

A Study on Misuse of Section 498A of Indian Penal Code, 1860

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ABSTRACT:

India is a country where customs and traditions have played an important and crucial role in society. Marriage is one of the divine social institution in society but in last few decades it has undergone monumental changes. Dowry was one of the practices prevailing in Indian Society which was earlier treated as blessing. However it took monstrous form and became a curse for the society and as a result women fell prey to the darkest side of it. Gradually, it became a reason for the harassment and cruelty to women. Endeavour should always be made to sustain the sanctity of marriage as a divine institution, but what has been widely recognized is the violence against women as one of the most pervasive forms of human rights abuse. Therefore, for the protection of women, Section 498A was brought under Indian Penal Code, 1860 by the Act 46 of 1983. However in recent years, it has been observed that women misuse Section 498A of Indian Penal Code for their own personal benefits. This Section has created snag in current state of affairs for men as they are being discriminated. There is a desire of amendment in Section 498A of IPC and a need for bringing up some changes in society so as to remove the curse of misusing the legal provision against men. In many instances, due to the harassment by wives to approach the Police or Court for no reason, men have committed suicide. This research paper tries to analyze the concept of the cruelty against women and also tries to make it evident that there is a misuse of Section 498A of Indian Penal Code, 1860.

Keywords: Section 498A, Indian Penal Code, Cruelty, Misuse.

I. INTRODUCTION

India has always been a nation where customs and rituals are not only followed but regarded as sacred and praised. The concept of dowry was also one amongst them which was prevalent in India. The term 'Dowry' is defined under Section 2¹ of Dowry Prohibition Act, 1961. Section 498-A³ was introduced because of the pressing needs to stop all sorts of cruelty towards a married woman which was a burning problem of the country. One basic fact is that the greed for dowry and indeed the dowry system as an institution is at the root part of the offence contemplated in the section. This section was intended to protect the women from the atrocities of her husband and family members. The section was incorporated to shield the women from ill treatment and torture. But in present situation the legislation has become an evil in society. Instead of 'shield', the particular section is now used with mala fide intention by women as an 'armor' to threaten and harass the men for personal gratification and benefits. Consequently, it can be said that Section 498A is used as a weapon by women who simply abuses the arrangement of this particular Section for her own profit.

Section 498A of the Indian Penal Code

¹The Dowry Prohibition Act, 1961 Section 2- 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).³
Indian Penal Code, 1860 Section 498A.

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; 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.

As stated earlier in 1983, to check cruelty to women by husbands and parents-in-law, rampant in an unprecedented scale in the country a new chapter XXA, entitled: 'Of Cruelty by Husband or Relatives of Husband'² was added in the Penal Code. In addition, a consequential amendment to the Evidence Act was also made, shifting the burden of proof of innocence on the part of the accused as against prosecution in the case of abetment of suicide by a married woman and a wife's death within a period of seven years of marriage.⁵ An idea about the gravity of the problem can be had from the large number of reported cases of cruelty and torture by the National Crime Records Bureau during 1997(36592), 1998(41376) and 1999(43823) respectively that demonstrate an increase of 5.9 per cent.³

The object of adding this chapter is to punish a husband and his relatives who torture and harass the wife with a view to coerce her or any person related to her to meet any unlawful demands or to drive her to commit suicide.

To make the offence deterrent, section 498A prescribes a sentence of three years and also a fine for the husband of a woman, who subject her to cruelty.⁴

II. CONCEPT OF CRUELTY

'Cruelty' includes both physical and mental torture. 'Wilful conduct' in Explanation (a) to Section 498A of IPC can be inferred from direct and indirect evidence. The word Cruelty in the Explanation clause attached to the section has been given a wider meaning to include-

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide, or to cause a grave injury or danger to life, limb or mental or physical health 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.⁵

² This Chapter has been inserted by the Criminal Law (Second Amendment Act, 1983), Act 46 of 1983. ⁵ Indian Evidence Act, 1872 Section 113A and 113B.

