

MISUSE OF SECTION 498A OF INDIAN PENAL CODE: HOW BLESSING BECAME CURSE FOR SOCIETY

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ABSTRACT

The underlying object of this research paper is to study and analyse the provisions of section 498A of Indian Penal Code, 1860. Under this paper the author tried to elucidate the section 498A, where husband or relatives of husband of a women subjecting her to cruelty. This section 498A is provided under chapter XXA of Indian Penal Code, 1860, it was not part of original code and was included in IPC in 1983 in order to provide protection to the woman who are ill-treated by their husband and his relatives for not bringing dowry. But now as the society progresses we have seen that there is misuse of this section and some woman are harassing their husband and his relatives by filing false charges against them. Thus, under this research paper author is trying to explain the provision of section 498A of IPC, how it is being misused by woman for their benefit and how even distant relatives are roped in to put pressure on husband.

INTRODUCTION

Marriage is considered as a sacred institution where two consenting adult consent to marry and form a family together. It is a social institution where husband has certain responsibilities towards his wife. However, the problem arises when there is demand of dowry on part of husband and his relatives and for which they ill-treat woman for not bringing dowry. The main purpose for introducing section 498A to Indian Penal Code was to protect women from matrimonial cruelty. Section was created to combat the menace of dowry death. This section was inserted in penal code by the Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983) and by same Act section 113A was introduced under the Indian Evidence Act to raise presumption regarding abetment of suicide by married woman.¹ But now it is been held by the Hon'ble Supreme Court and various High Courts that section 498A is repeatedly being misused by the women for their benefits and women are filing false cases against their husband and his relatives are also being roped in just to harass the husband. Therefore, it can be said that section which was meant to be blessing for the women and was bought in to provide safety to women who are subjected to cruelty by husband and his relatives, is used as a weapon by some women who misuse the provision of section and implicate false charges against husband and his relatives.

Section 498A: Cruelty by Husband or Relatives of Husband

Whoever, being the husband or the relative of the husband of a woman, subjects such a 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 women; or*

¹ Ratanlal & Dhirajlal, The Indian Penal Code, 34th ed. LexisNexis, p. 1171

b) *Harassment of the women 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 is on account of failure by her or any person related to her to meet such demand.*

What is Cruelty?

Cruelty is a behaviour that causes pain or suffering to others. In *State of Karnataka vs. H.S. Srinivas*,² Hon'ble court held that the expression cruelty postulates such a treatment as to cause reasonable apprehension in the mind of wife that her living with the husband will be harmful and injurious to her life. To decide the question of cruelty the relevant factors are the matrimonial relationship between husband and wife, their cultural and temperamental state of life, state of health and their inter-action in daily life. In another case of *Inder Raj Malik vs. Sunita malik*³ while explaining the meaning of cruelty court held that the word cruelty as defined under explanation means harassment of a woman with a view to coerce her or any related person to meet any unlawful demand for any property or any valuable security.

Following are the types of cruelty covered under the section 498A:⁴

- Cruelty by vexatious litigation,
- Cruelty by deprivation and wasteful habits,
- Calling wife barren woman,
- Cruelty by persistent demand,
- Cruelty by extra-marital relation,
- Harassment and bigamy,
- Cruelty by non-acceptance of baby girl,
- Cruelty by false attack on chastity.

Here, it is important to note that mere harassment or demand of property, etc. does not mean cruelty. Rather it is only when harassment is shown to have been caused for the purpose of coercing a woman to meet demands that it amounts to a cruelty which has been made

² 1996 Cr LJ 3103

³ 1986 CrLJ 1510

⁴ Ratanlal & Dhirajlal, The Indian Penal Code, 34th ed. LexisNexis, p. 1176-1178

punishable under the section.⁵ In case of *Basant Kaur vs. State (NCT) Delhi*,⁶ hon'ble Supreme Court observed that section 498A and section 113A of Indian Evidence Act, include in their amplitude past events of cruelty, but as it is provided under section 113A the presumption of suicide by a married woman arises when it takes place within 7 years of marriage. In another case of *R.P. Bidlan vs. state of Maharashtra*,⁷ it was held that mere proof of cruelty and suicide does not make a person liable under the section 498A. Therefore, to prove cruelty it is important that a relation between suicide and cruelty should be established.

Section 113A⁸: Presumption as to abatement of suicide by a married woman.

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her 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 her husband.

Explanation- for the purpose of this section, 'cruelty' shall have the same meaning as in section 498A of the Indian Penal Code.

Offence Under 498A should be committed by Husband or his Relatives:

As it is mentioned under section 498A Indian Penal Code, in order to establish liability under section 498A it is important to show that the offence is committed by husband or relatives of husband. The term 'relative' principally includes a person related by blood, marriage or adoption, generally it includes father, mother, husband or wife, son, daughter, brother, sister, nephew or niece, grandson or granddaughter of an individual or the spouse of any person. Therefore, it can be said that the term relative should be assigned the meaning as it is commonly understood.

