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Section 498A of the Indian Penal Code, 1860

– A Stage towards Social Justice

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ABSTRACT

Marriage is one of the primary instruments utilized in extension of family yet having said that the foundation of civil marriage has experienced significant changes over the recent couple of decades. That being said, this foundation brings in the upsetting and unbearable issue of cruelty faced by married woman in her in-law's house by husband or his relatives. Looking back, India was swamped with the media reports and readings regarding the cold-blooded matter of cruelty by husband and his relatives against married woman for various selfish reasons, the most important being the non-fulfilment of the demands of dowry. For this purpose, to defend the interest of a women by protecting them from the odds of such ill-behavior faced under the roof of their matrimonial home, Section 498A was inserted in the Indian Penal Code by the Criminal Law (Second Amendment Act, 1983). This paper attempts to highlight the importance of section 498A of the Indian Penal Code and lays down a legal as well as judicial analysis of the topic, certain important definitions, situations and cases, that plays and essential role in the understanding of section 498A. Along the same lines, unfortunately contentions have been held against the misuse of this law for various suspicious reasons. Therefore, this paper also deals with the claimed misuse of section 498A of the Indian Penal Code and the reality beyond these allegations.

Keywords: Cruelty, Dowry, Marriage, Section 498A.

I. INTRODUCTION

“I write for those women who do not speak, for those who do not have a voice because they were so terrified, because we are taught to respect fear more than ourselves. We’ve been taught that silence would save us, But it won’t.”²

We as a generation and our past generation can never be in a position to deny the fact that women of all communities (minority or majority) have been subjected to hardships and

¹ Author is a student at NMIMS School of Law, Mumbai, India.

² Audre Lorde, These Feminists Quotes Will Inspire You, BUSTLE (Aug 26, 2015) <https://www.bustle.com/articles/106640-17-inspiring-quotes-about-womens-equality-for-womens-equality-day-because-weve-made-a-lot-of>.

sufferings, throughout history and surprisingly even today. In a country like India, with 1.7 billion (approx.) of population, it is evident to highlight that people are deeply entangled in a social framework where the most significant determiners of the same framework are marriage and family. B.R. Ambedkar, the architect of the Indian Constitution, once said that, “I measure the progress of a community by the degree of progress which women have achieved.” This earmarks the attempt of bringing a change in the status of women and alleviate her from her distress, anguish, and a down- hearted environment where living gets tough for her and quitting even tougher, adding a new Chapter, XXA, entitled: “Of cruelty by Husband or Relatives of Husband”³ in the Indian Penal Code. This section was instituted to battle the menace of dowry deaths. Along with this Act, section 113A and 113B has been added to the Evidence Act, 1872 to raise assumption with respect to abetment of suicide by married women. The fundamental objective of section 498A of Indian Penal Code is to ensure to safeguard the interests of a married women who is being pestered by her husband or husband's relatives.

Since days of yore women have been vitiated to a defaming breathing life into a character provided with shallow engaging quality yet intellectually meek, who could simply fulfil male expectations. Considering the flawless standard with different leveled demonstrations of disregard they were encouraged to embody the piece of mother, life partner or that of a home maker just to be pushed to carry on with an unbroken presence with restricted movability or in more terrible cases to live in supreme separation. Despite India's reputation of respecting and worshiping women as Goddess, history reveals the serious mystery that is secured under the idealistic portrayal of ladies which was simply being used as a mask for making sure about the predominant situation of the male individuals from the general population by implication. Since medieval period, women were expected to be a genuinely subordinate part in the general population. Along these lines, women were not respected in a genuine manner earlier. In a report by National Record Bureau during, the number of reported cases of cruelty and torture during 1997 (36592), 1998 (41376), and 1999 (43823) respectively that demonstrates the increase of 5.9%,⁴ highlights the gravity of the mistreatment towards married women.

