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The Rising Duplicity of Section 498A

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ABSTRACT

Crimes against women are as old as civilization, and the attempts to curb them are equally ancient. Crime and violence against women are on the rise. Specific laws and regulations have been introduced to curb it. While constitutional protections is given and a large number of protective laws have been enacted to deter and regulate crimes against women, such crimes have, however, continued to grow. It has been commonly found that women hesitate to knock at the Court's doors because of lengthy, continuous and intense legal battles. Marriage is considered a religious relationship in which two consenting adults consent to marry together and form a family. One of the various conventions and practices that have been followed in our culture from early times is dower. Dowry is a sum of money or property that a wife gives her husband as a wedding gift. The dower provided during the wedding is intended to protect the female offspring and is regarded as a blessing for her. However, nature took its course, and human avarice continued to grow. The Central Government passed a regulation that served as a protection for the women against the cruel treatment they had to endure because of the desire for dowry. As a result, husbands and their families began to harass and torture the bride for bringing less dowry. Section 498-A was introduced into the Indian Penal Code to regulate the rapid rise in cases of cruelty against women. A new form of legal terrorism could be unleashed by exploiting the law for furthering one's motive. The law is designed to act as a shield, not as an assassin's weapon.

I. INTRODUCTION AND HISTORICAL BACKGROUND

Marriage is considered a religious relationship in which two consenting adults consent to marry together and form a family. It's a social institution where the husband has some obligations towards her wife and visa-versa. Dower is one of many practices and customs which have been practiced in our society since ancient times. Dowry is a quantity of property or cash brought in on their wedding by a wife to her husband. The dower given during the wedding is for the female offspring's protection and it is thought as a blessings for her. But nature took its course and as usual the human greed was getting more increased. Husband and their families started to harass and torture the bride for bringing less dowry as a consequence of which the Central Government enacted a law which acted as a shield for the women for the ill treatment that they

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had to undergo due to demand of dowry. Dowry Protection Act, 1961 was enacted to protect women and in addition to that Section 498A of Indian Penal Code, 1860 came into force to protect the women from her husband and in-laws. This Section(498A) was created to fight the threat of dowry death. Section 498A was inserted by the Criminal Law (Second Amendment) Act, 1983² and within the same act Section 113A emerged under The Indian Evidence Act to raise an assumption in reference to abetment of suicide by married women.

*498-A. Husband or relative of husband of a woman subjecting her to cruelty*³ -

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 her 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 meet any unlawful demand for any property or valuable security or is on account of failure by her or any person to her to meet such demand.

113-A. Presumption as to abetment of suicide by a married woman -

When the question is whether the commission suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed the suicide within a period of seven years from the date of a marriage and that her husband or such relative of husband had subjected her to to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of a husband. Explanation – for the purpose of this section, cruelty shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).⁴

Resacrh Problem: Whether any violations of Section 498A have occurred.

Hypothesis

NULL HYPOTHESIS - Section 498A is not misused against husband or his in-laws

² The Criminal Law (Second Amendment) Act, 1983, No. 46, Acts of Parliament, 1983 (India).

³ The Indian Penal Code, 1860.

⁴ The Indian Evidence Act, 1872.

ALTERNATIVE HYPOTHESIS - Section 498A is greatly misused against husband or his in-laws

Objectives: The objective of this research paper is to understand Section 498A, its constitutional validity and to address the issue pertaining to its misuse.

Literature Review

Karan Godara- In his article on “Misuse of section 498A IPC-Judicial trend” has correctly stated that the provisions of law which are meant to be ameliorative become a source of harassment. From the observation of Judicial trends and various commissions it has become clear that Section 498A is a necessary evil.⁵

Sankul Nagpal - In his article “Misuse of Section 498A” states that in the modern era where laws have changed the direction in which we perceive social institutions and gender, it has not been a favourable change for all the spheres of the society. A situation worsens when law empowers particular strata of society over others.⁶

Akshay Goel - In his article on “Use and Misuse of Section 498A” gives emphasis on the fact that lawmaker need to urgently take in view the current situation and provide a reasonable remedy for the same. At the same times he discusses the importance of other social institutions like NGOs, Family Counselling Centres, Set up of Civil Authorities, etc. for improving the current situation of the society.⁷

Abhijeet Singh - in this essay on “Section 498A I.P.C. - Its uses and misuses” states that this section provides remedy to woman only and is being used as ‘brahamastra’ by the woman. There is a grave need of amendment for this section before the trust of people over judiciary fails.⁸

RESEARCH METHODOLOGY - This study is expressive in nature and has used experimental techniques. The information has been acquired from secondary sources, including journals and articles that were printed in newspapers and websites as well as online. All references are cited appropriately in the footnotes and a mention in the bibliography.

