

CRUELTY IN MARRIAGE: ANALYSIS OF SUPREME COURT CASES ON SECTION 498A IPC

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INTRODUCTION

Institution of marriage is an oldest social institution and provides a foundation on which whole superstructure of the civilization and prosperity is built. Stability i.e. a happy, cordial and harmonious relationship between the couples has been considered as one of the most important condition for this institution in the civilized societies-ancient as well as modern.

However due to emergence of the industrialized societies and result of the social awareness amongst the people, especially in the females about their right of equality and personal liberty, the meaning of stability in context of marriage has been changing gradually in the different span of times.

Most of the crimes against women happen within marriage lock. Bride burning, dowry deaths, domestic violence, marital rape etc. are very common in the life of Indian married women. *According to the National Crime Records Bureau Report,2016 pointed out that of 4,77,986 cases that were pending in the start of 2013, only 46,217 cases were decided 6,559 were convicted while 39,658 were acquitted and 10,318 were withdrawn. Conviction rate of the cases registered under the Section 498A IPC was also a staggering low at 14.2%.”*

Disposal of cases filed under Sec 498-A of IPC by Courts							
Year	Total Cases where trial completed in that year	Convicted	Acquitted	Withdrawn	Total Cases Pending at the end of the year	Conviction Rate of Cases under 498-A in %	Average Conviction Rate of all IPC crimes in %
2006	31261	6857	24404	5679	206431	21.9	42.9
2007	32622	6831	25791	6364	228614	20.9	42.3
2008	34347	7710	26637	7310	251759	22.4	42.6

Disposal of cases filed under Sec 498-A of IPC by Courts							
2009	37323	7380	29943	7111	278921	19.8	41.7
2010	40751	7764	32987	6601	309991	19.1	40.7
2011	40338	8167	32171	7450	339902	20.2	41.1
2012	46054	6916	39138	8162	372706	15	38.5
2013	45423	7258	38165	8218	412438	16	40.2
2014	46853	6425	40428	8922	443885	13.7	45.1
2015	46217	6559	39658	10318	477986	14.2	46.9

Concept of Matrimonial Cruelty in Penal Code

Criminal law Amendment Act, 1983 inserted the Section 498A (Chapter XX-A) relating to the cruelty by the Husband or the relatives of the Husbands to combat the social evil of dowry and matrimonial atrocities against the married women. This measure was to make better family system for greater society.

One side to protect society from crime against the women and other side to put matrimonial cruelty in penal code for making it more stringent to curb wife battering, dowry system which made society more polluted.

There are several provisions in penal law relating to offences of matrimonial nature. A married woman is subjected to cruelty under Indian Penal Code, 1860 by her husband or his relatives (498A) or by same husband and his relatives in demands of dowry preceding unnatural death within seven years of marriage (Section 304B) or causing woman's death (Section 302) Amounting to murder.

In both sections 498A and 304B cruelty extends toward death. A person charged under section 304B can be convicted under 498A without any charge under that section.

But this shield has become only and multipurpose sword against husband and his relatives.

According to **Malimath Committee Report**, once a complaint or FIR is lodged under section 498A or 406 of Indian Penal Code, it becomes easy tool in the hands of the police to arrest or threaten to arrest the husband and other relatives named in FIR without even considering the intrinsic worth of allegations and making a preliminary investigation.

Law Commission of India in its 237th report on ‘Compounding of IPC offences’ highly recommended that Section 498A, Indian Penal Code, 1860 should be made compoundable with permission of Court.

This is not the first time; the same recommendation was by Law Commission on its 154th report on 1996 and 177th report on 2001 respectively.

Apart from the Law Commission, **Justice Malimath Committee’s report on ‘Reform of Criminal justice System’** had also suggested to bring Section 498A under purview of compoundable offence. There was a constant demand for the flexibility of this provision from Apex Court’s in numerous cases.

In **Preeti Gupta v. State of Jharkhand**¹, wherein complainant filed complaint before Chief Judicial Magistrate, Ranchi under Sections 498-A, 406, 341, 323 and 120-B, Indian Penal Code read with sections 3 and 4 of the Dowry Prohibition Act against all the immediate relations of her husband like father-in-law, husband, mother-in-law, unmarried brother-in-law and Preeti married sister-in-law. Since the Appellants never lived with complainant, Apex Court came to conclusion that their implication in the complaint is meant to harass and humiliate the husband's relatives.

