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## Loopholes in Section 498-A IPC

Agnes Sabu<sup>a</sup>

<sup>a</sup>Government Law College, Thiruvananthapuram, India

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*Women in Indian society has being subject to increasingly grave human rights violations, especially in the past few decades. The role of women in the male-dominated patriarchal structure of our society, the dowry system, the economic dependence of women, lack of education, and poverty<sup>1</sup> are a few factors for the increasing rate of violence against them. The ultimate purpose of marriage is to help the young couple to lead a happy and peaceful life.<sup>2</sup> Domestic Violence against women, demand for dowry, and economic and social dependence on women prevent them from meeting the goals of marriage. Section 498A IPC was introduced in the wake of the increased dowry death cases. It's a tool to reduce the cruelty faced by women in the clutches of their husbands and in-laws. The recent hike in false charges under section 498A IPC implies the need for suitable amendments in the legislation.*

**Keywords:** *section 498A IPC, cruelty, dowry death, domestic violence.*

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<sup>1</sup> Kritika Oberoi, 'Violence against Women' (2019) 2 (2) IJLMH <<https://www.ijlmh.com/wp-content/uploads/2019/07/Violence-Against-Women.pdf>> accessed on 16 April 2022

<sup>2</sup> G. V. Rao v L.H.V. Prasad and Ors. (2000) 3 SCC 693

## INTRODUCTION

Section 498A IPC<sup>3</sup> was introduced in the Criminal Law (Second Amendment) Act, 1983, Act No. 46 of 1983 under Chapter XX A as 'Of Cruelty by Husband or Relative of Husband'<sup>4</sup>. The Section was inserted to curb the cruelty faced by women from the in-laws preceding dowry death. The act also introduced a suitable provision under Section 113B of IEA<sup>5</sup> and made amendments in Section 174 CrPC<sup>6</sup> to enhance the stringent provision.<sup>7</sup> The complaint can be made by the victim or her relatives. Section 498A IPC is a non-bailable, non-compoundable, and cognizable offence with imprisonment of up to 3 years and a fine. India's National Family Health Survey (NFHS - 5), conducted in 2019 -2020, has found that the women who experience spousal violence that includes both physical and sexual violence in the state of Karnataka (44.4%), Bihar (40%), Assam (32%), Andhra Pradesh (30%)<sup>8</sup>. Domestic Violence is an age-old phenomenon that traces its roots to rigid gender roles, cultural norms, political conditions, etc.<sup>9</sup>Such violence against women has a hugely detrimental impact on women's health conditions such as gynecological problems, temporary and permanent disability, depression, suicide, etc.<sup>10</sup> The social practice of Dowry now has an irreplaceable role in Indian society. The term 'Dowry' can be defined as a "*monetary payment or gesture given to the groom's family in regard to the bride, and it incorporates currency, gold, electrical devices, furniture, and other housewares that assist the newlyweds in setting up their home.*"<sup>11</sup>

According to the latest data published by the National Crime Records Bureau (NCRB) Report, 2020 of all the 13812 persons arrested under the Dowry Prohibition Act (DWA) 11188 are

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<sup>3</sup> Indian Penal Code, 1860, s 498A

<sup>4</sup> Criminal Law (Second Amendment ) Act ,1983

<sup>5</sup> Indian Evidence Act, 1872, s 113B

<sup>6</sup> Criminal Procedure Code, 1973, s 174

<sup>7</sup> *Ibid*

<sup>8</sup> Dr. V.K. Paul, 'National Family Health Survey NFHS-5 Phase 2' (*National Family Health Survey*) <[http://rchiips.org/nfhs/factsheet\\_NFHS-5.shtml](http://rchiips.org/nfhs/factsheet_NFHS-5.shtml)> accessed 16 April 2022

<sup>9</sup> Ravneet Kaur & Suneela Garg, 'Addressing Domestic Violence Against Women: An Unfinished Agenda' (2008) 32 (2) IJCM, 73-76 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2784629/>> accessed 15 April 2022

<sup>10</sup> *Ibid*.

