

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

SECTION 498A IPC – AMMUNITION TO WOMEN OR INSULT OF LEGISATURE?

AUTHORED BY - BHOOMI JAIN

ABSTRACT

Our Indian Legislature consists of various legislation that were once developed as an ameliorative but soon became a source of harassment in the society. During the traditional times the dowry system was the most prevalent system in the society as men were the sole earner of the family but now as the women have also become a bread earner in the family, there comes a decline in the dowry cases. But to much of astonishment, there came a rise in the filing of false cases of cruelty against the husbands. There is a famous saying, “Behind every scar, lies a story”. But the story of the scars that are left on the husband, after being falsely framed by her wife in any gruesome case, is not heard by the society. The cry of men and his family that they are innocent are left unheard by this cruel society, who from the traditional times had this root developed in their mind, that women are always the victim and the men always the accused. But, no one should deny the fact that now the tables have turned, society has developed and the submissive women now have become dominant. The men who were earlier the attacker now have become the sufferer.

INTRODUCION

Section 498A of Indian Penal Code 1860 equivalent to Section 85 and Section 86 of Bharatiya Nyaya Sanhita 2023 primarily deals with the cruelty subjected to a married women by her husband or his relatives. It was basically provided as a shield to the married women to protect her from the pathetic reality of the domestic violence occurring within the four walls of a house in the ancient era. But in today’s modern era with the rise of financial independence of women, growing education system, modernization and false and overhyped radical feministic view, this shield has been converted to a hot weapon for the women or any of her relative against the husband or his family. It has become an advantageous instrument for wife to settle personal scores against the husband and his relatives.

Before dwelling in the depth of the misuse of Section 498A of Indian Penal Code 1860, let’s

first engage ourselves to understand what does our legislation says about the concerned section:

SECTION 498A - Husband or relative of husband of a woman subjecting her to cruelty¹

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation — For the purposes of this section, “cruelty” means—

- a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Section 498A of IPC, 1860 was inserted in the legislation in 1983 as a part of Criminal Law (Second Amendment) Act, owing to the rising instances of death of women due to “accidental kitchen fire” but it was later determined that the fatalities were deliberately caused by the husband or his relative for the dowry harassment or mental cruelty of married women. But now it has somewhere become a vengeance or a simple way to get out of a wedlock. This section has become a curse to the roots of marriages. The justice system has seen an evident rise in the filing of false cases under Section 498A of IPC by women or their relatives either to blackmail the husband to carry out any of her negative or unreasonable demand, or to dominate the husband, coercively influencing him to separate from his parents or transfer his property in the name of his wife, the other reasons can be that the women who came into wedlock due to her parents force now wants to opt out of the marriage and thus abuses 498A to obtain a divorce from the husband.

It must be perceived that although Section 498A was fueled with good intent and was proved to be a blessing for the simple and innocent souls who have been wounded by their husband but, the execution of the same is carried out in such an unjustified way that it has caused hindrance to achieve coveted end. The shield provided to the women now has taken a shape of a sword which makes it difficult for the married man to tackle thus, making it invincible. Justice’s principle is that it should be utilized to shield the weaker and make sure that the wronged is given a fair opportunity to rebut but when the wives accuse their husbands below

¹ Indian Penal Code, 1860

Section 498A IPC by creating the offence non bailable and cognizable, if the person is innocent he doesn't get an opportunity quickly to urge justice and "justice delayed is justice denied"

In 2003 Malimath Committee Report², it was duly observed by the committee formed by the Home ministry in 2000 that,

" There is a general complaint that section 498A of the IPC regarding cruelty by the husband or his relatives is subjected to gross misuse and many times operates against the interest of the wife herself. This offence is non-bailable and non-compoundable. Hence husband and other members of the family are arrested and can be behind the bars which may result in husband losing his job. Even if the wife is willing to condone and forgive the lapse of the husband and live in matrimony, this provision comes in the way of spouses returning to the matrimonial home. This hardship can be avoided by making the offence bailable and compoundable.

