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Misuse of Section 498-A

ARWA SARKAR¹ AND SMITA THOOL²

ABSTRACT

“Hell hath no fury like a woman scorned” especially if it is backed by the provisions of IPC, which is used both as the shield to protect women against cruelty and a sword with which they can attack. What would be the repercussions if section 498A is used maliciously? Since centuries, women have always been looked up as a liability; first by her father and later to be passed to her husband. She has always been expected to act as a submissive one, be it at her husband’s house or father’s house. Even the marital vows dictate her to obey her husband and gives husband the right to punish her for disobedience which most often than not leads to domestic violence. Domestic Violence is no misnomer, it is one of the most scathing issues faced by women all over the globe transcending religious and social boundaries since history of mankind. Today as a modern welfare state we do acknowledge the fact that there exists more than one type of domestic violence, physical assault being the most common one. To constrain the peril of brutality against women Section 498-A was introduced with a pure vision to safeguard the interest of women across the country. Nonetheless we see an escalation in number of cases where women have misused this law to get revenge either from her husband or her in-laws. Moreover, modern women today use this law as per their whims and fancies thereby sabotaging man’s age-old dominance over them. The crux of the matter today being man are being roasted under the ambit of this section even while they are innocent. The aim of this research is to provide detailed male perspective as per the trauma, defamation, harassment faced by men who are innocent but guilty in the eyes of law.

Keywords: Section 498A, Misuse of Domestic Violence, Men’s Perspective on 498A, Exploitation of Males, Women-Centric Laws.

I. INTRODUCTION

Light and darkness both mutually complement each other and complete each other, where light illuminates and brings clarity, darkness hides the deepest secrets. This very quality of darkness leads to festering of evil intent and murky deeds. In society, the institution of marriage can be said to be a perfect analogy of light and darkness. Marriage is a custom which has been prevalent since time immemorial irrespective of diversities in geography, history, culture, customs,

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religion and politics. It is an important part of life for all people. On one hand, the illuminated aspect of marriage is a very rosy picture of love and affection with taglines like ‘Made for each other’; Marriages are made in heaven; ‘My wife my life’, Soulmates and so on.

The institute of marriage also plays a very important role in boosting the economy and fostering industrial, corporate, business, political alliances. On the whole the picture of marriage is all glitter and glamour with people finding love, two hearts beating as one, the whole romantic saga made of fairy tale stuff. On the other hand, there are many instances when it is not so rosy picture of love and affection and the darkness in the form of domestic violence, cruelty, harassment for dowry, burning wife alive, daughter-in-law suicides and killings is a side which is a closely guarded secret kept tightly locked against prying eyes of the society while the illusion of the bright side is on constant display.

The evil of domestic violence is real and prevalent irrespective of social and economic status, educational background and even patriarchal and matriarchal form of society. Centuries passed without any glimmer of hope. Times prevailed, victims perished and perpetrators got arrogant. And then hope emerged in the form of Section 498-A of Indian Penal Code, which was introduced in 1983 by the Parliament. This section enacted by the Parliament proved to be a game changer as it was a powerful shield against the perpetrators of domestic violence. Aggrieved and abused women finally had hope to rescue themselves and get relief from various forms of domestic violence. Over the decades, things changed and the provision of law which came as a hope for aggrieved and tortured women trapped in marriages which had become a life-threatening nightmare started also to become a weapon used by scorned and discontented wives to turn the tables against their husband and in-laws.

Various judgements have reflected the misuse of Section 498-A of The Indian Penal Code to an extent that it has become a cause of concern. This concern has been expressed by judges of the Supreme Court for the need to protect husbands against the misuse of Section 498-A of Indian Penal Code. In recent times, it has been observed by the Courts numerous times that the provisions of Section 498-A of Indian Penal Code are being used as a tool for blackmail or to extract revenge and personal vendetta against the husband and the in-laws

II. NEED AND GENESIS OF SECTION 498-A OF INDIAN PENAL CODE

Since the history of mankind, women around the globe have always been considered as an object of enjoyment and a broodmare to further the bloodlines and protect the progeny. They have always been controlled by the men of their respective households, i.e., by her father or brother. At her maternal home and by her husband after marriage. Women have always been

expected to act, look, behave, wish, dress as per her husband's wish and always be complaisant. They did not have a choice to educate themselves as men are regarded as the bread earners and the providers of the household, while women have been viewed as a liability. Women were expected to grin and bear any or all forms of brutality inflicted on them especially by the husband and the in-laws. Such cases of any form of domestic violence were not often reported as they were considered as family matters and disregarded as petty quarrels between spouses.