³ Crime in India-1999, National Crime Records Bureau, Government of India, page 202, <http://ncrb.gov.in/StatPublications/CII/CII1999/CII1999/cii-1999/CHAPTER-5.pdf>.

⁴ L.V. Jadhav v. Shankarrao Abasaheb Pawar, AIR 1983 SC 1219.

Following are the few instances of Cruelty as a social evil in modern era-

- **Repeated demands of dowry amounts to cruelty:** If there exists a repeated demand for dowry and torture or harassment of any kind be it physical or mental is meted out to a woman, it is an act of cruelty.⁶
- **Repeated taunts calling her ugly and mal treatment is cruelty:** The wife was ill-treated from the next day of marriage and she was repeatedly taunted and mal-treated and mentally tortured by calling her ugly etc. This amounts to cruelty, mental torture for any bride.⁷
- **False allegations in litigation amounts to cruelty:** The wife was subjected to a series of malicious litigations in which extremely hurtful and offensive accusations were leveled against the wife and she was tortured through the execution of search warrants and seizure of her personal property. These very acts when repeated and carried on, constitute cruelty.⁸
- **Neglect by husband also amounts to cruelty:** The act of the husband was only that of disregarding his duty to provide the wife and the child elementary means of sustenance while he himself was squandering his earnings on gambling and other vices and was starving his wife and infant child to death.⁹

From abovementioned instances it can be construed that the term 'Cruelty' is abstract in nature. There is no specific definition of cruelty in any Act. It can be in different forms and depends on different factors and circumstances such as family background of woman, mental and physical parameters, socio-cultural background ,etc.

III. ABUSE OF THE SECTION 498A OF IPC, 1860

A basic investigation of the section 498A reveals that an arrangement which was initially incorporated to shield the women from the torture and harassment by the spouses or relatives tragically has been mishandled to problem the husband and his family. The Supreme Court in one of its decisions said that - "Yet by abuse of the arrangement (IPC, 1860 498A - Dowry and Cruelty Law) another legitimate fear mongering can be released. The arrangement is proposed to be utilized as a shield and not a professional killer's weapon".¹⁰

In one of the cases, the court held specifically that there are misuse and exploitation of the provisions to such an extent that it was hitting on the basis that is the foundation of marriage itself and which ultimately proved to be not a good sign for the health of society for the public at large.¹¹

The Supreme Court in one of its rulings said that -"But by misuse of the provision (IPC, 1860 498A - Dowry and Cruelty Law) a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not an assassin's

⁵Shobha Rani v. MadhukarReddi, AIR 1988 SC 121.

⁶Jagdish v. State of Rajasthan, 1998 CriLJ 554.

⁷Pawan Kumar v. State of Haryana J.T. 1998 (1) SC- 565.

⁸Smt. M.M.Chitnis v. Mr. M.M. Chitnis, 1991 (2) Maharastra L.R. 753.

⁹State of Karnataka v. Moorthy, 2002 Cr. L J 1683 (Karnataka).

¹⁰S.R. Subaashini and M. Kannappan, *A Study on Cruelty against Married Women and Legal Framework in India (Section 498(a))*, 119 INTERNATIONAL JOURNAL OF PURE AND APPLIED MATHEMATICS 1381 (2018).

¹¹Savitri Devi vs Ramesh Chand AndOrs., 2003 CriLJ 2759.

weapon".¹² In the 2003 Malimath Committee report on reforms in the criminal justice system it has been depicted that there exists a "general complaint" of Sec 498A of the IPC to be a subject to gross misuse; and therefore the same report suggested an amendment to the impugned provision.¹³

Section 498A IPC, 1860 at times said to be **sexual orientation biased law** because the arrangement gives security just to women in the battle against spouse and his relatives. The reality of the matter is that a watchful perusing of the section uncovered some difficult issues which can influence the general public.

According to the social activists, urban accomplished women are exploiting the section 498A so as to dwell autonomously, isolated from the spouse and his family directly after the husband's family submit to her requests which for the most part includes either money or property. This is why is the section acquired the shame of 'legitimate fear based oppression' since it is biased towards women and turns into an abhorrent arrangement when fall into wrong hands.