The Code may be suitably amended to make the offence under Section 498 A of the I.P.Code, bailable and compoundable. "

The Hon'ble Supreme Court in *Sushil Kumar Sharma vs Union of India*³ observed that "the object is to strike at the roots of dowry menace. But by misuse of the provision (Sec 498A) a new legal terrorism can be unleashed. The provision is intended to be used a shield and not assassins' weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears."

The NCRB Report⁴ reveals that a total of 111,549 cases were registered under Section 498A of IPC. Among these cases, 5,520 were deemed false by the police and 16,151 cases were closed due to reasons such as mistake of facts or law, insufficient evidence or civil disputes.

No matter how optimistic and benevolent intention was there of the lawmakers in drafting the Section 498A of IPC, but over the time, it has substantially been reduced to a puppet of harassment and torture. There is no denying in the fact that there are a lot of cases in which the actual female victims are more as compared to men but still there are a lot of cases observed by the Indian judiciary that are proved to be fake and filed on a mala fide intention. The apex court is continuously taking efforts to effectively distinguish between the false and actual cases of Section 498A IPC and thus, urging the concerned authorities to bring about a change in the same. There have been numerous judicial pronouncements that emphasized on the widespread

² Government of India, "Report of the Committee on Reforms of Criminal Justice System" (Ministry of Home Affairs, 2003).

³ AIR2005SC3100

⁴ Ministry of Home Affairs "National Crime Record Bureau Report 2020 on Crimes in India 2020"

abuse of the above mentioned law.

Some of the judicial precedents are:

1. State by Assistant Police vs Srikanth And Ors.⁵ – The Karnataka HC observed that the entire family must not be included in the investigation unless there is a concrete evidence against them in the cruelty subjected to women u/s 498A IPC and that it is outrageous for the police to name the entire family as accused party.
2. Arnesh Kumar vs State of Bihar⁶ - The court in this case observed that because the offence in this section is non bailable and cognizable, and thus, it is more often used as a weapon rather than the shield by the disgruntled wives. Moreover, it results in harassing the husband and his relatives by getting them arrested without a prima facie case. Thus the court in this regard issued certain guidelines which the police officer is mandated to follow while arresting a person under Section 498A IPC or Section 4 of Dowry Prohibition Act ,1961 and such arrest must be made on a reasonable satisfaction with respect to genuineness of the allegation and in addition to that magistrates must be careful enough not to authorise detention casually.
3. Rajesh Sharma vs State of U.P.⁷– The Supreme Court, in light of rising misuse of the legislation, gave certain directions to deal with the menace, except in the cases involving tangible physical injuries or death and ordered that the issued guidelines must be tried for atleast six months and then a suitable report by the National Legal Service Authority should be submitted about the effectiveness of the listed rules.
4. Swapan Kumar Das vs State of West Bengal⁸- The court stated that the Section 498A IPC was enacted by the legislature to strike the dowry menace out of the society but now it has been duly observed that by misusing the section and its power new legal terrorism is unleashed.
5. Prateek Bansal vs State of Rajasthan⁹ – The latest case about the misuse and abuse of Section 498A IPC had its judgement delivered on 20 April 2024 wherein the bench comprising of Justice Vikram Nath and Justice Prashant Kumar Mishra stated that the impugned proceedings u/s 498A IPC in this case ,is nothing but abuse of process of law wherein the complainant father and daughter, who is also a police officer, had been misusing their

⁵ 2002 CRILJ 3605

⁶ (2014) 8 SCC 273

⁷ (2017) SCC OnLine SC 821

⁸ 2023 SCC OnLine Cal 2427

⁹ 2024 INSC 324

official position by lodging the complaints one after the other against the husband under Section 498A IPC and thus, this practice of state machinery being misused for ulterior motives and causing mental harassment to husband is deprecated.

