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# Unseen and Unheard Shades of Section 498a of IPC

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## ABSTRACT

*Dowry is undoubtedly a big social evil and several efforts have been made in the past to tackle this evil practice. India has realized that there should be some law which prevents the dowry deaths and harassments from the matrimonial home and introduced a prevailing law section 498A of Indian penal code. However, with the passage of time, concerns were raised over the misuse of this law. Knowing that this law is non-bailable and cognizable women started filing wrong cases under this law. Over the past few years, there is dramatic increase in the misuse of this section, and this has become a weapon to most of the women to file false cases on an innocent husband who had no chance of escape. There are many cases where men committed suicide and were sent to jail for many years as a result of false cases filed by women. Because of this there is an emergency to amend this law and make sure no innocent is sentenced to face the punishments without having complete enquiry and evidence.*

*Therefore, this research article mainly focused on Section 498A of IPC, its misuse from the arrival to the present, suggestions and recommendations by Malimath Committee, Reform steps taken to fight against the misuse of this law justified by some of the important landmark Judgments like *Shobha Rani v. Madhukar Reddy* relating to Cruelty, *Inder Raj Malik & ors. v. Mrs. Sunita Malik* based on ultra-vires and followed by other case studies which help to understand all the legal terms related to 498A of IPC there before concluding with the relative suggestions to tackle the misuse of Section 498A through empirical methodology.*

*This also inclines laymen to know how effective this law is in undertaking the menace of sec 498A, and what are the concerns with respect to the implementation of this law and also what can be done to address those concerns and protect the innocent victims of 498A.*

**Keywords:** *Dowry, Misuse, Indian Penal Code, Domestic Violence, Cruelty.*

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## I. INTRODUCTION

Marriage is a sacred relationship of which two majors decide to marry and develop a family together. It is a responsibility where husband has be responsible about maintaining his wife. However, India is also place where the customs and rituals are praised as well. To uphold the duties towards the bride there is a place where dowry comes into the picture. Dowry is the amount which was given to the bridegroom from the side of bride's family. The dowry which is gifted is considered as the security and blessings for the daughter. By passage of time it seen that the husband and family members of husband were harassing for dowry, and this has become a big social evil. Several efforts were made in the past to tackle this evil practice. The Dowry Prohibition Act, which was brought into force in 1961, proved to be less effective. The moment against Dowry demand and harassment gained momentum back in the 1970s, reaching its peak in the 1980s. On December 1983, the parliament passed the criminal law, Second Amendment Act, thus, introducing section 498A to the Indian Penal Code. The new law proved effective in tackling the menace of the Dowry and provided much-needed protection to the women who were victims.

However, with the passage of time concerns were raised over the misuse of this law. It can be said that the section which is meant for safety and blessings has been turned in to a weapon to the wife and the husbands with family members as well are being affected.

This section speaks on then women who are subjected to cruelty by her husband and other family members. And, about the punishment prescribed for the accused.

This contains two clauses to explain word "cruelty":

Clause (a) talks about the wilful conduct which makes the women to commit suicide or to cause grave injury or danger to life, limb or health whether it can be mentally or physically.

Clause (b) briefs about the word harassment. "Harassment should be 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."<sup>3</sup>

This has promoted Supreme Court to put in place guidelines for arrest procedure and setting up family Welfare Committee to scrutinize the complaints under Section 498A. On September 2018 through Supreme Court, by bench lead by CJI Deepak Mishra modified its previous order doing away with the provision of family welfare committee. The apex court also expressed concern over the complaints of misuse of this law, saying there are in build

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<sup>3</sup>The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860, s.498A.

mechanisms in the criminal procedure to check the miss you of other provisions and the court cannot fill the gaps in the pain in law.

The purpose of this paper is to know how effective this law is in tackling the menace of dowry. And what are the concerns with respect to the implementation of this law. Also, what can be done to address those concerns and protect the victims of Dowry related crimes.

