

A COMPREHENSIVE STUDY ON THE EFFICACY OF SECTION 498-A

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Introduction:

To start with first, we have to look that what this word marriage means. ‘Marriage is the voluntary union for life of one man and one woman to the exclusion of all others.’ It is a social institution where husband has the responsibility to take care and maintain his wife. He cannot neglect his duties. But on this great institution a stigma called ‘dowry’ still exists. Women are ill-treated, harassed, killed, divorced for the simple reason that they didn’t brought dowry. For safeguarding the interest of woman against the interest of woman against the cruelty they face behind the four walls of their matrimonial home, the Indian Penal Code, 1860 (herein after referred to as I.P.C.) was amended in 1983 and inserted S.498A which deals with ‘Matrimonial Cruelty’ to a woman.

Matrimonial Cruelty in India is a cognizable, non bailable and non-compoundable offence. It is defined in Chapter XXA of I.P.C. under Sec. 498A as: 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 her to cruelty shall be punished with imprisonment for a term, which may extend to three years and shall also be liable to a fine.

The section was enacted to combat the menace of dowry deaths. It was introduced in the code by the Criminal Law Amendment Act, 1983 (Act 46 of 1983). By the same Act section 113-A has

been added to the Indian Evidence Act to raise presumption regarding abetment of suicide by married woman. The main objective of section 498-A of I.P.C is to protect a woman who is being harassed by her husband or relatives of husband.

Meaning of Cruelty:

It was held in ‘Kaliyaperumal vs. State of Tamil Nadu^[5]’, that cruelty is a common essential in offences under both the sections 304B and 498A of IPC. The two sections are not mutually inclusive but both are distinct offences and persons acquitted under section 304B for the offence of dowry death can be convicted for an offence under sec.498A of IPC. The meaning of cruelty is given in explanation to section 498A. Section 304B does not contain its meaning but the meaning of cruelty or harassment as given in section 498-A applies in section 304-B as well. Under section 498-A of IPC cruelty by itself amounts to an offence whereas under section 304-B the offence is of dowry death and the death must have occurred during the course of seven years of marriage. But no such period is mentioned in section 498-A.

In the case of ‘Inder Raj Malik vs. Sunita Malik^[6]’, it was held that the word ‘cruelty’ is defined in the explanation which inter alia says that harassment of a woman with a view to coerce her or any related persons to meet any unlawful demand for any property or any valuable security is cruelty.

The presumption of cruelty within the meaning of section 113-A, Evidence Act,1872 also arose making the husband guilty of abetment of suicide within the meaning of section 306 where the husband had illicit relationship with another woman and used to beat his wife making it a persistent cruelty.

Constitutional Validity of Section 498-A

In ‘Inder Raj Malik and others vs. Mrs. Sumita Malik^[7]’, it was contended that this section is ultra vires Article 14 and Article 20 (2) of the Constitution. There is the Dowry Prohibition Act which also deals with similar types of cases; therefore, both statutes together create a situation commonly

known as double jeopardy. But Delhi High Court negatives this contention and held that this section does not create situation for double jeopardy. Section 498-A is distinguishable from section 4 of the Dowry Prohibition Act because in the latter mere demand of dowry is punishable and existence of element of cruelty is not necessary, whereas section 498-A deals with aggravated form of the offence. It punishes such demands of property or valuable security from the wife or her relatives as are coupled with cruelty to her. Hence a person can be prosecuted in respect of both the offences punishable under section 4 of the Dowry Prohibition Act and this section gives wide discretion to the courts in the matters of interpretation of the words occurring in the laws and also in matters of awarding punishment. This provision is not ultra vires. It does not confer arbitrary powers on courts. In the leading case of 'Wazir Chand vs. State of Haryana ^[8]', involving the death by burning of a newly married woman, the circumstances did not establish either murder or an abetted suicide and thus in-laws escaped the jaws of section 300 and 306, but they were caught in the web of this newly enacted section for prevention of harassment for dowry. Not to speak of the things they are persistently demanding from the girl's side, the fact that a large number of articles were taken by her father after her death from her matrimonial abode showed that there was pressure being exerted on-in laws and continued to be exerted till death for more money and articles.