The dynamics of marital alliances were always imbalanced in the favour of the groom's side as the system of Dowry, which has been deep rooted in the society, was prevalent. It was a custom in India even prior to the British era and was traditionally followed all over India, the bridal side was expected to bear the expenses of the wedding ceremonies and give gifts to the groom and his family, such as money, property, furniture, vehicles etc for the sake of their daughter's security and peaceful married life. The fact that the groom has married the woman and his family has agreed to take her in as their daughter-in-law was considered as a huge favour bestowed on the bride and her family. This imbalance led to the husband and his family members being dominant while the wife and her family being in a submissive position. Such power dynamics often led to the vogue of men arrogantly thinking of his wife as an object. This mindset resulted in a rapidly increasing rate of cruelty and domestic violence against women. The fact that cases of domestic violence were hardly reported due to fear of social standing and the wife's personal safety, such incidents of domestic violence seemed to be beyond the purview of law. Yet there have been instances where the family of the woman namely her parents and siblings could no longer maintain a stance of an onlooker as the life of their daughter would be at stake. Or at the very least they wanted a closure for her death.

As acts of domestic violence were perceived as disputes with the family and rarely reported, the form of such violence against women started spiralling downwards taking an inhuman form. Some of the acts under domestic violence included any or all of the acts like pouring of kerosene/acid, forced consumption of poison, violence during pregnancy, assault and beating, sexual violence, abuse from in-laws, attempts to kill, threats, verbal abuse and harassment, confinement and deprivation, humiliation, dowry demands, threat to pour acid/kerosene, throw out of house, desertion, physical abuse of family, psychological abuse of family etc.³ Such used to be the heinous nature of the acts committed that the family of the victim had no choice but to seek the recourse of law. In *Akula Ravinder and Others v. The State of Andhra Pradesh*⁴, the

³<http://www.icrw.org/wp-content/uploads/2016/10/Domestic-Violence-in-India-2-A-Summary-Report-of-Four-Records-Studies.pdf>

⁴ AIR 1991 SC 1142, II (1991) DMC 53 SC, 1991 Supp (2) SCC 99

appellants to the case were convicted under Section 304B and Section 498A of IPC. The Supreme Court while setting aside the conviction for Section 304B, upheld the conviction for Section 498A. A glimpse into the facts of the case was that there were three accused namely the husband of the deceased, the father-in law and the mother-in-law. The demand was for dowry which was partially fulfilled and the balance was remaining which the parent of the wife could not pay. Ironically the wife was closely related to the husband's family in such that she was the daughter of her father-in-law's sister. As the demand for the dowry could not be met with, the wife was harassed by her husband and in-laws to the point that she died and the death took place within seven years of marriage in April, 1987. The death was due to external injuries and seemed homicidal and not suicidal, which was mentioned in the post mortem report.

The facts in the case of *State of West Bengal v Orilal Jaiswal*⁵ have all the ingredients of mental and physical harassment of the wife for dowry from claiming that the items the bride brought as dowry being sub-standard to calling her 'alakshami' when her mother-in-law's father-in-law passed away shortly. Amidst the continuation of the physical assault and mental harassment, she conceived. Unfortunately, the baby was a still-birth for which her mother-in-law called her a woman of such evil luck that she would swallow her own baby. To add icing to the cake the husband had the habit of drinking regularly which again led to marital conflicts. As the conflicts continued the woman committed suicide in a year after she married. The Supreme Court set aside the order of acquittal and held that the accused, i.e., the husband and the mother-in-law were guilty of cruelty under Section 498A.

- There was a dire need to strengthen the position of women in society so that they could have a recourse in law and thereby protect themselves from the types of harassment that had become a norm for a married woman to be subjected after her marriage. In *State of Himachal Pradesh vs Nikku Ram and Ors*⁶, Hansaria, J. stated "*Dowry, dowry and dowry. This is the painful repetition which confronts, and at times haunts, many parents of a girl child in this holy land of ours where, in good old days the belief was: "Yatra Naryastu Pujyante ramente tatra dewatan" (where woman is worshipped, there is abode of God). We have mentioned about dowry thrice, because this demand is made on three occasions: (i) before marriage; (ii) at the time of marriage; and (iii) after the marriage. Greed being limitless, the demands become insatiable in many cases, followed by torture on the girl, leading to either suicide in some cases or murder in some.*" This support of the law had to be strong enough to instil fear in the hearts of the perpetrators and Section