Widely recognized, cruelty against women is one of the most permeative kind of human rights abuse in the whole wide world. On a daily basis, women and girls, are subjected to domestic, sexual, physical and psychological violence. It gets even worse, when women are

³ This Chapter has been inserted by the Criminal Law (Second Amendment Act, 1983), Act 46 of 1983 w.e.f. 25-12- 1983.

⁴ See Crimes in India – 2005, Crimes Record Bureau, Government of India, p 202.

subjected to such a kind of abuse in their in-law's house. In 1990, WHO said, "Violence against women causes more deaths and disability than many diseases put together and violence against women is a common phenomenon in Indian diseases."⁵ On an average, In India 22 women were killed each day in dowry related murders in 2007.⁶ Talking in numbers, there has been an increase in dowry deaths from 4648 in 2008 to 8083 in 2013. Moreover, in just three years from 2010 to 2013 the cases of cruelty by husband and husband's relatives have increased from 99,135 to 1,18, 866. In the initial years of 19th century, the status of Indian women was degraded till its depth. Giving much importance to marriage, and simultaneously almost null importance to the women has been a trend. And this exploitation commenced with child marriage. As discussed earlier, we Indians are a marriage society. 'Marriage is the willful association for life of one man and one woman to the exclusion of all others.' Endeavor ought to consistently be made to support the holiness of such a divine foundation, since it is a kind of structure which must be reconstructed each day. Here, in this, social foundation the husband has the duty to deal with and keep up with his wife. He can't disregard his obligations. In every case, similar to every single great angle, parts of a specific demonstration also exist. The foundation of marriage endures from a significant social evil. For example- dowry (Money or property brought by a woman to her husband at the time of marriage); and for the endowment husband and his relatives' practices physical as well as mental cruelty on wife. Women are abused, hassled, murdered, divorced for the basic explanation that they didn't brought dowry. It is significant to mention here, that, "the scars from mental cruelty can be as deep and long-lasting as wounds from punches or slaps but are often not as obvious. In fact, even among women who have experienced violence from a partner, half or more report that the man's emotional abuse is what is causing them the greatest harm."⁷

II. LEGAL ANALYSIS

Section 498A of Chapter XXA of the Indian Penal Code states, husband or relative of husband of a woman subjecting her to cruelty. – Whoever, being the husband or the relative of the husband of a woman, subjects 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 –

⁵ WHO: Violence against women: A priority health issue, 1997.

⁶ UNIFEM Factsheet: Violence Against Women Worldwide.

⁷ Lundy Bancroft, *Why Does He Do That? Inside the Minds of Angry and Controlling Men*.

- 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 on account of failure by her or any person related to her to meet such demand.⁸

The purpose of merely adding this chapter in the Indian Penal Code was to punish a husband and his relatives who harass and torment the wife with a perspective of coercing her or any other person related to her for the sole purpose of meeting their unlawful demands or to drive her to commit suicide. In order to make the offence seem deterrent in the eyes of general public, section 498A prescribes a sentence of 3 years and also a fine for the husband or the relatives of the husband of a woman, who subjects her to cruelty.⁹ The most important purpose idea behind this was to completely eradicate the crime in itself, rather than eradicating the criminals. Cruelty has deliberately been defined in the Indian Penal Code in two ways. In part (a) of Section 498A cruelty has been defined as “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.” Secondly in part “b” it has also been defined as “harassment of the woman” to coerce her or any person related to her “to meet any unlawful demand for any property or valuable security”. This subsection further states that harassment “on account of failure” by a woman to meet the demand of dowry will also be punishable. Cruelty is an applied thought, there is no specific definition or explanation given by any legitimate researcher. Cruelty can be of different structures, for instance, mental, physical, quick or indirect, proposed or unintended. It moreover, depends on different components and conditions, for instance, social establishment of the woman, mental and states of being, etc. Cruelty can be explained as: slow starvation, repeated requests of share, false charges in suit,¹⁰ repeated insults calling her revolting and maltreatment, neglect by spouse,¹¹ non-return of stridhan, and disapproval of infant girl.¹²

The kinds of cruelty which are secured under Section 498A of Indian Penal Code are:

1. Cruelty by vexatious suit,

⁸ Chapter XXA (containing section 498A) ins. by Act 46 of 1983, section 2 (w.e.f. 25-12-1983).

