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Marital Cruelty and Section 498A

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Violence against women is of great concern which varies in harshness. The majority of the marital cruelty cases remain unreported in India because they are committed by their people. Generally, the victim refrains from complaining due to fear of getting her reputation affected. Cruelty cases were prevalent earlier also, events such as shaming women, stripping also occurred specifically from women of lower casts but there were no such studies about women and marital cruelty was conducted so very little data is available before British Era. In the current scenario, the law is being misused by women. As a result, the section was made for the advantage of women to ones who were the victims of cruelty but some of them used it as a weapon to entrap false charges against the husband and his family members. This paper examines the history, relevance of the provisions and traces how the misuse began and the way forward.

Keywords: *marital cruelty, misuse, dowry.*

INTRODUCTION

Physical assault, actions harming the life of a married individual in any way is considered as marital cruelty. Violence against women is of great concern which varies in harshness. According to Section 498A¹, “the husband or any person related to the husband of a woman

¹ Indian Penal Code 1860, s 498A

who subjects her to cruelty shall be punished with three years of imprisonment which may extend and the person would be liable to pay the fine". The cruelty includes physical or mental harm to a woman's body or health, harassing her or her parents for dowry. Harassment for dowry comes under the jurisdiction of the section's final part. In India, it remains one of the worst abuse. There isn't any comprehensive analysis on this topic in India. The majority of the marital cruelty cases remain unreported in India because they are committed by their people. Generally, the victim refrains from complaining due to fear of getting her reputation affected. Dowry² is a prominent cause of marital violence in several regions of India, owing to the groom and his family negotiating to secure a considerable amount from the bride's family. When the dowry demands are not fulfilled the bride is tortured by her husband and in-laws.

According to a report published in 2011, "Crimes in India,"³ the IPC rate of torture cases against women accounts for 43.4% of total crimes against women. Marital cruelty in India is threatened by the patriarchal society. Marital Cruelty in post-independence 1922-96⁴ reflects the history of marital cruelty in modern Ireland. During that time many women were subjected to cruelty by their husbands but the victims of cruelty had very few alternatives for at least fifty years following independence. The actual physiological realities of cruelty are very disturbing, the socio-cultural backdrop and interpretations of cruelty and tactics used for violence have a historical aspect. In a case study done by Tichy et al (2009)⁵, an analysis was discovered as 64 women, of at least 18 years of age from Tamil Nadu reported that women of high socioeconomic status reported fewer cases of cruelty. Women of high society were unaware of the cruelty that affected women. Section 498A was added in the case of *Shobha Rani v Medhukar Reddy*⁶. So Section 498A protects women from cruelty. This section was added in IPC for the protection of women from all kinds of cruelty. This is the only section under IPC that aids women in their fight against male brutalities. There are many

² Dowry Prohibition Act, 1961, s 2

³ Meghna Bhat & Sarah E. Ullman, 'Examining Marital Violence in India: Review and Recommendations for Future Research and Practice' (*SAGE Journals*, 24 July 2013)
<<https://journals.sagepub.com/doi/10.1177/1524838013496331>> accessed 11 November 2021

⁴ *Ibid*

⁵ *Ibid*

⁶ *Shobha Rani v Medhukar Reddy* [1988] AIR 121, SCR (1)1010

controversies regarding this matter. Firstly, allowing wives to complain about cruelty will destroy the family. Secondly, the criminalisation of cruelty would violate the privacy of marriage. When IPC was framed the second and third reasons were valid.

Both these assumptions are irreconcilable with constitutional democracy found on teachings of liberty. Consequently, the Supreme Court's right to privacy judgement settled all these questions. It is statistically proved that a great majority of assaults on women are committed by spouses. The incidents reported under Section 498A are the second-highest in Delhi because the reporting of cases is high in that city. Group of lawyers played a critical role in bringing about substantial amendments in laws criminalising domestic violence in order to protect women from all types of marital cruelty. The state and society must offer the victim urgent help so that they can live a normal life. In order to address the issues of cruelty against women, innovative levels of coordination are needed between the government, civil society, and family.

