

ISSN: 2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

[www.ijlra.com](http://www.ijlra.com)

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# **CRITICAL EVALUATION OF SECTION 498A OF THE INDIAN PENAL CODE IN LIGHT OF THE RECENT GUIDELINES GIVEN BY THE SUPREME COURT**

AUTHORED BY - MS. ANUSHKA BHADURI

## **Abstract**

A family is a basic institution of society. It is bridged either by blood or a marriage or through adoption. It has an immense influence from the time of birth to the death of an individual. A marriage is a foundation between a man and a woman and a principle tool which leads to the enlargement of a family. Though even in the modern society today, this very holy foundation of marriage aches from a crucial communal evil that is dowry. The current position of females in a civilization, depicts the very extent of the 'stage of evolution', to where a civilization has transpired. The cruelty or oppression against women from the Vedic times to the modern era has always questioned the position of women in our society. Hence, the enforcement of Section 498A of the Indian Penal Code, 1860 acted significant in combating cruelty against females and in curbing out the social evils and bring about a social reform. The primary need of the law was to hinder dowry related violence. Section 498A and section 304B which deals with dowry death compliments each other. Huge proportion of women have exploited immense powers given in application of Section 498A to abuse spouses and his family and get an unfair advantage. Ultimately, motive of the section, that is to protect females in true cases of cruelty, is under threat due to the misuse done by women these days. However, with the recent passage of time there has been major landmark judgments that has created helpful guidelines passed by the Hon'ble Courts which has led to the creation of certain remedies to counter the misuse of Section 498A. Also, there are provisions in certain legislative Acts which can be used as remedies to fight against the false allegations. When justice is delayed then justice is not served and when wives falsely accuse their spouse of 498A IPC, there is no way for the husband to get justice quickly. Therefore, the lawmakers must come up with a mechanism to ensure that the provision is neutral so that justice is served on the both sides.

## Analysis of Section 498A, Indian Penal Code, 1860

A dowry is any form of materialistic good or a monetary gain that the man collects from the wife's family during commencement of the marriage. It is typically seen that during dowry, the husband exerts mental and sometimes physical pressure on the wife and her family. The wives are usually abused, maltreated and sometimes even divorced or murdered for the simple reason of them not being able to comply or fulfill the demands. Due to disgrace affiliated with the reporting of cases and with the mindset of what the rest of the society thinks, the actual number of cases reported against social evils like dowry paints a very inaccurate canvas. Only when the victim commits suicide, suffers death or pursues medical care for the injuries caused by such subjects, the matter of dowry reaches police station & the judiciary. Misuse of smaller gravity often buried unreported. There have been no statute in the Indian judiciary addressing such domestic abuse preceding 1983. Hence, for guarding safety & protecting brutality that women encounter inside their home, the section was introduced in the code which protects a women against cruelty throughout a marriage.

With the recent changes of laws in India, it is now a punishable offence that cannot be resolved outside of courts. In 1983, with the second amendment of the Criminal Law Act, Section 498A was added to the IPC, 1860. Aim of the said provision, is to safeguard the wives against the tortures of the husband or his family for dowry and to penalize him and/or the family members for doing so. Thus, this provision presented itself as a major amendment which safeguarded the women rights and also empowering them to stand against any kind of extortion. It is seen that in our society about 80% of the cases relating to domestic violence or cruelty are somewhat related to dowry. Hence, such provisions and amendments were a necessity for the prevention of women against abuse and for such acts to majorly stand alone as an anti dowry act in India.<sup>1</sup>

Now let us talk about Section 498A and its goals. Parliament marked multiple layers that are important to address the atrocious crimes against women such as:

- a. Explain the fundamental offence of cruelty towards woman by husband & the family of the husband.
- b. To execute policy, that need a investigation onto certain death of woman.
- c. For bringing justice efficiently to the woman against the offender, it is important to formulate

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<sup>1</sup> <https://blog.ipleaders.in/498a-of-ipc/?amp=1>

Due to such issue, the IPC, 1860, was formed to comprise both the Section 304B (Dowry death) & 498A. The goal of the said section, is to protect woman against the harassment of their spouse and husband's family. A fine of Rs. 30,000 and a maximum sentence of 3 years has been set.<sup>2</sup>

For the application of this section, certain requirements should be met. They are:

- i. The woman should be married.
- ii. The woman should be treated to abuse. Demanding dowry is harsh in itself.
- iii. Such abuse should be subjected either by the husband or the spouse's family if not both.