⁵ AIR 1994 SC 1418

⁶ Appeal (crl.) 984 of 1995

498A of Indian Penal Code gave just that power to protect women against the cruelty in marriage. The Court further observed that *the highly injurious and deleterious effect of dowry, on the girl, her parents and the society at large required legislative interference. It started with enactment of the Dowry Prohibition Act, 1961, containing some penal provisions also. But as the evil could not be taken care of by this soft statute, the Penal code was amended first by inserted Chapter XX - A (containing the only Section 498-A) in it by the Criminal Law (Second Amendment) Act, 1983 (46 of 1983)*⁷

III. UNDERSTANDING SECTION 498-A

Domestic violence has remained a grave threat to the health and lives of women all over the world and India is no exception. The need to take measures to curb the menace of domestic violence especially the cruelty that women had faced in the hands of their husbands and in-laws became more pronounced as it is proven to have multiple long and short-term effects on their health (physical, psychological and emotional) and well-being. In India, domestic violence has been found to impact early childhood growth and nutrition through biological and behavioural pathways.⁸ Efforts of legislation have led to the insertion of Section 498-A in an amendment of the Indian Penal Code in 1983 by the Parliament of India to criminalise domestic violence. Article 498-A is defined as follows:

"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". The offence is Cognizable, non-compoundable and non-bailable. The explanation for cruelty u/s 498-A of the Indian Penal Code is given as under -

Cruelty as defined under the Indian Penal code as "Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation. —For the purpose of this section, "cruelty" means—

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to 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*

⁷ Ibid

⁸ <https://www.orfonline.org/research/domestic-violence-and-womens-health-in-india-insights-from-nfhs-4/>

*on account of failure by her or any person related to her to meet such demand*⁹.

In *Gananath Pattnaik v. State Of Orissa*¹⁰, the Court observed that the concept of cruelty u/s. 498-A IPC and its effect u/s. 306 IPC varies from individual to individual also depending upon the social and economic status to which such a person belongs. This Court held that cruelty for the purpose of offence and the said Section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty or harassment.

In *Suvetha v. State*¹¹ the Court mentioned that there must be three components under section 498-A of the Indian Penal Code which are:

- The women Must be married
- She must be subject to cruelty or harassment; and
- Such cruelty harassment must have been shown either by the husband of the woman or by the relative of her husband.

Women need not always show that she isn't happy with the bruises on her body but can also say she has been put through the massive mental pressure or mental torture for a certain demand to be met. Sometimes wives are forced into a quid pro quo situation by their very own husbands whereby they are expected to give out sexual favours to their husband's boss in return for promotions. Such promotion of the husband is at the cost of his wife's exploitation and wife's denial for the same results in a hostile atmosphere for the wife at home by the family. A woman would have never been able to share such information with anyone including her own parents as there is a lot of societal pressure on her to act a certain way. As per the societal norms a Married woman must never think of returning back to her parents' home when she is married, Phrases like "*Doli mein aai thi, Arthi pe jaaugi*", Have actually ruined the lives of a lot of young women. In order to empower women and to treat them equally, section 498-A of the Indian penal code was enacted. It's officially a women centric law. A country's gender value is seen on the basis of its rates of reported domestic violence. The higher the grades the more backward the country.

Today as a progressive, educated and advanced society we also recognise types of cruelty, it need not only be physical but also emotional, mental etc. The Indian judiciary interprets cruelty in wider connotations and has not defined the term to only be used with physical assault. There are miscellaneous ways in which a woman is subjected to cruelty which includes but is not

⁹ Ratanlal & Dhirajlal, The Indian Penal Code, 35th Edition, 2017

¹⁰ (2002) 2 SCC 619

¹¹ (2009) 6 SCC 757: 2009 CrLJ 2974

limited to the following:

1. Vexatious Litigation:

This is a situation where the unforgiving husband out of revenge drags his very own wife into a litigation proceeding which requires search and seizure of her property and assets which leaves her in a humiliated condition feeling tortured. It makes it difficult for her to step out of her house and face society. It amounts to cruelty.

2. Calling Her Names:

Where the woman was not able to conceive within the first three years of marriage. Publicly calling her barren woman, Infertile woman etc by her husband or her in-laws thereby harassing her. It was held in State of Andhra Pradesh v. Kalidindi Sahadevudu, that mere commenting that the woman was not begetting children, does not amount to subjecting the woman to cruelty within the meaning of s. 498-A IPC.¹²

3. Never Ending Demand:

When a bride is tortured from day one by her in-laws or husband for dowry, which leads to repeated quarrels it becomes a part of mental harassment. Cruelty need not always be physically constant fear that, *“My husband will leave me”* or *“my in-laws are never going to be happy with me”*, *“will they get another bride for my husband”* etc.

