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THE VEXATIOUS CRUELTY

AUTHORED BY – JUHI MISHRA¹,

Abstract:

The word 'cruelty' is not gender specific but has gathered the catatonic notion of being gender specific, being inflicted by one over another, notwithstanding the fact that from anthropological dimension and natural selection the dominant has inflicted cruelty on weaker ones. Originally, word cruelty was gender neutral and had the construct as enunciated before. However, after enactment of Act no. 45 of 1860, the legislature re-defined the construct of cruelty and encapsulated it in a narrower construct qua abuse in matrimonial bond by male over female in socio legal space. The ex-parte construct by Indian Penal Code caters victimization of female by men and never vice-versa, which is also a social truth. Notwithstanding the above, the offence also ropes the female members of 'accused husband', but never the male or female members of wife. The accusation on male got justified because of the excuse based upon the fact that the society is male dominated or the patriarchal one. This is basically the fact that so far the coin had been seen only from single side and not from the both. The other face of the coin remains neglected. The other face of the coin is the fact that the cruelty can be exercised on males too. The records and surveys also speak about the same injustice and biasness. This paper deals with the injustice and the indifferent treatment which has been imparted upon the husband and his relatives. The matrimonial bond had been considered as sacramental bond since ages. But amongst the women who are aware of such provisions, there are few who use these provisions for their evil motive, ultimately tarnishing this sacramental bond and hence, degrading the societal norms and creating mistrust in society as a whole. The aim which had been thought off by the legislature to achieve by adding Section 498-A of Indian Penal Code got dissipated and the objective related to it became the secondary aspect. The destruction made by the respective section had been given it a disrepute. The section was meant to be a tool to protect her and to enable her to profess the equality and the justice as enshrined in the Constitution of India, but now is it is more used by the evil minded women as a tool for unjust enrichment, rather than a medium for which such section was formulated. This is now a tool for vindictive propaganda. This false accusation of cruelty is

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nothing but an actual cruelty upon the husband and his relatives. Such false accusation leads to the deterioration of their reputation, wealth, time, trust etc.. This harassment and torture which they have to suffer can be eased out by acquitting them but whether it is an appropriate and satisfactory remedy? Is this a proper and efficient justice? Just acquitting the so called accused can never pay back. Anyone filing for the false accusation should be punished accordingly and the time and justice also demands to revisit the cruelty provision.

Keyword: Cruelty, Gender-sensitization, Amendment, False-accusation, Relatives

1. Introduction

“The family is the simplest and smallest unit of society and the real fountain of culture. If this fountain remains pure, man's culture has promise. But if it becomes polluted, all the rest will turn to dust and ashes, since the home is the foundation of the entire social structure.”²

For a family to be the smallest unit and for the proper and systematic functioning of this unit the person needs to enter into the institution of marriage regardless of the religion to which he belongs. Various authors and authorities define marriages of some religious as sacrament and of others as contract. But observing keenly, in practical sense each and every religion in India regard marriage as an eternal bond and hence, a sacrament. Sacrament is obviously seen as a pure concept, but various instances take place which tarnish this pure sacrament, hence adversely affecting the whole society, as the family being the smallest unit of the society. This sacrament could only be practiced by both the man and woman being party to the marriage. Such a pure institution many a times get covered by the cloud of ego, misunderstandings, back-biting, the avariciousness for dowry etc. and hence, creating mistrust, bitterness in relation, and hence, many times leading to the cruelty and torture of other partner. This cruelty ultimately destroys the institution of marriage. Every person is invested with the right to live with the dignified life.³ A dignified life is an essential to the free-mind living and the over-all development of the person. Honorable Justice J D.Y.Chandrachud also stated that, “Human Dignity is the integral part of the Constitution. Reflections of dignity are found in the Guarantee against arbitrariness (Article 14), the lamps of freedom (Article 19) and in the right to life and personal liberty (Article 21).”⁴ The Constitution

² Henry R. Van Til, The Calvinistic Concept of Culture

³ Maneka Gandhi vs. Union Of India, A.I.R 1978 S.C. 597

⁴ K.S.Puttaswamy v. Union of India, (2017) 10 S.C.C. 1, Para 108

of India also envisages the “Protection of life and personal liberty”⁵ to be the fundamental right. The Secretary-General in his message on United Nations Day said, “When we achieve human rights and human dignity for all people - they will build a peaceful, sustainable, and just world.”⁶ But when the cruelty is practiced on any person then it is the fundamental as well as the natural right violation of the victim. “Natural Rights are inalienable because they are inseparable from the human personality.”⁷ Even in jurisprudential studies the distinguished jurist John Locke supported the right to preserve life and property and perfect equality and freedom to be the concoction of the natural right.