<sup>11</sup> Samarth, 'Dowry Death:A Neglected Public Health Issue In India' (2022) 5 (2) IJLMH, 384-389 <<https://www.ijlmh.com/paper/dowry-death-a-neglected-public-health-issue-in-india/>> accessed 15 April 2022

males<sup>12</sup>. Acknowledging the social, economic, and political intricacies involved in upbringing the status of women in the society, the government over the years has introduced numerous legislations to protect the rights of women. The Dowry Prohibition Act 1961 which was later amended in 1984, The Domestic Violence Act 2005, Cruelty by Husband or relative under Section 498A IPC 1860, Dowry Death under Section 304B IPC 1860<sup>13</sup>, Section 113B IEA, 1872, etc. However, over the past few years, there is an increasing tendency to misuse these legislations, such as section 498A IPC, which deals with cruelty to women by husbands or their relatives hence depriving the legislation of its purpose of inception. An increase in literacy rate, Better legal awareness of the features of section 498A IPC as non-bailable, non-compoundable, and cognizable offence, and the fact that immediate action by police on the FIR lodged by them would lead to an arrest are the factors for the increase in the rate of misuse of the section.<sup>14</sup> Cruelty is an essential element under Section 304B IPC and Section 498A IPC, however, they are distinct offences and unlike Section 498A IPC where cruelty by itself is an offence, Section 304B of dowry death requires that death must have taken place within seven years of marriage<sup>15</sup>. The difference between Section 306<sup>16</sup> IPC and Section 498A IPC is in the intention. In Section 498A IPC cruelty by the husband or his relative lead the woman to commit suicide whereas under Section 306 IPC suicide is abetted and intended<sup>17,18</sup>.

## THE ELEMENT OF 'CRUELTY' UNDER SECTION 498A IPC

*The quality of being cruel; disposition of inflicting suffering; delight in or indifference to another's pain; mercilessness; hard-heartedness*<sup>19</sup> The court through various judicial interpretations has evolved the meaning of cruelty to suit the changing societal values and mores<sup>20</sup> As per the recent data

<sup>12</sup> Ministry of Home affairs, National Crime Records Bureau Report 'Crimes In India 2020' (2020)

<sup>13</sup> Indian Penal Code, 1860, s 304B

<sup>14</sup> Kriti M.M, 'An analysis of section 498A IPC' (*Manupatra*, 30 March 2017)

<<https://articles.manupatra.com/article-details/An-Analysis-of-Section-498A-of-IPC>> accessed 15 April 2022

<sup>15</sup> Saif Rasul Khan, 'A swinging Between Extremesto Find the perfect Balance?' (*Manupatra*, 7 September 2018)

<<https://articles.manupatra.com/article-details/Section-498-a-Swinging-Between-Extremesto-Find-The-Perfect-Balance>> accessed 16 April 2022

<sup>16</sup> Indian Penal Code, 1860, s 306

<sup>17</sup> *Satish Kumar Batra and Ors. v State of Haryana* (2009) Criminal Appeal No. 976/2001

<sup>18</sup> *State of Punjab v Iqbal Singh and Ors.* (1991) SCR (2) 790

<sup>19</sup> *Shorter Oxford Dictionary* (6<sup>th</sup>edn, Oxford University Press 2007)

<sup>20</sup> PSA Pillai, *Criminal Law* (14<sup>th</sup>edn., Lexis Nexis 2021)

of NCRB report 2020, 11549 cases were reported under Section 498A IPC. In this light, ascertaining the legal aspect of the term 'cruelty' is crucial. According to the explanation of Section 498A IPC cruelty means;-

- 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
- 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<sup>21</sup>.

Cruelty includes the conduct that may force a woman to commit suicide, cause grave injury, danger to life, or harassment with the intention to coerce her to meet the unlawful demand of dowry<sup>22</sup>. In the case of *Vijay Pal Singh v State of Uttarakhand*,<sup>23</sup> the woman was forced to leave her in-law's house as she was unable to fulfill the dowry demand. The evidence also showed that even a Panchayat was held at the local level to sort out the issue. The Supreme Court in the case held that these factors amounted to mental cruelty or harassment. Cruelty postulates such a treatment that causes reasonable apprehension in the mind in the mind of the wife that living with her husband will be harmful and injurious to her wife.<sup>24</sup> However, it has to be distinguished from the ordinary trifle matters of family life.<sup>25</sup> The illicit relationship of a married man with another woman also amounts to cruelty.<sup>26</sup>

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<sup>21</sup> Indian Penal Code 1860, s 498A

<sup>22</sup> *Rajesh Sharma and Ors. v State of U.P. and Anr.* (2018) Criminal Appeal No. 1265/2017

<sup>23</sup> *Vijay Pal Singh v State of Uttarakhand* (2014) Criminal Appeal No. 37/2011

<sup>24</sup> *Savitri Pandey v Prem Chandra Pandey* (2002) Appeal (Civil) No. 20-21/1999

