

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 1

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

The Rise of Legal Terrorism: A Socio Legal Issue

SARTHAK BHATIA¹

ABSTRACT

This research work titled “The Rise of Legal Terrorism; A Socio Legal Issue” is authors original research work wherein he has explored and attempted to portray two distinct situations one where women are being harassed and are subjected to cruelty, by their spouses. Females who were considered as the vulnerable section of our society and encountered domestic violence in their marital homes. Section 498A of the Indian penal code was a provision which was implemented to help impuissant women subjected to such domestic violence. The ugly facet of the aforementioned provision, which is described in the research's latter section, is, however, its primary focus. How various women in the society have weaponised such provisions against their spouses. The increase in feminism and urbanization has created a well for men in this society, Various case laws wherein men were subjected to such disparities due to subsequent legal stipulations have also been mentioned.

With the evolution of the society law needs rectification to remove the intricacies that emanated over time. Due to a lack of legislative protections, men in our nation are currently targets of legal terrorism. Legal terrorism in nothing but men bearing the brunt of provision which initially came into being to help vulnerable females, but is widely used as a weapon against innocent spouses. A fraction of females in our society have developed a modicum out of such momentous and sacrosanct provisions. Nonetheless, for the sake of the readers' convenience, additional offensive and defensive remedies that a man can utilise in such circumstances are also herewith mentioned in this research work. The author has also quoted suitable national crime bureau records for better discernment of the issue. Lastly, pertinent remarks and recommendations about the said issue has been made in conclusion.

Keywords: legal terrorism, cruelty, ugly facet, offensive and defensive remedies.

I. INTRODUCTION

Section 498A of Indian Penal Code -

Section 498A of the Indian penal code states that, “*husband or relative of husband of a woman subjecting her to cruelty shall be punished with imprisonment for a term which may extend to*

¹ Author is a student at Chandigarh University, India.

3 years and shall also be liable to fine”².

Explanation –with the view to “cruelty” means:

- a- Any willful behavior that poses a serious risk to the woman's life, limb, or health (mental or physical), or that is likely to force her to commit suicide. or
- b- Harassment of a woman is when it is done with the intention of forcing her or a member of her family to comply with an illegal demand for money, property, or valuable security, or when it is done because she or a member of her family has refused to comply with the demand.

The term "cruelty" has been highlighted in this section, and it encompasses both physical and psychological injury to a woman's body or health with the intention of pressuring her or a member of her family to give in to any illicit demand or claim for property or valuable protection.

However, this section was validated to consider with the threat caused by dowry deaths. This was implemented in “*the code by the criminal reforms act, 1983*”³. The foremost aim of IPC section 498A is to protect a woman who is subjected to the harassment by her spouse or his relatives.

Harassment of dowry falls in the latter part of the section that creates such circumstances, which forces a woman to commit suicide is one of the major ingredients to commit suicide. It is implied that if a woman suffers cruelty by her spouse, he shall be penalized with imprisonment of three years and is also liable to fine. Section 498A also states that such act is cognizable, non-compoundable and non bailable.

II. INGREDIENTS OF SECTION 498(A)

Domestic violence against woman as a crime is perceived only in section 498A of Indian penal code. Section 498A was introduced for curbing cruelty against married woman by her husband or in laws. Various amendments were later added in the “*code of criminal procedure 1973*”⁴ and also “*Indian evidence act 1972*”⁵ to expeditiously tackle with the cases relating to dowry deaths and cruelty to any Married women by her spouse or his relatives.

Furthermore, the “*protection of women from domestic violence act, 2005*”⁶ is also assisted to

² Section 498A IPC 1860

³ The code of criminal reforms act 1983

⁴ Code of criminal procedure 1973

⁵ Indian evidence act 1972

⁶ Protection of women from domestic violence act 2005

deal with the misconduct against women these days.

The basic essentials of *section 498A* include –

1. The woman must be married
2. She must be harassed and treated cruelly.
3. Her spouse or a family member of her spouse must inflict the mistreatment on her.

III. CONCEPT OF CRUELTY AS PER HINDU MARRIAGE ACT

Both physical and mental abuse amounts to cruelty. Moreover, both Direct and indirect evidence can be used to infer '*willful conduct*' in explanation

The term cruelty is given a broader definition in section 498A explanation clause to include-

- a. Any intentional behavior that creates substantial danger to the woman's life, limb, mental health, or physical well-being, or that is likely to induce the woman to commit suicide or cause her to commit suicide
- b. Harassment of a woman with the intent to compel her or anyone connected to her to perform an act or make a payment in response to an unlawful demand for money, property, or a valued security, or because they have failed to do so. She couldn't possibly fulfil such an enormous demand.

