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Misuse of Section 498-A, IPC: Judicial Analysis From 2010 Onwards

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ABSTRACT

In the recent times we have seen a steep rise in false cases of sec 498A of the IPC. Which has ultimately questioned the legal validity of sec 498A of IPC and need to make amendments due to changing scenario in society. The marriage in India is considered as a sacred bond of two souls and is the divine social institution in society. But this social institution has gone a complete transformation in past few decades. Due to rise in dowry deaths in India govt added new provisions called 498A in Indian penal code. But in present times we have seen many misuse incidents of this sec by women to harsh their husbands and his family. This paper aims to see the other side of sec 498A i.e., the missuses of this provision by women and its impact on husband and his family.

Keywords: Indian Penal Code, Sec 498A, women.

I. INTRODUCTION

Dowry which was in past given to women at time of marriage voluntary as custom and was considered as blessing. But in past decades the meaning of dowry has changed and it is this dowry which has become a reason for crime against women and in some cases reason for loss of life.

In ancient India Women holds very important position in society also more superior to men. They were called by name like 'Sakthi' a term related to feminine means power and strength.² Also in every Religion existed in India talks about women equality and was considered higher to men. For example, in Sikhism Guru Nanak Dev ji first guru and founder of Sikhism also emphasis in his teachings that both Men and women are equal and therefore no one is inferior.

Guru Nanak dev ji in his Baani in Guru Granth sahib ji wrote that:

ਮਃ ੧ ॥

ਭੰਡਿ ਜੰਮੀਐ ਭੰਡਿ ਨਿੰਮੀਐ ਭੰਡਿ ਮੰਗਣੁ ਵੀਆਹੁ ॥

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² Gourav Kumar, *A Study on Misuse of Section 498A of Indian Penal Code, 1860*, 2 INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES (2019), <https://www.ijlmh.com/a-study-on-misuse-of-section-498a-of-indian-penal-code-1860/> (last visited Aug 24, 2023).

ਭੰਡਹੁ ਹੋਵੈ ਦੋਸਤੀ ਭੰਡਹੁ ਚਲੈ ਰਾਹੁ ॥
 ਭੰਡੁ ਮੁਆ ਭੰਡੁ ਭਾਲੀਐ ਭੰਡਿ ਹੋਵੈ ਬੰਧਾਨੁ ॥
 ਸੇ ਕਿਉ ਮੰਦਾ ਆਖੀਐ ਜਿਤੁ ਜੰਮਹਿ ਰਾਜਾਨ ॥
 ਭੰਡਹੁ ਹੀ ਭੰਡੁ ਉਪਜੈ ਭੰਡੈ ਬਾਝੁ ਨ ਕੋਇ ॥
 ਨਾਨਕ ਭੰਡੈ ਬਾਹਰਾ ਏਕੇ ਸਚਾ ਸੋਇ ॥
 ਜਿਤੁ ਮੁਖਿ ਸਦਾ ਸਾਲਾਹੀਐ ਭਾਗਾ ਰਤੀ ਚਾਰਿ ॥
 ਨਾਨਕ ਤੇ ਮੁਖ ਉਜਲੇ ਤਿਤੁ ਸਚੈ ਦਰਬਾਰਿ ॥੨॥³

First Mehl:

From woman, man is born; within woman, man is conceived; to woman he is engaged and married.

Woman becomes his friend; through woman, the future generations come.

When his woman dies, he seeks another woman; to woman he is bound.

So why call her bad? From her, kings are born.

From woman, woman is born; without woman, there would be no one at all.

O Nanak, only the True Lord is without a woman.

That mouth which praises the Lord continually is blessed and beautiful.

O Nanak, those faces shall be radiant in the Court of the True Lord. ||2||

Hindu religion also treats women status equal with men they even worship women in form various Devi (God). India is among few countries which has deep rooted history with women like most powerful Lady PM of Indian Mrs. Indira Gandhi, and other famous ladies like Kalpana Chawla, Jayalalitha, Sarojini Naidu, Savitribai Phule, Sucheta Kripalani etc.