HISTORICAL BACKGROUND

Cruelty cases were prevalent earlier also, events such as shaming women, stripping also occurred specifically from women of lower casts but there were no such studies about women and marital cruelty was conducted so very little data is available before British Era. The areas such as family, marriage have been critical in both pre-independence and post-independence movements in India. The women's movement in the 1970s and 1980s underlined such assaults on women as cruelty inside the family, it also highlighted and criticized the methods in which the state rejected acts of cruelty and did not give importance to it. Section 498A⁷ was introduced in 1983 due to the major concern of women interfering with the rise in deaths of young women which was called "accidental kitchen fires". Subsequently, it was discovered that the deaths were caused due to harassment of the newlywed women for dowry.

⁷ Indian Penal Code, 1860, s 498A

Furthermore, Section 304B⁸ was introduced in 1986 known as "dowry death". The existing remedies were initiated to strengthen the Dowry Act,1961⁹. From then women used Section 498A in the case of cruelty and other violence. This was the only remedy used till 2005. Women had difficulty in reporting it to their nearest police station. The police did not take their cases seriously unless they presented proof. To reduce the cases the government of India on 24th April 1959 introduced Dowry Prohibition Bill,1959 for reducing the horrific cases. In September 1959 the bill was presented to a Joint Committee of both the houses of the parliament for further review. The Dowry Prohibition Act,1961 was approved in a joint session of Parliament and went into effect on 1 July. The Act was amended twice in 1984 and 1986. Certain campaigns such as protests against Rameezabee's rape in Hyderabad in 1978¹⁰ and they requested a new trial of the acquitted policemen accused of raping Mathura in 1980 and the preposterous claims of murders that happened due to dowry, became the symbol of a new phase in feminist public protest. Throughout the colonial period, there were cases of violence against women.

The end of the Emergency in 1977 indicated the beginning of the second phase of India's Women's Movement. At this time many deaths happened in Delhi disguised as the case of suicide or accident. Even during the anti-dowry movement feminists connected all types of abuse against women to dowry demands. They entirely focused on cruelty against women inflicted by husbands. As the movement gained steam many previous taboos were brought highlighted and explored. Women started coming forward and communicating their experiences. With the campaign's development in the 1980s, many cases of violence appeared. There was no particular law regarding the violence within the family before 1983. With the need of women's activists for legislation about the violence, the government of India willingly revised the criminal act provisions in 1983 and 1986. Special categories of offence were included under IPC under Section 498A and 304B to cope with the cruelty or harassment. In the current scenario, the law is being misused by women. As a result, the section was made for

⁸ Indian Penal Code, 1860, s 304B

⁹ Dowry Prohibition Act, 1961

¹⁰ Legal battle awaits to prove charges against Rameeza Bee' (*India Today*, 31 August 1978)

<<https://www.indiatoday.in/magazine/indiascope/story/19780831-legal-battle-awaits-to-prove-charges-against-rameeza-bee-822980-2014-03-20>> accessed 11 November 2021

the advantage of women to ones who were the victims of cruelty but some of them used it as a weapon to entrap false charges against the husband and his family members.

CRITICAL ANALYSIS

Criminal Law in the concurrent list of 7th Schedule of the Constitution of India. Both parliament and state legislatures had the authority to enact legislation in these areas¹¹. Dowry crimes have been an issue in India for a long time, with horrible instances of crime like cases of cruelty to married women. The country's right-thinking citizens expressed grave worry about the cruelty. As a result Section 498A was included in the Indian Penal Code in 1983 to provide punishment for cruelty imposed on married women. The objective of this section was to protect the women from cruelty, the explanation added to the section defined the word "cruelty".

The first reaction after the insertion of Section 498A was less favoured and the provisions of the section have been misused to a very much extent. The court has dealt with many cases regarding the cases registered under Section 498A of the Indian Penal Code. The provisions were made with good intention but the prosecution left a bad impact and the move had been proven counterproductive. The provision also resulted in a large number of divorce cases as one member of the family went to jail, chances for sustaining in marriage ceased. Further, the Ministry of Women and Child development viewed that Section 498A and the dowry prohibition act 1961 provides legal remedies to women.¹²

STUDIES ON MARITAL CRUELTY

Various studies have revealed multiple risk factors for marital cruelty such as economic instability, education, and employment situation. In the latter three decades of the twentieth century, a group of feminists combined brought tremendous change and enhanced the remedies possible to the victim of cruelty. Section 498a states that "Husband or relative of husband of a woman subjecting her to cruelty- Whoever, being the husband or the relative of

¹¹ Constitution of India, 1950, art 246

¹² Indian Penal Code, 1860, s 498A

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." The current provision has been in force for three decades and has been the focus of numerous judgements across all courts in India. The courts have continued to extend to enlarge the scope of this provision and managed to apply the provision to major innovations that have developed.

