

MISUSE OF WOMEN PROTECTION LAWS: SPECIAL REFERENCE TO 498A

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Abstract

In this current day and age there have been several cases that have been brought to light with regards to men being falsely accused on the grounds of harassment of women. Laws which were brought with a view of protecting the weaker women who become victims of cruelty and domestic violence initially served its purpose well. However, gradually these women protection laws are being greatly misused by educated women to blackmail their husbands and family for money and various other reasons and the women who really need protection through this law are hardly ever able to use it. One such law is that of Section 498A which is an anti-cruelty law for women, which also takes into consideration dowry-related harassment, but is not restricted to it. Since the very beginning, Section 498A has been targeted by various men's rights activists. It is an open secret that this section of the IPC is being widely misused and in the recent *Rajesh Sharma and Ors v State of UP and Anr*, a question had emerged from an appeal made to the Supreme Court, as to whether "any directions are called for to prevent the misuse of Section 498A". My paper seeks to analyze and establish the evils that Section 498A has created in the Indian society through the increased abuse of it by women and officials and to propose solutions in light of this. It seeks to answer the following questions:

- **How section 498A is being misused?**
- **What are the means by which the misuse of Section 498A can be prevented and what steps have the government has taken in light of this?**

Key words: Section 498A, misuse, cognizable, constitutional, ultra vires

Introduction

Women have always been an integral part of society. However, more often than not their contribution in the human society has been ignored. This gave rise to the need of empowering women and hence the feminist movement. India's Constitution makers and our founding fathers were very determined to provide equal rights to both women and men. The Constitution provides provisions to secure equality in general and gender equality in particular. The rights available to women in India can be classified into two categories, namely as constitutional rights and legal rights. The constitutional rights are those which are provided in the various provisions of the constitution. The legal rights, on the other hand, are those which are provided in the various laws (acts) of the Parliament and the State Legislatures. Before proceeding further with regards to the misuse of these rights it is important to acknowledge the rights provided to women in the Constitution primarily through Articles 14, 15(1), 15(3), 16(2), 23(1), 39(a), 39(d), 39(e), 42, 51- A(e), 243-D(4), 243-T(3), 243-T(4), and 243-D(3). As for the legal rights of women, there are various legislation's containing several rights and safeguards for women namely, the Protection of Women from Domestic Violence Act (2005), Immoral Traffic (Prevention) Act (2006), Indecent Representation of Women (Prohibition) Act (1986), Indian Penal Code (1860). When it comes to marriages, women have legislations for their protection in the following acts, Dowry Prohibition Act (1961), Dissolution of Muslim Marriages Act (1939), Indian Christian Marriage Act (1872), and Hindu Marriage Act (1955).

Misuse of Women Protection Laws

In recent times it is seen that these laws are being misused and abused and the allegation of misuse is made particularly against Sec 498A of the IPC and against the offence of dowry death in Sec 304B. The present research paper tries to establish the evils that Section 498A has created in the Indian society through the increased abuse of it by women and officials. Laws which were brought with a view of protecting the weaker women who become victims of cruelty and domestic violence initially served its purpose well. However, gradually this law is greatly being used by educated women to blackmail their husbands and family for money and various other reasons and the women who really need protection through this law are hardly ever able to use it. Furthermore, it is not only the women who misuse this law in their interest but also the corrupt government officials who facilitate

this misuse through wrongful and illegal procedures. The offence being a non-bailable, cognizable and non-compoundable one hits right at the foundation of institute of marriage and leaves no scope for the families to reunite. The constitutional validity of section 498A has also been challenged as it gives no protection to men and the protection or the special provisions made for women is affecting other class of people at large. The law once made to protect women from cruelty and violence has now become a tool for women to practice cruelty on their husband and relatives.

Understanding Section 498A

Section 498A of the Indian Penal Code (IPC), which defines the offence of matrimonial cruelty, was inserted into the IPC by an amendment in 1983. Offenders are liable for imprisonment as well as a fine under the section and the offence is non-bailable, non-compoundable and cognizable on a complaint made to the police officer by the victim or by designated relatives. Article 498A passed by Indian Parliament in 1983, is a criminal law and not a civil law.¹ It is defined as follows:

"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."²

The offence is cognizable, non-compoundable and non-bailable which means that the accused can be arrested and jailed without warrant. After investigation, the complainant cannot be withdrawn by the petitioner and that the accused must appear in court to request bail. The accused is presumed guilty and the entire burden is on the accused to prove innocence in the courts.

Section 498A offers an in depth explanation of the meaning of cruelty and in the case of *Kaliyaperumal v. State of Tamil Nadu*³, it was held that a common essential under both sections of 304B and 498A is that of cruelty. It is important to keep in mind however that these two sections are not mutually inclusive but are rather both distinct offences and persons acquitted under section 304B for the offence of dowry death can be convicted for an offence under sec.498A of IPC.