<sup>25</sup> Saif Rasul Khan (n 15)

<sup>26</sup> *Laxman Ram Mane v State of Maharashtra* (2010) Criminal Appeal No. 19/2005

## MISUSE OF SECTION 498A IPC

With the recent trend of increasing cases filed under Section 498A<sup>27</sup>IPC, the Supreme Court has acknowledged the fact that *“Section 498-A Indian Penal Code 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 Supreme Court in the case of *Kahkashan Kausar and Ors. v the State of Bihar and Ors*<sup>28</sup> also noted that there is an increasing tendency among the complainants of implicating relatives of the husband in matrimonial disputes, without analyzing the consequences of a trial on the complainant as well as the accused. The court also observed to be cautious while proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them<sup>29</sup>. In the case of *Savitri Devi v Ramesh Chand*, the court has acknowledged the issue of rampant misuse of the section and highlighted the significance of stringent guidelines while proceeding against section 498A IPC.<sup>30</sup> The Court has also observed that most of the cases are *“filed at the heat of the moment over trivial issues without proper deliberations.”*<sup>31</sup> Great caution must be taken to ensure that the social fiber of the family is not ruined or demolished.<sup>32</sup> The constitutional validity of section 498A IPC was challenged in the landmark case of *Sushil Kumar Sharma v Union of India (UOI) and Ors.*<sup>33</sup> The main argument was that the provision is grossly abused by married women, Police, investigating agencies, etc. to harass the accused and family, especially due to the fact that it is a non-bailable and cognisable offence. The 2 judge bench of the Supreme court consisting of justice Arijit Pasayat and Justice H.K Sema held that upheld the validity of section 498A and stated that the mere possibility of abuse of a statutory provision can in no way serve as a valid ground to declare the provision ultra -vires. However, the court remarked that the constitutional validity of the Section is not a licence to fulfill personal revenge.<sup>34</sup> The term ‘legal terrorism’ was used by the court to describe the misuse of Section 498A and reminded the investigating agency and the police that

<sup>27</sup> *Armesh Kumar v State of Bihar and Anr.* (2014) Criminal Appeal No. 1277/2014

<sup>28</sup> *Kahkashan Kausar and Ors. v State of Bihar and Ors.* (2022) Criminal Appeal No. 195/2022

<sup>29</sup> *K. Subba Rao v The State of Telangana* (2018) Criminal Appeal No. 1045/2018

<sup>30</sup> *Savitri Devi v Ramesh Chand* (2003) CriLJ 2759

<sup>31</sup> *Preeti Gupta and Anr. v State of Jharkhand and Anr.* (2010) Criminal Appeal No. 1512/2010

<sup>32</sup> *Ibid*

<sup>33</sup> *Sushil Kumar Sharma v Union of India (UOI) and Ors.* (2005) Writ Petition (Civil) No. 141/2005

<sup>34</sup> *Ibid*

their role is that of a watchdog. It is hence, their duty to monitor that innocent persons are not dragged in on the bases of false allegations.<sup>35</sup>

## **GUIDELINES TO CURB THE RAMPANT MISUSE OF SECTION 498A IPC: THE JUDICIAL EFFORTS**

Reiterating the legislative intent of section 498A, the Supreme court in the case of *Arnesh Kumar v the State of Bihar*<sup>36</sup> introduced a set of guidelines to be adhered to by the police while effecting the arrest of the persons under section 498A IPC or under Section 4 of the Dowry Prohibition Act. The guidelines include strictly following the parameters under Section 41 CrPC while proceeding with the arrest against the accused and filing a checklist under Section 41(b)(ii) of CrPC by police. Violation of the guidelines shall subject the police officers and judicial magistrates to strict departmental action by concerned authorities respectively. In the case of *Rajesh Sharma and Ors. v the State of U.P. and Ors.*,<sup>37</sup> the two-judge bench consisting of Justice Adarsh Kumar Goel and Justice U.U. Lalit has also introduced certain guidelines to prevent the misuse of S498A. The court directed the establishment of the Family Welfare Committee (FWA) in each District under the guidance of the District Legal Service Authority (DLSA). The committee will constitute of paralegal volunteers, social workers, and retired persons. The committee will be assigned the task of receiving and examining the complaints received by Police or magistrates.<sup>38</sup> The Committee is assigned to send a report within one month to the concerned authority. Although Section 498AIPC is a non-compoundable offence, the guidelines enable a provision for settlement, and the District judge or the concerned judicial officer can dispose of the proceedings. The court took a lenient stand with regard to the personal appearance of the relatives and in-laws of the accused. The trial court may grant exemption or attendance by video conferencing.<sup>39</sup> The Court also remarked that for accused who are non-residents of India, impounding of passport should not be the primary action.