One of the instances where the personal liberty and life suffer a threat is cruelty in the institution of marriage. This superiority could be of various categories. For instance, physical superiority, mental superiority, financial superiority or it could be just the social superiority based on the patriarchal nature of society. Just because of the feeling of the superiority of the particular gender the husband tends to show the dominance over the wife. The most appropriate instance amongst all is the dowry demand. The demand of dowry by husband and the relative of husband create the pressure upon the bride and the family of the bride to fulfill the demand and there begins the realm of cruelty. The cases of dowry death and the burning of the bride were becoming more and more common. Also, the torture which was imparted to the victim to meet the demands were on the surge which lead to mental pressure and ultimately the decision of suicide was taken by the victim. The lawmakers and the constitution framers were aware of the pathetic condition of the women in the Indian Society and hence, they contemplated to insert Article 15(3) of the Constitution which lays down that, “Nothing in this article shall prevent the State from making any special provision for women and children”. This is an enabling provision which empowers the state to frame various laws that could be beneficial for the development of the women and to render them a dignified life.

Therefore, to protect resulting evil consequences of the prevailing gender inequality and threat to the lives of women, the legislature in the year 1983, inserted Chapter XX-A, entitling “Of cruelty by Husband or the Relatives of Husband”. This chapter was inserted to act as a preventive measure towards the women who suffer cruelty by their husband or the relatives of the husband. “In a

⁵ INDIA CONST. art. 21

⁶ UNITED NATIONS, <https://www.un.org/sg/en/content/sg/statement/2017-10-24/secretary-generals-message- united-nations-day> (last visited on Sept. 19, 2022)

⁷ K.S.Puttaswamy v. Union of India, (2017) 10 S.C.C. 1, para 42

civilized society male chauvinism has no room. The Constitution of India confers the affirmative rights on woman and the said rights are perceptible from Article 15 of Constitution. When the right is conferred under Constitution, it has to be understood that there is no condescension. A man should not put his ego or, for that matter, masculinity on a pedestal and abandon the concept of civility. Egoism must succumb to law Equality has to be regarded as the summum bonum of the constitutional principle in such context.”⁸

The recent report of National Crime Record Bureau, 2021 shows that there is rise in crime against women. Crime against women rose by 15.3 per cent in 2021 from the previous year, according to latest data released by the National Crime Records Bureau (NCRB), with 4,28,278 cases registered last year following 3,71,503 cases in 2020.⁹ Out of these, ‘Cruelty by Husband or His Relatives’ saw the most number of cases, i.e., 31.8%.¹⁰

But unfortunately, every coin has two sides. When this new inserted provision successfully acted as a preventive measure to protect the woman, the woman on the other hand started to use it as a tool to coerce their in-laws so as to satisfy their wants. It is an alarming situation that the misuse of such provisions can ruin the life various people and it’s the time for legislature to take an action to prevent such vexatious allegations.

2. Essential ingredients of Section 498-A: The essential ingredients of Section 498-A of Indian Penal Code are as follows:

2.1: The woman must be married: Section 498-A is applicable in the status of marital relationship only. The woman must be married and there must be the color of the existing married relationship. The term ‘woman’ used in the concerned section is the general terminology and includes the wife of all types of marriages. The honorable Supreme Court in the case of *Shivcharan Lal Verma and others vs. State of Madhya Pradesh*¹¹ in its 3 judges’ bench decision ruled that for valid applicability of section 498-A there must be valid marital relationship between man and woman. Further in various other cases the Honorable Supreme Court was still of view that there should be some sort of ceremonies with the object of getting married. The status of the validity of