⁹ *LV Jadhav v. Shankarrao Abasaheb Pawar*, (1983) Cr LJ 1501: AIR 1983 SC 1219.

¹⁰ *Hira Choudhary v. State of West Bengal*, 1997 (1) WLC 543.

¹¹ *Jagdish v. State of Rajasthan*, 1998 RCR (Cr) 9.

¹² *Pawan Kumar v. State of Haryana J.T.* 1998 (1) SC 565.

2. Cruelty by hardship and inefficient propensities,
3. Calling spouse desolate lady,
4. Cruelty by persevering interest,
5. Cruelty by additional conjugal connection,
6. Harassment and plural marriage,
7. Cruelty by renunciation of infant young lady,
8. Cruelty by false assault on purity.¹³

Upsides and Downsides:

The overbearing conduct of the laws and the separation of the marriage has another side. Hotel of bodies of evidence with the wrongdoing against women cell may not be certifiable. Marital conflicts detached with settlement requests or endowment related badgering are frequently given the shade of share by the spouses to get even with their husbands.¹⁴ The Supreme Court in one of its decisions said that - "Yet by abuse of the arrangement (IPC, 1860 498A - Dowry and Cruelty Law) another legitimate fear mongering can be released. The arrangement is proposed to be utilized as a shield and not a professional killer's weapon". An investigation conducted by some social activists reveals that urban established women are abusing the section 498A in order to stay independent and secluded from the husband and his family, legitimately after the husband's family submit to her solicitations which generally incorporates either cash or property and the arrangement of section 498A is to such a degree, that the husband can't archive a complaint, or whether or not they do, they are not involved solely for the reasons that the law is associated only for the protection of women and not men. This is why the section has obtained the disgrace of 'legitimate fear-based oppression' since it has the trait of inclining towards the women and transforms into an abominable plan when fall into wrong hands.

But it also to be noted, women encounter a lot number of problems in their marital home and it is a socially accepted norm that they are supposed to adjust in the environment, rather than expecting the husband or the in-law's to be as welcoming as they can be, for the mere fact that the married woman is the one who needs validation because she is the one for whom every person and everything is new and unfamiliar. All the more, it gets difficult when the domestic verbal abuse and crimes are not seen as wrongdoings by the general public, and

¹³ S.R. Subaashini and M. Kannappan, *A Study on Cruelty against Married Women and Legal Framework in India (Section 498(a))*, 17 IJPAM. 1384-1391 (2018).

¹⁴ *Id.*

subsequently it is even more hard to convict an individual for intellectually harassing his wife, as large number of the women acknowledge this conjugal brutality as their destiny, so the issue is just for the husbands whose wives stands against this cruelty.

III. JUDICIAL ANALYSIS

Highlighting some instances where Supreme Court of India elucidated the idea of cruelty. In *V. Bhagat v. D. Bhagat*,¹⁵ it was held that, the nature of the psychological cruelty depends on the environment in which a married woman lives and whether or not it is respectful enough to live in. Further, in *A. Jayachandra v. Aneel Kaur*,¹⁶ it was noticed that there is a presence of immediate proof in physical cruelty but not in mental cruelty, and therefore in order to gather a proof the courts should test the psychological process and the mental wallop of the event happened. In *Neelu Kohli v. Naveen Kohli*,¹⁷ it was held that whenever there is a specified end goal which constitutes to cruelty, then in those circumstances, the measure of manifestation grizzled of as causing cruelty must be comparatively more bona fide than the destruction of marriage. In *Vinita Saxena v. Pankaj Pandit*,¹⁸ the court clarified on the issue of mental cruelty and stated that the composition of mental cruelty depends more on destructive effect of the psychological attitude which is vital for a supportive wedding home, than the numeric verification of such episodes.