In Pawan Kumar v. State of Haryana¹³, the bride was repeatedly taunted, maltreated and mentally tortured right from the next day of marriage. There was a quarrel between her and the husband only a day before her death. This led the bride to commit suicide. Presumption as to dowry death u/s. 113B, Evidence Act became applicable. There was no rebuttal from the side of the accused husband.

In State of Punjab v. Dal Jit Singh¹⁴, four years after the marriage, the wife was called upon to bring some money from her parents for sending her husband's younger brother abroad. It could not be termed as a dowry demand, but because she was harassed for it and on account of this, she became compelled to end her life, it was held that it was held that an offence under section 498-A was made out

4. Girl Child

The husband is not willing to accept the girl child born to him or is putting it up as his wife's

¹² 2021CrLJ 2303(AP).

¹³ AIR 1998 SC 958: 1998 CrLJ 1144(SC).

¹⁴ 1999 CrLJ 2723 (P&H)

fault would amount to cruelty. In some cases, husbands force their wives to bury the girl or throw her in a dustbin, Leave her in an orphanage etc. All these scenarios clearly depict the status of women in India and the male dominance.

5. Outraging of Modesty by In-Laws

In some households the brother-in-law or the father-in-law try to outrage the modesty of a married woman to which the husband might be silent. In *Manoj Kumar v. State of Himachal Pradesh*¹⁵, it was held that trying to outrage the modesty of a woman in her matrimonial house, by her father-in-law amounts cruelty u/s. 498-A IPC.

One major factor promoting domestic violence is child marriage. When two individuals are united without understanding the nature of their relationship it's always been viewed as a burden from the inception which makes it quite easy to resort to domestic violence as a way to show vengeance. Since women have always been from the submissive section of our society it's easier to raise hand on her personal frustration, work pressure etc. Apart from this scenario young teenagers fall in love and elope from homes in a moment of rage later they find it hard to cope with the realities of life. This results in physical violence and the poor victim has nowhere to go.

6. Past Cruelty

In *Basant Kaur v. State (NCT) Delhi*¹⁶, the Court observed, *“Can incidents done in the past by the spouses be termed as cruelty in the current suit? If this is allowed there will be a number of incidents as the darkness of a relationship is known only to the one who lives in it. And when both are in rage trying to prove their roles in the relationship, they would dig up deep and try to pour every detail. A marriage had lasted 25 years. Incidents of cruelty or harassment which had occurred two decades ago were not allowed to be made a group for punishment.”*

7. Relatives of the Husband as defined under Section 498-A of IPC

In *Suvetha v. State*¹⁷, the Court clarified the status of relatives of the husband liable under Section 498A of IPC as *“Any offence committed u/s 498-A of the Indian Penal code must be committed by his husband or his relative. The term relative has been understood to include the relatives of the husband and includes his mother, father, brother, sister, wife, son, daughter, nephew or niece, grandson or granddaughter etc. Relatives of the husband include a person related by blood, marriage or adoption. But it will not in any way include his girlfriend or even*

¹⁵ 2016, CrLJ 5015 (MP).

¹⁶ 2003 CrLJ 803(Del).

¹⁷ (2009) 6 SCC 757; 2009 CrLJ 2974

a concubine. If no marriage has taken place, the question of one being relative of another would not arise.”