⁵ Misuse of section 498A IPC-Judicial trend by Karan Godara available at <https://www.worldwidejournals.com/paripex/fileview/>.

⁶ Misuse of Section 489A by Sankul Nagpal available at <https://www.lawtendo.com/blogs/misuse>.

⁷ Use and Misuse of Section 498A by Akshay Goel available at <http://www.legalservicesindia.com/>.

⁸ Section 498A I.P.C. - Its uses and misuses by Abhijeet Singh available at <https://www.legallyindia.com/views/>.

II. SECTION 498A

'The judiciary must not take on the colouration of whatever may be popular at the moment, we are the guardian of rights, and we have to tell people things they often do not like to hear' - Rose Elizabeth Bird, the 25th Chief Justice of California once said that.⁹ Thus one can observe that the role of judiciary is like a guardian and it is empowered to make favours for a particular sex but on the contrary it is anticipated that the belief system should not sway with the popular hysteria of speculations witnessed by crowd or media.

Ingredients of the provisions re as follows :

- The woman must be married
- She must be subject to cruelty or harassment
- Either the woman's husband or a relative of her husband must have displayed such act of cruelty or harassment.

Section 498A is a cognizable, non-bailable and non-compoundable criminal offence. On a closer inspection of the section it makes it evident that the entire section is, founded upon four fundamental questions of law. They are as follows :

- Any conduct or gesture that is expected to drive a woman to commit suicide.
- Any action or conduct that is probable to cause grave injury to life, limb and health of the woman
- Causing harassment to the woman and her family for the purpose of extracting some property
- Causing harassment to the woman and her family due to failure in accepting the demand for money or any other kind of property.

In *Brij Lal v. Prem Chand*¹⁰ the case was regarding murder of the bride. As per the High Court's order the accused was acquitted because of no record exhibiting that the bride (Veena Rai) was instigated by the accused. However, the Apex Court criticized the verdict given by the High Court and held that, abetment of commission of suicide was only due to investigation. Therefore, it attracts first clause of section 107 IPC, 1860. With great disappointment, the Apex Court stated its plan for introducing section 113A and 113B of the Indian Evidence Act, 1872 to support section 498A with the following intention of highlighting two prime points:

⁹ Rose Elizabeth Bird, Chief Justice of California (1936-1999) Brown, Patrick..

¹⁰ 1989 AIR 1661.

- That the woman committed suicide within a period of seven years of marriage
- That the husband or any relation had subjected her to cruelty.

Many a times the constitutionality of this section (498A) have been challenged on various grounds like misuse of the stated provision, the court has upheld its validity but at times it also has to stand in a difficulty position due to appeal of false cases.

In *Inder Raj Malik v. Sunita Malik*¹¹ it was contended that section 498A is ultra vires as there is Dowry Prohibition Act, 1961, that collectively deals with the similar cases. Court held that Section 498 A is a separate section on comparison with Section 4 of the Dowry Prohibition Act, 1961 under which existence of cruelty is not an essential requirement. Whereas, section 498A provides wide discretion to the courts within the matters of interpretation of the word. Therefore, the discussed provision is not ultra vires and in no circumstance provides whimsical power on courts.

In *Sushil Kumar v. Union of India*¹² - An appeal was made to the Hon'ble Supreme Court under Article 32 of the Constitution regarding invalidity of Section 498A and an alternative guideline should be framed to restrict the misuse of this section. The court after referring to a number of cases decided that, the object of the section is prevention of dowry death and merely because there exists a possibility of abuse of a provision of law, it cannot be struck down. Additionally, the Supreme Court noted that due to the inception of such proven many new cases have raised and certain misfortunes have been avoided. The court also stated that there are some complaints which are not of bona fide intentions but as it is for the legislature to legislate, the court be required to function within the prescribed parameters if law.