⁵ Balram Prasad Agarwal vs. State of Bihar, AIR 1997 SC 1830: 1997 Cr LJ 1640

⁶ 2003 Cr LJ 803 (Del)

⁷ 1993 Cr LJ 3019

⁸ Section 113A of Indian Evidence Act, 1872, Ins. by Act 46 of 1983

In case of *A. Subhash Babu vs. State of Andhra Pradesh & others*,⁹ court held that word “husband” would apply to person who enters into marital relationship and under the colour of such proclaimed or feigned status husband subjects the women concerned to cruelty or coerces her in any manner or for any purposes. Court further held that a person who enters in to marital arrangement and treats his wife maliciously cannot be spared from criminal liability just because there was no valid marriage and question of dowry does not arise.

In *Vasant Bhagwat Patil vs. State of Maharashtra*,¹⁰ a contention was made that, whether section 498A is applicable to cruelty against legally wedded wife only? In response to this contention hon’ble court held that section 498A refers to word ‘woman’ and not to ‘wife’ therefore the protection is provided to married woman and not to legally wedded wife only. In this case accused and deceased were residing together as husband and wife and evidence proved that accused and deceased were married by ‘sulagna procedure’. But there was no evidence of valid marriage between them. Court did not accept the contention and held that ‘no evidence of valid marriage does not attract the provisions of section 498A, cannot be accepted.’

CONSTITUTIONAL VALIDITY OF SECTION 498A

Time and again constitutionality of the section 498A is questioned. In case of *Sushil Kumar Sharma vs. Union of India*,¹¹ a petition have been filed under article 32 of the Constitution to declare section 498A unconstitutional or ultra-vires so that false accusation cannot be made to victimized innocent people. In response to this contention hon’ble Supreme Court held that, “if a statutory provision is otherwise intra-vires, constitutional and valid, mere possibility of abuse of power in a given case would not make it objectionable, ultra-vires or unconstitutional. In such cases, “action” and not the “section” may be vulnerable. If it is so, the court by upholding the provision of law, may still set aside the action; order or decision and grant appropriate relief of the person aggrieved.”

In another case of *Inder Raj Malik & others vs. Sumita Malik*,¹² it was contended that section 498A is unconstitutional; it violates the provisions of article 14 and 20(2) of the

⁹ AIR 2011 SC 3031; 2011 (7) SCC 616

¹⁰ 2012 Cr LJ 65 (Bom)

¹¹ 2005 (6) SC 266

¹² 1986 (2) Crimes 435; 1986 (92) Cr LJ 1510

Constitution. The section is discriminatory and creates the situation of double jeopardy because Dowry Prohibition Act, also deals with similar cases. Negating the contention hon'ble court held that section 498A and Dowry Prohibition Act does not create the situation of double jeopardy as both legislations are different from each other. In Dowry Prohibition Act (Section 4)¹³ mere demand of dowry is punishable and there is no need to prove cruelty, whereas under section 498A to establish the liability, demand of dowry is punishable only in case of cruelty to wife by husband or relatives of husband.

MISUSE OF SECTION 498A

The law was enacted by legislature to provide protection to women who are subjected to cruelty by their husband or his relatives. In our society women were always been ill-treated and suppressed by male member of the family. Therefore, to provide security to the women in their in-laws house this section was introduced under the Indian Penal Code. But as the society advanced the provisions of the section were misused by some women for their benefit. As a result of that we can see that so many false charges are being filed against the husband and even distant relatives of the husband are being roped in to these charges in order to harass him and to pressurize him to extort huge amount of money.

With the rise of western influence on Indian society, modernization, financial security, radical feminist are using this law as a weapon in their hand and because of which husband and in-laws have become victims of their vengeful daughter-in-law. Concern about the misuse of the laws relating to violence against women in India is been repeatedly shown by the Hon'ble Judges of Supreme Court and High Courts. It is been held that women incriminate false charges against the distant relatives of the husband with malice intention just to put pressure on husband and in-laws in order to fulfil her demands.

In case of *G.V. Rao vs. L.H.V. Prasad & others*¹⁴ court held that in matrimonial disputes where all members of the family been roped in to the matrimonial litigation should be

¹³ Section 4- Penalty for demanding dowry: if any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to ten thousand rupee: Provided that the Court may, for adequate and special reason to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than six months.

¹⁴(2000) 3 SCC 693

quashed. Further, hon'ble justice observed that "there has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupts which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and bought about rapprochement are rendered helpless on their being arrayed as accused in criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different courts."

In landmark judgement of *Geeta Mehrotra & another vs. State of U.P. & another*¹⁵, the fact of the case are, complainant alleged that she was married to shyamji mehrotra. It was stated that soon after the marriage husband and in-laws of the complainant started to torture her mentally and physically for not bringing dowry. Complainant filed complaint under section 498A (matrimonial dispute) against her husband and in-laws, complaint also included the name of unmarried sister and brother of complainant's husband as co-accused. Hon'ble court quashed the proceeding stating that there was no prima facie evidence against the co-accused therefore they cannot be held liable. Court further stated that where large number of family members had been included in FIR by casually mentioning their names and contents did not disclose their active participation, cognizance of matter against them would not be justified. Therefore, under such conditions, cognizance would result in abuse of judicial process. Thus, quashment of such proceedings would be justified.