Here are a few illustrations of cruelty:

1. Demanding dowry repeatedly amounts to cruelty: if it consists of both torture and repeated demands for dowry.
2. when a woman is subjected to harassment in any form weather emotional or physical it can be called as a cruel act
3. Calling her ugly and mistreating her on a regular basis is cruel, from the next day the wife was ill treated
4. She was frequently ridiculed, abused and emotionally tormented by calling her unattractive, among other things. This for any woman amounts to cruelty and mental agony
5. The wife was exposed to a series of spiteful litigations
6. The wife was subjected to a barrage of exceedingly harsh and insulting charges and she was tormented as a result.
7. Search warrants were executed, and personal property was seized. When such activities are repeated, they amount to cruelty.

8. Negligence by husband also amounts to cruelty: the husband's deed was only that of ignoring his obligation to give the wife and kid the basic means of nutrition while he squandered his money on betting and other indulgences starving his wife and baby child to death.

IV. THE CHALLENGES AND CONTROVERSIES OF SECTION 498A OF IPC: A SOCIO-LEGAL PERSPECTIVE

The term cruelty may be inferred from the above-mentioned examples to be abstract in nature. No act has a precise definition of cruelty. It can take many forms and is dependent on a variety of conditions and situations including the woman's family background, physical and mental characteristics, cultural background and so on.

A fundamental examination of section 498A reveals that an arrangement that was initially brought into action to protect the woman from the torment and provocation of woman by their husbands or relatives of husband unfortunately has been misused to issue the spouse and his family. The Supreme Court in one of its remarkable judgments stated that "*yet by abuse of the arrangement (IPC 498A dowry and cruelty law) another legitimate fear mongering can be release. The arrangement is proposed to be utilized as a shield and not a professional killer's weapon*"⁷ in one of the cases the apex court stated that the rules were being abused and exploited to the point to the point that they were being used to attack the foundation of marriage itself which eventually comes out to be a bad indicator for the welfare of both the society and the general public. In one of its judgments the Supreme Court stated that "*but by misuse of the provision (IPC 498A –dowry and cruelty law) a new legal terrorism can be unleashed*"⁸

In the case of *Narayan Ganesh Dastane v. Sucheta Narayan Dastane*⁹ cruelty was conceded as the cause of divorce, therefore the divorced wife was made entitled to maintenance from her husband. The act that results in mental sufferings amounts to cruelty. Cruelty results in mental sufferings amounts to cruelty. Cruelty is not stated as a ground for divorce but only as a ground for judicial separation as per "*the Hindu marriage act 1955*"¹⁰. Cruelty was made as a ground for divorce later in the amendment act of 197. Before this, cruelty was cruelty was only a rational comprehension in either person's mind so as to cause threat to his or her life. "*But the court after this stated that whether any cruelty has been suffered by any party and this must be*

⁷ SR subhaashini and M Kannappan, a study of cruelty against married women and legal framework in India

⁸ Sushil kumar Sharma v. UOI 2005(6) SCC266

⁹ Narayan ganesh Dastane v. Sucheta Narayan Dastane 1975 AIR 1535

¹⁰ The Hindu marriage act, 1955

determined in any specific manner”.¹¹

V. JUDICIAL APPROACH

“In Arnesh kumar v. state of Bihar”¹² The wife alleged that she was asked to pay a dowry and that she was banished from the marriage home for refusing to do so. When the spouse applied for anticipatory bail, he was rejected. The husband as a result filed a special leave petition in the supreme court.

The Court noted in this case that disgruntled wives typically utilise Section 498A of the IPC as a weapon rather than a shield. It results in the spouse and his family being subjected to harassment by keeping them in custody in accordance with this Section, and it is even more appalling to see bedridden grandparents being kept without a preliminary investigation. The Court as a result issued detailed guidelines that a police officer must adhere to when making an arrest under “Section 498A of the Indian Penal Code”¹³ or “Section 4 of the Dowry Prohibition Act, 1961”¹⁴, and that the basis for making such an arrest must be a reasonable belief in the validity of the charge. Additionally, even Magistrates must use caution when approving detention on an arbitrary and routine basis. A judicial magistrate will be subject to departmental action by the relevant high court if he disobeys the instructions granted. Additionally, if a police officer disobeys the rules, he could be held liable for contempt of court. The police officers are also instructed to complete the checklist and provide the evidence and justifications for the arrest.

