

The Flip Side: Section 498A

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Abstract

In India, earlier we used to come across many newspaper and news readings subjecting to the cruelty against the women in their marital home for the different reasons such as dowry. So for this purpose of safeguarding the interest of woman against the interest of cruelty they face behind the four walls of their matrimonial home, the Indian Penal Code, 1860 was amended in 1983 and inserted S.498A, this section deals with 'Matrimonial Cruelty' to a woman. Offence of cruelty against women is cognizable, non-compoundable and non-bailable offence and defined in Chapter XXA of I.P.C. under Sec. 498A.

But since last few years about 20 years of criminal law reform, a major contentions that is being raised against laws relating to violence against women that these laws are being misused by them by filing false complaints against their husband or in-laws, and reason behind this could be to extort money, or personal hatred towards in-laws but it is still debatable. Different judgments have been given by the legal authorities mentioning the section as to be misused. The charge of misuse is made particularly against Sec 498A of the IPC and against the offence of dowry death in Section 304B. As per the Malimath Committee report in criminal justice system also there is a 'general complaint' that 498A of the IPC are subject to gross misuse. But now Supreme Court has taken positive steps toward this misuse and laid down some guidelines to arrest the accused and had enforced checklist for police under section 41 of the Criminal Procedure Code (Cr.P.C) and said that complaints are not always bonafide and at times filed with oblique motive.

Therefore, research article would be dealing with the section 498A of IPC, its misuse in present context and along with the suggestions by Malimath Committee and reformative measures taken against the misuse by the Supreme Court relating it to the section 41 of Cr.P.C., thereby concluding it with the study of judgments given in leading cases and suggestions against the misuse of Section 498A, IPC.

Keywords: *Cruelty, Matrimonial home, cognizable, non compoundable, non-bailable, dowry death, complaint Malimath committee.*

1. Introduction

Section 498A of Indian Penal Code read as "Husband or relative of husband of a woman subjecting her to cruelty. 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 willful 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 [1].

2. Evolution and Implementation of Section 498A

From time immemorial we come across many of the newspaper readings and news channels that wife was beaten by her in-laws or husband. Wife was not accepted or is tortured in her marital home because of her inability to fulfill demands of her in-laws.

Earlier, cruelty was known to be an evil, being practiced in matrimonial relationships in the name of dowry system prevailing at that time under which specially women, after their marriage was forced to fulfill the demands of property or finances by her husband or in-laws. Women were forced and harassed in such a manner that the option left with them to get rid of this harassment is to commit suicide, with continuous practice of the same, the government was deemed to take some preventive measures for the women, so Government then took active steps and with this section 498A under Indian Penal Code was inserted in 1983 as a safeguard against cruelty. This section is applicable on the husband or his relatives, of women who is subjecting her to cruelty. Cruelty according to section 498A includes physical harm or cruelty as well as mental cruelty affecting the mental peace of women. In various Supreme Court judgments like, in *V. Bhagat Vs. D. Bhagat*, Supreme Court held that mental cruelty must be of such a nature that the parties cannot be reasonable are expected to live together. After the insertion of this section initially, it resulted in fruitful results and successful in achieving its objective. While arriving at such conclusion regard must be had to the social status, educational level of the parties, the society they move in and all other relevant facts and circumstances [2]. Section is a cognizable, non-bailable and non-compoundable criminal offence. Insertion of this section helped largely in empowering women with some rights and remedies against the torture suffered by them and during 21st century it took a new shape and color and after that many sections were inserted for the safeguard and protection of women against various crimes.

But with this, the major motive of the section i.e., to provide the safeguard to women is being quashed and replaced with as a weapon. Now it has become legally recognized alibi in hands of women in case of which she decides to leave the husband's house and in-laws on preposterous grounds and would still possess the entitlement of receiving alimony, rendering the husband and his family wretched [3]. Therefore now section is being misused by filing of false complaints by women or wife against her husband or specially her in-laws. Due to the women power in present society, lower judiciary tends to, without any proper inspection into the matter and facts disposes the case against the in-laws or in favor of false complaints filed by women. Also, it has become a difficult task for the courts to differentiate between false accusation and defending real victims since the whole provision aims at protecting women from being tortured by the hands of her husband or his family [4].