In *Vijeta Gajra v. State of National Capital Territory Delhi*,¹⁹ it was held that the plaintiff cannot lodge FIR against the foster sister of the husband, for the sole reason that the foster sister is not a “relative” of husband by blood, marriage or adoption and therefore cannot be tried under section 498A of Indian Penal Code.

In *Vungarala Yedukondalu v State of Andhra Pradesh*,²⁰ the court held that section 498A is not ultra vires of the Constitution and that classifying the husband and the relatives as a class is in no way unreasonable. The court also highlighted that the meaning of the expression “cruelty” is not vague and this section applies even in those cases where the behavior of the person imposes such cruelty as to cause his mistress to commit suicide.

In *Inder Raj Malik v. Sunita Malik*,²¹ it was held that a person can be persecuted under section 498A of the Indian Penal code and as well as under section 4 of the Dowry

¹⁵ (1994) 1 SCC 337.

¹⁶ (2005) 2 SCC 22.

¹⁷ AIR 2006 SC 1675.

¹⁸ (2006) 3 SCC 778.

¹⁹ AIR 2010 SC 2712.

²⁰ 1988 Cr LJ 1538 (AP).

²¹ (1986) Cr LJ 1510.

Prohibition Act, 1956 and it does not attract double jeopardy. For the reason being, in the latter it is enough to prove the demand of dowry and there need not to be an element of 'cruelty' but in section 498A there has to be an act of cruelty caused to the married woman, thus making the provisions differentiable and allowing the person to be persecuted under both the sections.

In *Vijai Ratna Sharma v. State of Uttar Pradesh*,²² the court practically observed the proceedings and sidelined the argument of jurisdictional technicalities and held that the facts of the case made it evidently clear that there was a presence of dowry demand from the beginning of the marriage succeeding to which was the cruel behavior, making a connect, and therefore the husband of the plaintiff can be tried under section 498A and as well as under section 220 of CrPC, 1973.²³ This incredible act of history, creates a long way in sidelining the people who are eventually ready to take advantage of the triviality of law.

In *Bhaskar Lal Sharma v. Monica*,²⁴ held that a husband and relatives cannot be held liable for 'cruelty' against wife, if the facts claim that wife was kicked and threatened to get a divorce by the mother-in-law or other family members. The researcher is of the view that in this instance kicking, scolding and threatening to get a divorce completely amounts to cruelty under this section.

IV. CONCLUSION

The foundation of marriage is never again pondered of as a blessed relationship of two hearts, however has fairly ended up being even more a contractual obligation between two individuals in demanding sentiment of the term where one is committed to another to perform matrimonial rights. With the introduction of section 498A in the Indian Penal Code, 1860 acted as a blessing in disguise for the married women who were subjected to cruelty, in the early years. As the years proceed, the court made several attempts to bring about the meaning of cruelty and instill fear in the minds of husband and his relatives against something which constituted as a crime. Yet now, there have been instances where it has been recognized that there was a manipulation of this section, and moreover it has become a matter of reputation for the family. But still, almost after 35 years of the incorporation of this section, women are still afraid of getting married or those who are married, to live respectfully. There needs to be a focus on the rural women, because they are yet to fully

²² 1998 Cr LJ 1581 (All).

²³ Section 220(1) read as: "If, in one series of acts so connected together as to form the same transaction, more offences than one is committed by the same person, he may be charged with, and tried at one trial for, every such offence.

²⁴ (2009) 11 SCR 408.

understand the meaning and purpose of this section and for the mere fact that they are still afraid to stand against their in-law's. Finally, certain lawful moves need to be incorporated to shorten development of "lawful fear-based oppression", because the purpose was to protect and uplift the status of women and not to be vulnerable and degrade the status of men. Because establishing equality requires providing equal measures to everyone in the society.