The nature of the offence of Section 498A can be enlisted as:

- i. **Non-bailable:** When there is a complaint against this section, the magistrate has the power to not give bail and transport the accused to the court & police without any requirement of hearing.
- ii. **Cognizable:** These are such offences where the police do not need a warrant for arrest.
- iii. **Non-compoundable:** Cases that are non-compoundable in nature, the complainant cannot revoke their complaint i.e, settle the case outside the court.

Both intentional and unintentional harm are protected under Section 498A. According to it, the following acts account for cruelty against women:

- i. Intentionally provoking a woman to commit suicide.
- ii. Actions of the perpetrator if found intentional can result in facing charges.
- iii. An act of the perpetrator which may risk mental & physical condition.
- iv. Abusing the woman with the intention of receiving any tangible goods by compelling either the woman or her family members.
- v. Abusing the woman on the grounds of dowry.

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<sup>2</sup> Indian Penal Code, 1860, s 498A

## Misuse of Section 498A, Indian Penal Code, 1860

A massive proportion of women have exploited immense powers given application of Section 498A to abuse spouses & his family & get an unfairly advantage. Section 498A is used by women who want to take revenge on their husbands to intimidate and pressurize their relatives.

The Apex Court, acknowledged growing tradition of men getting accused untruly under this section, naming it a phenomenon & a communal disease. As it is observed in Sushil Kumar Sharma vs. Union Of India And Ors (1997) 5 SCC 536, "Legal Terrorism"<sup>3</sup> explains the misuse of the said section. Also, innocent family members such as the elders, are often wrongfully prosecuted and suffer immense harassment through justice system. The ultimate motive of the section is to protect females in true cases of cruelty, is under threat due to false allegations these days. The crime U/S 498A is both cognizable and non-cognizable & in present day females are quite aware of how powerful the section stands.

With a single complaint, females can send their spouse and spouse's family to jail. Defending a charge against the clause may be difficult, as complainant's word holds more power & the story in her complaint is harder to counter. After a report, wives may force their husband to complete a divorce, increase alimony or even outright blackmail. This is a regular method of abuse relating to the section, which actually intends to serve justice in actual case of cruelty. Increasingly, wives make fake accusations towards their husband in order to humiliate the entire family, or instead eliminate them from her life. This trend is contrary to the spirit of the said regulation. Abuse is very common in this provision & most educated wives are completely aware that the section is non-bailable & cognizable, as that the police have to act quickly on a report and arrest their spouse.

## Remedies of Section 498A of Indian Penal Code, 1860

Let us look at some remedies or precautions that a husband, his family and relatives can take in case of a false case under the section 498A of IPC. Listed below there are, multiple remedies that might help a person falsely accused of the said section:

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<sup>3</sup> <https://sahodar.in/498a-a-legal-weapon/>

- A suit for defamation can be filed by the husband under Section 500 of the IPC. The husband has been given the opportunity to file a defamation case.
- He should gather evidence of criminal conspiracy against the wife. A woman whomisuses the law for their own interest can be charged under Section 120B of the IPC which states criminal conspiracy as a crime. A husband can apply to the court and seek redressal under this section of the IPC if he has reasonable apprehension to suspect and can prove that his wife is party to a criminal conspiracy where she had made false accusations against him and his family members.
- Providing fake evidences is an offense done by any person, which is defined in section 191 of the IPC. Due to the said section, women cannot base their case on fake evidences to support the case they filed U/S 498A.
- If a woman has threatened her husband or members of his family with physical harm,complaint shall be filed under section 506 of the IPC,in which it states punishments.
- If a wife leaves the husband & goes to her parent's house, the spouse can apply for restoration of marriage under Section 9 i.e. by restitution of conjugal rights of the Hindu Marriage Act, 1955. This applies only if the accused is acquitted or discharged in a 498Acase.
- A change to this rule is warranted due to recent findings and an increase misuse.
- Because the legal system is misused in order to harass the spouses, women's NGOs are responsible for investigating complaints thoroughly, without favoring either gender. No woman should be encouraged to make accusations against her father-in-law in petty matters.These groups also have a duty to inform the public about the consequences of misuse of the law through research and studies.
- Many men who have been the victims of misuse through their wives or in-laws have come forward across the country. There is hardly any group that can effectively help troubled men and their families by hearing their side of the story and helping theauthorities on their behalf. There is an urgent need to establish family counseling centers in cities across the country to help the affected families.
- Speedy trials of the cases would result in speedy redressal.
- There is a vague meaning of "mental cruelty" that may get abused through unwanted manners. Thus, it should be mentioned clearly to close the gray areas of the law.
- A report should be made only after the civil authorities confirm that a crime has been committed.
- As a matter of fact, majority of them convicted under the section find it diifucult toafford bail and hence is main reason why the law is so often misused to harass the defenseless. To avoid unnecessary detention of elderly parents, pregnant sisters andschool-aged children, this clause should

be made mandatory for bail.