Why do people misuse the provision 498A IPC, 1860?¹⁴

There are certain specific reasons stated below:

- a. **Legal Extortion** – Get-rich-quick-scheme to extort large amounts of money.
- b. **Prior Relationship** – Wife has a prior relationship, and cannot get out of it. She marries to satisfy her parents, and then misuses the 498a law in order to obtain a divorce.
- c. **Adultery** – Women who indulge in adultery use 498A as a bargaining tool.
- d. **Domination** – Wife wants the husband to abandon his parents and siblings, and have total control over his finances and social behavior.
- e. **Custody** - Deny the father and his family access to their children.
- f. **Fraudulent Marriages** - in which the bride (and her family) hides her education level or mental health; and when is justifiably asked to release the person who has gone into marriage without knowing the full facts; she files a false 498A case.

Today every husband is seen as a torturer and the relatives as demon. A fair amount of blame rests on the media also which, with a view of sensationalizing the issue blows the news without proper investigation.

Following are some of the views of Judiciary with respect to the misuse of the Section 498A of IPC, 1860:

In *Jasbirkaur vs. Stae of Haryana*¹⁵¹⁶, the Punjab and Haryana High Court observed that an estranged wife will go to any extent to rope in as many relatives of the husband as possible in a desperate effort to salvage whatever remains of an estranged marriage.

¹²Sushil Kumar Sharma v. UOI, 2005 (6) SCC 266.

¹³Vasundhara, *Use And Misuse of Section 498A*, LEGAL SERVICE INDIA (May 12, 2019, 1:15 PM), <http://www.legalserviceindia.com/legal/article-652-use-and-misuse-of-section-498a.html>.

¹⁴ An investigative report by a NGO called Rakshak, *The Silent Tears of Shattered Families: The Ugly Reality of Dowry Law*, <http://equality.batcave.net/dowrylaw.html>.

The Karnataka High Court, in the case of State vs. Srikanth¹⁹, observed that “Roping in of the whole family including brothers and sisters-in-laws has to be depreciated unless there is specific material against these persons, it is down right on the part of the police to include the whole of the family as accused”.

The Supreme Court in the case of Mohd. Hoshan vs. State of A.P.^{17, 20} observed as:

“Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusation or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of the sensitivity, degree of courage and endurance to withstand such cruelty. Each case has to be decided on its own facts whether mental cruelty is made out.”

The statistics published by National Crime Records Bureau¹⁸, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence under Section 498-A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

Some Facts from NCRB 2016¹⁹ data of crime –

- Total no. of 498a cases registered in India (2016) – 1,10,378. These are 32.6% of total cases registered under crime against women category.
- Out of 1,10,378 498a cases, 12,218 cases were registered in major cities. Delhi being top with 3,645.
- Again in cities, 498a contributed a major portion of crime against women i.e. 29.2%.
- 498a cases have gone since Arnesh Kumar judgement (2014) since 2014. From 1,22,877 in 2014 to 1,10,378 in 2016.
- In 2016, 6745 cases under IPC 498a were considered false as per the final report. 2958 cases were considered as a mistake of facts. 8308 were considered as true but insufficient Evidence.
- 91810 chargesheets were submitted in the court of 498a cases. Chargesheeting Rate 83.3%.

¹⁵ (1990)2 Rec Cri R 243.

¹⁶ CriLJ 3605.

¹⁷ Cri LJ 4124.

¹⁸ Crime in India-2012, National Crime Records Bureau, Government of India, <http://ncrb.gov.in/StatPublications/CII/CII2012/Statistics2012.pdf>.

¹⁹ Crime in India-2016, National Crime Records Bureau, Government of India, <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20%202016%20Complete%20PDF%20291117.pdf>.