⁸ Pawan Kumar vs. State of H.P.,(2017) 7 S.C.C. 780, para 48

⁹ THEINDIAN EXPRESS, <https://indianexpress.com/article/india/crime-against-women-rose-by-15-3-in-2021-ncrb-8119739/> (last visited on Nov.19 2022)

¹⁰ <https://ncrb.gov.in/sites/default/files> (last visited Nov.22, 2022)

¹¹Shivcharan Lal Verma and others vs. State of Madhya Pradesh, (2007) 15 S.C.C. 369

marriage does not affect the applicability of the said section. Even the bigamous marriage between the wife and husband cannot shelter the husband behind the smoke screen on pretext of marriage being not valid, and hence, still the husband can be made liable under Section 498-A of Indian Penal Code.¹² But the man and woman living in live-in relationship cannot attract the provisions of section 498-A.¹³

2.2: She must be subjected to cruelty or harassment: With a view to attract the applicability of the Section 498-A of Indian Penal Code, it must be the established fact that the woman was subjected to cruelty with a view to coerce her to practice bodily injury to herself which is grave in nature or to commit suicide. Cruelty not being the subjective concept differs from facts and circumstances of each case. It depends upon person to person on whom the cruelty is performed. The cruelty must be such as to drive the normal frame of mind of the victim. To understand this ingredient the word 'cruelty' must be understood. Cruelty is a multi-faceted concept. Cruelty cannot be defined in isolation; rather to define cruelty there is needed to understand the various dimensions of it.

Black's Law Dictionary defines cruelty as, "The intentional and malicious infliction of mental or physical suffering on a living creature especially a human; abusive treatment; outrage."

In the sequence of defining cruelty the Black's Law Dictionary further defined the term extreme cruelty "As a ground of divorce, one spouse's physical violence towards the other spouse, or conduct that destroys or severely impairs the other spouse's mental health."

D. Tolstoy's "Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such a character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger."¹⁴

Thus, to constitute cruelty, element present can be both mental as well as physical as well as any one of them. But it should also be taken into consideration that what is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case.¹⁵

¹² Reema Aggarwal vs.. Anupam Appeal (crl.) 25 of 2004

¹³ Unikrishnan vs. State of Kerala (2018) CrLJ 265 (Ker)

¹⁴ D. Tolstoy', *The Law and Practice of Divorce and Matrimonial Causes* 61 (6th ed. 1967).

¹⁵ Samar Ghosh vs Jaya Ghosh Appeal, (2007) 4 S.C.C. 511

There is no straight jacket formula to establish the fixed criteria to constitute cruelty as each case varies from each other and depends upon the facts and circumstances of each case and according to the social or economic strata of the person concerned. Few instances of cruelty can be that even the absence of mutual respect and understanding between spouses¹⁶, abnormal conduct of one spouse or the conduct of the spouse below accepted norm of one partner¹⁷, etc. can also constitute cruelty. Generalization cannot be done of the concerned issue. The cruelty as given under Section 498-A of Indian Penal Code has been aptly explained in the clauses (a) and (b) of the explanation. The explanation points out that the cruelty and harassment of wife would be constituted:

1. when the wife tends to cause grave bodily injury to herself, or;
2. to commit suicide, or;
3. To fulfill the illegal demand for the dowry.

But this explanation of cruelty could be a ground of divorce but to constitute an offence under Section 498-A of Indian Penal Code there should be something grave in nature.

2.3: Cruelty must be by husband or the relatives of the husband: The term 'Relative' means the relationship arising out of blood, marriage or the adoption. Thus all the relation that arises out of the blood relation to a man is within the scope of the relation. Moreover, considering the point that whether the relationship arising out of marriage or another wife of the man could also be admitted to the ambit of relative of husband? Then, the answer to such can be in the affirmative. The cruelty towards the first wife by the second wife comes within the ambit of Section 498-A. Also, the affiliation of the second wife is inclusive in the term relative of Husband. But, the scope of the interpretation of the term 'relative of husband' nowhere includes the concubine of the husband; as such relationship does not arise out of blood, marriage or adoption.