Supreme Court while dealing with Writ Petition pertaining to the Constitutional Validity of Section 498A expounded that,

“A serious re-look of entire section 498A of Indian Penal Code is needed. Merely because the provision was constitutional and intra vires, did not give a license to unscrupulous persons to wreck personal vendetta or unleash harassment. It has been very properly discussed that how sister-in-laws become victim of section 498A without having any nexus with cruelty. Not only that but there are many practical examples where 498A was charged against remote relatives, friends, match makers or even priest also”.

The rapid increase of matrimonial litigations according to Supreme Court demonstrates the discontent and unrest in family life of a large number of people of the Society. Even false charge of cruelty under the Criminal Law has become a ground of cruelty for the matrimonial

¹ AIR 2010 SC 3363

relief. False cases of bigamy against the Husband² or under the Dowry Prohibition Act, 1961 as well as the Indian Penal Code³ are also amount to cruelty as decided by the various High Courts.

Apex Court expounded that the object was to strike at roots of the dowry menace. But by misuse of the provision a new legal terrorism can be unleashed.⁴

In **Ashok Kumar v. Vijay Laxmi**, Respondent made false and frivolous allegations against Appellant that there was a conspiracy to burn and kill her which was never done by him at any time. She made a false report against him at PS Karol Bagh as a result of which he had suffered mental pain, agony and humiliation which he continues to suffer. Thus Court has accepted that *Respondent is guilty of having caused mental torture of the gravest nature to Appellant which in short can be termed as cruelty false allegation of cruelty is amount to cruelty.*⁵

This is an irony of law that one protective legislation has become a cause for protection for others.

Law is always to protect its subjects and to ensure justice, which is its end. But if situation arrives when a 'piece of legislation' becomes a 'symbol of terror' for the subjects, its horrible.

Imagine the plight of unmarried girl, whose life and future prospects are ruined due to arrest and detention and frequent visits to courts, the sufferings of old aged persons, who went to jail, the pain of married sister, and other in-laws, falsely implicated, who never lived with the victim of 498 A and 304 B, of I.P.C.

In **Preeti Gupta v. State of Jharkhand**⁶, Apex Court enunciated that,

“It is a matter of common experience that most of the complaints under the Section 498-A IPC are filed in heat of the moment over the 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 motive.

² Raj v. Raj, AIR 1986 pat. 362

³ Kalpana v Surendra, AIR 1985 All 253

⁴ Sushil Kumar Sharma v Union of India, AIR 2005 SC 3100

⁵ AIR 1992 Del. 182

⁶ AIR 2010 SC 3363

At the same time, rapid increase in number of genuine cases of the dowry harassment are also a matter of serious concern.

“Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society”.

Basically anti-dowry laws and other laws relating to women protection are made to protect them from greedy in laws and husbands. But there is also another section of women who often abuse the authority of law. They snuff-out vengeance with the liberty of protection of law and find enough room to misuse the instruments of law at their pleasure. The husband is victimized most, so also the members of his family. We don't always have Sita in every frame of woman. The law which was meant to protect the women is often getting double edged, hitting back the husband with deep incised wounds. The provisions of Indian Penal Code, Code of Criminal Procedure and Domestic Violence Act 2005 become handy weapons for those who want to settle any scores with the “husband” and “in-laws”.⁷

Delhi High Court in **Anu Gill v. State & Anr.**⁸ quoted Punjab and Haryana High Court which had expounded that,

“It has become a practice that whenever a police report is lodged consequent upon a matrimonial discord, there is always a tendency on the part of the complainant to involve practically all the relations of her in-laws family either out of vengeance or to curl out appropriate settlement. Such a tendency ought to be deprecated.”

Delhi High Court in **Savitri Devi v. Ramesh Chand**⁹ made following recommendations which are as follows.

- Marital offences should be bailable
- Offences to be compoundable
- Investigation by civil authorities
- Minor children not to be arrested.

⁷ V.K Dewan, Law relating to Cruelty and Offences against Husbands, (2009), p. 4

⁸ 2001 (2) JCC (Delhi) 86

⁹ 2003 Cri. LJ 2759 (Delhi)

In this case Delhi HC, recommended to the authorities and the law-makers to have a review of situation and the legal provision.

Supreme Court in **Sushil Kumar Sharma v. Union of India and others**¹⁰ has suggested the following remedial measures by stating that the courts have to take care of the situation within the existing framework.