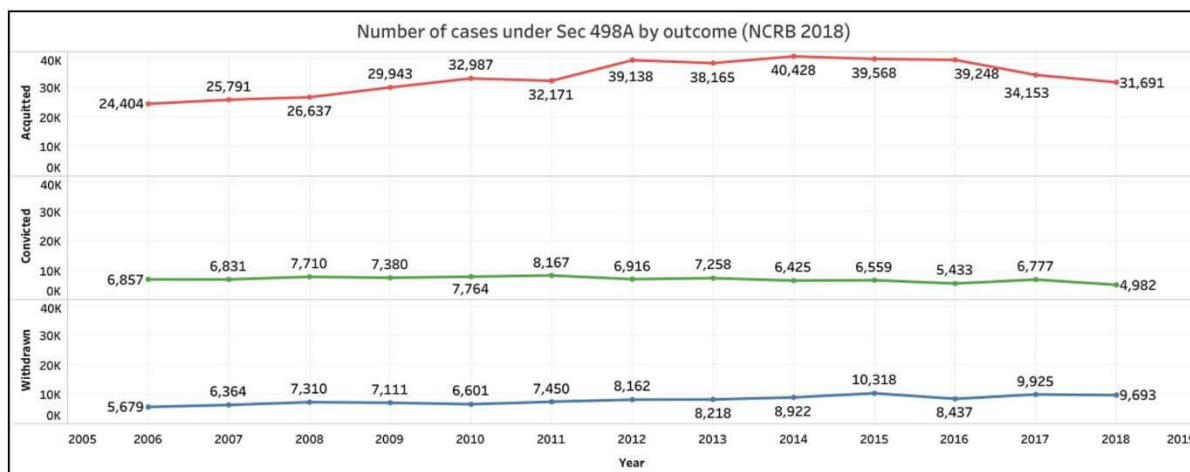
IV. EFFECT AND BENEFITS OF SECTION 498-A OF INDIAN PENAL CODE

Section 498-A of IPC has proved to be effective in curbing the menace of domestic violence. Due to its cognizable, non-bailable and non-compoundable nature it has proven to be helpful to women in various fronts such as:

1. Providing a protective measure for the fight against domestic violence by providing stringent punishment and fines in case of any complaint registered with the police by the woman against her husband and/or in-laws. Initially women would be reticent in seeking help as they feared their voices would be unheard. Gradually the cases of complaints against domestic violence increased as the awareness and the effectiveness of section 498-A grew exponentially.
2. Reduced the instances of dowry deaths and suicides of women as it put a fear of the law in the perpetrators viz the husband and in-laws. The stigma of loss of reputation in society due to arrest for domestic violence has also led to decrease in the instances of exploitation of women and harassing them or subjecting them to domestic violence. Empowering women to exercise their rights and protect themselves and their families by complaining against any and all forms of domestic violence. To protect women against domestic violence and create awareness about the redressal forums for domestic violence, various NGOs and Women Organisations helped the aggrieved women in seeking guidance and giving a voice to the gravity of their situation
3. As the section also includes the in-laws and other family members of the husband, the family of the husband are prompted to behave responsibly towards their daughter and refrain from doing or speaking anything which would fall in the ambit of cruelty and domestic violence and trigger a complaint u/s. 498-A of IPC.

This section was enacted to protect the women who were predominantly backward and confined in the four corners of the house making themselves a prey to male dominance and having no place to go elsewhere. This section was enacted as a protection and was always available as an only women section to all the women across India. However today that is not the scenario and the misuse of this section at the hands of independent educated women in order to seek revenge and vengeance from her husband or in-laws has been rapidly escalating. And this section today has left some innocent men feeling unprotected by the Indian Laws.

V. MISUSE OF SECTION 498-A



NCRB statistics¹⁸

The legislature to protect women from cruelty against her husband and his family proved to be efficient in curbing the menace of harassment of women by their husband and his family. However, the stringent and rigid nature of this legislation became an impediment as the liability for burden of proof was either absent or bare minimum. The above data from NCRB reveals that the acquittal rate and the withdrawal rate in cases under 498A is higher than the actual conviction. This has been a cause of concern as the inference derived from this data indicates an imbalance in the use and misuse with the indication of misuse of the Section 498A Of IPC being greater than the use. The misuse of Section 498A of IPC was a matter of concern as early as 15 to 17 years since the provision was implemented which is evident in the report of the Justice Malimath Committee.

The Justice Malimath Committee, set up by the Home Ministry in 2000 for reforms in criminal justice system gave the following report w.r.t section 498-A of IPC in 2003:

“16.4 CRUELTY BY HUSBAND OR RELATIVE OF HUSBAND – SECTION 498-A OF IPC
16.4.1 This provision is intended to protect the wife from being subjected by the husband or his relatives to cruelty. Cruelty for the purpose of this Section means wilful conduct that is likely to drive the woman to commit suicide or cause grave injury or damage to life, limb or health, mental or physical. It also includes harassment by coercing to meet unlawful demands. This is a very welcome measure. But what has bothered the Committee are the provisions which make this offence non-bailable and non-compoundable.