After the desirable outcome of the provision in the act of 1983, it continued to progress where the Supreme Court in *Arnesh Kumar vs State of Bihar and Anr*¹³, reported in (2014) has held Section 498A "dubious place of pride amongst the provisions that are used as a weapon rather than a shield by disgruntled wives". In this particular case, the wife claimed that dowry was expected from her and she was evicted from marriage when she failed to meet such demands. The husband requested anticipatory bail which was denied. Thus, the court laid down parameters that a police officer should follow while arresting someone under Section 498A of the Indian Penal Code, such arrest must be grounded on a reason with regard to the truthfulness of the charge. People have misused this law, according to the National Crime Records Bureau¹⁴ (NCRB) 93% of cases registered under Section 498A by women, hardly 15% of those accused were acquitted. Misinterpretation of provisions such as IPC 498A will result in the breakdown of the family.

MISINTERPRETATION OF 498A

In *Sushil Kumar Sharma vs Union of India*¹⁵ 2005, the Supreme court reported that Section 498A has been used with an ambiguous intention in many cases since the provision is "intra vires" and does not give an unethical person the right to use it in a wrong way. The petitioner maintained that stern punishment should be taken against women who file fake cases against their husbands. Later in 2014, another bench stated that "Section 498A is the cognisable and non-bailable offence has granted it a doubtful place of pride among the provisions that are

¹³*Arnesh Kumar v State of Bihar & Anr* [2014] 8 SCC 273

¹⁴ Prashant K Trivedi & Smriti Singh, 'Fallacies of a Supreme Court Judgment: Section 498A and the Dynamics of Acquittals' (*JSTOR*,2011) 49 *Economic and Political Weekly* 90, 90-91

¹⁵*Sushil Kumar Sharma v Union of India* AIR 2005, SC 3100

utilised as weapons rather than shields by disgruntled wives." This was a dangerous interpretation of the case, to avoid the exploitation of law the court overlooked the issue of preventing the violence. The Supreme Court's decision was discriminatory and opposed all the work done to promote women's rights in India. The government is currently making Section 498A compoundable, which allows the spouse to forgive each other and compromise as suggested by Malimath Committee.

Currently, the offence is non-bailable and non-compoundable. Whenever there is a complaint of dowry registered against a husband they are arrested immediately. The Ministry of Home Affairs has sent a draft to the Union Cabinet to amend Section 498A of the IPC and if the case is found to be false, the amended law would impose a fine of Rs 15,000 as opposed to Rs 1,000 today. Female activists have opposed this idea as it would affect millions of women. Recently the Supreme Court has modified the sentence of a man convicted under Section 498A of the IPC to a period previously completed after he agreed to pay compensation. During the lockdown period, there have been many cases of violence. The limits imposed to prevent Covid 19 led to an upsurge in violence. Reports from National Commission for women show an increase in violence during a pandemic and they stated a reason for this uprise. Firstly, withdrawal from alcohol and secondly, unemployment.

DEVELOPMENT OF SECTION 498 A THROUGH JUDGEMENTS

In a case,¹⁶ Janaki Devi was married to the appellant who at the time of marriage demanded 40,000 rs dowry. The family of Janaki Devi agreed and paid the dowry amount to the appellant. After the marriage, the appellant demanded buffalo which wasn't possible for Janaki's family to fulfill. This was perceived as vitriolic behaviour by the appellant. Due to this, he started beating Janaki Devi. When the family of Janaki Devi came to know about this, they visited her in-laws for conciliation, but when they reached their house they found Janaki Devi dead. The sessions court¹⁷ held the appellant guilty and sentenced him to 10 years imprisonment, while in the high court of Bihar the sentence was reduced to 7 years. When the