In *Wazir Chand v. State of Haryana*,¹³ the court observed that in many cases where section 498A is attracted end up being false as they are mere blackmail attempt under strained marriages. In cost of the cases section 498A grievances is followed by the demand of big quantity of cash to settle the case out of the court.

The court has held that Section 498A IPC, 1860 is not retrospective in nature and no cognizance can be taken in cases where the offence was committed before the enforcement of this section.

¹¹ 1989 (92) CRLJ 1510.

¹² (1998) 8 SCC 661.

¹³ 1989 SCC(Cr) 105.

III. USE AND MISUSE OF SECTION 498A

In our society women have always been subject to ill-treatment. The law was enacted by the legislature to provide a shield of protection to women who are subjected to cruelty by her husband or relatives. Hence, to provide security to the women in their house section 498 A was introduced under the Indian penal code. But as the society develops it has been observed that this section has become a tool which is often misused by women for their own benefit. As a result of which there has been a spike in false charges being filed against the husband and even distant relatives of the husband are being subjected to these charges. The idea behind false allegations is to harass and pressurise the husband and to extort huge amount of money for settlement of the case. Has been observed that women implicate false charges against relatives of husband with malice intentions just to put pressure on him and the in-laws in order to get her demands fulfilled. Due to this irresponsible behaviour on part of women there are many cases where a female actually suffers but at times is not provided with justice.

On a deeper inspection of section 498 a it can be said that a provision which was primarily intended to protect the bride from being harassed and physically tortured by their husbands or relatives unfortunately has been abused to cause trouble to husband and his family. The Supreme Court of India in one of its rulings said that – “*by misusing the provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not an assassin's weapon*”.¹⁴ The court has come across a number of cases which deals with false allegations or misuse of section 498A on the part of female. Following are the cases which deal with the which dealt which such issues:

In *G.V. Rao v. L.H.V. Prasad & Others*¹⁵ held that in a matrimonial issue if all the members of the family have been roped into the litigation then such litigation should be quashed. Hon'ble Justice observed that “there has been an outburst of matrimonial disputes in recent times. Marriage is a secret ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial conflicts which suddenly erupts often take view of something serious resulting in heinous crimes. Elders of the family who are involved in such cases usually try to reconcile but are rendered helpless and termed as accused in a criminal case”.

In *Geeta Mehrotra & another v. State of U.P. & another*¹⁶ the facts of the case are, complainant alleged that she was married to Shyamji Mehrotra. Soon after the marriage husband and in-

¹⁴ Sushil Kumar Sharma v. UOI, JT 2005 (6) SCC 266.

¹⁵ (2000) 3 SCC 693.

¹⁶ (2012) 10 SCC 741.

laws of the complainant started to torture her mentally and physically for not bringing enough dowry. As a consequence of it complainant filed a complaint under section 498 A against her husband and in-laws, she also included the name of unmarried sister and brother of complainant's husband has co accused. Hon'ble court quashed the proceedings after stating that there was no prima facie evidence against the co-accused therefore, they cannot be held liable. Further stated that in cases where large number of family members names have been included in FIR and does not disclose their active participation, cognizance would result in abuse of judicial process. And, quashment of such proceedings would be justified.

In *Preeti Gupta v. State of Jharkhand*¹⁷ supreme Court observed that there was a need to revisit the provisions of section 498 A. It should also be noted that usually appeals of such nature tend to exaggerate versions of the incident and it can be said due to the very large number of cases. Therefore, it is high time that the legislature take into consideration and make appropriate changes in the existing law. Law Commission of India in the 243rd report recommended the following proposals :

1. The offence under 498A should be made compoundable, and with the permission of court it should be subjected to a cooling period of three months.
2. There should be a monitoring department in police to keep a track of section 498 a cases and observance of the guidelines
3. The need for swift and expeditious resolutions for issues under 498A should be given prime or supreme attention by prosecution and the judiciary.
4. The offence should remain non-bailable.

In *Rajesh Sharma & others v. State of U.P.*¹⁸ Hon'ble Supreme Court stated that it is a matter of serious concern that since large number of cases have been filed under section 498A regarding harassment of married women it is essential and urgent to find a remedy for such situation. The court is of the view that involvement of civil society in the age of administration of justice can be one of the steps apart from investigating officers. As a result of which the hon'ble Supreme Court has given following directions which are to be applied only to cases where there are no physical injuries or death caused:

1. A family welfare committee will be set up in every district which shall consist of three members. Such a committee is to be made by district legal service authorities.