- The courts and the investigation agencies should not deal with the allegations casually.
- The Courts should not follow any strait jacket formula, any pre conceived notion or view.

Justice Markendey Katju has rightly expressed his opinion in **Som Mittal v. Govt. of Karnataka**¹¹that,

“The experiences have shown that absence of provision for the Anticipatory Bail has been causing great injustice and hardship to citizens, for instance, often false FIRs are filed e.g. under Section 498-A of Indian Penal Code. There are some reported incidents. Many cases remain unreported. But it is unfortunate that no authentic data is available of its misuse. However, courts all over country are experiencing that misuse of the matrimonial offences has reached to drastic level, which have reflected in remarks made by the higher courts in several cases”.

Apex Court, in **Kanaraj v. State of Punjab**¹² expounded that,

“for the fault of the husband, the in-laws or other relatives cannot in all cases held to be involved. The acts attributed to such persons have to be proved beyond reasonable doubt and they cannot be held responsible by mere conjectures and implications. The tendency to rope in relatives of the husband as accused has to be curbed.”

Punjab and Haryana High Court, in **Bhupinder Kaur and others Vs. State of Punjab**, enunciated that,

¹⁰ AIR 2005 SC 3100

¹¹ AIR 2008 SC 1126

¹² 2000 Cri. LJ 2993

“From the reading of the FIR, it is evident that there is no specific allegations of any act against petitioners, which constitute offence under section 498-A, I.P.C. I am satisfied that these two persons have been falsely implicated in the present case, who were minor at the time of marriage and even at the time of lodging FIR. Neither of these two persons was alleged to demand of dowry article nor they alleged to have ever demanded any dowry article. No specific allegation of demand of dowry, harassment and beating given to the complainant by the two accused has been made. The allegations made are vague and general. Moreover, it cannot be ignored that every member of the family of the husband has been implicated in the case. The initiation of criminal proceeding against them in the present case is clearly an abuse of the process of Law.”

Thus taking into consideration the above stated judgments, it can be concluded that Section 498-A of IPC is incorporated by Legislatures basically in interest of women and to safe guards them from harassment. But, it has become somewhat counterproductive. In the several cases, women are harassed, arrested and humiliated on complaints given under section 498-A IPC. The truth or otherwise of allegations is subject to proof. For giving complaint absolutely no authentic and prima facie material like medical evidence is required, but on such complaints, in several of cases, number of women are being arrested. In cases of arrest of married young women are being arrested.

In cases of arrest of married young women, they might face some problem from their husband and in-laws. In case unmarried women are arrested their marriage prospectus would be badly affected and if Government servants are arrested their service prospectus are affected. In the present case, only one woman is alleged to victim; but at least four women might have to go to jail even before trial, effecting their reputation, subjecting them to rude treatment in police station etc.¹³

Prohibition of Casual Arrest under Section 498A, Indian Penal Code

¹³ Dr. Shobharam Sharma, “Legal Terrorism in India: Need to Change the Law” Cri. LJ, Vol:117, p.371, December(2011)

Supreme Court in **Arnesh Kumar v. State of Bihar**¹⁴ expounded that, “*Men and his Family cannot be arrested “automatically” just because a dowry harassment complaints filed by their wives*”.

Supreme Court added that, “*Complaint under Sec 498-A allows immediate arrest and jailing of the accused, since the offence is cognizable and non-bailable. This is evidence of violation of human rights, if the complaint is false and motivated*”.

Apex Court instructed 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.*

It was more often being used as “the weapons rather than being used as the shields by disgruntled wives” enunciated the Apex Court Bench.

Apex Court Bench expounded that, “The simplest way to harass husband and his relatives was to get them arrested under Section 498A, Indian Penal Code. There are a number of cases where bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades have been arrested”.

Four-judge Bench of Apex Court comprising of CJI Thakur, Justice Anil R. Dave, Justice J.S. Khehar and Justice P.C. Ghose while dealing with the curative petition filed by Women Panel found no fault with the verdict that the dowry harassment law which had become a “menace” to the Society.

Formulation of Family Welfare Committees

In a landmark move, Supreme Court in **Rajesh Sharma v. State of UP**¹⁵ has issued a set of directives related to application of Section 498A, Indian Penal Code (IPC), with a view to prevent misuse of this provision in cases filed under it.