16.4.4 In less tolerant impulsive woman may lodge an FIR even on a trivial act. The result is

¹⁸ Govt. Data Roundup Archives - FACTLY

that the husband and his family may be immediately arrested and there may be a suspension or loss of job. The offence alleged being non-bailable, innocent persons languish in custody. There may be a claim for maintenance adding fuel to fire, if the husband cannot pay. She may change her mind and get into the mood to forget and forgive. The husband may realise the mistakes committed and come forward to turn a new leaf for a loving and cordial relationship. The woman may like to seek reconciliation. But this may not be possible due to the legal obstacles. Even if she wishes to make amends by withdrawing the complaint, she cannot do so as the offence is non compoundable.

16.4.5 This section, therefore, helps neither the wife nor the husband. The offence being non-bailable and non-compoundable makes an innocent person undergo stigmatization and hardship. Heartless provisions that make the offence non-bailable and non-compoundable operate against reconciliations. It is therefore necessary to make this offence (a) bailable and (b) compoundable to give a chance to the spouses to come together.”¹⁹

The Malimath report recommendations were given just two decades after the insertion of Section 498-A in Indian Penal Code. Concern has been expressed both by the judiciary as well as the government for the growing misuse of Section 498-A. The term cruelty defined in section 498-A of IPC had a wide connotation. In the case of *Manju Ram Kalita v. State of Assam*, the Supreme Court observed that, ‘ *"Cruelty" for the purpose of Section 498-A I.P.C. is to be established in the context of S. 498-A IPC as it may be different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty.*”²⁰

The Bombay High Court in *Avinash Chandrakant Deshmukh & Ors v State of Maharashtra and Anr* held that “*In order to hold that the acts amount to cruelty, it must be shown that such acts amount to unbearable, continuous, repeated acts of brutality. Section 498-A of the Indian Penal Code does not come into play in every case of harassment and/or cruelty to a married woman. What is required to be shown is wilful conduct of such a nature as is likely to drive or propel or compel a married woman to commit suicide or to cause grave injury or danger to her life,*

¹⁹ https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf Dr. Justice V. S. Malimath Report pg. 199

²⁰ *Manju Ram Kalita V. State of Assam*, 2009 13 SCC 330

*limb or health. It must be shown that acts were of such a nature, as were sufficient for causing a married woman to lose her normal frame of mind.”*²¹

It has often been observed that many women lodge fake complaints against their husbands or in-laws with a motive to teach them a lesson or give back a tit for tat. This misuse of Section 498-A IPC has been termed as ‘Legal Terrorism’ by the Supreme Court (in 2005), which further expressed the concern that the provision of Section 498-A is intended to be a shield and not an assassin’s weapon. It further mentioned that if the cry of "wolf" is made too often as a prank, assistance and protection may not be available when the actual "wolf" appears.²²

At times lack of awareness, overzealousness and/or improper guidance can also be the reason for the misuse of this provision. In 2011, Addl. Sessions Judge Kamini Lau in State vs Prem Kumar (Brother-in-Law) observed, “*Section 498-A IPC in the recent years has become consummate embodiment of gross human rights violation, extortion and corruption and even the Apex Court of our country had acknowledged this abuse and termed it as Legal Terrorism. provisions of Section 498-A IPC are not a law to take revenge, seek recovery of dowry or to force a divorce but a penal provision to punish the wrongdoers. The victims are often misguided into exaggerating the facts by adding those persons as accused who are unconnected with the harassment under a mistaken belief that by doing so they are making a strong case.*”²³ She further mentioned that the Courts cannot be a party to any kind of exploitative situation and it is necessary for every complainant to remember that it is only an honest complaint which succeeds in law where contents are supported by facts on the ground and persons, who are not connected with the harassment, should never be arrayed as accused. The platform of the courts cannot be permitted to be used to wreck personal vendetta or unleash harassment and the tendency of the complainants to come out with inflated and exaggerated allegations by roping in each and every relation of the husband is required to be deprecated.²⁴

There have been various judgements wherein the Courts observed that the provisions of Section 498-A IPC were used as a mode for revenge or as a personal vendetta to harass the husband and his relatives. In most cases all the family members are dragged into the case to settle a matrimonial dispute which has a detrimental impact to the said family members both to their person as well as their reputation not to mention the time and money spent for appearance in the Court at every given date. Many times, it has been observed that they are not party to the

²¹ Avinash Chandrakant Deshmukh & Ors v State of Maharashtra and Anr 20-APL-603-2018

²² Sushil Kumar Sharma vs Union of India and Ors JT 2005(6) SC266

²³ State. Vs. Prem Kumar Etc., CR No. 37/12 Page No. 6 of 10

²⁴ Ibid

case and yet they have been included as the perpetrators.