## **II. OVERVIEW OF SECTION 498A**

In ancient period dowry was not a crime. It is treated as the traditional value of which is looked in a way that the daughter who was sent with a dowry will be in a good security and live a happy life with her husband at matrimonial house. And then it started with the idea to provide worthwhile property or considerable security within their family willingness but slowly and gradually it turns in one way from torturing the bride's family by groom's family for ambitious dowry from them. This has been extended to a stage where the girls were being killed if the demanded sum amount of dowry was not brought and even later the groom is allowed to marry another girl who is willing to give such sum of dowry and e this practice lead to n number of dowry deaths caused by husband or in-laws or relatives from husband side. Its paved path to domestic violence, honour killing, and what not. This scenario brought fear in the minds of the women and no one dared to fight for justice.

Not taking much time Constitution realized that dowry has become threat to the nation and specially for women to survive her life in the society and by realizing this they filled the gap by introducing Dowry Prohibition Act on 20<sup>th</sup> of may in 1961 which makes dowry as unlawful practice and those who take or give will be penalizes the same. It stated that property, jewellery or any kind of cash as a security if given or taken as a dowry became unlawful. It imposed a term of three years of imprisonment and shall also be liable to be fined. Times were good at some point but later cruelty from husband and relatives became worse in society. Although most of the Indian-anti dowry laws were present they were not effective, despite pressure driven for decades. In the many parts of the country with the increase of dowry deaths and murder for the dowry brought concern to enforce new laws. Hence in 1983 the constitution in India filled the gap by introducing 498A under chapter XX-A, for women to protect them if there is any cruelty caused by husband (or) relatives of husband in 1983.

The area of section 498A is referred to is criminal law as of which a wife and relatives or family members can take an action against her husband and his family for any physical or mental cruelty. This is the only law in India which is not just based on bigotry and applicable

irrespective of the age of the women.

### **Essentials of Section 498A**

As this section is the only one which talks about cruelty and harassment from the husband and matrimonial home, there are some important aspects to be fulfilled to file a case under this section 498A. They are mentioned below

1. First and foremost, the women must be married.
2. Those women must be exposed to Harassment or Cruelty.
3. The cruelty or harassment shown must be by her husband or the relatives of the husband.
4. “The word ‘cruelty’ covers all or any of the following elements:
  - a) Any “wilful” act which is of such a nature that is likely to drive the woman to commit suicide; or
  - b) Any “wilful” conduct which is likely to cause grave injury to the woman; or
  - c) Any “wilful” attempt which is likely to cause danger to life, limb or health whether physical or mental of the woman<sup>4</sup>.”

Hence these are some of the main aspects which must be looked before filing a case.

### **III. PARTICULARS IN THE SECTION**

#### **Cruelty**

Section 498A of IPC 1860, clearly explains the word cruelty which has clause A and clause B. The clause A, perspicuously mentioned about coercing, causing great injury to wife, loss of life, suicide etc. This clause mainly revolves around the word “wilful conduct”. The word wilful conduct contemplates obstinate deliberate behaviour of the offender which amounts to cruelty. This clause clearly says that wilful conduct is the part of the offender. When we talk about the word cruelty “mens rea” is very essential which is also the most important element in any offence which comes under IPC.

Supreme Court in *Shobha Rani v. Madhukar Reddy*<sup>5</sup> case, it was clearly mentioned that this section is enough to define the word cruelty, because definition of cruelty in IPC is different from the normal dictionary.

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<sup>4</sup> Ramanu, *Understanding Section 498A of Indian Penal Code, on Domestic Violence*, Ipleaders intelligent solutions (May 14, 2014), <https://blog.ipleaders.in/understand-section-498a-domestic-violence/>

<sup>5</sup> 1988 AIR 121

Similarly in the case of *Madhuri Mukund Chitnis v. Mukund Martand Chitnis*<sup>6</sup>, it states that “Married women who have been subjected to the malicious litigation in which extremely hurtful, offensive activations were levelled against her and she was tortured and humiliated by the execution of search warrant and the Ceasing her property will subject to Section 498A” which has opened a new way of understanding this section.

Likewise, in the case *Sarla Prabhakar v. State of Maharashtra*<sup>7</sup>, the SC unquestionably states that every cruelty or harassment does not attract section 498A. The Supreme Court held that calling “barren women” do not amount to cruelty under 498A through the case, *State of Andhra Pradesh v. Kalindi Sahadevudu*<sup>8</sup>

### **Imprisonment**

The objective of Section 498A is to give punishment to the husband or any relatives of her husband. It has an improvement of 3 years and fine. It is important to mention here that the word ‘and’ is used not ‘or’ It means punishment includes imprisonment with fine.