But with changing times the status of women started to diminish and dominance of male in society and the women are just considered as property of their father and after marriage property of her husband. Even in criminal Law any crime on women like rape was considered as offence against the property of husband not crime on women. So, the institution of marriage was also affected because of practice of Dowry concept which was initially used as symbol of respect

³ So kyon Manda Akhiye Jit Jamein Rajan, GOLDEN TEMPLE HEAVEN ON EARTH (Jul. 18, 2015), <https://goldentempleheavenonearth.wordpress.com/2015/07/18/so-kyon-manda-akhiye-jit-jamein-rajjan/> (last visited Aug 24, 2023).

and given out of love and affection from the parents to their married daughter at time of marriage. But some people in-laws started demanded dowry as their right and if their demand are not fulfilled the newly-wed girl becomes ultimate victim of this evil practice of Dowry.

So, to protect women and to control rising cases of dowry deaths in India the Sec 498A of IPC was added in 1983. Which simply talks about offence of matrimonial cruelty by husband or by any member of his family against women.⁴ In 20th century women all over the world was at different standards as compare to men in every aspect of life starting from political, social to economical aspect. But in India when Gandhi ji started his famous Non-Violence movement there was huge participation of women and they played a key role in uniting everyone. So, this movement made women politically united and made them realize to stand and demand for equality. It was in 1970's period which saw rise in women led movements against the evil practices and condition of women in India like wife-beating, rape and dowry deaths were some of the factors led to women led movements. Women at that point of time was deprived of their basic freedom and rights because it was society mindset that a free women would neglect its matrimonial duties. But seed of women empowerment is sown at the time of formation of Indian National Congress when Gandhi allowed women to be its member even purdah nashin women.⁵ It was seen as first step in women participation in political sphere.

Section 498-A of IPC was introduced in 1983 to protect women from matrimonial violence more specifically Cruelty. Since its inception in IPC, it has played a remarkable job in protecting women from cruelty from husband or by any of his family member. The offence under this section is non bailable, non-compoundable and also cognizable offence.

II. CONSTITUTIONAL & LEGISLATIVE MEASURE

1. The word cruelty under Indian criminal law has been widely interpreted so as to include not only bodily harm but also mental and social harm to women by any act for fulfilment of demand. The main reason or crux behind enacting sec 498 A of IPC was to control rising cases of dowry deaths in India and to protect her from atrocities committed by her husband or her family member. It act as shield for a women who are abused by her in-laws. on the same footing Section 113-A was added in Indian Evidence Act⁶ which talks about presumption raised in cases of abetment of suicide by a married women. But in

⁴ shashank, *IPC 498A: A Critical Analysis*, LEGALSERVICESINDIA, [https://www.legalserviceindia.com/article/179-498-\(A\)-A-Critical-Analysis.html](https://www.legalserviceindia.com/article/179-498-(A)-A-Critical-Analysis.html) (last visited Aug 24, 2023).

⁵ Mukund Sarda, *Misuse of Section 498-A IPC and Dowry Prohibition Act Vis-a-Vis Human Rights: Need for Statutory Changes*, (2016), <https://papers.ssrn.com/abstract=2711105> (last visited Aug 24, 2023).

⁶ Rampant Misuse of Section 498A of IPC and SC» IILS Blog, IILS BLOG (Mar. 16, 2016), <https://www.iilsindia.com/blogs/rampant-misuse-of-section-498a-of-ipc-and-sc/> (last visited Aug 24, 2023).

present Scenario this legislation has become a cause of concern due to rising case of misuse of 498 A some women to satisfy their personal grudge more specifically it is used by them as weapon than a shield.⁷