3. Malimath Committee Report on Misuse of Section 498A

There are some laws in Indian Penal Code like section 498-A, other sections under chapter XXA of Cruelty and Domestic Violence Act, 2005 etc. have number of provisions to intimidate men and their families. The effect of these laws is unjustified power in the hands of women for blackmail and extortion in domestic disputes which irreparably damages the life of husbands and their relatives and sometimes also becomes the reasons for their death [5].

There exists and Malimath Committee, which was constituted in the year 2000 by the Home Ministry with the motive of considering measures for rectifying Criminal Justice System. After the insertion of section 498A, it came to the conclusion that section has certain ambiguity and shortcomings in it and along with that recommended some changes. "The report of 2003 Malimath Committee report on reforms in the criminal justice system also notes, significantly, that there is a "general complaint" that Sec 498A of the IPC is subject to gross misuse; it uses this as justification to suggest an amendment to the provision, but provides no data to indicate how frequently the section is being misused. It is important therefore that such "arguments" are responded to, so as to put forth a clearer picture of the present factual status of the effect of several criminal laws enacted to protect women" [6].

According to this Malimath Committee Report it was laid down that once a complaint or FIR is lodged under section 498A or 406 of Indian Penal Code, it becomes easy tool in the hands of the police to arrest or threaten to arrest the husband and other relatives named in FIR without even considering the intrinsic worth of allegations and making a preliminary investigation [7]. So for this purpose report further suggested to bring the section 498A under the purview of compoundable offence and proper investigation is to be made before arresting an alleged.

4. Abuse of Legal Protection by Women

4.1. Indian Residents

Along with the section 498A of Indian Penal Code, which deals and penalizes husband and his relatives with the imprisonment of the term, which may extend to three years or fine or both, our legal system has provided an enough other section for the women who are victimized of any kind cruelty be it mental or physical.

Similarly, section 113B of Indian Evidence Act, 1872 [8] deals with that the presumption is to be made that if soon before women's death she has been subjected by such person to harassment or cruelty then it is to be presumed that such person had caused dowry death.

Likewise, section 406 of Indian Penal Code provides the punishment for criminal breach of trust and husband or in-laws on filing of case by women can be punished if "*streedhan*" is not returned [9].

Another statute like Dowry Prohibition Act 1961, in its provisions prohibits the giving and taking of dowry of dowry and whoever is practicing it, is punishable with imprisonment of fine or both.

But these laws which were enacted with the motive of women empowerment in the society are now getting double edged, one side being positive and another side being negative. Being a negative side, it is used as a weapon against husband and in-laws. And another side being positive, its existence regarded as noble one. But it's not just to presume that the domestic cruelty is only to a wife only and not to husband. Women use it as a weapon to blackmail, humiliate, harass and falsely implicate innocent husband and in-laws under these provisions.

4.2. Non-Indian Residents

Many women marry a non-resident Indian guy for the purpose of getting a visa, to make money, as generally it is regarded that Non-Indian Residents have comparatively high pay-ups, so to acquire that financial status, they marry Non-Indian Residents for purpose of getting money as well as high status in society. If later she files false complaints then she abducts their children and comes back to India after having taken over his assets.

There are instances when Non-Indian Resident (NRI) are tortured, threatened and blackmailed by their wives. As they live apart from their spouse they are unable to deal with such matters properly and due to lack of knowledge of legal procedures and distances they fail to prove their innocence. There are circumstances in which Indian Legal authorities tends to direct foreign embassies to cancel their visas due to allegations of cruelty imposed on them. As soon as they arrive to India may be by reason of resolving these matters, without listening to them, they are arrested airports as criminals and their passports are seized and stopped to go back to abroad [10]. Because the major problem arises is these are cognizable offenses in which proof is not required and merely on the complaints filed by the wife police or authorities arrest the accused and put him behind the bars.

5. Impacts

Misuse of these provisions has many after effects which are not realized as to when it is misused. Some of the major impacts are as follows: As soon as husband's relatives being arrested, he loses the trust in matrimonial relationships with his wife and chances of survival of marriage comes to an end leading to the divorce cases.

Family reputation is being defamed in society due to the false implication which can lead to difficulty in unmarried children of the husband's family.

In many families, husband or his parents commit suicide due to the fear of false allegations put upon them.