### **Relatives**

The movement when we start reading the section the first word which comes into our mind is the husband or any relatives of the husband. Now the question which can raise in our mind is whether the word relative includes everyone? or the scope is limited? Hence, this was explained by the SC through the case of *Vijeta Gupta v. State of NCT Delhi*<sup>9</sup>, that only relation by marriage or relation by blood will come into a preview of the word relative and no other person will include.

### **Ultra-virus**

There are many times that this Section 498A challenged in the supreme court by filing a writ petition stating that this section is an ultra-virus. Supreme court in *Inder Raj Malik & ors. v. Mrs. Sunita Malik*<sup>10</sup> case, came up with a verdict that Section 498A is an ultra-virus with article 20(2) i.e. Double Jeopardy. But later Delhi high court opposed this conduct and held that a person can be convicted under both Section 498A of IPC and any section of the Dowry Prohibition Act (DPA). Because both sections have different perspectives as in Section 4 of DPA, where demanding dowry is punishable, but it is not included in the section of 498A.

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<sup>6</sup>AIR 1992 SC 1804

<sup>7</sup>1990 CrLJ 407

<sup>8</sup>2012 CrLJ 2302 (AP)

<sup>9</sup>AIR 2010 SC 2712

<sup>10</sup>1986 CrLJ 1510

In *Satish Kumar Batra v. State of Haryana*<sup>11</sup> case Supreme court in 2009, Section 498A was again challenged as ultra-virus. But Supreme Court later comes with a verdict that the possibility of abuse of power cannot make any section objectionable, Ultra virus or Unconstitutional.

### **Cognizance of Section 498A**

In the Bare Act, it is mentioned this section is a cognizable offence. The cognizable offence is the offence through which police can start an investigation and can arrest without the order of magistrate. But in section 198 of CrPC, it permits code to take cognizance under Section 498A only upon the receiving the police report. And the police cannot start an investigation before the submission of the report.

### **Compoundable and Non-Compoundable Nature**

Compoundable offences are those offences where the complainant enters into a compromise and agrees to have the charges dropped against accused but whereas in non-compoundable, they can't. In the Bare Act it is clearly mentioned that this law is non-compoundable in nature but in Andhra Pradesh is compoundable through the state amendment act and it is the only one among 29 states in India. The Supreme Court has requested the Law Commission to make an amendment to set this section as a compoundable in nature in the case of *Ram Gopal & ors., v. State of Madhya Pradesh & ors.*<sup>12</sup>. By considering the request of Supreme court, the law commission in 237 report stated this section is only compoundable with the consent of the court until then it remains as non-compoundable in nature.

## **IV. MISUSE OF THIS LAW**

This section was enacted in order to protect the rights of women if they face any type of cruelty/harassment from the matrimonial home. But in this modern era this law has become a tool to most of the women. Most of the educated women knowing that this law is cognizable and non-bailable started filing wrong cases against their husbands. There are many situations where police directly arrested the husband, parents of the husband, sister-in-laws, even the children who is just 3 years of old without any investigation. In this scenario the family members along with the husband go through severe mental trauma and sometimes harassment from the pervert Indian system.

Some of the women, NGOs and feminists think that making this law non-cognizable and bailable is a wrong step and can give a chance to men to escape. This is giving women more

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<sup>11</sup>AIR 2009 SC 2180

<sup>12</sup>2010(13) SC 540

advantage to file false cases against innocent people. In other context most of the women who simply want to get rid of marriage or had an affair with anyone are knowingly filling false case in the court.

The data of National Crime Records Bureau, under the section, the number of cases filled are on average about 1,00,000 annually. Under all the Indian penal code sections, the conviction rate in 2015 is 14%. And under section 498a, the rate of conviction rate in 2011 is 20% and in 2015 it is 14%. Hence this difference in the conviction rate is evidence that the men are arrested by many false cases and arrested without having a proper investigation under section 498A.

