,000/- to 25,000/- was also demanded for setting the husband in business and they were unable to satisfy these demands. The husband and father-in-law were convicted under Section 498-A and sentenced to rigorous imprisonment for one year and a payment of fine of Rs. 100/-.

It may not be out of place to point out here that the concept of 'cruelty for purposes of divorce under Section 13 of the Hindu Marriage Act, 1955 is not identical to that concept as an offence under Section 498-A of the LP.C. Demand for dowry by itself amounts to cruelty entitling the wife to get a decree for dissolution of marriage; it may be unintentional too, harassment is also not necessary which is essential under Section 198-A.

In the case of *Davkabai v. Namdev Doka*, the High Court upheld that there cannot be an offence under Section 498-A of IPC, in present circumstances. The appellant after 18 years of the marriage filed F.L.R. in the police station Nerkhad charging that the husband, father-in-law is demanding 10 totals gold and eight thousand rupees from her. As she is unable to give, so they are doing physical and mental cruelty against her. The case could not be proved beyond doubt, so the accused were acquitted by the Court.

**Relationship between Sections 498-A and 304-B.-**As noted above if a married woman is subjected to cruelty or harassment by her husband or his family members, Section 498-A would be attracted. This Section was added in 1983, But the law underwent a further change with the introduction of Section 304-B in the Penal Code in 1986. This aspect of the matter has been dealt at

length in Chapter 18 under the heading of 'Dowry Deaths and Abetment of Suicide Therefor. Shortly stated, where the death of a woman is caused by burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and evidence reveals that soon before her death she was subjected to cruelty or harassment by her husband or any of his relatives for or in connection with any demand for dowry, such death is described as dowry death under Section 304-B for which punishment extends to Imprisonment for life but not less than imprisonment of seven years.

The meaning of the term 'cruelty in Section 304-B has been held to be the same as defined in Explanation to Section 498-A. Now the question is as to what should be the result where the accused is charged under both the sections and is acquitted under one. For example, whether the acquittal of the accused persons of the offence punishable under Section 498-A will make any difference for their conviction under Section 304-B. Facing this question the Supreme Court in *Shanti v. State of Haryana*,<sup>1</sup> stated that mere acquittal of the accused under Section 498-A makes no difference for the purpose. However, the Court did not stop there and took the opportunity to observe :

*"Sections 304-B and 498-A 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 498-A gives the meaning of 'cruelty. In Section 304-B there is no such Explanation about the meaning of 'cruelty' but having regard to the common background to these offences we have taken that the meaning of cruelty or harassment will be the same as we find in the Explanation to Section 498-A under which 'cruelty' by itself amounts to an offence and is punishable. Under Section 304-B as already noted, it is the 'dowry death that is punishable and such death should have occurred within seven years of*

marriage. No such period is mentioned in Section 498-A and the husband or his relative would be liable for subjecting the woman to 'cruelty' at any time after the marriage. Further, it must also be borne in mind that a person charged and acquitted under Section 304-B can be convicted under Section 498-A 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 498-A in view of the substantive sentence being awarded for the major offence under Section 304-B.

**Non-retrospective in operation** - This section is not retrospective in operation being a prospective Act the allegation of cruelty cannot go back to the date of marriage if it is performed before the commencement of this section.

It is noteworthy here that to bring the accused within the scope of chapter XXA, (Section 498-A) it must be proved that the deceased was subjected to 'cruelty' as explained under Section 498-A.

The High Court of Jharkhand in *Tilak Bose v. State of Bihar*, (now Jharkhand), has held that a demand of money by husband from parents of wife for starting a business cannot be said to be dowry. Therefore, the suicide by wife cannot be said to be a dowry death and conviction for such death is not proper. In *Pawan Kumar v. State of Haryana*, the death of the deceased was caused by bum injuries. The conviction of the accused under Section 498-A was held proper.

In *Girdhar Shankar Tawade v. State of Maharashtra*, it was held that for conviction under Section 498A some cogent evidence is required without which the charge cannot be said to be maintained.

In *K. Prema S. Rao v. State of Maharashtra*, the wife of the accused suicide for the cruel treatment of her husband. The Supreme Court omitted her liable under Section 498A of the Indian Penal Code.