3. Causes of Cruelty:

Nothing occurs in the vacuum. For cruelty there are various factors which contribute in constituting the offence. For understanding the concept of cruelty there is need to understand the cause. There could be various causes which can lead husband and the relatives of husband to practice cruelty upon the wife. Few reasons can be as follows:

3.1: Greedy demand of dowry: The persistent demand for the dowry puts the victim in the state

¹⁶ Ravi Kumar vs. Zulmi Devi (2010), 4 S.C.C. 476

¹⁷ Manisha Tyagi vs. Deepak Kumar, A.I.R 2010 S.C. 1042

of tension and frustration. Because if we consider the social factor as well as personal factor and the way the Indian daughters are brought up, the daughters after their marriage do not want to be burden on her parents and hence she hesitate in putting forward the demands to her parents. On the other hand the in laws of the victim pressurizes her to ask for the same and they want to make their fortune by the money and property out of the hard earned money of the parents of their daughter in law. Seeing the pitiful condition of the victim the husband and the relatives of husband ask the victim to fulfill their demand for dowry thereby harassing the victim.

3.2: Dominance: In the Indian society it is a pattern to show that the groom's side of family is more superior than that of the bride's family and in following the age old same pattern the husband and the in-laws of victim exceeds the required amount of the ostentatious behaviour and that ultimately results in the cruelty. Many a times they also use inhumane means to treat her as a subject and tends to dominate her.

3.3: Extra-marital affairs: Talking practically, the wish of husband to marry another woman and to coerce the earlier wife to give divorce or to allow the husband to enter into another marriage also tends the in-laws to treat the victim in inhumane manner.

3.4: Pre-marriage relation of wife: In case the bride had a relationship with any person other than the groom before her marriage and the husband and in-laws of the victim gets to the same then it also results in the cruelty towards the bride.

3.5: Expecting only her to adjust: The rigid behavior of the husband and the in-laws of the wife majority of times expect only the victim to adjust with the new house and new people and they do not try to be flexible enough so as to assist her in adjusting. They do not even try to make the condition of the house so amicable enough so as to make the new member of the family comfortable amongst them.

3.6: Vexatious social stigma: The age old fake reputation in which the old member of the family have to show their relatives and the friends that their daughter in law listen to them and dare not to do anything without their permission also tends to make the lives of the daughter in law miserable.

4. Analysis of Section 498-A with other relevant provisions:

Any of the legal provisions of the existing laws could not operate in vacuum and they have other provisions also which act as complementary to each other and they function properly with the support of each other. The study of Section 498-A tends to be incomplete without the study of some other provisions of the Indian Penal Code as well of the Indian Evidence Act. The deep analysis and the constituting force of Section 498-A leads to the contributing factors and for instance few of them are cruelty, suicide, dowry death. The object behind the in-depth analysis is that, the torture or the harassment must be of such a nature so to drive the women out of her stable mental frame. Due to her disturbed mental frame she must be having self-killing instinct. Thus, the ingredients constituting cruelty consists of both mental as well as physical cruelty. The instinct to commit suicide is the reflection of mental cruelty and the tendency to cause grave injury to her body itself reflects the physical injury. But, on a word of caution, the act driving the mental frame of woman to cause the injury or to commit suicide is not the innocent act of the accused. Such act is done deliberately and with 'intention'. The component of mens rea is well founded in such acts. If any act is done by the husband of the victim or the relative of the husband which in itself is a normal act and the intention part is missing in it then it will not constitute cruelty upon the wife. To analyze further and also to promote further the objects of the protection of women from the menace of the dowry extortion and cruelty concept for such purpose Section 113-A and 113-B of Indian Evidence Act comes into play.

4.1: Section 113-A: Section 113-A was added by the Act 46 of 1983 so as to eradicate the social evil of the suicide by the married women due to cruelty practiced upon her by her in-laws or by her husband. The connection between Section 498-A of the Indian Penal Code and Section 113-A of Indian Evidence Act is that the explanation attached to Section 113-A of said Act defines cruelty to be the same that of Section 498-A. Due to the nature of the offence which takes place within the four walls of the house, the matter of privacy prohibits the evidence to be collected. The physical injuries and tortures can be recognized by due medical examination but the mental torture could not be measured. Thus, keeping in mind the fact that the evidence cannot be collected the legislature made a provision to make a prima facie case for the person in whose favor the presumption is raised. Thus, there is the presumption concept, i.e., the presumption could be raised on the point when the criteria lay down by the Section 113-A and 113-B are fulfilled. The presumption for Section 113-A is that the married woman must have committed suicide within seven years of marriage. Along with the suicide the ingredients of the Section 498-A Indian Penal