- The total Number of 498a cases went for trial (including pending of previous yrs) – 5,69,685. More than 4,77,000 were pending from previous years.
- In 2016, Only 5,433 cases where conviction happen. As compared to 39,248 cases of acquittals. Conviction rate is 12.2%. Lowest among the IPC sections.
- Cases pending during the trial at the end of 2016, 5,15,904. Remember in 2015 it was around 4,77,000. More and more cases piling up with 90.6% pending rate!
- Total no. of arrest were 1,98,851 under IPC 498a. Whereas people chargesheeted were 1,68,053 (Lesser than the ppl arrest). Even if we consider all charge sheets to be true, still more than 30,000 innocent ppl were arrested.
- 38817 females arrested in 2016 under 498a. Again less female being charge sheeted 31,734. The socalled Law made for women going against women!
- In cities, only 259 cases convicted. Whereas 2464 cases acquitted. Conviction rate 9.5% lesser than of national average (12.2%).
- 169 children below the age of 18yrs were arrested under IPC 498a in 2016! Do they even know the meaning of dowry???
- 5371 senior citizens aged more than 60yrs were arrested under IPC 498a in 2016. Most of them can't even walk forget about beating!

In the view of the abovementioned data and decisions of various courts, it can be clearly construed that Section 498A is being abused on a large scale and there is gross human rights violations occurring because of this particular Section.

IV. SUGGESTIONS AND CONCLUSION

The following are the suggestions or recommendations posed by the researcher towards the research problem:-

- **Firstly**, in India, the trial of criminal cases especially of serious nature continues for 8 to 10 years if not more depending on the gravity of crime. But a speedy trial is advisable so that the innocent victims entrapped under the section of 498A gets prompt redressal. Therefore it is of utmost importance that besides being effective the judiciary must try to expedite the process of trial with regard to the 498A cases.
- **Secondly**, an effort must also be made so that the investigation regarding this 498A cases is operated only by civil authorities and only on the finding of reasonable evidence, enough to establish the individual's crime, should the policeman take actions against him.
- **Thirdly**, the provision laid down under section 498A IPC, 1860 needs an immediate amendment and it should be one of the major concerns of the law-makers in recent times.

- **Fourthly**, in our nation there is no proper formal organization who offers family counselling. Establishment of a recognized family counselling organization is essential so that the individuals can vent out their grief and can also take the advice of experts and practitioners.
- **Fifthly**, the NGO's associated with the human rights activities must join hands to act in a neutral manner and should educate the crowd of not filing criminal cases based on trivial matters.
- **Sixthly**, a genuine endeavor must be made so that 498A cases are continued as bailable offence and not non-bailable to prevent the innocent ones from languishing in custody.
- **Seventhly**, The Court should start imposing penalty and stringent actions must be taken against the individual for making false accusations since this section lacks the deterrent element for which the dowry cases are increasing at such alarming level.
- **Eighthly**, strong actions must be taken against the dishonest, corrupted police officers; they must either be penalized or suspended from their posts if it becomes evident that there has been a gross negligence of duty on their part.

Conclusion:

This Section solely provides remedy to women solely and it's an extremely debatable issue recently. If this snag isn't resolved by legislation it's going to become a scary evil for the society. People's trust over the Judiciary, thus it's high time that this Section be amended. Many women who really need protection from Domestic Violence will probably never know about it and even if they do, never use it. This law will be yet another weapon in the hands of unscrupulous women who will misuse it. When a man is thrown out of his own house under true or false allegations of domestic violence or cruelty everyone who is dependent on him is bound to suffer. It is unfair enough to penalize an entire family even if an accused man is truly abusive. Unfair is a subtle word to describe a situation in which an innocent man, along with his family, is tortured by misuse of law.

After the entire study the researcher can conclude that though Section 498-A of IPC, 1860 was brought in forth for the protection of women from the cruelty of her husband and his relatives but now it is being abused. These women are turning the law other way round by being cruel to their husband and his relatives and getting them tried under Section 498A of IPC, 1860 which deals with "Cruelty by husband or relatives of husband".

Henceforth certain legal actions should be taken as soon as possible to curtail growth of "legal terrorism", by misuse of provisions of law.

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