“Rajesh Sharma v. state of Uttar Pradesh”¹⁵, 2017- The Supreme Court provided guidelines to stop the misuse of “Section 498-A IPC”¹⁶ in this case, and those guidelines were also changed in **“Social Action Forum for Manav Adhikar v. Association of India, 2018”**¹⁷. They are mentioned as hereunder-

- 1- These instructions state that a designated Investigating Officer of that region may be the only person to look into complaints under Section 498-A and any related offences.
- 2- If the parties reach a settlement, each party may apply to the High Court under Section 482 to have the proceedings quashed or to make another motion.
- 3- A bail application may be considered as soon as feasible on the same day if it is

¹¹ Narayan ganesh Dastane v. Sucheta Narayan Dastane 1975 AIR 1535

¹² Arnesh Kumar v. State of Bihar (2014) 8 SCC 273

¹³ Section 498 A of Indian penal code, 1860

¹⁴ Section 4 of the dowry prohibition act, 1961

¹⁵ Rajesh Sharma v. State of Uttar Pradesh (2017) SCC 821

¹⁶ Section 498a of Indian penal code 1860

¹⁷ Social Action Forum for Manav Adhikar v. Association of India (2018) SCC

submitted with at least one day's notice to the public prosecutor or complainant. Recovery of disputed dowry items might not, by itself, be a reason to deny bail if support for the wife or minor children can be guaranteed, together with other rights.

- 4- Obtaining passports or sending out Red Corner Notices to people who typically reside outside of India shouldn't be a regular practice.
- 5- If there are any actual physical injuries or fatalities, these instructions won't matter much.

*“The supreme court in **“Mohd. Hoshan v. state of Andhra Pradesh”** stated that “whether on spouse has been guilty of cruelty to other is essentially a question of fact. The impact of complaints accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the victim concerned, the social background, the environment, education etc. Further mental cruelty varies from person to person depending on the intensity of the sensitivity, degree of courage or endurance to withstand such cruelty. Each case has to be decided on its own facts whether mental cruelty is made out”¹⁸*

*“**Ram Kumar Nanki v. State of Madhya Pradesh**”¹⁹, A guy who had been found guilty in a dowry death case by the Trial Court and the High Court has been exonerated by the Supreme Court. The wife of the accused in this case committed suicide by putting herself on fire. According to the deathbed declaration, the deceased set herself on fire because of a domestic dispute with the spouse. Thus, the deathbed declaration and the testimony of several witnesses were taken into consideration by both the Trial Court and the Chhattisgarh High Court in order to find the accused guilty under “*Sections 304-B and 498-A IPC*”²⁰. He received a ten-year prison sentence.*

The council for the accused then brought it to the Supreme Court's notice that the dying statement said that the dead intentionally put herself on fire by dousing herself in lamp fuel, and that the worried doctor's evidence strongly supported the dying declaration. He argued that there was little justification for dowry-related harassment based on the nebulous accusations made against the accused by certain witnesses.

The appeal was approved by the court, which was made up of *“**Justices L. Nageswara Rao, Vineet Saran, and S. Ravindra Bhat**”*²¹. The court stated that the dying declaration demonstrated that the deceased's argument with her husband was the immediate reason she set

¹⁸ Mohd. Hoshan v. State of Andhra Pradesh, 2002 CrLJ 4142

¹⁹ Ram Kumar Nanki v. State of Madhya Pradesh criminal appeal no. 814 of 2020

²⁰ Section 304b and section 498a of Indian penal code, 1860.

²¹ Ram Kumar Nanki v. State of Madhya Pradesh criminal appeal no. 814 of 2020

herself on fire. The deathbed declaration reveals the specifics of the deceased's burn injuries and the urgent reason behind her drastic action.

Nothing in the records suggests that the deathbed declaration was obtained by deception, misrepresentation, or incorrect recording, or that the statement was obtained fraudulently. It met all the standards, was documented by a doctor who was an impartial party, and was accurate.

In a recent judgement, the FIR against the in-laws of a lady who accused them and her husband of cruelty and harassment for dowry was dismissed by a bench of **Justices S Abdul Nazeer and Krishna Murari**. The Patna High Court denied their appeal against the FIR dated April 1, 2019, and while ruling on their appeal, the court stated that "the charges levelled against them being generic and omnibus, do not support prosecution."

"Decisions clearly demonstrate that this court has at numerous instances voiced concern over the misuse of Section 498A IPC and the increased tendency to implicate relatives of the husband in matrimonial disputes, without trying to analyse the long-term repercussions of a trial on the complainant as well as the accused," the bench said with reference to some previous cases.