Thus, one should agree now that the provisions were mandatorily required to deal with the abuses and mishaps the women faces post her marriages by the husband or his relatives in regards to their greed for dowry or any other unreasonable demand, but now the tables have turned. The provision which was earlier a safeguard for the women now has become a disproportionate boon for a handful of females. Earlier due to insufficiency of data and resources, many cases went either unreported or did not get the proper legal remedy but as they are now being recognized, it is been observed that many innocent spouses and their families have impacted by the false reporting of cases under Section 498A of Indian Penal Code, 1860. Thus, now it has become really important for the concerned authorities to provide an indemnity to the male member as well so that his rights are not pointlessly contravened. It is although a bitter but the ardent reality of the Indian globe that neither the society nor the law values the voice of an injured men. The society has a stigma related to it that the husband is always wrong and greedy for the dowry from the wife and thus if any husband is reported for cruelty to his wife, though proved innocent by the court, but would never get a clean chit from the court of societal justice. He would always be seen as a culprit and would be marginalised by the society, no matter if he is innocent or guilty. Thus one should understand that the filing of cases under several sections of code, e.g. being Section 498 of Indian Penal Code, 1860, or Section 4 of Dowry Prohibition Act, 1961, leaves a huge impact on the accused and his family.

Consequently, one should acknowledge that if the misuse of the rules of marital violence are to be discouraged then the court and legislature should make some refinement. Some of the suggestions are :

1. Bailable – The offence u/s 498A IPC is more abusive and tormenting because of the fact that this offence is non bailable and thus, the unimpeachable person is unnecessarily languished in detention for weeks, pregnant sisters, aged parents are either left behind without anyone to take care of them or sometimes they are also rotten in jail until the final decision of the case arrives thus, it is advisable that this section should be ransomed.
2. Time-bound trial and investigation – A swift trial under this section would not only ensure a leverage of greater time for the innocent person to recover his rights using the appropriate remedies available, but would also help in the reduction of costs of the legal process for the poor family and the disposition of the true prosecution will also

increase.

3. Penalty for making false accusations – If any court concludes that the case registered is false and that the husband was made suffer innocently then stringent and tight actions should be taken against the accused. It will deter people to approach the courts with unclean hands from the next time and ulterior motives.
4. An investigation by civil authorities – The government should raise awareness among the officials about its misuse and the fact that they need not to be harsh on every husband and their families under this case until and unless, any supporting and strong evidences are found against them and that they should also cooperate with the accused and behave with them culturally.
5. Family counselling centres – The government should establish various family counselling and mediation centres so that the marital disputes are settled outside the court only and the issues can be solved amicably and consequently leading to reduction of filing of false cases under Section 498A IPC.
6. Roles of women NGOs – The government in collaboration with the women NGOs should raise awareness about the proper use of this section. Moreover, they should also make the women aware about the consequences of filing false cases under this section. These measures can reduce the likelihood of misuse of this section.
7. Compoundable – The offence under this section should be made compoundable with the permission of court and with a cooling off period of 3 months. This is also recommended by the Law Commission in its 237 Report.

It can be very well proved now that misuse of Section 498A IPC is not a rumour and that in today's era women can very well form a conspiracy against their husband and their families and register them under a false rule. Most of the cases still remain unresolved and the square measure of husbands paying maintenance to their wife just because he is husband doesn't mean he is to blame for all the expenditures and benefits of the wife as one has to for sure agree on this point that ladies are scammer more than men in the society. This section is used by the wives to extort some cash from the husband and sympathy from the society. Section 498A IPC is surely for the protection of wife but also a harassment to husband and the in-laws by a spouse.

The effect on the society on the basis of this example is terribly unhealthy. The Law Commission¹⁰ also addressed this issue whereby they recommended that there should be a

¹⁰ Law Commission of India "243 Report on Section 498A IPC (August 2012)"

specific provision to punish those women who file case for extraneous reasons under Section 498A IPC. The abuse of the section however does not mean that one is removing the usefulness of the laws that is successful in impacting the wider public interests. Therefore, the perspective of state and the people must change from using it for false and unreal reasons for the concerned laws of domestic violence to that to implementing it for more real purposes in the society.

