

IPC 498 A- MYTHS AND REALITIES

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Section 498 A⁴¹⁸ of the Indian Penal Code was introduced in Penal Code by Criminal Law (Second Amendment) Act of 1983 which came into force with effect from 25th December , 1983 making cruelty to a married woman a crime. It broadened the scope of the term domestic violence and states that: *"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."* For the purposes of this section, "Cruelty" means— a) any willful 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." This section regulates that a court can take cognisance of any offence punishable under this section only upon a complaint made by the person aggrieved by the offence, or by her relatives. It is cognisable and the non-bailable. Section 498A of the IPC made violence perpetrated by the husband or in-laws a cognisable offence. It was aimed as a deterrent to marital violence by enabling the woman to take preventive action before it led to her death. The law penalises the perpetrators with a prison term which may extend to three years and or a fine. It also makes it mandatory for the police to arrest the accused husband or in-laws immediately after a complaint is registered.

A dowry death is the murder of a young woman; committed by the in-laws, when she was unable to fulfil their coercive demands for money, articles or property, categorized as dowry. Organizations across the country pressurized and urged the government to provide legislative protection to women against domestic violence and dowry. The objective was to allow the state to intervene rapidly and prevent the murders of young girls who were unable to meet the dowry demands of their in-laws. As a result of the intense campaigning and lobbying, significant amendments were made in the Indian Penal Code, the Indian Evidence Act and the Dowry Prohibition Act, with the intention of protecting women from marital violence, abuse and

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⁴¹⁸ Indian Penal Code, 1860

dowry demands. The most important amendment came in the form of the introduction of Section 498A in the Indian Penal Code (IPC).

Procedure: The victim of Domestic Violence has to file a complaint with the Police. The Police have orders to verify the facts and as far as possible to refer the case to the Special Security Cell for Women or Counsellors. On the report of the counsellor, the police take cognisance of the offence. On arrest of the accused, bail can be given at the discretion of the judge because this is a non-bail able offence. The Public Prosecutors represents the complainant woman. But the woman has the option of being represented by a private lawyer. Sometimes the private lawyer works as a watchdog to assist the Public Prosecutor in such cases.

Misuse of the Section 498A: After the introduction of this section 498A of IPC in 1983, there was lots of information on the misuse of this Section. There is a widespread belief among the Indian public that this provision is used primarily to file false charges to harass or blackmail an innocent spouse and his relatives.⁴¹⁹ The court in *Verrulu v. The state* demanded a stop to unhealthy trend of false complaints that had been resulting in unnecessary misery to the husband and his relatives⁴²⁰. The Supreme Court in *Sushi Kumar Sharma Vs. Union of India*⁴²¹ Writ petition no, 141 of 2005 has condemned 498 A as “Legal terrorism”. A report published by NCRD informs that in 2006 a total of 1, 61,217 men were registered under section 498 and 304(culpable homicide not amounting to murder). But surprisingly, the numbers of convictions were only 16, 995 while the courts found 61, 297 people innocent. Less number of convictions proves that it is heavily misused. Reports of false complaints are widespread on this law.

Shocking statistics reveal that more men are falling prey to dowry laws and domestic violence than women. In *Indar Raj Vs. Sunita*, the Delhi high court and in *Krishnan Lal Vs. Union of India* (high court of Punjab and Haryana dealt with a challenge to the constitutional validity of section 498 A on the grounds that it violated the right to equality under article 14 of the Indian constitution. In both these cases even though the respective court is successful in establishing that the Section 498 A did not violate the article 14 of the constitution misuse of this section even by police is widely reported.

According to Manushi, a magazine devoted to gender studies female complainants often allege threats of dowry demands in complaints of domestic violence or cruelty, even when dowry is

⁴¹⁹V.K. Dewan, law relating to Dowry Prohibition 184(2010)

⁴²⁰ See Id.

⁴²¹ AIR 2005 SC 3100

not an issue.⁴²² If these reports of false claims are accurate, it would constitute an abuse of due process, for this provision was intended to be shield against violence, not a sword or bargaining tool.⁴²³ Manushis investigations revealed that police would often use the threat of arrest under section 498A to extort large sums of money from a husband's family.⁴²⁴ There is also allegation that lawyers force the complainants to exaggerate the amount owed to them as stridhan, and lawyers also get large settlements from their male clients, provided they were entitlements to a percentage of the settlement as a commission for coercing the husbands family.

NCRB statistics 2005-06⁴²⁵, shows altogether 52,483, married men committed suicide while the figure for women stood at 28,188. BBC study indicates that more than 80% women under-trials (related to husbands) lodged in Tihar jail (Delhi) are booked under dowry related laws. National Crime Bureau data from 2008 revealed that the number of dowry deaths had increased from 6,975 cases in 1998 to 8,093 in 2007.⁴²⁶ Cases registered under section 498A had also increased from 41,375 to 75,930 while the reported number of sexual harassment cases had grown from 8,053 to 10,950 in the same ten-year period⁴²⁷.