Hon'ble Supreme Court in case of *Onkar Nath Mishra vs. State (NCT) of Delhi*,¹⁶ where there was not even whisper of wilful conduct of harassment could be proved, observed that the section was introduced with avowed object of combating the menace of dowry death and harassment of a women at the hands of her in-laws. But the provision should not be allowed to be used as a device for achieving oblique motive.

¹⁵ (2012) 10 SCC 741

¹⁶ (2008) 2 SCC 561: 2008 Cr LJ 1391

In case of *Preeti Gupta vs. State of Jharkhand*¹⁷, Supreme Court held that there is a need to revisit the provisions of section 498A. It is also a matter of knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. Therefore, it is high time that legislature must take this in to consideration and make suitable changes in the existing law.

Law commission of India in its 243rd report recommended following suggestions:

- The offence under 498A should be made compoundable, with permission of court and subject to cooling period of three months.
- The offence should remain non-bailable. However, the safeguard against arbitrary and unwarranted arrest lies in strictly observing the letter and spirit of the conditions laid down in sections 41 and 41A of Cr.PC relating to power of arrest and sensitizing the police on the modalities to be observed in cases of this nature.
- There should be a monitoring mechanism in the police Dept. To keep track of section 498A cases and the observance of guidelines.
- The need for expeditious disposal of cases under section 498A should be given special attention by the prosecution and judiciary.

In another landmark Judgement of *Rajesh Sharma & others vs. State of U.P.*,¹⁸ hon'ble Supreme Court stated that, "it is a matter of serious concern that large numbers of cases continue to be filed under section 498A alleging harassment of married women. To remedy the situation, we are of the view that involvement of civil society in the aid of administration of justice can be one of the steps, apart from the investigating officers and concerned trial courts being sensitized. It is also necessary to facilitate closure of proceeding where a genuine settlement has been reached instead of parties being required to move High Court only for that purpose."

Therefore, following directions are given by hon'ble Supreme Court to combat the misuse of the section; these directions will apply only to the cases where there are no physical injuries or death caused:

¹⁷ AIR 2010 SC 3363

¹⁸ 2017 SCC online SC 821

- (a) In every district one or more Family Welfare Committees be constituted by the District Legal Service 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 District and Sessions Judge of the district who is also the Chairman of the District Legal Service 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 committees. 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 Service 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 Session Judge to utilize the cost fund wherever considered necessary and proper.
- 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,

- In cases where a settlement is reached, it will be open to the District and Session 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,
- If a bail application is filed with at least one 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 be 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,
- In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine,
- 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,
- 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.

CONCLUSION

To conclude the discussion it is submitted that section 498A is wonderful legislation which was introduced under the Indian Penal Code with an intention to provide protection to women, who are vulnerable section of our society and who have been victim of cruelty and harassment. However, the problem arises when there is misuse of these provisions for personal benefit and innocent people and their families are falsely implicated in section 498A cases. Judiciary time and again have observed that, false allegations are made against innocent people without any justification or proper evidence to prove the case against them. According to the statistics of National Crime Records Bureau, conviction rate of cases registered under section 498A of IPC

is approximately 15%.¹⁹ Therefore, it can be said that there is urgent need to revisit the provisions of section 498A and to adopt measures to prevent the misuse. Recommendations submitted by the 243rd Law Commission of India report and Justice Malimath Committee report should be implemented. Legislature should take these suggestions into consideration and amend the law so that the purpose of enactment of the law could be fulfilled, women who are vulnerable and genuinely need this law could approach the judiciary for their rights and people who are trying to misuse the provisions of the law could be punished. Hon'ble Justice Malimath in Malimath Committee's report on Reforms of Criminal Justice System²⁰ observed that:

“The harsh law, far from helping the genuine victimized women, has become a source of blackmail and harassment of husband and others. Once a complaint (FIR) is lodged with the police under section 498A/406 IPC, it becomes an easy tool in the hands of the police to arrest or threaten to arrest the husband and other relatives named in the FIR without even considering the intrinsic worth of the allegations and making a preliminary investigation. When the members of a family are arrested and sent to jail, with no immediate prospect of bail, the chances of amicable re-conciliation or salvaging the marriage will be lost once and for all. The possibility of reconciliation, it is pointed out, cannot be ruled out and it should be fully explored. The imminent arrest by the police will thus be counter-productive. The long and protracted criminal trials lead to acrimony and bitterness in the relationship among the kith and kin of the family. Pragmatic realities have to be taken into consideration while dealing with matrimonial matters with due regard to the fact that it is a sensitive family problem which shall not be allowed to be aggravated by over-zealous/callous actions on the part of the police by taking advantage of the harsh provisions of section 498A as such, but in the provisions of CrPC making the offence non-compoundable and non-bailable.”

¹⁹ National Crime Records Bureau report ,2013

²⁰ Justice Malimath Committee report on Reform of Criminal Justice system, 2003