These are the some reported circumstances in which family of the husband has been adversely affected. Along with these circumstances, there are many other situations in which husband and his family are tortured and dominated in lieu of these provisions which can adversely affect the mental health of husband and in-laws.

"Yearly about 75000 dowry harassment cases are filed in India. According to National Crime Reports Bureau data, more than 80% people arrested under dowry law cases have turned out to be innocent. Suicide rates of married men in India are higher than females and their proportion increases with their age. For males in the age group of 30 to 40 suicide rate is 508 per 100000 persons; for women, it is 220. The suicide rates among men in the age group of 45 to 59 are 1812 per 100000 persons and among women, it is 550. It shows that more husbands are compelled to commit suicide because of unbearable harassment, mental torture, disturbed family life, financial pressure etc" [11].

6. Reason for the misuse of Section 498A

In today's context, women are getting well educated and aware of the fact that section 498A is Cognizable as well as non-bailable offense and as soon as the complaint is filed by women, her husband or in-laws are put behind the bars. Therefore women take advantage of the same and misuse the section.

Major reasons could be to fulfill their financial demands and needs by way of extorting amount of money either by means of alimony or maintenance.

There could be a possibility that wife is having another affair and unable to get over it, then misuses the section to get divorced.

When wife develops a personal grudge against her in-laws or her husband due to some or other reason and wants to get rid of her matrimonial house.

Some cases are filed without bona fide intention just to take revenge.

“Luteri Dulhan- Cases have come to light, where a woman used to marry a number of men and cheat everyone of them, by living sometime with them and sometime and then making theft of valuable property and disappear. If the case of cheating and theft is filed against such woman, criminal complaints of alleging dowry demand and harassment are filed. If a woman wants to have full control over the finances of her husband and wants to dominate his social behavior and don’t want him to live with his parents” [12].

The Court, therefore, held clearly that there was a misuse and exploitation of provisions to such an extent that it was hitting at the foundation of the marriage itself and proved to be not so good for the health of society at large. Court further believes that the authorities and lawmakers had to review the situation and legal provisions to prevent such from taking place [13].

7. Constitutional Validity of Section 498A

Number of cases recorded before the Supreme Court challenging the constitutional validity of the section. In a writ petition about the constitutional validity of section, Supreme Court said that merely because the provision was held to be constitutional and not the ultra vires, it did not allow a person to practice harassment. In a case, *Inder Raj Malik and others vs. Mrs. Sumita Malik* [14] contended that the section is ultra-vires of Article 14 and 20(2) of the Indian Constitution. Therefore, “both statutes together create a situation commonly known as double jeopardy. But Delhi High Court negatives this contention and held that this section does not create a situation for double jeopardy. Section 498-A is distinguishable from section 4 of the Dowry Prohibition Act because in the latter mere demand of dowry is punishable and the existence of an element of cruelty is not necessary, whereas Section 498A deals with aggravated form of the offense. It punishes such demands of property or valuable security from the wife or her relatives as are coupled with cruelty to her. Hence a person can be prosecuted in respect of both the offenses punishable under section 4 of the Dowry Prohibition Act and this section” [15]. Further analyzing the constitutional validity of this section it is violative of the principle of Equality amongst the gender, as at one side it has been the area of incessant debate that both the genders should be vested with equal rights and privileges. But then critics of the same could argue that should this section be held unconstitutional or repealed? The answer of the same could be that no, but the area of section or area of the offence of cruelty should be widened by providing the same for the victimized husbands also and inspection of facts and circumstances should be analyzed more productively.

In another leading case of *Sushil Kumar Sharma vs. UOI* [16], it was contended before the Supreme Court that section 498A is unconstitutional under Article 32 of the Indian Constitution and asked to frame alternative guidelines to restrict its misuse. Supreme Court held that the object of section 498A being prevention of the dowry menace, it could not be struck down but by the misuse of the provision, a new legal terrorism can be unleashed [17]. Further petition of said case seeks the Court to take harsh

action against those women who had filed fictitious or false complaints against their husband or in-laws. Supreme Court then came to a conclusion saying that merely there is a possibility of abuse of provision of law; it would not render it unconstitutional.