As IPC 498A is Non-bailable, once the complaint is made the accused is at the discretion of the magistrate, it is very difficult for the accused to prove his innocence. A typical case will go on for 3 to 7 years. Even though many a time police will register a 498A case, they don't investigate and go on to arrest people because of money to be made in bribes from both sides. Since bail is at the discretion of magistrates, all sorts of games will be played by the police to trap the families, while negotiations go on to settle the case. The NGO named SAVE Family Foundation is doing ample research and advocacy on the demerits of this section as a threat to Indian Families.

The monetary compensation is the main motivation for registering false complaints. If a woman doesn't like her husband 498A is a convenient tool to get out of marriage and to entail divorce with monetary benefit. There is a new trend whereby one can file a complaint and evoke section 498 A to force her husband to settling the divorce with a huge amount of cash and then get married to her boyfriend. Section 498A is a perfect tool for extortion to wreak vengeance on husband's family. It will put her in good negotiation or a fat settlement and gain custody

⁴²²Kishwar, destined to fail, *Supra* note 129

⁴²³Majumshar and Kataria, Law of Dowry Prohibition, cruelty and Harassment 94(2010)

⁴²⁴MadhuKishwar : laws against domestic violence, *Supra* note 23

⁴²⁵http://mospi.nic.in/mospi_new/upload/Report_crime_stats_29june11.pdf, accessed on....

⁴²⁶T.K. Rajalakshmi, Oppressors Case, Womans organizations Rise up Against a petition that seeks an amendment to section 498 A of the Indian Penal Code, Frontline (March 26-Apr, 8, 2011)

⁴²⁷*Id.*

of the kids if kids are involved. Often the corrupt and untrained Indian police force dealing a domestic dispute, overburdened lower courts and non-enforcement of penalties for filing frivolous cases, all will lead to the failure of the proper implementation of IPC 498A. Hindustan Times also reported that 498A is even misused to save the hard-core criminals of murders of Nitish Katara case⁴²⁸.

Much ambiguity remains under 498a as a criminal offence in theory and practice:

- **Cognizable:** The police will register a 498A case since it is required by law, but they don't investigate properly and arrest people so that they can take bribes from both sides.
- **Non-Bailable:** Since bail is at the discretion of the magistrate, all sorts of games will be played to have families locked up while negotiations go on to settle the case. This may happen especially in the cases where the magistrates are allegedly corrupt or, the public prosecutor and the cops are in cahoots.
- **Non-Compoundable:** Though 498A is non-compoundable, the courts should allow the withdrawal of the case when the parties agree to reconcile or settle case. In real terms, if you pay up, the case goes away and if you don't you'll get stuck with a criminal case that will go on for years.

Vires of the provision:

The vires of Section 498A, IPC was assailed in a Delhi case and the Single Judge was moved to refer the question of vires to a larger Bench on the ground that in view of S. 4, Dowry Prohibition Act, Section 498A of IPC is violative of Art. 20(2) Constitution of India providing bar to double jeopardy. The constitutionality of provisions were against challenged before the Supreme Court under Art.32 on the ground that there is no prosecution but persecution in these cases and the accuser who are more at fault than the accused try to take undue advantage of sympathies exhibited by Courts in matters relating to alleged dowry torture. The Court was also requested to lay down the guidelines for future cases that whenever false or unfounded cases are brought before Court stringent action must be taken in order to deter or discourage the persons from coming to Courts with unclean hands and ulterior motives. The Court held that mere possibility of abuse of the provision of law *per se* does not invalidate legislation and therefore the plea that S.498A has bot legal or constitutional foundation is not tenable. The

⁴²⁸Hindusthan times : 1st April 2008

Court further observed that merely because the provision is constitutional and *intra vires*, it does not give a license to unscrupulous persons to wreck personal vendetta or unleash harassment. Pointing out towards responsibility of legislature it was said that it is for legislature to find out ways how the makers of frivolous complaint and allegation can be dealt with⁴²⁹.

There are two debates to this section. One is of the supporters of men's groups which states that this section is misused. But when one goes through the allegations made by such groups we have to understand that it is based on following arguments:

1. One that they are the products of patriarchy and do not believe in getting equality in the real sense. They pose their argument in a way that women are never harassed and they are always misusing the law to extract money.
2. The second argument they make is about how everyone should be treated equally under Art. 14 and 15(2) and hence all the laws made must be gender neutral. They do not read Art. 15(3) of the Constitution of India where affirmative action by making special provisions for women and children can be made.