2. The provision of Sec 498A of IPC deals with atrocities against women and is defined as that any act done either by husband or by his relatives subject women to cruelty husband would be imprisoned for a maximum term of 3 year and also be liable for fine. For the application of an offence under this section there are following ingredients which need to be satisfied:
 - a. Married women
 - b. Subject to harassment or cruelty and,
 - c. Such cruelty or harassment be done either by husband of women or family members of her husband.
3. The word cruelty is broadly interpreted by explanation clause and shall include both physical and mental torture. The wider meaning of cruelty in explanation clause under sec 498A include-
 - (a) Any conduct wilful done which is of such nature to drive women to commit suicide or cause injury of grave nature or danger to life, limb and harm physical and mental health of women.
 - (b) Harassment of women for forcing her or any person related to her to meet any unlawful demand for any property or valuable security or failure to meet such demand by her or any person related to her.⁸
4. There are various forms of cruelty in modern society like:
 - a) Repeated demand of dowry: it is one of the form which amounts to cruelty if there is torture and harassment on women for repeated demand of dowry it will clearly amount to cruelty.
 - b) Repeated Taunts by calling ugly & ill treatment: if the wife is mal treated since from the day of marriage and mentally harassed by calling her ugly this clearly amounts to cruelty for any bride.⁹
 - c) False allegations during litigation: if the wife was subject to false allegations during

⁷ Supra Note 2.

⁸ Shoba Rani v. MadhukarReddi, AIR 1988 SC 121.

⁹ Pawan Kumar v. State of Haryana 1998 SC 565.

litigation by husband which hurts her reputation and mental state and tortured by way of execution of search warrant and seizure of her property. The act clearly amounts to cruelty.¹⁰

d) Neglect by husband: when the wife was neglected by husband by not giving her basic living expenses and child care fund and spending his entire earning in Gambling and other means and subjected wife and infant child to starving until death.¹¹

5. So, from above types of cases we can clearly state that the term cruelty has no bracket tight definition in any act and is dynamic in nature. It can vary from situation to situation and from factors and family background of women.

(A) How Section 498A is misused?

The initial trend shows that sec 498A which was enacted as a shield for the women from torture and remedy from harassment by husband or his relatives was drastically misused or created a weapon to problem the husband and his family. The hon'ble SC in one of its decision ruled that "Sec 498A of IPC Dowry and Cruelty law which was proposed to be used as shield and not as a professional killer's weapon".¹²

In another case court held that the misuse of sec 498A is of such an extent that it is effecting and hampering the basic foundation of marriage and which is ultimately not a healthy sign for Good society and public at large.¹³ Moreover seeing the grave nature and increasing incidents of misuse of sec 498a. The SC in *Sushil Kumar Sharma v. UOI, 2005*¹⁴ held that sec 498a can led to unleash of new legal terrorism. The provision which was indented to be used as a shield and not an assassin's weapon.

- Against Husband & Relatives: due to rise in education, financial stability and modernization in our society this provision of cruelty and dowry protection law is widely misused by women as weapon in their hand. At many occasions it is said that sec 498A is a Sexual orientation biased law because the provision is such that it protect only women and give her a chance of battle against her husband and his relatives.

According to some legal and social experts urban women misuses sec 498a so as to live

¹⁰ Smt. M.M Chitnis v. Mr. M.M. Chitnis, 1991.

¹¹ State of Karnataka v. Moorthy, 2002 Cr. LJ 1683 (Karnataka).

¹² S.R. Subaashini and M. Kannappan, A Study on Cruelty against Married Women and Legal Framework in India (Section 498 A), INTERNATIONAL JOURNAL OF PURE AND APPLIED MATHEMATICS 1381 (2018).

¹³ Savitri Devi vs. Ramesh Chand & Ors. 2003 CriLJ 2759.

¹⁴ 2005(6) SCC 266.

autonomously, separate from husband and his family after getting share in money and property. This is why this section acquired the shame of “legitimate fear based oppression”. And moreover it is biased in favour of women and becomes a dangerous weapon when falls in hands of wrong hands. Due to this, many helpless husbands and their families have become victims of revengeful daughter-in-law’s.

- Blackmail Attempts: In modern days the majority of cases under sec 498A are mostly turns out to be false cases or allegations levied by wife against husband and his family just for blackmailing them. Blackmailing can be for demand for separate house or share in money and property and this has become a means to settle case outside the court.
- Degradation of Marriage: The Hon’ble courts has at many occasions observed that this provision is widely misused and this has badly effected the basic foundation of marriage. Which is not at all a healthy sign for a sacred bound like marriage and has its repercussions in our society. Women have started using it has a method or tool to get out of wedlock.