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<sup>35</sup> *Ibid*

<sup>36</sup> *Arnesh Kumar* (n 27)

<sup>37</sup> *Rajesh Sharma and Ors.* (n 22)

<sup>38</sup> *PSA Pillai* (n 20)

<sup>39</sup> *Amrasha Singh, 'Rajesh Sharma and Others v State of U.P' (Manupatra, 13 January 2020)*

<<https://articles.manupatra.com/article-details/Rajesh-Sharma-and-Others-v-State-of-UP-and-Another>>  
accessed 15 April 2022

However the directives, in this case, were subjected to reconsideration and review by the supreme court in *Social Action Forum for ManavAdhikar and Ors. v Union of India (UOI), Ministry of Law and Justice and Ors.*<sup>40</sup>The main contentions questioned the credibility of the Family Welfare Committee (FWC), and its power to dispose of proceedings by District and Sessions judicial officers through settlement when on the other hand Section 498A IPC is a non-compoundable offence. The court in the instant case set aside the principles laid down in the case of *Rajesh Sharma and Ors. v State of U.P. and Ors* with respect to FWC, its composition, power, etc. It also mandated that matters of the settlement must be altered to suit the provisions of Section 482 CrPC.<sup>41</sup>

### **MALIMATH COMMITTEE AND LAW COMMISSION REPORTS ON SECTION 498A IPC**

Malimath Committee Report, 2003 has recommended that Section 498A IPC be made bailable and compoundable as it is being a weapon of misuse. The report places forth the argument that Section 498A IPC in its present nature creates a legal barrier as it makes it nearly impossible for reconciliation and settlement. The arrest of the husband and loss of his job due to the criminal case will have a deteriorating effect on the woman if she is someone who is solely dependent on the maintenance from the husband.<sup>42</sup>The 237<sup>th</sup> Law Commission Report published in the year 2011, recommended that section 498A IPC be made compoundable. The report observed, “Section 498A should not be allowed to become counterproductive. In matters relating to family life and marital relationship, the advantages and beneficent results that follow from allowing the discontinuance of legal proceedings to give effect to a compromise or reconciliation would outweigh the degree of social harm that may be caused by non-prosecution. If the proceedings are allowed to go on despite the compromise arrived at by both sides, either there will be little scope for conviction or the life of the victim would become more miserable<sup>43</sup>.” With the aim to reduce the number of false cases under section 498A, the law commission recommended serious legal action against women under Section 182,211 of IPC, Section 250 of CrPC, and section 358 of

<sup>40</sup> *Social Action Forum for ManavAdhikar and Ors. v Union of India (UOI), Ministry of Law and Justice and Ors.* (2018) Writ Petition (Civil) No. 73/2015

<sup>41</sup> *Ibid*

<sup>42</sup> *Ibid*

<sup>43</sup> Law Commission of India, “Two Hundred and Thirty –Seventh Report : Compounding of (IPC) Offences “ (Government of India, 2011) para 5.4

CrPC.<sup>44</sup> It also recommended strict adherence to sections 41 and 41A in CrPC in order to prevent the unwarranted and arbitrary arrest of innocent persons.<sup>45</sup>

## CONCLUSION

India is a land of rich and varied culture and heritage, it's also a land that values and honours the concept of family. Marriage is considered a "divine social institution."<sup>46</sup> However, the sanctity of marriage is being hampered over the past few decades with the rising cases filed under the impugned section. Rampant misuse of Section 498A IPC by wives against their innocent husbands and in-laws to seek revenge is a matter of grave concern. Such acts deprive the purpose for which the very legislation was made. It's therefore the need of the hour, to take action against such misuse by making suitable amendments to the section.

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<sup>44</sup> Law Commission of India, " *Two Hundred and Forty –Third Report : Section 498A IPC* ", (Government of India, 2012) ,para 17

<sup>45</sup> Ibid , para 19.6

<sup>46</sup> Gourav Kumar.' A Study on Misuse of Section 498A of Indian Penal Code, 1860' (2019) IJLMH  
<<https://www.ijlmh.com/wp-content/uploads/2019/09/A-Study-on-Misuse-of-Section-498A-of-Indian-Penal-Code-1860.pdf>>accesed on 17 April 2022