In *Mohd. Hoshan v. State of A.P.* the Supreme Court held that the accused was liable under Section 498. A of the Indian Penal Code.

The *Andhra Pradesh High Court in Vadula Vinay Kumar v. State of Andhra Pradesh*, held that petty quarrels between wife and husband cannot be termed as cruelty to attract the provision of Section 498 A, LP.C

Our law makers are paying more attention on cases where women are subjected to cruelty by their husbands or husband's relatives. The Parliament has enacted the Protection of Women from Domestic Violence Act, 2005 (43 of 2005). The Act is passed to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

Section 3 of the Protection of Women from Domestic Violence Act, 2005 defines domestic violence.

**Definition of domestic violence.**-For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it.-

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical of the aggrieved person or tends to do so

and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental to the aggrieved person.

Explanation 1.- For the purposes of this section

- (i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force
- (ii) (ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- (iii) (iii) "verbal and emotional abuse" includes

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person In whom the aggrieved person is interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment or rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.-- For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.



**Question:-What are the essential ingredients of criminal trespass?**

**Answer:-Section 441. Criminal trespass.-** whoever enters into or upon property in the possession of another with intent to commit an offence, or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property unlawfully remains there with intent thereto to intimidate, insult or annoy any such person, or with intent to commit offence, is said to commit criminal "trespass".

**447. Punishment for criminal-trespass.-**Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

**Ingredients.** The following things are essential to establish the offence of criminal trespass

- (i) Person's entry into or upon the property in the possession of another person;
- (ii) An entry of a person which was lawful at the time but has now become unlawful. The person is remaining unlawfully upon the property of another;
- (iii) Unlawful remaining upon the property of another must be followed with
  - (a) to commit an offence, or
  - (b) to intimidate, insult or annoy person in the possession of the property.

**Intention.** - The General Secretary of a registered Trade Union served notice on the General Manager of the factory stating that as a protest against the wrongful removal from service of their Vice-President, the Union officials would go on hunger strike for 48 hours from the date specified in the notice. Thereafter, Union workers pitched a tent inside factory premises and the General Secretary of the Union went on hunger strike for 48 hours as proposed and during that period inflammatory speeches were made by some persons including other accused against the high-handedness of the high officers of the factory. It was held that so far as the first part of Section 441 is concerned, the accused cannot be said to have committed any offence because the dominant intention of these persons was merely to draw the attention of the higher authorities of the factory against the dismissal of the Vice-President which according to them was wrongful. They had given ample notice to the authorities which would go to show that they considered this action to be the legitimate object of Trade Union activities. The knowledge that such conduct might result in annoyance or intimidation would not make the act an offence of criminal trespass.

**Absence of criminal intent.** - Where there is a bona fide dispute of a civil right and the accused exercises his right of way, he has no criminal intent to commit the two offences of criminal trespass.

Similarly, in a case one 'S' gifted his property to a trust with condition that he would stay in the house till his death and the trust can take over the possession after that. During his lifetime, he invited his brother's wife who was a widow to stay in the house with him. After the death of 'S' the widow continued to stay and she was served with a notice to quit. On failure to comply, a complaint under Section 448 was filed. Supreme Court held that in order to satisfy the conditions of Section 441, I.P.C., it must be established that widow

entered in possession over the premises with intent to commit an offence. She had no such intention therefore she would not be liable for criminal trespass.

Constructive possession - Criminal-trespass against. -Even if a person was in constructive and not actual possession of the property an offence of criminal-trespass would be made out if the trespasser while entering into or upon the property did so with the intention of taking unauthorised possession or making unauthorised use of the property and failed to withdraw upon notice given to him to do so.

**Exclusive possession.**- Failure to prove exclusive possession complainant is fatal to a prosecution for criminal trespass.

A person can be guilty of trespass on his own land where his land rightly or wrongly is in possession of some other person and he enters into or upon such land with intent to commit an offence, or to intimidate, insult or annoy that person in possession of such property, or having lawfully entered into or upon such property unlawfully remains with intent thereby to intimidate, insult or annoy that person, or with intent to annoy any other person, or with intent to commit an offence.