With the rise in modernisation, education, financial security and the new found independence the radical feminist has made 498A a weapon in her hands. Many a hapless husbands and in laws have become victims of their vengeful daughter-in-laws. Most cases where Sec 498A is invoked turn out to be false (as repeatedly accepted by High Courts and Supreme Court in India) as they are mere blackmail attempts by the wife (or her close relatives) when faced with a strained marriage. In most cases 498A complaint is followed by the demand of huge amount of money (extortion) to settle the case out of the court.

Sec 498A and the Allegation of Misuse:

In the last 20 years of criminal law reform a common argument made against laws relating to violence against women in India has been that women misuse these laws. The police, civil society, politicians and even judges of the High Courts and Supreme Court have offered these arguments

of the "misuse" of laws vehemently. The allegation of misuse is made particularly against Sec 498A of the IPC and against the offence of dowry death in Sec 304B. One such view was expressed by former Justice K T Thomas in his article titled 'Women and the Law', which appeared in The Hindu.²¹ The 2003 Malimath Committee report on reforms in the criminal justice system also notes, significantly, that there is a "general complaint" that Sec 498A of the IPC is subject to gross misuse; it uses this as justification to suggest an amendment to the provision, but provides no data to indicate how frequently the section is being misused. It is important therefore that such "arguments" are responded to, so as to put forth a clearer picture of the present factual status of the effect of several criminal laws enacted to protect women.

Domestic violence and abuse by spouses and family members are complex behaviours and the social organisation of courts, the police and legal cultures systematically tend to devalue domestic violence cases. Sec 498A was introduced in the IPC in 1983 and the reforms of the past 20 years have not been adequately evaluated at all by the government with respect to their deterrence goals, despite the institutionalization of law and policy to criminalise domestic violence. A program of research and development is urgently required to advance the current state of knowledge on the effects of legal sanctions on domestic violence.

The narrow or perhaps almost negligible study done by law enforcement agencies about the deterrent effects of legal sanctions for domestic violence stands in high contrast with the extensive efforts of activists, victim advocates and criminal justice practitioners in mobilising law and shaping policy to stop domestic violence.

It is important to do these studies to correct the general misconceptions that women are misusing the law by filing false cases against their husbands and in-laws in order to harass them and get them convicted. The perspective of the state and its agencies needs to change from that of protecting the husbands and in-laws against potential "misuse" of the laws of domestic violence to that of implementing their real purpose – to recognise that such violence is a crime and protect women who have the courage to file complaints against their abusers.

Use of Section 498 A by Indian Courts:

Indian Courts had been using this provision to safeguard the women from facing the cruelty faced by them at their matrimonial home. 9 out of 10 of the cases are always related to dowry, wherein the woman is continuously threatened for want of more money and property which if remains unfulfilled, the married woman is tortured, threatened, abused- both physically and verbally and harassed. Like in the case of Ram Kishan Jain & Ors v State of Madhya Pradesh ^[9] due to insufficiency of dowry demands the woman was administered calm pose tablets and thereafter she even cut the arteries of both her hands. Sometimes, dowry may not be the cause but the woman for several reasons like her complexion or family status is tortured to death.

In the case of Surajmal Banthia & Anr. v. State of West Bengal ^[10], the deceased was ill-treated and tortured for several days and even not given food several times. Her father- in-law also misbehaved with her quite often. This is the treatment that several young brides face when they move out of their parents' home and into the house of her in-laws'. It is the duty of the court to prevent any of these abusers from escaping. The increasing rate of bride burning for want of more dowry and brutal torture of young wives, together with a clear escape of the abuser is a clear indication that the court has not taken any strong measures for the implementation of S. 498A IPC properly.

As stated earlier many a times this victim turns into the abuser and is clearly not wronged but instead wrongs the husband and his family for no fault of theirs. Several cases show that the married woman takes advantage of the section and sends the respondents to jail under the ambit of this section.

Many women rights' groups justify the abuse of this section as being a common feature with all other laws and that also the ratio of false cases to that of true ones as being very low. But this still does not change the truth that there is slowly a rise in the abuse of S.498A IPC.