The Allahabad High Court has instructed the relevant authorities that no arrests should be made prior to the end of a two-month "*cooling period*" "in instances of marital disputes brought under "*Section 498A of the Indian Penal Code*"²², when the maximum term is less than 10 years. In addition, the family welfare committee (FWC) will be contacted right away to try to address the marriage issue during this "cooling off" time. Moreover, if a woman is subjected to cruelty, her husband or his family may be punished under Section 498 A of the IPC. The decision was made by Justice Rahul Chaturvedi in the revision case brought by Sahib Bansal, the husband, Manju Bansal, and Mukesh Bansal to contest the lower court's denial of their discharge motion. The Court accepted the in-laws' request for discharge but denied the husband's request and ordered him to appear before the lower court.

Regarding the misuse of '*Section 498A IPC*'²³, the Court said: "*Nowadays, every matrimonial case is exaggerated manifold with pungent and caustic allegations of dowry-related atrocities against the husband and all family members.*"

The Supreme Court's ruling in the case of "***Social Action Forum for Manav Adhikar v. Union of India***"²⁴ served as the court's guide in developing the safeguards, which were put forth to curb the public's growing tendency to accuse the husband and every member of the family of

²² Section 498a of Indian penal code,1860

²³ Section 498a of Indian penal code,1860

²⁴ Social Action Forum for Manav Adhikar v. Association of India (2018) SCC

something while simultaneously making broad and generalised statements.

VI. A SCANDALOUS ABUSE BY URBAN WOMEN

This ground of cruelty is identical to the ground that is stated in “*section 10(1)(b) of the Hindu marriage act 1955*”²⁵ i.e., judicial separation by a point of difference between them were that the phrases 'persistently' or 'repeatedly' were added and so the basis was rendered more acute post amendment. Despite the fact that family disputes cannot be resolved solely on the basis of allegations made because it is not always possible to prove the guilt of either party due to a lack of evidence, the courts are given greater latitude for the interpretation of the ambiguous question of whether the parties' actions constitute cruelty or not. As a result, the courts must consider all pertinent information and not rely just on certain instances. The fact that the husband permitted the same ultimately contributed to the case's resolution, in which the respondent was not found guilty of the appellant's fabricated accusations because there were no recurring acts of cruelty by the wife in the current instance.

Therefore, this provision is meant to be used as a shield rather than a weapon by assassins. There is a "general complaint" of “*Sec 498A of the IPC*”²⁶ being prone to egregious misuse, according to the “*2003 Malimath Committee report*”²⁷ on criminal justice reforms, and hence the same study urged a revision to the impugned clause. “*Section 498A IPC, 1860*”²⁸ is sometimes referred to be a "sexual orientation prejudiced" statute since it provides only women with protection in the fight against their spouse and his family. The truth is that a careful reading of the section unearthed several challenging topics that may have an impact on the broader audience.

Urban prosperous women are allegedly misusing section 498A to live independently, away from their spouses and their families, provided that the husband's family accedes to her requests, which are often for money or property. This is why the component has been referred to as "legitimate fear-based oppression"²⁹ since it is anti-feminist and might easily turn into a dishonorable plot if it gets into the wrong hands.

(A) Why do people misuse the provision 498A IPC 1860

Various such reasons are stated below:

²⁵ “Section 10(1)(b) of the Hindu marriage act 1955

²⁶ Section 498a of Indian penal code 1860

²⁷ https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf

²⁸ Section 498a of Indian penal code 1860

²⁹ India laws online.com

1. It is a straightforward procedure to gather large of money.
2. The wife is stuck in a prior relationship. She gets married in order to please her parents, but then uses the 498a statute to obtain a divorce.
3. 498A is frequently used as a negotiating tactic by an adulterous lady.
4. The wife wants the husband to forsake his parents and siblings and to have complete control over his income and social life.
5. The access of children is denied to the father and his relatives.
6. Alternatively, if a woman enters a marriage fraudulently, she may later, when questioned about it, deny entering it by filing a fabricated 498A lawsuit without being aware of the facts.

Today, every husband is regarded as a tormentor, and relatives are regarded as demons. A portion of the fault also falls on the media, which, in order to misrepresent the subject, blows the news without conducting a thorough investigation.

(B) Defensive Remedies

Men can safeguard their families and selves from being imprisoned as a result of the false complaint. To protect themselves and their family, they can choose from the following options:

1. Record any communications (phone, chat, email, letters, etc.) with threatening parties, preserve the originals in a secure location, and refrain from presenting the actual evidence in front of anyone.
2. Obtain proof that they haven't requested dowry or accepted it despite that, or both.
3. Collect evidence to show that the woman left the marriage's obligations without a good reason.
4. When the defendant requests anticipatory bail or any other adequate notice bail from the court, this material will be helpful.