There are many reasons why this provision of 498A is misused and some are as follow:

1. Legal Extortion: This is the most common reason in most of cases of false cases of 498A under which wife want to extort money from husband just as a way to become rich in quick manner.
2. Extra-Marital Affair: The wife has an extra marital affair with someone and she marries under parental pressure and society but couldn’t move on with the marriage. So, this provision acts as a means for getting divorce.
3. Adultery: A married women who is in relationship with another man other than his husband uses this provision as a bargaining tool against husband and his family.
4. To have full control over husband: Sometimes wife uses sec 498A just to have dominance over their husband and want them to abandon their parents and siblings, and to gain power to control husbands finances.
5. Gain custody of child: Used as tool by wife to gain exclusive custody of child and restrict the husband or his family.
6. Fraudulent Marriage: There are some instances where marriage is solemnized by wife by concealing the true facts like about her education qualification, mental health etc. and when husband demands a divorce then wife threatens them by sec 498A.

In today’s era every husband is seen as torturer and his family as evil devils by our society all

thanks to our media which highlights the news for publicity or for their TRP without even verifying the true facts and investigation.

III. JUDICIAL ANALYSIS FROM 2010 ONWARDS

Due to increase in number of cases of misuse of sec 498A by wife against the husband and his family just to harass them has become so serious matter that after recommendations of Law commission of India¹⁵ and High courts of various states has in recent past recommended the need of amendments to the law. So, now Government of India is thinking to amend Sec 498A of IPC to make it a “compoundable” offence.¹⁶ And there is also demand and equally important to make this provision as “Bailable” offence so that there can be some sort of relief to be given to those whether husband or his family from mental and societal harm. But the main problem and hindrance in amending sec 498A IPC for Govt of India is the feminist group and various women organization agitate against any step in changing the offence under sec 498A to Compoundable and bailable. So, ultimately govt of India has dropped its plan to make any changes in sec 498A.

However, the main point to be kept in mind in amending sec 498A is the violation of basic human rights of the affected person who is subject to false allegations by her wife under this provision and mental trauma due to damage of their reputation in the society. There are various cases came to judiciary and various HC and our Hon’ble SC laid guidelines and instruction to curtail its misuse and to protect the basic rights of effected persons.

1. Preeti Gupta & Ors. v. State of Jharkhand (2010)

Facts: The wife Manisha (complaint) married to Kamal Poddar since 2006. The wife lodged a complaint in 2007 that she was being assaulted physically by her husband and her family for demand of dowry. Therefore the case was registered under Sec 498A of IPC.

But the appeal was filed by Preeti Gupta (sister-in-law of Manisha) and her husband against the judgement of Jharkhand HC.

Judgement: The court observed that there is no doubt that husband and all his close relatives are named under this provision by wife. But at some occasions even after conclusion of criminal trial it becomes very difficult a uncover the real truth. So, courts must be very careful and cautious in concluding these trials and should consider all the circumstances dealing with the

¹⁵ <https://lawcommissionofindia.nic.in/reports/report243.pdf>

¹⁶ SC modifies its order on dowry harassment cases, THE TIMES OF INDIA, Sep. 14, 2018, <https://timesofindia.indiatimes.com/india/supreme-court-takes-note-of-misuse-of-section-498a-makes-it-bailable/articleshow/65805285.cms> (last visited Aug 24, 2023).

case.

In the present case the allegations levied on the relatives of husband like sister-in law and her husband who live in different cities and even not visited the complaints house was framed as accused in sec 498A. so, the court held that there must be at most care and precaution must be taken to judge the case. Therefore court quashed false allegations against the accused relatives as the same could not be proved.

2. Arnesh Kumar v. State of Bihar (2014)¹⁷

Facts: There was an allegations made by wife against her husband and his family that they demanded 8 lakh rupees, a Maruti car, an air conditioner etc from her. It was also alleged that her husband also supported the demand for dowry and threatened her to marry another women if demand not fulfilled and she was even thrown out of her matrimonial house just for the sake that demand of dowry was not fulfilled by her. However, the husband alleged that the allegations levied by her wife was false and applied for an anticipatory bail before SC.