In many judgments, the court has not considered mental cruelty caused to the woman but has concentrated only on any sign of physical cruelty. If evidence does not show that the woman was

physically harassed, then the court does not look into the case. What the court does is call the woman hyper- sensitive^[11] or of low tolerance level and having an unstable mind^[12]. Also S.498A IPC does not only deal with dowry deaths but also any wilful conduct on part of the husband which causes harm to the wife's 'life, limb or health (whether mental or physical).' To prove that cruelty was caused under explanation a) of S.498A IPC it is not important to show or put forth that the woman was beaten up- abusing her verbally, denying her conjugal rights or even not speaking to her properly^[13] would fall into the ambit of mental cruelty.

Showing any mercy to abusers or giving them the 'benefit of doubt' when some proof to torture at their hands is present is completely wrong. Like in the case of Ashok Batra & Ors v State^[14] even though letters of the deceased stating that harassment had taken place was present, not treating them as strong evidence and giving the appellants a benefit of doubt without ordering for a further investigation into the matter is wrong.

The judges have in several instances made a very narrow interpretation of this section, considering it to be only cruelty in relation to unlawful demands or dowry demands. In a particular case, the court went to the extent of stating that 'merely because her in-laws or husband were to chastise the woman for improper or immoral conduct, it does not necessarily amount to cruelty.'^[15] This act of chastising the woman clearly amounts to mental cruelty, something that the court apparently failed to notice. Here, considering the woman to be a hyper- sensitive woman not used to usual wear and tear of social life is completely erroneous.

In the case of Bomma Ilaiah v State of AP^[16] the husband of the complainant tortured the woman physically by forcing his wife to have sexual intercourse with him. He inserted his fingers and a stick in her vagina, causing severe pains and bleeding but the court found the husband of this

Woman guilty only under S. 325 IPC and not S, 498A IPC. Why? Her life both physically and mentally was at risk. Didn't the court notice this? The court has in another case not punished the guilty under S.498A IPC even though medical Reports clearly showed that the death was homicidal by throttling. This was simply because According to the court, even though there were dowry

demands in the past, the court felt that Proximity of the death to be caused due to such a demand was unlikely^[17]. Who decides this Proximity? The cause and its effect on the woman's health or life may be profound and even cause her mental unrest at a later stage. While on the one hand, women's emancipation is the need of the hour and prevention of ever increasing dowry deaths and harassment needs to be stopped, it is also clearly noticed that women today are still tortured and often the court, being the ultimate saviour also does not come to the rescue to protect these women.

Misuse of Section 498 A in Modern World:

A violation of this section, its goals and its aims is on the rise with the woman frivolously making false allegations against their husbands with the purpose of getting rid of them or simply hurting the family. The abuse of this section is rapidly increasing and the women often well- educated know that this section is both cognizable and non-bailable and impromptu works on the complaint of the woman and placing the man behind bars. Like in the case of Savitri Devi v Ramesh Chand & Ors^[18], the court held clearly that there was a misuse and exploitation of the provisions to such an extent that it was hitting at the foundation of marriage itself and proved to be not so good for health of society at large. The court believed that authorities and lawmakers had to review the situation and legal provisions to prevent such from taking place.

This section was made keeping in mind protection of the married woman from unscrupulous husbands but is clearly misused by few women and again this is strictly condemned in Saritha v R. Ramachandran^[19] where the court did notice that the reverse trend and asked the law Commission and Parliament to make the offence a non-cognizable and bailable one. It is being a duty of the court to condemn wrongdoings and protect the victim but what happens when the victim turns into the abuser? What remedy does the husband have here?