“RCR (*Restitution of Conjugal Rights*)”³⁰ Document- Let's say that after all the threatening, the wife has already left her husband's home. Men can then file an “RCR (*Restitution of Conjugal Rights*)”³¹ citing the requirements she must agree to before moving in with her husband.

(C) Offensive remedies-

Men can file countersuits against their spouses in an effort to fortify their case and speed up

³⁰ Section 9 of Hindu Marriage act, 1955

³¹ Section 9 of Hindu Marriage act, 1955

the process. The following is a collection of competing claims they can use to bolster their position.

“Section 120B IPC, 1860”³²

Penalties for Criminal Conspiracy- A spouse might file a complaint against his wife on the pretext that she is preparing to harm him and his family.

“Section 167 of IPC, 1860”³³

An official drafting an incorrect document with the intent to harm If the husband thinks the police are assisting their wife in filing a fraudulent complaint and fabricating documents, he might launch a lawsuit against them and claim that they have done so.

“Section 182 of IPC, 1860”³⁴

False information intended to influence a public servant's use of his authority against another person Typically, when a public official uses his authority to accomplish something that is probably not going to happen, false information is spread to undercut the facts.

Giving false evidence is prohibited by “IPC Section 191 of 1860”³⁵.

If the husband is of the opinion that his wife or another party is fabricating evidence to use against him in court or at the police station, he has the right to file a lawsuit, arguing that the allegations against him are false as a result of the fabrication of the evidence used to support them.

“Section 197 of IPC, 1860”³⁶

Creating a fake certificate or signing it; One cannot sign a fake certificate and claim it is legitimate without committing perjury. Therefore, if someone suffers as a result of a false certificate, he can establish his innocence by providing sufficient proof.

“IPC Section 471”³⁷ :

Presenting a forged and fabricated [document or electronic data] as bona fide. Anyone who falsely or dishonestly represents any [document or electronic record] as genuine that they know or have reason to believe is a forged [document or electronic record] will be punished in a manner similar to how they would be punished if they had actually created the relevant

³² Section 120b, Indian penal code 1860

³³ Section 167, Indian penal code, 1860

³⁴ Section 182, Indian penal code, 1860

³⁵ Section 191, Indian penal code, 1860

³⁶ Section 197, Indian penal code, 1860

³⁷ Section 471, Indian penal code, 1860

[document or electronic record].

Some records by national crime record bureau-

1. Out of 110378 total cases of 498A.32.% of which is registered as crime against woman category.
2. 12,218 498A out of 110378 cases were registered in urban cities.
3. 6745 cases dealing with 498A in 2016 were contemplated as falsified according to the final report.
4. 91810 charge sheets were submitted to the courts that were about 498A cases.
5. In only 5433 cases conviction happened, comparing to 39248 cases of acquittals. This conviction rate is the least amongst all the IPC sections.
6. 169 children who were less than 18yrs were sentenced for offence under 498A in 2016. Do they even know what dowry is???
7. 5371 senior citizens who were more than 60 yrs in age were also arrested in 2016. How can someone who can barely walk show physical violence to someone.

In light of the foregoing facts and different court rulings, it is apparent that Section 498A is being exploited on a huge scale, and those severe human rights abuses are occurring as a result of this specific Section.

The following are suggestions and recommendations posed by the researchers regarding the research problem-

To begin with, depending on the seriousness of the act, criminal cases in India, especially those of a serious nature, are tried for 8 to 10 years, if not longer. To guarantee that innocent victims identified under section 498A obtain prompt redress, a speedy trial is advised. Therefore, it is essential that the judiciary strive to expedite the trial process in the 498A cases in addition to being effective. As a result, it is essential that the courts be efficient while also moving the 498A cases' trials along quickly.

Second, it must be made a point to guarantee that the investigation into these 498A cases is carried out only by civil authorities and that the policeman's actions are solely based on the finding of reasonable evidence adequate to establish the person's misconduct.

Third, the provision set forth in section “498A of the Indian Penal Code³⁸”, 1860, requires

³⁸ Section 498a, Indian penal code, 1860

quick modification and should be one of the top priorities for legislators in recent years.

Fourth, in our nation, there isn't a formal institution that offers family counselling. It is crucial to establish a reputable family counselling organisation so that people may express their grief and get professional advice.

Fifth, human rights NGOs must work together to act neutrally and educate the public about the importance of not pursuing criminal charges based on minor issues.

Sixth, a serious effort must be made to ensure that 498A cases are treated as bailable offences rather than non bailable offences in order to avoid innocent people from rotting in prison.

Seventh, The Court should start enforcing fines and stern sanctions against individuals who make false claims since this part lacks the deterrence component for which dowry cases are increasing at such an alarming rates.