In *Preeti Gupta & Anr v. State of Jharkhand and Anr*, the Court commented that, “It is the matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motives.”²⁵ The Court directed the members of the Bar to treat the complaints under Section 498-A IPC as a basic human problem and try to help the parties in arriving at an amicable resolution. The Court expressed concern over the fact that the consequences are not visualised at the time of filing a complaint and such complaint can lead to insurmountable harassment, agony and pain to the complainant, the accused and his close relatives²⁶

In *Chandralekha v State of Rajasthan and Anr*,²⁷ The Rajasthan High Court quashed the FIR against the family members citing the allegations as extremely vague and general. The allegations made against were of those family members who were residing in another city. Moreover, the allegations against the said members were made six years after she left the house which the Court held raises grave doubt about the truthfulness of the allegations thereby quashing the FIR against the family members.

Similarly, in *Geeta Mehrotra & Anr v State of U. P. and Anr* the Supreme Court quashed the criminal proceedings against the appellants stating that the FIR does not disclose any material which could be held to be constituting any offence against the appellants except causal allegations.²⁸

Men do not have any protection and are assumed to be guilty always unless proved non guilty. Society's perspective changes and they are viewed as bad individuals. Also, their family reputation suffers due to defamatory information which is rapidly spread through hearsay. Society is also very biased if it sees a woman crying and complaining about her in-law's torture. It always assumes that it's her husband's fault and never questions her about her actions or conduct. Women usually take undue advantage of the same and misuses the protection entitled to them. Courts have time and again expressed concern over the misuse of Section 498-A IPC and the same has been evident in Supreme Court judgements on the misuse of Section 498-A IPC.

²⁵ Criminal Appeal No. 1512 of 2010, (Arising out of SLP (Crl.) No. 4684 of 2009) (SC)

²⁶ *Ibid*

²⁷ Criminal Appeal No. 2070 of 2012, Arising out of Special Leave Petition (Crl.) No. 9092 of 2011

²⁸ (SC) (Arising out of SLP (Crl.) No. 10547/2010) (Criminal Appeal No. 1674 of 2012)

In *Arnesh Kumar v State of Bihar*²⁹ The Supreme Court observed that, “*The fact that s.498-A is a cognizable & non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shields by disgruntled wives. The simplest way to harass is to get the husband & his relatives arrested under this provision. In a quite number of cases, the bed-ridden grand-fathers & grand-mothers of husbands, their sisters living abroad for decades are arrested*”. The Supreme Court further said that arrest brings humiliation, curtails freedom and casts scars forever and directed the police not to make automatic arrests u/s. 498-A IPC and laid down the guidelines for the conditions for arrest namely:

- a. *All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.P.C;*
- b. *All police officers be provided with a checklist containing specified sub- clauses under Section 41(1)(b)(ii); The police officer shall forward the checklist duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;*
- c. *The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;*
- d. *The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;*
- e. *Notice of appearance in terms of Section 41A of CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;*
- f. *Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.*
- g. *Authorising detention without recording reasons as aforesaid by the judicial Magistrate*

²⁹ *Arnesh Kumar v State of Bihar* (2014) 8 SCC 273

*concerned shall be liable for departmental action by the appropriate High Court.*³⁰

Taking further steps in trying to curb the arbitrary use of the provisions of Section 498-A IPC, The Supreme Court in *Rajesh Sharma & Ors. v State of U.P.*³¹ expressed the need to adopt measures for the misuse of the same. In its endeavour to regulate such gross misuse of Section 498-A IPC, the Court has stated the following safeguards:

- 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 498-A 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 affected.*
- (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 utilise the cost fund wherever considered necessary and proper.*

³⁰ *Arnesh Kumar v State of Bihar* (2014) 8 SCC 273

³¹ Criminal Appeal No. 1265 of 2017 (Arising out of Special Leave Petition (Crl.) No.2013 of 2017)

ii) *Complaints under Section 498-A 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;*

iii) *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;*

iv) *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;*

v) *In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine;*

vi) *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*

vii) *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.*

viii) *These directions will not apply to the offences involving tangible physical injuries or death.³²*

VI. SUGGESTIONS

The institution of marriage is not only a custom or a usage but a sacrament in many personal laws. It is an inclusive ritual which joins the bride and groom as well as their near and distant relations into one big family. Likewise, any discord in the matrimonial relations potentially impacts both the parties to the marriage and their families. Remarking on the impact of misuse of Section 498A of IPC, Justice Rahul Chaturvedi, in *Mukesh Bansal v. State of U. P*³³.,