On this ground, the woman gets to divorce her husband and re-marry or even gain money in the form of compensation. Many women rights' groups go against the idea of making the offence a non-cognizable and bailable one thinking that this gives the accused a chance to escape conviction. But what this would do is that it would give a fair chance to the man and above all help meet the

ends of justice. Justice must protect the weaker and ensure that the wronged is given a chance to claim back his/her due. When women accuse their husbands under S.498A IPC by making the offence non-bailable and cognizable, if the man is innocent he does not get a chance quickly to get justice and 'justice delayed is justice denied'. Therefore, the lawmakers must suggest some way of making this section non-biased to any individual such that the guilty is punished and the person wronged is given justice. The position of the women in India is still bad. They still need rights to alleviate themselves in society but many a times fail to notice others' rights as long as their rights are ensured. The educated woman of today must agree with the mantra of equality and demand the same but the trend is slowly getting reversed. Women are taking due advantage of the fact that they are referred to as the 'weaker sex' and on the foundation of rights ensured to them are violating others' rights.

Recent Judgements:

Indian Courts in their recent judgements have looked into the matter of misuse of Sec.-498A I.P.C. As this Section provides that when an F.I.R. is lodged all the family members of the husband can be roped in. In their judicial observations and remarks, the courts have expressed deep anguish over this law. Here are some recent judicial observations.

1990 Punjab and Haryana High court observed in *Jasbir Kaur vs. State of Haryana*^[20], case as: "It is known 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."

In *Kanaraj vs. State of Punjab*^[21], the apex court observed as: "for the fault of the husband the in-laws or other relatives cannot in all cases be held to be involved. The acts attributed to such persons have to be proved beyond reasonable doubt and they cannot be held responsible by mere conjectures and implications. The tendency to rope in relatives of the husband as accused has to be curbed"

Karnataka High Court, in the case of *State Vs. Srikanth*^[22], observed as: "Roping in of the whole of the family including brothers and sisters-in-law has to be depreciated unless there is a specific

material against these persons, it is down right on the part of the police to include the whole of the family as accused”

Rajesh Sharma v. State of U.P. (SC) ^[23], observed as: Thus, after careful consideration of the whole issue, we consider it fit to give following directions: -

- i) (a) In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and Sessions Judge of the district who is also the Chairman of the District Legal Services Authority.
- (b) The Committees may be constituted out of para legal volunteers/social workers/retired persons/wives of working officers/other citizens who may be found suitable and willing.
- (c) The Committee members will not be called as witnesses.
- (d) Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee. Such committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication.
- (e) Report of such committee be given to the Authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.
- (f) The committee may give its brief report about the factual aspects and its opinion in the matter.
- (g) Till report of the committee is received, no arrest should normally be effected.
- (h) The report may be then considered by the Investigating Officer or the Magistrate on its own merit.
- (i) Members of the committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.
- (j) The Members of the committee may be given such honorarium as may be considered viable.
- (k) It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper.
 - i. Complaints under Section 498A and other connected offences may be investigated only by a designated Investigating Officer of the area. Such designations may be made within

- one month from today. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from today;
- ii. In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior Judicial Officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord;
 - iii. If a bail application is filed with at least one clear day's notice to the Public Prosecutor/complainant, the same may be decided as far as possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife/minor children can otherwise be protected. Needless to say that in dealing with bail matters, individual roles, prima facie truth of the allegations, requirement of further arrest/ custody and interest of justice must be carefully weighed;
 - iv. In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine;
 - v. It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the Court to whom all such cases are entrusted; and
 - vi. Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to grant exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trial.
 - vii. These directions will not apply to the offences involving tangible physical injuries or death.

Rajesh Sharma v. State of U.P. (SC) ^[24], observed meaning of the expression of cruelty as follows Section 498A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the Statement of Objects and Reasons of the Act

46 of 1983. The expression 'cruelty' in Section 498A covers conduct which may drive the women to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continue to be filed under Section 498A alleging harassment of married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement. This Court had earlier observed that a serious review of the provision was warranted. The matter also appears to have been considered by the Law Commission, the Malimath Committee, the Committee on Petitions in the Rajya Sabha, the Home Ministry, which have been referred to in the earlier part of the Judgment. The abuse of the provision was also noted in the judgments of this Court referred to earlier. Some High Courts have issued directions to check such abuse. In *Arnesh Kumar (supra)* this Court gave directions to safeguard uncalled for arrests. Recommendation has also been made by the Law Commission to make the offence compoundable.

References

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5. *Ibid.*
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8. II (2003) DMC 546 (DB)
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