- A FIR cannot be withdrawn after its filing in case of the wife says that she has made a mistake and wants to return to the marriage. To save the institution of marriage, it should be difficult. In addition, if the spouses decide to separate amicably, the ongoing criminal proceedings will seriously disrupt their lives.
- If the court decides that such allegations are baseless, actions against those who allege violation of Section 498A IPC. Thanks to this, fewer people would approach the legal system with dirty hands and in secret. All officials who intend to unfairly accuse women and their families must be criminally charged.

## **Reports of Law Commission of India**

The Law Commission of India in the report 154 (1996)<sup>4</sup>, suggested the incorporation of Section 498A appended to Section 320 (2), so that it can be completed with approval of the court. Relevant excerpts from the report suggest that , Various High Courts have recently abolished criminal proceedings for non-cognizable offenses in connection with an agreement between the parties to attain euphony and tranquility in the society. In view of the submissions received from various parties and the submissions of the Supreme Court and High Court, in the September 2009, the Law Commission of India was asked to reconsider amending Article 498A of the Indian Penal Code or offer other measures to check the abuse of the said provision. In view of the submissions received from various parties and the submissions of the Supreme Court and High Court, in the September 2009, the Law Commission of India was asked to reconsider amending Article 498A of the Indian Penal Code or offer other measures to check the abuse of the said provision.

The 154th Report of the Law Commission reiterated the recommendation on section 498A in Report 177 (2001)<sup>5</sup>. The commission noted that in recent years, the legal commission has received a number of proposals from individuals and organizations with the aim of aggravating the aforementioned offence. Furthermore, the Justice Malimath Committee Report on Reforms in the Criminal Justice System firmly aided the plea to make Section 498A of the IPC, a compoundable offense.

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<sup>4</sup> [https://lawcommissionofindia.nic.in/report\\_fourteenth/](https://lawcommissionofindia.nic.in/report_fourteenth/)

<sup>5</sup> [https://lawcommissionofindia.nic.in/report\\_sixteenth/](https://lawcommissionofindia.nic.in/report_sixteenth/)

## **Recent Guidelines on Section 498A, Indian Penal Code by the Supreme Court**

In matrimonial disputes, between two individuals, the first and foremost action a wife could legally take is to file a F.I.R under Section 498 A of the Indian Penal Code. The initiative is foreseen under Section 498 A of the Penal Code. Nowadays it is seen that the inside contents of the FIR are so indistinguishable and similar which clearly shows the very abuse of the Section. Courts also accept that, innocent persons are falsely accused under 498 A. But also, there are real cases where wives have been brutalized by their husbands or relatives.

Due of such faulty accusations, most of the courts have began to provide judgement in favor of the man and his family. Amongst these judgments, the Supreme Court made an important decision on the case of Arnesh Kumar V. State of Bihar (2014) 8 SCC 273<sup>6</sup>. In this judgement, the court mentioned, if we desire to arrange a complaint under Section 125, we must first file a complaint under Section 41A. Also, a man and his family can only be arrested if the victim's injury is severe and serious. Many things have changed since the Supreme Court decision. Recently, the Supreme Court of Uttar Pradesh has also passed an important judgment which goes a step ahead by giving directions to Section 498 A.

### **Judgement of Mukesh Bansal V. State of U.P. and Another (2022), CrI.R. 1187, (2022) CrI.R. 1122**

Now, we would discuss thoroughly on the Judgment of U.P. High Court in the case of Mukesh Bansal V. State of U.P. and Another (2022), CrI.R. 1187, (2022) CrI.R. 1122

The women filed a complaint under Section 498 A against the husband and mother-in-law. After an investigation, her husband's family was charged. The husband's family contested the charges in the Allahabad High Court. The court considers the accusations absurd. Male members of the husband's family were sexually accused. Nowadays, it is very common for such charges to be filed under section 498 A. The court takes up the case against the mother-in-law and the father-in-law and

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<sup>6</sup> <https://indiankanoon.org/doc/2982624/>

acquits them. But the husband was charged under 498 A, there the court did not interfere in the prosecution phase. And rejects the petition that was against the husband. Even though, the husband's appeal failed, his mother and father were relieved and made cleared of liability. Now even the Hon'ble Courts have agreed that 498 A is being misused and abused by giving false accusations to the husband's family. Section 354 of the Indian Penal Code is invoked when an F.I.R. from the women's side is filed. The section deals with ill-treatment or criminal violence against a woman intended to anger her modesty. Mother-in-law as well as brother-in-law are usually blamed for such accusations. Sometimes they are accused of rape. There are also real cases where cases of false claims far outnumber the real cases. The court fails to believe, the majority of men in our society have such immoral values.