These groups have made no basis of why they say that this law is misused. Even the Law Commission report No 243 states⁴³⁰ ***“In course of time, a spate of reports of misuse of the section by means of false / exaggerated allegations and implication of several relatives of the husband have been pouring in. Though there are widespread complaints and even the judiciary has taken cognizance of large scale misuse, there is no reliable data based on empirical study as regards the extent of the alleged misuse. There are different versions about it and the percentage of misuse given by them is based on their experience or ipse dixit, rather than ground level study.”***

The second debate is where the women's groups which include men and women have been working to emancipate the position of women in the society. These groups are following the international documents which recognise violence against women. These groups are of the opinion that what is private is political and hence there must be protection for women who are facing violence against women. They have relied on the cases reported in the National Crime Report Bureau (NCRB) and also the cases reported by

⁴²⁹ Sushil Kr. Sharma v UOI, 2005 CrLJ 3439 (SC)

⁴³⁰ Law Commission of India Report no 243 Section 498A IPC August 2012

States. It soon dawned on the women's groups that there was nothing to rejoice about S.498A of IPC as it is not a very feasible option for the women to use because of many reasons. The women do not have access to use this law unless there is a moral support from family members, friends or NGOs. Approaching the justice delivery mechanisms like police and court is the last resort for the women. In spite of this the women who approach the court are categorised as "home breakers" and brazen. The hurdles of using the law are many because of the societal norms which do not always support women who stand up against violence. At this backdrop the provisions under the Protection of Women from Domestic Violence Act, 2005 can prove to be a better option than S.498A because it creates a space to stop violence. It gives remedies and support to the woman which encourages the women to fight against domestic violence.

Looking at the recent statistics there is a 3.91% increase in 498A in 2012 as compared to 2011 but the conviction rate has gone down from 2.15 to 1.85 in 2012 as compared to 2011. Hence the PWDVA is a better option for the women who are survivors of Domestic Violence.

Supreme Court Judgments on IPC-498a

1) Satyajit Banerjee and others v. State of West Bengal and others (Supreme Court of India) Date of Judgment : 23/11/2004 Indian Penal Code, ss. 498A, 306 - Trial Court acquitted accused but High Court set aside acquittal and directed a de novo trial - Whether High Court is right in directing examination of additional witnesses under s. 311 in revision?; whether direction of High Court to trial court to record further evidence and take a 'fresh decision from stage one' is without jurisdiction? - Held, direction for retrial should not be made in all or every case where acquittal of accused is for want of adequate or reliable evidence - Even if a retrial is directed in exercise of revisional powers by High Court, evidence already recorded at initial trial cannot be erased or wiped out from record of case - Trial Judge has to decide case on basis of evidence already on record and additional evidence which would be recorded on retrial - Clarified and reiterate that trial Judge, after retrial, shall take a decision on basis of entire evidence on record and strictly in accordance with law....

2) Ruchi Agarwal v. Amit Kumar Agrawal and Others (Supreme Court of India) (Date of Judgment: 5/11/2002: Quashing of criminal complaint - Alleging offences under ss. 498A, 323 and 506 IPC, and ss. 3 and 4 of Dowry Prohibition Act - Quashing on ground of lack of territorial jurisdiction - Whether quashing of criminal complaint sustainable? - Held, that appellant having received relief she wanted without contest on basis of terms of compromise, cannot now accept argument of appellant - Conduct of appellant indicates that criminal

complaint from which this appeal arises was filed by wife only to harass respondents - It would be an abuse of process of court if criminal proceedings from which this appeal arises is allowed to continue....

3) Rajkumar v. State of Madhya Pradesh (Supreme Court of India) :Date of Judgment : 14/9/2004: Indian Penal Code. 1860, s.302 - duty of the prosecution to establish that the accused had or necessarily would have remained at the house around the time when the attack took place - barring the evidence of PW8 who claimed to have seen the accused at 9.00 a.m. at his house, there is no other evidence to establish the presence of the accused in the house proximate to the time of occurrence - vital link in this behalf is missing in the case - no motive has been proved or seriously suggested for inflicting fatal injuries on the pregnant wife whom the accused married a year back - in a case based on circumstantial evidence, this factor also should be kept in view - no reason to set aside findings of trial court - appeal allowed....

4) Y. Abraham Ajith and others v. Inspector of Police, Chennai and another (Supreme Court of India) Date of Judgment : 17/8/2004: Code of Criminal Procedure, 1973, s. 482 - Prayer for quashing proceedings - Single Judge of the Madras High Court rejected prayer - Whether judgment of Single Judge sustainable? - Held, in factual scenario disclosed by complainant in complaint petition, inevitable conclusion is that no part of cause of action arose in Chennai and, therefore, concerned magistrate had no jurisdiction to deal with matter - Proceedings are quashed....

IPC 498a is often abused section now days. The intent of the section was contemplated for those who are really helpless and need redress from cruel husbands. In the present scenario instead of relief to the women who are facing violence in their husbands section 498a has become a stick in their hands to target and harass the husbands. It is disturbing experience to see that husbands are a prey to the wives even for a small refusal. This section is often used to disown a legitimate husband for other reasons mostly where the women is economically strong and can go astray with the set practices in society. After acknowledging the loophole of this act, the legislature enacted another law, "protection of women from Domestic violence Act, in 2005 giving a new definition to domestic violence.