Code must have been fulfilled to raise the presumption. On the other hand Section 306 of Indian Penal Code lays down, “Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”. This section before the inclusion of Section 113-A was of no use in regard to suicide committed by the married women as no presumption could have been raised in this regard and the case could not be attached in whole with the section 498-A of Indian Penal Code. Thus the inclusion of Section 113-A resulted in the proper functioning of Section 306 Indian Penal Code for the protection of married women from the menace of the society. For the clarification of doubt Section 113-A does not lay down for the creation of any substantial right but it is matter of procedure only.¹⁸

4.2: Section 113-B: Section 113-B raises a presumption that if a woman died and before her death she was subjected to cruelty by her husband or by her in laws then the cause of her death is demand of dowry. For the purpose of Section 113-B also the term cruelty will derive its meaning from section 498-A of Indian Penal Code. The presumption of section 113-B will come into play when few conditions are fulfilled. The conditions are that the women should have died because of burns or the bodily injury or if she had died under normal circumstances then the death should have occurred within seven years of marriage. But it is necessary element that it should be evident from the existing facts that soon before her death she was subjected to cruelty by her husband or by her in-laws. Therefore, if these conditions are fulfilled then the presumption is raised against the accused and hence the onus of proof shifts upon the accused to prove against the same.

Thus, the legislature with the aim and objective of providing a secure life to the married women and to eradicate the menace of the dowry demands and the torture which the brides were surviving, framed the relevant provisions which could serve the purpose. Also by framing such provisions, legislature aimed to fill the lacuna regarding the enforcement of such provisions which remained eclipsed but to non availability of the enabling and supportive provisions.

4.3: The Protection of women from Domestic Violence Act, 2005: This Act was enforced by the Parliament in 2006. The purpose of the Act was to curb down the offences of domestic violence but due to improper implementation the women are still at the receiving end.¹⁹ As per the Act the

¹⁸ Gurbachan Singh vs. Satpal Singh, A.I.R. 1980 S.C. 209

¹⁹ Maran Nama v. State of Tripura (2010), 90 A.I.C. 833 (Gau)

objective stated is “to provide for more effective protection of the rights of the women guaranteed under the Constitution who are victims of the violence of any kind occurring within the family and for matters connected therewith or incidental thereto.”²⁰ Thus, laying down such objective the Act, the legislature provided for various facilities through orders and the officers as enumerated in the Act, such as, appointment of protection officers, establishment of shelter homes and provisions relating to the service providers. It also provides for various reliefs such as providing counseling, providing of assistance of welfare expert, protection orders, residence orders, monetary reliefs, custody orders, etc.

4.4: Dowry Prohibition Act, 1961: Act 28 of 1961 was enacted with the objective of prohibiting the giving and taking of dowry. This Act was enacted with the motive to tackle with the menace of the dowry system which was prevalent in the Indian social system. Practically, the dowry system is still prevalent in India not in it’s original form but in a disguise. The implementation of the law is being carried out by the government but not in such a way as to properly curb it down. A way better implementation of the same law can still be carried out.

5. Dark side of 498-A:

The purpose and object of section 498-A of Indian Penal Code is in compliance with the constitutional essence so as to provide a protection as aspired by the Constitution under Chapter III and also under Chapter IV. Section 498-A also provide sense of security to the woman who were remediless in the hands of their in-laws just because of the purpose of dowry extortion and other contributing factors. The legislative intent was just to create a sense of equality and justice towards the women in the midst of the rising cases of the cruelty. Holding the constitutional validity of Section 498-A held that, “Provision of S. 498A of Penal Code is not unconstitutional and ultra vires. Mere possibility of abuse of a provision of law does not per se invalidate legislation. Hence plea that S. 498A has no legal or constitutional foundation is not tenable. The object of the provisions is prevention of the dowry menace. But many instances have come to light where the complaints are not bona fide and have been filed with oblique motive.”²¹

But, the thing turned towards the unexpected side. Section 498-A of Indian Penal Code has subsequently and ultimately became the devil’s weapon with the passage of time. The section was

²⁰ THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, No. 43, Acts of Parliament, 2005 (India)

²¹ Sushil Kumar Sharma v. Union of India and others, (2005) 6 S.C.C. 281

formulated and inserted for the protection of women but it is the same women who are using it as a tool to fulfill their needs and self-centered attitude.