¹⁷ AIR 2010 SC 3363.

¹⁸ 2017 SC 821.

2. The members of such committee maybe volunteers, social workers retired persons or any other member who is suitable and willing to do.
3. The committee will not be called as witness.
4. Every complaint has to be referred to the committee and the committee is required to submit a report to the authority who referred such complaint. The report may then be considered by the Investigating Officer or Magistrate on its own merit.
5. The task of the committee is to look into every complaint under Section 498A received by the police or the Magistrate.
6. No arrest should be affected until the report of the committee is received.
7. Personal appearance of all family members may not be required.
8. Shall be open to the district judge or any designated senior judicial officer to club all the connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the court.
9. Passport confiscation or issuance of a red corner notice shouldn't be common in the case of where the accused usually resides out of India.
10. The investigating officer is to be designated within a month from the delivery of judgement to investigate the complaints under section 498 a and any other connected offences
11. In cases where a settlement is reached, the District and sessions judge for disposal of the proceedings such disposals also include the closing of criminal cases if the dispute initially relates to matrimonial discord

After viewing and observing articles and judgment regarding Section 498A IPC, 1860 it can be called a gender-biased law. Because, it provides protection only to women in the fight against husband and in-laws. The fact that a number of false cases are filed and no penalty is applied on such false accusations this section exposes some serious problem in the society. The law framers at the time of enacting such provision could not comprehend that it could do injustice to two set of people: the former being, real victim of dowry harassment that are now being criticized for false claims and the latter being the family or relative of the husbands who are being harassed by the police and in some case are sent behind the bars.

Therefore, it is observed that the section itself consists of a number of loopholes. The section was enacted with the objective of protecting women from harassment and at the same time helping in restoring their marriages but this section has possibly in every manner threatened

the institution of marriage. There are a number of reasons as to why there exists misuse of Section 498A IPC:

Legal Extortion, Adultery, Domination, Fraudulent marriage, etc.

In *Srinivasalu v. State of A.P.*¹⁹ court held that consequences of cruelty which are likely to drive women to commit suicide or cause any grave injury or danger to her life must be established first before arresting the husband and in-laws. The FIR must only be considered to be taken if there exist sufficient reason to believe that gross action of violence has been committed by the husband towards the wife. It has been observed by police, civil society, politicians and even judges of the High Court and Supreme Court that the law has been exploited in every possible manner.

In *Savitri Devi v. Ramesh Chand & Others*²⁰ the court held that The provision was evidently abused and exploited to the point that it began to undermine the entire basis of marriage itself and demonstrated to be detrimental to society as a whole. The court believes that the authorities and lawmakers should review the situation and pass appropriate legal provisions required after considering the current situation.

IV. CONCLUSION

Nowadays, the institution of marriage is no longer considered to be a sacred union but rather it has taken a form of a civil contract between two individuals in literal sense of term. Section 498A which was earlier termed as legal terrorism due to its fight against evil practices of the society like dowry has now taken a different form and is rather considered as an assassin's weapon. Thought the inception of section 498A was a step towards social reform but due to the western influence and the increased pace of modernisation that has been adopted in our society this provision has resulted in failure of the judiciary to curb out the misuse of Section 498A. There is a need for change and the lawmakers need to take in view go the humiliation that the family of husband goes through. There should be equal protection given to the male members of the society on proving of any false accusation. Section 498A has been heavenly misused by dragging innocent men and women to police stations. Due to the irresponsible behaviour of such females many women who really need protection of such provision will fail in accomplishing it. This law will be another weapon in the hands of immoral women who will misuse to the very end at the sight of a tiny opportunity. It can be concluded that Section 498A was initially brought for protection of women in the society keeping in mind the kind of ill-

¹⁹ Appeal (Crl.) 11 of 2002.

²⁰ II (2003) DMC 328.

treatment they go through. But at present, it has been misused to every possible extend. It is required for the lawmakers to take an urgent legal action as soon as possible to curtail growth of “legal terrorism”.

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