¹⁶ *Kamlesh Panjiyar v State of Bihar* [2005] 2 SCC 388

¹⁷ *Ibid*

matter reached the SC, the SC upheld the decision of the sessions court and ruled “Under section 304 of IPC it was not necessary to give direct evidence of guidance of causing death. Cruelty before death is enough.” In another case¹⁸, after marrying the respondent in 1998, the appellant was harassed by her mother-in-law, father-in-law, and spouse. In her complaint, she stated that his in-laws attempted to kill her by placing an acidic liquid in her mouth. However, it was the parties' second marriage, and the prior spouse was still alive legally. The respondents took advantage of this and claimed that IPC 498 A and 304 B did not apply to them because their marriage was not lawful. Subsequently, the HC acquitted them since it was legally not the marriage in the first place.

When the matter reached the SC, it was ruled that HC wrongly interpreted the meaning of husband and gave a new interpretation of the term husband. “Husband means a person who has entered into the relation of marriage’ and the interpretation must be flexible.” In *Pamiben v State of Gujarat*¹⁹, Her mother-in-law poured kerosene oil on her while she was asleep with the purpose of killing her. On hearing her cacophonous cries the husband and other relatives took her to the hospital where she died. The Supreme Court convicted the mother-in-law by relying on the dying declaration of the deceased. The court ruled that there was no reason to believe that she committed suicide.

Notice how the judgments are changing the course of law by interpretation of the clauses of the statute as per the circumstances of the case. This was the reaction of the apex court towards this social evil. In *Baldev Singh v the State of Punjab*²⁰, *Dashrath v state of MP*²¹, *Raju, and Anr v State of Haryana*²² the apex court tried to make punishments graver to create a fear among the offenders. These cases made the apex court believe that we need to shift the balance in favour of women which became problematic as it will become more evident from the following cases. In *Kans Raj v State of Punjab*²³, the deceased was found dead not under

¹⁸ *Reema Agarwal v Anupam and ors* [2004] 3 SCC 199

¹⁹ *Pamiben v State of Gujarat* [1992] AIR 1817, SCR (2) 197

²⁰ *Baldev Singh v State of Punjab* [1971] CriLJ 234

²¹ *Dashrath v State of MP* LQ [2007] HC 17711

²² *Raju v State of Harayana* AIR 2010, SCR 2216

²³ *Kans Raj v State of Punjab* AIR 2000, SC 2324

ordinary circumstances, the parents of the deceased thought that in-laws were responsible for the death of their daughter so they falsely testified that there was a demand for dowry. When the court learned about this matter the charge sheet against the husband and relatives was quashed.

In another case²⁴ “The appellant Neelu Chopra and Krishan Sarup Chopra are husband-wife and the respondent Bharti was their daughter-in-law. According to Bharati, her married life with Rajesh (son of appellants) was not very smooth as there were unreasonable demands for doubts and misbehavior from Rajesh and his parents. Thus, in 1993, Bharati filed a complaint against her husband and in-laws under Section 498A of IPC. In 2006, Rajesh expired and hence the present case only lies against the in-laws. The Court observed that the complaint did not show as to which accused had committed what offence and what was the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations were made against him more precisely but he was no more and had already expired. Under such circumstances, it would be an abuse of process of law to allow the prosecution to continue against the aged parents of Rajesh, on the basis of a vague and general complaint which was silent about the precise acts of the appellants. The Court thus directed to quash the complaint under Section 482²⁵ of CrPC.”

In the case of *Manju Ram Kalita v the State of Assam*, the wife claimed that her husband tortured her emotionally and physically during their marriage. She moved out of her matrimonial house and began living with her father, but she subsequently learned that her husband had remarried a woman. The spouse was accused under Section 498A of the Indian Penal Code, but he rejected the charges and filed an appeal with the Supreme Court. The court noted, citing many examples, that the meaning of "cruelty" varies by statute and hence must be determined in the context of Section 498A of the IPC. The man's behavior and the seriousness of his actions must be weighed against the likelihood of the lady committing suicide, and so on. It must be proven that the lady has been subjected to cruelty on a regular basis or within a short period of time prior to filing the complaint. Petty squabbles would be

²⁵ Code of Criminal Procedure, 1973, s 482

exempt from the definition of "cruelty." As a result, the Court overturned the conviction under Section 498A of the IPC. In the above cases, the rampant misuse of sections 498A and 304 B is evident. The apex court took the strict view to protect women from their barbaric in-laws, but soon the law became a tool to extort money and other benefits from the in-laws.