“There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the 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 498-A 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. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested.”²²

With the passage of time various changes took place in the society which caused women to adopt such a way which ultimately caused the misuse of the law. Few of the causes can be enumerated as under:

4.1: Non-fulfillment of fantasies: Most of the times the bar which is set by the girl who is going to be married is set at such a high level that is not possible in real world to be fulfilled but could only be possible in the reel world. The fantasies driven by the television serials and the movies prove to be harmful in the real life and amicable married life. The dreams aspired by the girls due to effect of the social media and traditional television serials proves to be harmful for the real life.

4.2: Un-willingness to live in the joint family: Due to continuous guidance and interference by the elderly persons of the family to different aspects of life the wife feels frustrated to life together and becomes keen to live separately with no interference by any other relatives. But when these expectations are not met then she feels frustrated and this unrest ultimately leading to the misuse of the law.

4.3: Extra-marital Affairs: Many a times due to the relationship or the interest of the woman outside the wedlock is the dangerous step in which she tries to make fortune out of the income and property of husband on the advice of the paramour. To do so, she coerces the husband and the in-laws to fulfill her demand, otherwise they have to suffer the false accusations.

²² Arnesh Kumar vs. State Of Bihar & Anr., (2014) 8 S.C.C. 273

4.4: Pre-marriage affair: The forceful marriage of the girl with the accused paves the way towards the false accusations as the marriage was forceful and she is not willing to live with the accused and her in-laws.

4.5: Concealment by husband regarding his worth and profession: It is also the fact in several cases that before marriage the boy's side just to make their ostentatious reputation in front of society tells a lie that their son is having a hefty amount of income and is having a highly reputable job. But after marriage the wife finds the truth and then to retaliate from this, she files the false complaint accusing the husband and the in-laws.

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.²³ This ultimately ruins the institution of marriage. It not only affects the relationship of husband and wife but it obviously and without any doubt ruins two different families. Ultimately the society gets affected. As soon as the complaints are genuine the law and justice comes to rescue but when the allegations are false it results in adverse effect upon the law, justice, matrimonial bond, amicable family life, reputation, etc. The worst part being the fact that the malcontent does not only accuse husband but without the second thought they accuse their in-laws without acknowledging their age, situation, etc. As quoted in the Arnesh Kumar judgment, court felt pity for the situation when the bed-ridden elderly members are also filed under complaint.

In the case of *Bibi Parwana Khatoon & Anr Vs State of Bihar*²⁴, sister in law and the brother in law of the deceased were not present at the place of the incident still they were convicted and sentenced under Section 304B read with Section 34 of Indian Penal Code (IPC). Honorable Supreme Court recognized the fact that they were not present at the place of the incident and hence they were acquitted of the concerned charges.

Same unfortunate event happened in the recent case *Jyoti Ganesh Patil vs. State of Maharashtra*²⁵, in which the Aurangabad Bench of the Bombay High Court raised its concern that relatives of the husband are being vaguely roped in the cases. Observing the issue, High Court quoted "Time and

²³ Preeti Gupta & Anr vs. State of Jharkhand & Anr., A.I.R 2010 S.C. 3363

²⁴ (2017) 6 S.C.C. 792

²⁵ 919 CRIMINAL APPLICATION NO.440 OF 2022

again, this court as well as the Supreme Court has observed that it is a fashion to array all the relatives of the husband as respondents or to make them as a accused in a complaint under Section 498-A of the Indian Penal Code and it shows the misuse of the proceeding of the law, still the instances have not reduced. Such poor relatives, who were never staying with the husband, cannot be asked to face the proceedings on some stray statements about the domestic violence.”²⁶

Thus, the defense mechanism which was formulated by the legislature for the women became the weapon in the hands of devil so as to harass the members of matrimonial house and to make them suffer. The nearer as well as the remote relatives are all being included by the unsatisfied or unfortunate wife for purpose of her personal contentment. A step is needed to be taken so as to stop this menace otherwise the misuse of law will never stop ruining the innocent lives.

