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SECTION 498A: A BACKFIRING LEGISLATION

SUBMITTED BY - ANSHUMAN BISARYA

I. INTRODUCTION

Family is the nucleus of the society. It is essential in the society for a variety of reasons chief among them is that it is an institution which eulogizes the hallmark of love, bonding, harmony and understanding. The institution of marriage suffers from a major social evil i.e. Dowry and there have been many instances where for the dowry the husband subjects the wife to physical as well as mental cruelty on wife. Women are ill-treated, harassed, and in some unfortunate cases, killed, and divorced simply because they didn't bring dowry or could not satisfy the greed of husband and her in-laws. There was a growing cause of concern for the social cancer 'dowry' spreading itself and claiming innocent lives. There were instances of bride burning. For a country like India where women are often elevated to status of Goddess, this is abysmal and shows the double-faced nature of the Indian society. To protect and safeguard the interests of woman against the cruelty which they face within the four walls of her matrimonial home, an amendment was brought in the Indian Penal Code, 1860 in the year 1983, to check cruelty on women by husbands and parents-in-law, rampant on an unprecedented scale in the country a new chapter XXA, titled: Of Cruelty by Husband or Relatives of Husband was introduced and insertion of Section 498A which would deal with matrimonial cruelty subjected to a woman.¹ To make the offence deterrent, section 498A prescribes a sentence of three years and also a fine for the husband of a woman, who subjects her to cruelty.² There are many instances where in addition to section 498A, sections 3 and 4 of Dowry Prohibition Act are also coupled for the case³

In the present context, cruelty that was subjected to married women nowadays has taken a new color and to put it gently, the tables have turned. Section 498A originally introduced to instill confidence of married women and their families to fight against ill-treatment and cruel behavior

¹ This chapter has been inserted by the Criminal Law (Second Amendment Act,1983) (46 of 1983)

² L.V. Jadhav v. Shankarrao Abasaheb Pawar, AIR 1983 SC 1219

³243rd Law Commission Report, 2012 <https://lawcommissionofindia.nic.in/reports/report243.pdf>

but the same now has been termed as a weapon. There have been cases where cases under section 498A coupled with false allegations of dowry demand, mental or physical cruelty has come to the notice of the Courts.⁴ When this section was introduced with the objective to shield the women from any cruelty that maybe subjected to them it instilled some hope and optimism into the hearts of the women and their families that now they the means to combat against the cruelty of the Indian husbands and their family. However, with the passage of time it has become clearer and clearer that section 498A of the Indian Penal Code, 1860 has a lot of gaping holes and has the potential to fatally cause pain, misery, unwarranted humiliation and mental agony and social stigma if it falls into wrong hands.

REASON BEHIND INSERTION OF CRUELTY PROVISION IN THE INDIAN PENAL CODE, 1860

Here is the opening paragraph from the 91st Law Commission Report published in 1983 titled Dowry Deaths and Law reform: Amending Hindu Marriage Act, Indian Penal Code and Indian Evidence Act.

“The last few months have witnessed an alarming increase in the number in which married women die in circumstances which, to say the least, are highly suspicious. In the popular mind, these deaths have come to be associated with dowry, which is why, in popular parlance, they have come to be called dowry-deaths'. As the victim is often a young (and a recently married) woman, the phrase "bride-burning" has also come in vogue”.⁵

There was lot of growing concern regarding the despicable situation of women and subjected to cruelty and harassment and other forms of ill-treatment. The situation and condition of the women inside her martial home was getting despotic and wives were tormented and pressurized by their husbands and in-laws who were badly treating the wives and daughter in-laws for dowry.

Subsequently, section 304B was inducted in the Indian Penal Code, 1860. Section 304B states “Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than

⁴PTI, Supreme Court modifies its order on Dowry cases, Times of India, (15th November 2020, 7:49 PM) <https://timesofindia.indiatimes.com/india/supreme-court-takes-note-of-misuse-of-section-498a-makes-it-bailable/articleshow/65805285.cms>

⁵ 91st Law Commission Report, LAW COMMISSION OF INDIA <https://lawcommissionofindia.nic.in/51-100/report91.pdf>

under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death. Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”⁶ To address the growing issue of mental cruelty and the women being victims of harassment for dowry, the Parliament inserted section 498A to IPC in 1983⁷. In the case of *Prasanna Kumar v Dhanlaxmi*, it was observed by the Hon'ble Court that “Section 498A is not retrospective in nature and no cognizance can be undertaken under this section in case the offence was committed before the coming of this section into effect”.⁸ By the same Amendment, section 113-A was introduced to the Indian Evidence Act with the objective to raise presumption regarding abetment of suicide by married woman. Section 113A deals with “When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.”⁹

The main objective of section 498-A of I.P.C is to protect a woman who is being harassed by her husband or relatives of husband.