Judgement: The court made an observation that sec 498A is widely misused as it is non bailable offence and cognizable and its use by women as weapon than shield against relatives and husband. Even in some cases the old grand parents of husband who are not even in condition to move properly and are bedridden and relatives living abroad are also framed under this provision on false allegations. The court also laid down guidelines for arrest and ordered police guidelines under sec 498A of IPC and proper investigation must be made before arrest of any person. So, by Applying the reasonable mind the SC granted bail to the accused.

3. Bibi Parwana Khatoon v. State of Bihar ¹⁸(2017)

Facts: In this case it was alleged that husband and his family killed wife by setting her on fire. The brother and sister in-law of the deceased wife aggrieved by the decision of lower court they approached the SC for appeal.

The Hon'ble SC after analysing the evidences of the case carefully set aside the judgement of lower court and annulled it on basis of error in conviction order. It was observed by the SC that evidences on the brother-in-law and sister-in-law involvement in wife's murder was not proved beyond reasonable doubts. Moreover, the appellant was residing in different village and they have no common connection and intention between them and the husband in committing the crime. So, conviction order of the lower court was set aside by apex court.

¹⁷ (2014) 8 Scc 273

¹⁸CRIMINAL APPEAL NO. 888 OF 2017

4. Rajesh Sharma & Ors v. State of U.P ¹⁹(2017)

The wife Sneha and Rajesh was married and sneha's father gave dowry to Rajesh at the time of marriage but he was not being satisfied by the amount of dowry received and demanded more dowry from her family and started abusing and torturing her wife. So, Sneha filed a case under sec 498A of IPC against her husbands and her relatives. But the appeal was filled by the relatives of the husband for seeking a certain directions to prevent the misuse of this provision. The contention which was raised by appellant relatives and is most common in cases that there is false dragging of relatives of husband who have even no connection with husband and asked to laid certain directions to curtail misuse of sec 498A of IPC.

Judgement: The supreme court laid the following guidelines:²⁰

1. Family Welfare Committee: There shall be set up of a one or more family welfare committees in each district by district legal services authority and shall contain 3 members. The members may be from any volunteers, social workers, officers retired, or any other citizen who may be found willing. There shall be a frequent review made by District and session judge of the concerned district and ex-chairman of district legal services authority in addition to annual review. The members of the committee shall not be called as the witness. And every complaint received by police, magistrate must be referred to the committee and committee after inquiry must submit back its report to the concerned authority who referred the complaint. And it shall be considered by investigation officer or the magistrate. And most important that No arrest to be made without receiving proper report by police or magistrate.
2. Investigating Officer: The IO must be appointed within month of the judgement of the court and should mandatory undergo training for duration of four month from delivery of judgement.
3. Bail: In cases where Bail application is filled at least a day's notice to public prosecutor and complainant the same shall be decided on the same day. Moreover the recovery of disputed dowry items can't be a ground for rejection of bail if the maintenance and other rights of wife and minor child is otherwise protected.
4. NRIs: In respect of persons living abroad impounding their passports and issuance Red corner notice must not become a regular task in every case and must be proper

¹⁹ CRIMINAL APPEAL NO. 1265 OF 2017 [Arising out of Special Leave Petition (Crl.) No.2013 of 2017]

²⁰ Daisy Roy, *Top Five Supreme Court Judgments on Misuse of S. 498A of IPC*, IPLEADERS (Jan. 3, 2019), <https://blog.ipleaders.in/top-5-supreme-court-judgment-on-misuse-of-498a/> (last visited Aug 24, 2023).

investigation before issuing such measures.

5. Video Conference: It is must be laid down that personal appearance of all family members must not be made compulsory by trial court and relatives living at distant places and old relatives must be allowed to appear via video conferencing.

So, the court observed that to curtail or minimize the misuse of sec 498A of IPC it must be kept in mind these guidelines by police and Magistrate and also there is need to change attitude of the society towards the effected persons who are falsely dragged in malicious prosecution.

These directions was future modified in Social Action Forum for Manav Adhikari v. UOI (2018).