5. Protecting the basic essence of Section 498-A:

Crime has always been considered as wrong against society since time immemorial. Moreover, there is no doubt that the women had always been subjected to cruelty. Thus, for the protection of the women they had been granted the qualification to be the privileged section of the society. The law makers always prioritized the framing of laws and policies in such a way so that the interest of the women can be safeguarded. The framers of the Constitution made the special mention of the women for granting of the fundamental rights and also they have been given place in the fundamental duties for the sake of protecting their interest. But the disturbance in the balancing of interest of society comes into play when the said prioritized section of the society starts to exploit the provisions made for their protection. In such a scenario the chaotic situation erupts as to who has to be termed as victim and who will be termed as accused. This is question of dismay and inquietude.

Recognizing the same injustice which is made by Section 498-A and its accompanying laws the Honorable Supreme Court through its various verdicts, tried to control the devastation caused so far.

The biggest stain in relation to a crime is arrest. The biggest humiliation which the so called dominant ones can face is that of arrest. Irrespective of the fact that the person had committed crime of not, but prima facie he gets arrested. From this moment the mental as well as physical

²⁶ ibid

harassment of the arrestee begins. Dealing with same grave issue, Honorable Supreme Court in *Arnesh Kumar vs. State of Bihar & Anr*²⁷, laid down various advisories regarding arrest. Supreme Court showed its concern over the attitude of the police of prima facie arresting the accused and then proceeding with the investigation. Court explicitly observed that, “no arrest should be made only because the offence is non-bailable and cognizable.” Observing further, “no arrest can be made in a routine manner on a mere allegation of commission of offence made against a person.” Supreme Court advised the police officials to not to give priority to the conducting of arrest procedures but to use their own conscience as to whether the arrest is needed in the case or not. Court was of the view that the arrest should not be misused. Observing further the Honorable judges advised the police officers to use the test of reasonable satisfaction with respect to the allegations imposed.

The apex court expected the police officers to not to blindly arrest the person but to genuinely use the grounds which are given under Section 41(1) (b), i.e., reasonable complaint or credible information or the reasonable suspicion because the offence under Section 498-A of Indian Penal Code is punishable up to three years of imprisonment and also with fine. Thus, the police officers should first examine the genuineness of the complaint and then on being satisfied about the same proceed to arrest the persons.

The prevention from arrest is to be made on the reasonable grounds, so that on the one hand the real accused cannot roam free and on the other the person who is suffering the false accusations could not be arrested wrongfully. A balance has to be maintained between the protection of life, liberty and dignity of the victim as well as of the accused. But this was just the protection from arrest. The Honorable Court tried to pave the way for the protection of the matrimonial bond and hence, the Honorable court in another decision²⁸ laid down for the constitution of Family Welfare Committee in every district for receiving the complaints lodged by the women, even before the police take the cognizance on it. The working of the committee sanctioned for the reviewing of the complaint first and after that on the approval by the committee police can take cognizance. But this committee proved to be the hurdle in the proper investigation of the case and also proved to be the demon in disguise for the real suffering of the victims. This inappropriate measure was ratified by the Honorable Supreme Court in another case of *Social Action Forum for Manav*

²⁷ (2014) 8 S.C.C 273

²⁸ Rajesh Sharma vs. State of Uttar Pradesh [Criminal Appeal No.1265 of 2017]

*Adhikar vs. Union of India*²⁹. In this case court admitted the fact that ordering the constitution of Family Welfare Committee will cause an obstacle in the investigation and also it will cause the judicial over reach as it is work of legislature to make laws.

6. Re-evaluating Section 498-A of Indian Penal Code:

The turmoil caused by Section 498-A of Indian Penal Code, could not only be handled by the judicial decisions, rather it needs some effective legislation so that the havoc which is caused to the basic essence of the justice and equity can further be brought to an end. Therefore, Honorable Supreme Court in the case of *Ramgopal vs. State of Madhya Pradesh*³⁰ referred a request to the Law Commission and also to the Government of India to deal with the question about the compoundability of the offence under Section 498-A Of Indian Penal Code. As a result the Law Commission made its 237th Report which covered the issue related to “Compounding of IPC Offences.” This report of the Law Commission suggested that the punishment under Section 498-A of Indian Penal Code could be made compoundable with the permission of court.