Section 498A tends to be misused a lot to exact revenge on men or their families for their perceived misdeeds. In some cases, sources say, the offences may be trivial, such as a husband's inability to guarantee a certain lifestyle for his wife or any other sore point in the marriage that may escalate into a legal battle.

¹⁴ (2014) 8 SCC 273

¹⁵ CRIMINAL APPEAL NO. 1265 OF 2017

Apex Court's latest directives are not only meant to curb such flippant misuse of the law but also to prevent, as the bench says emphatically, the "violation of human rights". It should also be noted that the judges admit to being "conscious of the reason" behind this law's existence, even as they acknowledge the flaws inherent in it.

Supreme Court Bench has directed for *establishment of one or more Family Welfare Committees to be set up in each district in every state. From Paralegal Volunteers, Social Workers, Retired Citizens to Wives of Government Officials, almost anyone can apply to be part of such panels. Whoever is selected to it will be given training for at least a week, sometimes periodically, before they can commence their work.*

Such committees will have one month to file their reports and based on their findings suitable actions may be taken, including arrests. However, 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".

Order goes on to clarify that "recovery of the disputed dowry items may not by itself be a ground for denial of the bail if maintenance or other rights of wife/minor children can otherwise be protected".

Practice of impounding passports of the offending husbands or issuing a Red Corner Notice to NRIs would also no longer apply.

Although the directions given by the Apex Court are of temporary in nature and are meant to tackle the false and frivolous Section 498A cases that are filed that eventually increase the burden of the Courts. The Constitution of Committees is meant to provide pre-litigation sorting of the false cases so that such cases do not eventually travel to Court and also save the family members from humiliation that filing of such false and frivolous cases bring to the members of family.

But this cannot overshadow the flaws that are prevalent in the directions given by the Court.

One of the major flaws that comes up is that the Family Welfare Committees will apply only to women suffering from mental torture. Such vague and arbitrary categorization amounts to delay in bonfide complainant getting relief, thus resulting into even more prolonged period of mental torture till the Committee submits the report even though there is no commission of any tangible physical injury.

The Composition of Family Welfare Committee, which comprises of Paralegal Volunteers, Social Workers, Retired Citizens to Wives of Government Officials. There is no clarification in the order regarding the Qualifications of the Members of the Committee or whether the Committee will comprise of Retired Judicial Officers or what would be strength of each type of member in the Committee has not been clarified anywhere. Further, those who join Welfare Committees may bring in their own biases that may be inimical to any fair hearing of the cases.

The area of concern, is that the Constitution of Family Welfare Committees will introduce another step towards realization of the justice in bonfide cases, which may act as deterrence towards the victim of cruelty for dowry, forcing her to live in the torturous conditions due to long drawn process.

The capability and expertise of the Committee in deciding whether the Complaint filed is bonafide or malafide will play a vital role in deciding the Complaint. Since there are no guidelines or rules laid down for this purpose, the Committee may err in treating a bonfide complaint as malafide and vice-versa.

The fact that Apex Court failed to take into consideration while laying down the structure of Family Welfare Committees is that the women who are filing the Bonafide cases during the existence of such Committee they will be pushed to their limits while pursuing the matter because by the time the matter reaches to the Court after all the Committees and Mediations, the aggrieved women would be exhaust enough to not to pursue the matter further.

Conclusion:

Sole object of women protective laws was to give legal protection to the married women against the victimization by Dowry Greedy in-laws or by the stronger sex. Women protective laws have been justified with respect to status of the women in the older times.

But now Society has progressed to such an extent that the criminality amongst women have achieved a higher stand in Society and certainly have become influential but with respect to law is still where it was in older times.

Repeatedly the misuse of the legal protection has led to the new legal terrorism.

The women protective laws have now become a handy weapon for many women to blackmail, harass, humiliate and falsely implicate the innocent members of the in-laws family

in dowry demand cases and extract money from them before finally setting the marital dispute.

Laws like the Section 498-A, Indian Penal Code and the Domestic Violence Act, 2005 have number of provisions to intimidate men and their families. Effect of these laws are unjustified power in hands of the women to harass husbands and their family members in the domestic dispute which irreparably damages life of husbands and their relatives and sometimes also becomes the reason for their death.

Judiciary has demanded that if the provisions of law are misused and subjected to abuse of process of law, it is for legislature to amend, modify or repeal it, if deemed necessary.

While it is true that the women protective laws are marking effectively for well being of women, there are allegation that these laws have been misused by the errant women, and police officers for the nefarious ends.

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