FUTURE PROSPECT OF THE ISSUE

The social standards or norms of conduct inside a socially constructed group can encourage violence. Initiatives that target aggressive social and cultural patterns have broadly been applied to reduce violence. In order to prevent marital violence in the future people have to be educated, they should know about the legal provisions. One of the most promising approaches is to get the masses educated. There is a need of expanding the violence prevention activities among all the people of the society. The disparity in gender causes acts of violence. National Legislative frameworks promote gender equality that can help to avoid violence against women. The programs that are designed to avoid sexual violence should be subjected to a thorough assessment for both short and long-term consequences.

The misuse of the law can be reduced by implementing measures to assure strict adherence to the legislation controlling arrest, as defined in D.K Basu's²⁶ case and it adopted into the statute, namely Chapter V. The person who misuses the law must be punished severely. The laws should not be made so strong that they can't be manipulated in the future for personal benefits. The court needs to deliver justice rather than implement the law. In the future, women can misuse the law against the family and husband so the Section's social aim and the necessity for punishment should be kept in mind also when complaints are filed with false accusations for a motive should be restricted. Efforts should be made to accomplish reconciliation with the assistance of professionals. Even in big cities, there are no Crisis centers attached to Women's police stations that could provide instant assistance to women. The government should see it as a top priority to meet the needs of abused women.

²⁶ *D.K Basu v State of West Bengal* [1996] SC 0157

Women from lower casts are adversely affected if they are not provided with aid so the State should prioritize the matter and take the required steps to alleviate the sufferings of women. How we can control the abuse of section 498A in the future are that there is a need for the construction of family counseling clinics to meet the requirements of the injured family members, in order to deliver justice to innocent victims of false allegations a rapid trial is required this can lighten the load on the judiciary, The fact that Section 498A is not bailable is one of the key grounds for its abuse and to stop the abuse the provision must be recognized as a bailable offence, When an FIR is filed it's hard to drop the case especially in marital cases when the criminal procedure may cause hurdle in achieving the goal, there is a need of stringent rules. Considering the problem associated with the misuse of Section 498A if it still exists in the future it will be a menace to society.

CONCLUSION

Cruelty is a matter of political and public interest. It is crucial to consider the historical background of marital cruelty. Due to a lack of information, misconceptions, myths, and hostile attitudes regarding marital violence, many victims suffer a lot. They lack access to the facilities provided to them, so the women should overcome all the hurdles created. The provision established to provide aid under IPC is misused sometimes... Along as well many cases take benefit from the assembling cases, the government authorities take advantage of the situation despite realising that the concerns of the victims can be serious. The latest amendments made by the Supreme Court in September 2018 are considered a source of encouragement because the violation of Section 498A decreased as a result of these amendments. In India, the government has taken steps to minimize this issue via enacting legislation and punishing those who commit violent acts against them. There are already many provisions against this issue but equality between men and women remains a challenging aim. There is a vast difference between idealistic and realistic, not due to historical reasons but also related to mentality and enslavement towards women which renders her prone to physical dominance.

Section 498A has been criticized as it was designed to counter the wrongdoings, but currently, it has changed and evolved into a reputation weapon. The integration of Section 498A appeared to be productive and effective in the early years of its adoption. With the arrival of the 21st century, the phase of cruelty emerged. It has been misused, dragging innocent people into problems and hampering their mental peace. The women's organisation has empowered women and they are trying to bring about change in society. The goals can be achieved if people are adequately educated and know about legal provisions and their consequences. Mostly women from lower casts and middle-income families are adversely impacted if they are not assisted properly. In most cases, the victim remains silent to avoid emotional and financial stress to her family, her inability to defend herself, lack of education and information of her rights. These cases are reported in only one way when the victim dies or commits suicide. Traditional customs such as domestic violence, marital violence, dowry deaths if completely removed then there would be a possibility of gender equality and women empowerment. The women must help and empower each other by changing society's views regarding conventional behaviours.