PROBLEMS WITH SECTION 498-A AND ITS MISUSE

The 243rd Law Commission Report commented upon the longstanding issue of police attitude in the cases of section 498A. The Report observed “The harsh law, far from helping the genuine victimized women, has become a source of blackmail and harassment of husbands and others. Once a complaint (FIR) is lodged with the Police under s.498A/406 IPC, it becomes an easy tool in the hands of the Police to arrest or threaten to arrest the husband and other relatives named in the FIR without even considering the intrinsic worth of the allegations and making a preliminary investigation.”¹⁰ The Commission Report observed a rather disturbing problem that has arisen out during the implementation of this section. Upon filing of an FIR, the names that are given in the

⁶ Indian Penal Code, 1860 § 304B

⁷ Supra note 5

⁸ *Prasanna Kumar v Dhanlaxmi* 1988 SCC OnLine Mad 57

⁹ Indian Evidence Act, 1872 § 113A

¹⁰ Supra note 5 at Pg.10

FIR, the police automatically resort to making an arrest of husband and all the other people whose name was in the FIR.¹¹ The Report also remarked about the ‘over-zealous/callous’ action of the police that it further compounds the problem as it leads to a point of no return for the couple whose marriage is already on the path of breakdown. The immediate response of the police to arrest husband and others implicated in the FIR will lead to bitterness and firmly shuts the door for reconciliation.

There have been discussions about making the offence compoundable. Justice Malimath Committee Report was in strong favor of making the offence compoundable. The Malimath Committee gave reason for why the offence should be made compoundable. The Report added “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”¹²

The Committees were hoping that with the increase in compensation limit, women who file false complaints would be deterred from doing so. The Report recommended that the compensation limit changed from not exceeding 1000/- rupees to not exceeding 15,000/- rupees.¹³ They recommended strictly following section 41 and 41A of CrPC and adopting a balanced approach toward the power of arrest. In addition to that, The Commission was also of the view that this section coupled with the CrPC provisions should ‘not act as an instrument of oppression’ and ‘counter-harassment’ and become a tool of arbitrary arrests by the Police.¹⁴

Furthermore, there was research done by World Health Organization and they ranked India and Lebanon 1st for legal abuse of elders. In context of India, elders are being subjected to legal abuse by their daughter-in law by the anti-dowry laws. The report observed that “In India, there is a law that is intended to protect daughters-in-law from abusive in-laws. A daughter-in-law can go to the police station and lay a complaint that she is being abused by her in-laws, and the in-laws are arrested on her word alone”¹⁵

¹¹ Supra Note 5 at Pg.12

¹² Supra Note 5 at pg. 12

¹³ Supra Note 3 44

¹⁴ Supra Note 3 at pg. 49

¹⁵Editor, Missing Voices, World Health Organization (24th November 2020, 4:55 PM)

https://apps.who.int/iris/bitstream/handle/10665/67371/WHO_NMH_VIP_02.1.pdf;jsessionid=67A9AEDE446050E536F80AF5B17F451A?sequence=1

The Supreme Court, in the case of *Ramgopal v State of M.P*¹⁶ observed that “the offence under Section 498-A should be made compoundable”. The problem with the section 498A being non-compoundable is that it firmly shuts the door for any efforts towards reconciliation. There is no ounce of opportunity left for the husband and wife reach a compromise after realizing their wrongdoings and start afresh.

These are some of the major issues and effects of misuse of Section 498-A.

There have been cases as well where the Judiciary had been forced to admit the misuse of Section 498-A by wives against their husbands and in-laws.

In *Indresh Gopal Kohli v Anita*¹⁷, the appellant was the husband and respondent, his wife. They married in 2009 but soon after the marriage, relations turned sour and he was subjected to cruelty by his wife. The husband further said that she would create a scene in his workplace and there were quarrels and that she misbehaved and his parents were subjected to mental harassment from her side. She also threatened to falsely implicate the husband and her in-laws for a case of torture and cruelty for dowry. The appellant husband filed for divorce on grounds of cruelty under section 13 of the Hindu Marriage Act, 1955 but the Family Court dismissed the case citing that this does not constitute cruelty. Upon appealing, the High Court did find the evidence as cruelty and divorce was granted.