But the suggestion could not be transformed to the legislation. Time and again the Supreme Court in the case of *Preeti Gupta vs. State of Jharkhand*³¹, suggested the Law Commission to take a re-look at the provision. Again as a result the Law Commission in its 243rd Report Suggested of making the Section 498-A of Indian Penal Code as a compoundable offence.

In the 243rd Report, Commission gave various other suggestions so as to ease the provision of the said section and to prevent the misuse. Commission also suggested attaching the compounding of said offence with the three months of cooling off period. The commission along with the suggestion of following Section 41 and 41A of Code of Criminal Procedure in letter and spirit also suggested monitoring the mechanism of the police departments so as to keep a track of Section 498- A cases.

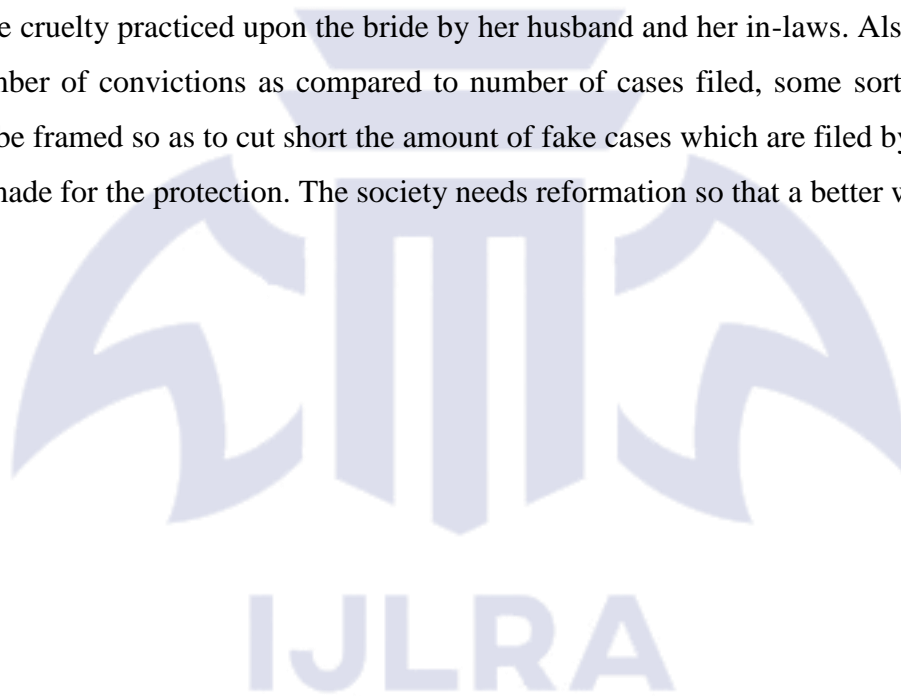
²⁹ A.I.R. 2008 S.C. 4273

³⁰ 2010 (13) S.C.C. 540

³¹ 2010 7 S.C.C. 667

7. Conclusion:

After the decision of *Social Action Forum for Manav Adhikar vs. Union of India*³², the situation which was prevalent at the time of the decision of *Arnesh Kumar vs. State of Bihar*³³, maintained status quo. The catastrophic situation which was prevalent before Arnesh Kumar decision throttling the reputation and freedom of each and every relative of the husband without prima facie evidence against them continue to be prevalent even after Arnesh Kumar. The arbitrary arrest without following the legal provision of arrest in its letter and spirit still continued. The arrest should be made only after the full satisfaction about the credibility of the complaint. Moreover, to maintain the justice, harmony, peace etc. the suggestions of the Law Commission should be transformed into reality as soon as possible. Moreover, strive should be made to lessen the data regarding the cruelty practiced upon the bride by her husband and her in-laws. Also, considering the less number of convictions as compared to number of cases filed, some sort of provisions should also be framed so as to cut short the amount of fake cases which are filed by misusing the provisions made for the protection. The society needs reformation so that a better world could be achieved.



³² A.I.R. 2008 S.C. 4273

³³ (2014) 8 S.C.C. 273