The Recent case related to Misuse of sec 498A of IPC was Kahkashan Kausar v. State of Bihar, 2022. The Hon'ble SC in a dowry demand and harassment case alleged by a wife against her husband and her in-laws. Two Judge Bench of justice Krishan Murari & SA Nazeer²¹ held that it would be complete injustice to the in-laws if they are forced to go through false trial and the general allegation can't be form basis of subjecting them to undergo complete trial. Even if the criminal trail led to acquittal of the accused but it give a dent on the life of the person acquitted and must be used by courts very carefully. It was observed by the court that Sec 498A was enacted with the aim to protect women from any kind of cruelty and violence in marriage but with changing times and modern days it is of no doubt that this provision is increased matrimonial litigation in country use by women to just get out of the marriage. This ultimately has led to making it a tool to be used by a women to settle their score against their husbands and in-laws.

“Therefore, it was observed by the Supreme Court in this case that they warned other courts to be cautious while proceeding against relatives and in-laws of the Husband without any prime facie case is made out against them.”

IV. CONCLUSION & SUGGESTIONS

There are following suggestions which is proposed by researcher towards the research problem-²²

1. In India the trial which are criminal in nature goes on till 8 to 10 years depending on the

²¹ Prachi Bhardwaj, *Section 498A IPC| Husband's Relatives Cannot Be Forced to Undergo Trial in Absence of Specific Allegations of Dowry Demand*, SCC BLOG 498 (Feb. 15, 2022), <https://www.sconline.com/blog/post/2022/02/15/section-498a-ipc-husbands-relatives-cannot-be-forced-to-undergo-trial-in-absence-of-specific-allegations-of-dowry-demand/> (last visited Aug 24, 2023).

²² Supra Note 2.

gravity of crime which creates a serious questions on speedy justice which ultimately effects Victims of Sec 498A in getting justice. Therefore it is important for our courts to check the process of trail of sec 498A so as to protect the innocent victims.

2. There is need for civil authority to investigate before taking any action complaint received under Sec 498A i.e., to collect evidence and after proper investigation arrest should be made.
3. There is a need for the Hour to make amendments in the current provision of sec 498A of IPC so as to curtail its misuse and make it useful in contemporary times.
4. There is lack of proper formal Family counselling institution and there is need in present times to establish Family Counselling institute. So that the women or any individual who is facing matrimonial issues for taking advice of experts and have effective solution.
5. The NGO's and social groups should contribute in educating the society to not to file any false cases and curtail misuse of law.
6. The Sec 498A must be converted toailable offence rather than non-ailable offence to prevent innocent persons who are put behind bars before investigation.
7. Court must impose stringent fines and punishments on the women who make false accusation since this provision lacks deterrent power if dowry case proves false. Which will set as an example against those individuals who misuses the law to harass others.
8. A strong action must be taken against those public officers who in lieu of money misuses their power like police officers, advocates etc.

The section was solely made for protection & providing remedy to women's in past difficult times when they were subject to sufferings in male dominated society in old times. But times & society have changed a lot and with changes the position of women is also improved and has come at par equal with women. But the laws that are women friendly and protect women remains the same and today's era. There in increase in misuse of sec 498A in society which effects our society and hampers our sacred Marriage structure. So, this is the hight time to make amendments in the provision and protect the rights of the victims and preserve the justice. There is time and again said by SC that sec 498A of IPC which was to be used as shield must not be used as a Killer's weapon. So, as to confirm people's trust in our judicial system and it also injustice to prosecute entire family of husband even if husband is at fault and his relatives who have no connection with husband and are sometimes living abroad.

(A) Testing Hypothesis:

After analysing the whole study the researcher comes to the conclusion that Sec 498A of IPC was initially introduced to protect women from domestic violence and cruelty by her husband and his family but in today's times has changed to being a weapon of abuse. So the Hypothesis made by researcher that there is need for amendments in Sec 498A of IPC due to rising incident of dowry cases in society so, the Hypothesis proves true and stands valid after conclusion of the research. Hence, there is need for legal reforms in Sec 498A of IPC to curtail rise of this 'Legal Terrorism' by misusing the law.

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