³² *Rajesh Sharma & Ors. v State of U.P. Criminal Appeal No. 1265 Of 2017 (Arising out of Special Leave Petition (Crl.) No.2013 of 2017)*

³³ (2018) 10 SCC 472, Criminal Revision No. 1126 of 2022 on 13/06/2022

observed, “*The misuse of section 498A of IPC is impacting the traditional institution of marriage and live-in relationships, which come free of legal baggage, is replacing traditional marriage.*” To create a balance between ensuring the safety of a married woman against cruelty by her husband and in-laws and safeguarding the husband and his family members against the false and malicious complaints, certain measures need to be taken which are suggested below:

Bailable: The non-bailable nature of Section 498A IPC is often used to instil fear in the husband and his family. The section can be made bailable with stringent measures required for bail so as to not dilute the gravity of the offense and yet provide a recourse in law

Compoundable: Many a times the one whom we love the most is also the one whom we hate the most as we have great expectations from them and want those expectations to be fulfilled. In marriages, most discord is in the moment of anger and disappointment of unfulfilled expectations. This also leads to complaints by the wife which she may later want to retract. The opportunity of compromise can be made available in such circumstances if Section 498A of IPC is compoundable.

Omnibus Allegations: A marital dispute may or may not fall in the ambit of Section 498A of IPC and a complaint against only the husband may not seem sufficient, so the woman may be advised to include her husband’s family to make her case strong. Such general or omnibus allegations by the women against her in-laws are an abuse to the process of law. This would also be a relief to those relations who are mentioned as accused but were not even living in the same house, vicinity, town or even the same country but have to be present in the Court proceedings as they were summoned for the same.

Family Counselling Centres: Rather than having a knee jerk reaction of immediate arrest of the persons against whom the complaint is registered, the investigative machinery should guide the parties to the dispute to family counselling centres to give them an opportunity to try to resolve their dispute in an amicable manner. However, measures should be taken that such counselling is gender neutral, unbiased and free from prejudice and pre-conceived notions.

Time Bound Trial and Investigations: To ensure that the victims are provided with prompt redressal and avoid false allegations, the investigations and trial process needs to be time bound. Undue delay would dilute the gravity of the matter and have negative repercussions on the accused like affecting their livelihood as constant leaves to attend the Court hearing could lead to possible loss of job, rise in expenses, subject to malicious gossip etc.

Evidence should include Medical Evidence: The definition of cruelty includes physical and mental cruelty. While physical cruelty leaves tell-tale signs open for evaluation, mental cruelty

is subtle in form making evaluation by a lay man difficult. Also, there are possibilities that the signs of abuse are self-administered. To ensure justice the evidence evaluated by the Court should also include medical evidence.

Penalty for making False Accusations: Section 211 of IPC provides for false accusations with imprisonment of upto 7 years or a fine. However there is not such provision in the Dowry Prohibition Act, 1961 and the Domestic Violence Act, 2005 which leads to the possibility of arbitrary allegations on the accused and their family, which in such matters is the husband and his family. Provisions for making false accusation should be made and they should be stringent with the penalty of imprisonment of upto 5 years or more so as to discourage false allegations by the women and her family members.

VII. CONCLUSION

“The guilty one commits not the sin but causes the darkness” - Les Misérables,

Domestic violence is a menace in society which poses a potential threat to the life and limb of the victim. The enactment of Section 498-A in the 1986 amendment of IPC has come as a much-needed relief for such victims and their families, especially the maternal side of the women who otherwise had to undergo the pain of losing their daughter to domestic violence or leave them at the mercy of the perpetrators. Misuse of this Section in the form of false accusation can not only shatter an innocent husband but also lead to undeserved harassment of the family members who are dragged in such family disputes. It also causes legal hassles, loss of reputation, rejection by society which can have a detrimental effect on the person and health of the victims of such malicious accusations. Their extended family estranges them and they feel like their life is over. Sometimes due to embarrassment and societal shame men disconnect themselves from all societal cords. At times, they fall prey to depression and other mental illness sometimes also commit suicide. A few men lose their jobs and have no means to provide for their family. On the flip side, such misuse of this provision of the IPC and the false accusations are an indirect insult to the experience of the survivors of domestic violence which may undermine their suffering and potentially lead people to invalidate and reject their true trauma. A balance needs to be struck so maintain the seriousness of the provisions of Section 498A of IPC and discourage its misuse which would lead to malicious and vexatious litigations. To sensitise people about the impact of the potential misuse of section 498A of IPC and create awareness of the same is the need of the hour.