## **V. SUGGESTIONS**

1. One of the key mistakes are the guidelines which are not implemented properly. This is due to the lack of duty by public servants, every member should be honest, they have to stick to their duty to which they are assigned and fulfil their duty at the right time. So that the case comes to a logical condition within a meaning full time.

2. The investigation must be done by a senior police officer. It should be done by a particular rank of police not by sub-inspector, nor by the inspector by a gazette officer. Because a bad investigation and bad prosecution leads to end up the cases as a recipe of disaster. The police officers should have gender sensitivity, to be accountable to their conscience, stick to the rule of law, do not be severed by extraneous considerations.

3. Monitoring policy should come into action when the investigating Agencies is not discharging their duty properly. And if they are denying doing this then it is the responsibility of the senior officers to check and balance everything on a proper line. They should look whether every case is investigated properly or not. If this check and balance link is missing, then there will be chance of exploiting the situation by the authorities at the lower level.

4. Misuse can be stopped by spreading awareness. It can lessen if all the stakeholders and public servants make an effort to tell the people how this law can be used in a right path. This can help to reduce the number of false cases not reach the peak.

5. Education of people in the rural areas is very important because the number of cases increased rapidly in the past few years from the rural areas. When we talk about educate, it is easy to say than doing it especially in rural areas. Now the huge responsibilities of NGOs, STATE, Educational Institutions comes into picture. There is a chance to promote some paralegal officers. Individuals must have a resolute sense of determination to educate the

people. While educating they have to give the clearance knowledge about the uses of this section rather the misuse.

6. The basic duty of a police officer to ensure that there is proper registration of the FIR which should be done at ground level which prevents victim from running pillar to post from filing FIR. In case of any kind of default in filing the FIR, there must be a suspension order issued against the concerned police officer under section 166A of IPC.

7. The lawyers should follow professional ethics and guide the clients. The cult of best unity should not enter the investigation part, and it should be based on facts and evidence only. But in case if there is no proper evidence then the court must look upon the law which is laid down related to circumstances evidence.

8. Petty issues which don't come under 498A are converted into a dowry harassment case.

In some situation when women approach CAW cells to share the information which is incompatible, then she is imprudent to write that she is harassed for dowry, she was battered up or she was not provided with food & shelter. This could make a false complaint to document.

9. There should be some free help lines for women just like 888249848 which is available for the man in distress by Men Welfare Trust. A helpline for women can result in disposal of petty family issues within themselves and there by mitigating burden to the courts.

10. The conviction rate is low when compared to the number of allegations made. Hence, the husband and wife should approach the mediation centre or have a private settlement without directly filing the case. This could filter the cases which are going to file under this law.

11. The court must give progressive verdict like the judgement of Rajesh Sharma if there is any situation where the right to liberty and life of a citizen is been curtail.

12. It is the right time where the legislative should look into the statistics which are available, the number of judgments of SC which have come. Within a span of one year the SC itself in the 2018 has changed or modified the judgement of 2017 which shows that shows there are some legislative gaps which needed to be filled. The legislature should debate on it and refer to the expert body like Law Commission and ask for submitting its report for the government for consideration.

13. There are gaps to fill in law where police should do an investigation within 30 days. Even prosecution and trial must end by 90 days. If there is any acquittal, we have to find out whether there was an imprecise investigation or bad prosecution nor both and then there will be right justice at the right time.

14. The role of investigating agencies is like a watch dog. “Justice delayed is justice denied”, hence they must try to protect the innocent person within short time so that he won’t get punishment.

## **VI. CONCLUSION**

To conclude the discussion, it is subjected that section 498A is the law which was introduced in the Indian Penal Code with an intention to tackle the cases on women, who are vulnerable section of our society and who have been victim of cruelty and harassment. However, the issue arises with the misuse of this law for their personal benefits, by this innocent people and their families are maliciously implicated under this section 498A. From the judicial point of view and observations of all the other commission reports it is clear that this law has become a mandatory evil. The section 498A of IPC is necessary to remain in our statute books for the protection of the women rights but with a proper caution. Because this is solely section which talks about cruelty and harassment. Hence, it is the duty of the legislation to fill the flaws by which it can become more effective in a right way. By amending such laws, people’s trust

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