After concluding this case, the Hon'ble Court had decided to lay down some major guidelines in order to prevent the abuse of the said Section. Thus, we can understand the aforementioned instructions:

- When a F.I.R. is registered under the section 498 A, there should be no detention for a maximum of 2 months. This 2 month period is called the cooling period. After registration, this complaint is also sent to the Family Welfare Committee.
- The Family Welfare Committee analyzes the case and decides within two months what is correct and what is wrong.
- It was a groundbreaking judgement of no arrest for 2 months. If a woman suffers injuries or physical violence, there can be an arrest.
- The Family Welfare Committee consists of four senior members from both the families.
- The committee then records the statement and evaluates the story on either sides within 2 months. Then the report is returned to the police station.
- If both the parties get a period of 60 days together, there is still a hope of resolution between them.
- The above investigation is then performed by Investigation Officer (IO). The Investigating Officer shall be specially trained to conduct investigations in cases for a minimum of 7 days. Sometimes, if the police are not instructed properly, the police might not detain the defendant directly.

## Judgement of Arnesh Kumar V State Of Bihar

### (2014) 8 SCC 273

- Supreme Court judgment in Arnesh Kumar v State of Bihar (2014) 8 SCC 273, stated that a notification under Section 41 CrPC has to be issued.
- The notification informs the accused of his probable detention so that the accused can appear and clarify his side of the matter.
- If the notified person is not willing to comply with preliminary investigation, he can be arrested.
- Any official that does not comply with the sentence, then the official, shall be punished. In addition, if the judge does not carry out the sentence, he will also face punishment and imprisonment.<sup>7</sup>

The Allahabad High Court had issued above guidelines to safeguard misuse of section 498 A. These directions have come when the court realized that, numerous wives make falsified allegations and claims against their husband and husbands families. These sort of claims have recurring patterns and storyline that have led the courts to question the credibility of such claims. With these directions, there still leaves a hope in our modern society to end women and family abuse.

### Conclusion

Marriage is an elective union of life between one man and a woman to the debarment of all others. It is a holy bond made by the individuals towards each other. It is considered to be a union of their respective families in the society. Though even in the modern society today, we see that this very holy foundation of marriage aches from a crucial communal evil that is dowry. Marriage is no longer seen as holy union of two individuals, rather over the time it turned into more alike a civil commitment in-between two people in the literal sense of the word, where one obliges the other to fulfill marital rights. Section 498A, which otherwise gained notoriety as "legal terrorism", was inserted mainly to fight against dowry and dowry related death. Through experience of prominent law persons & well-known lawyers, and various reports, we can formulate a solution to curb this communal cancer. However, the addition of Section 498A of the IPC, 1860, seemed a honest solution and quite efficient

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<sup>7</sup> <https://indiankanoon.org/doc/2982624/>

in those naive stages of its promulgation, a brand new age of barbarity has dawned in the recent years.

Even though the Judiciary has not curbed the blatant abuse of Section 498A, this provision itself demands immediate compensation for the suffering of insincerely accused sufferers of dowry harassment. Protection shall be broadened to the husbands of the society. The misuse of the Section shows that this strict provision has affected innumerable innocent individuals and their immediate families as this provision gives protection solely to women, making this provision bigoted, unfair and illegitimate. During the last twenty years, Section 498A of the IPC, 1860, had being badly abused, pulling innocent men to police stations, jails and even courts, stripping families of happiness. Wives who actually want protection from domestic violence, in actuality do not use it. This provision is a tool, which can be used as a dangerous weapon by women who abuse it in the smallest way possible.

We may hence conclude that although Section 498A of Indian Penal Code 1860, had been made to prevent married women against abuse by their husbands and his relatives but now it is being widely misused. The wives overturn the law by taking advantage and behaving cruelly to their husbands and his relatives and prosecuting them under Section 498A of the IPC ,1860. Hence, legal steps should be practiced to curb the menace spreading through misuse of this law.

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