In the case of *Preeti Gupta v State of Jharkhand*¹⁸, The Supreme Court remarked that “It is a 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 motive.” The Court observed that the facts and circumstances of the case when considered in the background of legal principles “would be unfair to compel the appellants to undergo the rigmarole of a criminal trial”. Subsequently the complaint against the appellants was quashed.

In the case of *Sushil Kumar v Union of India*¹⁹, the Supreme Court observed that “because of the fact that this legislation is constitutional, it should not be misused”. It remarked that “the object

¹⁶ *Ramgopal v State of MP* (2010) 13 SCC 540

¹⁷ *Indresh Gopal Kohli v Anita* 2019 SCC OnLine Utt 953

¹⁸ *Preeti Gupta v State of Jharkhand* (2010) 7 SCC 3363

¹⁹ *Sushil Kumar v UOI*, 2005 (6) SCC 266

of IPC is to strike at the roots of dowry menace. But by misuse of the said provision a new legal provision a new legal terrorism can be unleashed.” The Supreme Court also acknowledged that there have been instances which have come to light where the complaints were filed with mala fide intentions and ulterior motives.

In the case of *Arnesh Kumar v State*²⁰, The Supreme Court dealt with the question of constitutionality of section 498-A being brought into question, although ultimately the petition was dismissed but the Apex Court remarked that “There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision.”

CONCLUSION AND SUGGESTION(S)

The 243rd Law Commission Report despite coming on the conclusion that this section is indeed misused and the offence should be made compoundable to reduce its misuse said that misuse of the section does not make ground that this section should be diluted and was rather hesitant to suggest dilution whilst acknowledging the misuse at the same time. The Committee had recommended changes so as to discourage it from being misused but nothing of such sort which would create a deterrence effect in the mind of women to think properly before filing a false case. If there is no effect of deterrence or fear that any wrong doing will be checked and tough action will be taken against the wrongdoer, because of absence of anything such as this, guidelines won't be that effective as it would depend on the police officer how he/she wants to conduct the investigation and make arrests or not. However, one tries to defend section 498A and dictates its social objective and how it is necessary for vulnerable women; one cannot simply ignore the fact that this section is being grossly misused. The law is made with the intention to empower the women however what the women don't realize is that if legislation is being brought under the spotlight and being associated as a weapon, it would lose its value and would be characterized as a misused Law completely defeating the purpose it was enacted for.

²⁰ *Arnesh Kumar v State of Bihar* (2014) 8 SCC 273

Providing protection to women being subjected to mental cruelty and abuse at the hands of their husbands and in-laws does not mean that this ongoing misuse of Law should be tolerated. This view has been echoed by the Hon'ble Courts of India from time to time and have admitted that there is misuse of this section and they have also admitted in the Arnesh Kumar case that their hands are tied and it is for the legislator to step in and come with up with a legislation that sends a clear message to those women who do not visualize the extent of their actions that they take out of revenge and at the heat of the moment. This is high time that the legislators realize and come up with some counter measures. Time has exposed the gaping holes that exist in this section and the problems that have sprouted as a result of those holes (Police attitude of arrest first; section being non-compoundable which acts as an obstacle in the path of reconciliation and in cases, husbands do not want their wives back at all because of false cases filed against them and their parents).

The paper would like to conclude that this section has indeed backfired because its objective was to stop harassment of innocent but the irony is that it is now become a preferred medium of harassing the innocent and wreaking havoc in innocent husband's lives. The section being tilted towards one gender and the action that ensues in event of complaint is often used to threaten, instill fear, extort and force the husbands and their family to give in and do whatever the wives have asked to do otherwise false case will be filed against them. The blatant misuse actually affects the real victims of the crime as barrage of false cases have been filed and pendency rate is high. It is a mockery of the Law that somebody is in a position to openly threaten somebody that they will initiate a false proceeding against them. This section as has been suggested by the Courts and the Commission Reports needs to be amended urgently with tough actions being taken against those who file false cases and misuse this section.

It is time that the recommendations of the Law Commission reports be reflected in reality to serve as a deterrent effect to those wishing to misuse this provision.