Therefore it could be observed that Supreme Court also doesn't deny the fact that there exist a large number of complaints under Section 498A, IPC which are not bonafide but since it is duty of legislature to legislate, until and unless there comes a provision to tackle false complaints under this section, the Courts would have to continue to function within the prescribed procedure of law.

In a leading judgment [18], Court, to clarify further this Section of cruelty held that it is not retrospective in nature and cognizance cannot be taken if in case the offense was committed before the enforcement of the section.

8. Restraining the misuse of section 498A

It's not that our legal system does not take any measure to control or in curbing of such misuse of the section. But the misuse and problem have grown such that it has become very difficult to evade it completely, but several measures could surely be taken by which these problems could be minimized. Accepting the fact that this section is cognizable and non-bailable offence, it does not empowers the police officers the right to arrest, Supreme Court on this stated that police to arrest a person should meet and fulfill the conditions [19] given under section 41 and 41A of The Code of Criminal Procedure, 1973 and satisfy itself that arrest is justified. Therefore, Supreme Court Restricts Police officers to directly arrest and arrest only on satisfaction of conditions under section 41 or Cr.P.C., that is, when police may arrest without warrant and notice of appearance before the police officer.

“Justice Chandramauli Kr. Prasad, delivering the judgment on behalf of the Hon'ble Supreme Court took note of the gross misuse of section 498A observing “The fact that s.498-A is a cognizable and non-bailable offense has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shields by disgruntled wives. The simplest way to harass is to get the husband & his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers & grand-mothers of husbands, their sisters living abroad for decades are arrested” [20]. Courts should lay down several guidelines, through judicial pronouncement, to protect the liberty of the citizens and harassment of an innocent person in hands of unscrupulous litigants [21].

Supreme Court in *Sushil Kumar Sharma Vs. Union of India* [22] and others have suggested the following remedial measures by stating that the courts have to take care of the situation within the existing framework.

Firstly, the courts and the investigation agencies should not deal with the allegations casually [23].

Secondly, the Courts should not follow any straight jacket formula, any preconceived notion or view [24].

Moreover, disputes between matrimonial relations could be resorted in family level only rather than stretching it to the courts. This could help in mutual settlements between them and also there will not be any abuse to reputation.

9. Conclusion

Many critics opposed and contended this section to be unconstitutional as it is being misused. Also in some cases, it was contended that there are cases where the judiciary has failed to provide justice to the real victims or sufferers of harassment cases and justice is provided to the false complaints filed by

women with unlawful intent and to fulfill their personal benefits out of it. So it was contended that this section should be held unconstitutional but some areas or part of India is lacking behind in terms of cruelty against women. They still need rights to get rid of this harassment and raise their voice in society. So these provisions are required as a needful necessity to protect women but we cannot ignore the fact that some women are taking due advantage of this section and rights provided to them and therefore these provisions must prevail as a protection against women but its misuse should be curbed by proper investigation of facts and circumstances of the cases. It's not that these misuses are happening presently only, but it's just that earlier these cases were not recorded and left unreported behind the doors but it is now recorded.

Along with the protection to the women, it should also be extended to the male members as according to the data many husbands and his family who are innocent have been affected. And in generality, the voice of victimized men is neither valued in society, not law. Since this section sometimes tends to be biased and because of that along with him whole family suffers, therefore, it can be rightly concluded that this section from its very motive was inserted with the objective of safeguarding women from cruelty by his husband or in-laws or relatives but now it is being abused, therefore, measures are required to be taken to curtail further growth of misuse of this provision.

10. Suggested Recommendations for in-curbing misuses

Firstly proper investigation is to be done by the authorities in an honest and bonafide manner keeping in mind that punishing an innocent can lead to losing faith in the legal system by innocent as well as justice denied to an innocent which is not the motive of law.

Secondly, alike protection given to women, males should also be provided with the same, therefore, the section needs to be amended.

Thirdly, proper education to be provided to the women, who are real victims of the harassment cases and counseling, should be conducted for the people or women specially regarding the misuse of provisions of law along with its impact on the husband as an individual and his family as a whole.

Actions are to be taken against the officials or legal authorities for the negligence made on their part may be on collecting evidence or investigation in facts and circumstances of the case.

Lastly, provisions should be made against the women misusing the provisions of law and penalize them by imposing heavy penalties on them.

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