¹ <http://www.lawyersclubindia.com/articles/Sec-498A-of-the-Indian-Penal-Code-a-weapon-in-the-hands-of-vamps-585.asp>

² https://www.academia.edu/9531210/A_Doctrinal_Research_on_Section_498a_IPC_1860_-_A_critical_Analysis?auto=download

³ <https://indiankanoon.org/doc/1802261/>

The section provides an explanation that elaborates the meaning of cruelty as follows:

a) Any willful conduct which is of a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb, or health (whether physical or mental) 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." ⁴

Another important aspect of section 498A is that it awards protection only for married women. Section 498-A can only be invoked by a wife, a daughter-in-law or their relatives. This section is non-bailable, non-compoundable and cognizable. So far as the Indian Penal Code is concerned, Section 498-A of IPC was introduced wherein if a woman was subjected to cruelty by her husband or his relative or relatives, the relative or relatives could be convicted under this penal provision. The law underwent further change with the introduction of S. 304-B in the Penal Code and S.113B in the Evidence Act, 1872 by the Dowry Prohibition (Amendment) Act, 1986. By way of introducing Sections 113A and 113B in the Evidence Act, the legislature has tried to permit a presumption to be raised if certain facts are established.⁵

Constitutionality of Section 498A

There is currently an ongoing debate as to whether Section 498A contravenes Article 14. There have been cases that have proved positive of its contravention as well as negative. There are primarily two such cases that deal with the claims of Section 498A being unconstitutional and ultra vires. One such case is that of Sushil Kumar Sharma vs. Union of India.⁶ It was by the way of a petition filed under Article 32 of the Constitution to declare Section 498A as unconstitutional or ultra-vires. This was filed as a desperate cry to help curb the number of false accusations in order to prevent the victimization of innocent people and in the alternative to formulate guidelines to prevent the same. The Supreme Court denounced 498A as “Legal Terrorism” yet it was still considered to be constitutional. The Honorable Court in this judgment essentially stated that the object of the provision was the prevention of

⁴ <http://www.498a.org/498aexplained.htm>

⁵ <http://feministlawarchives.pldindia.org/wpss-content/uploads/Humsafar-Draft-Rep-498A-27.6.pdf>

⁶ 2005 (6) SC 266

the dowry menace and that it was rightly pointed out by the petitioner that there are several instances wherein the complaints are not bonafide and have a questionable motive but that doesn't necessarily make the provision unconstitutional or ultra-vires. Further, it was stated that just because it is held to be constitutional and intra vires does not give any person the license to misuse the section as a means of harassment to the husband and his relatives. This instead prompted the courts to seek rigid directives that would prevent the misuse of it and that would deal with the frivolous complainants in a serious manner. The Court drew a conclusion to the case by stating that the provision was intended to be used as a "shield and not an assassins weapon".

A case with regards to unconstitutionality of section 498A is that of Inder Raj Malik & others vs. Sumita Malik.⁷ In this case it was contended that Section 498A of the India Penal Code is ultra vires to Article 14 and Article 20(2) of the Constitution. It was held ultra vires on two grounds: Firstly, Section 498A Indian Penal Code gives an arbitrary power to the police as well as to the court thereby offending against the provisions of Article 14 of the Constitution. The 'cruelty' occurring in the said provision is very vague. It has been defined in the Explanation clause (b) of which says that if there is a harassment for obtaining some property or valuable security from a wife or her relative, it amounts to cruelty. The word 'harassment' is equally vague and as such any person can be arbitrarily hauled up for committing an act of harassment. (b) Section 498A Indian Penal Code offends against the principle of double jeopardy' in as much as demand of dowry or any property is punishable both under section 4 of the Dowry Prohibition Act, 1961 as well as under section 498A Indian Penal Code.

Misuse of Section 498A

This section was made keeping in mind the protection of married women from unscrupulous husbands like in the case of Surajmal Banthia & Anr. v. State of West Bengal, wherein the deceased was ill-treated and tortured for several days and even not given food several times. Her father-in-law also misbehaved with her quite often. This is the treatment that several young brides face when they move out of their parents' home and into the house of her in-laws'. It is the duty of the court to prevent any of these abusers from escaping.⁸ However, with instances such as those in the case Preeti Gupta & Anr vs State of Jharkhand & Anr⁹ it is evident that this section is being grossly misused. The facts state that the case filed under

⁷ 1986 (2) Crimes 435; 1986 (92) Cr LJ 1510

⁸ <http://www.legallyindia.com/views/entry/section-498a-of-ipc-its-use-misuse-html>

⁹ AIR 2010 SC 3363

Section 498A was a false allegation and that the charges framed against her husband and in laws during the incident was not true but were false. Another such case is that of the case Savitri devi v. Ramesh Chand ors.¹⁰ The court held unmistakably that there was misuse of the provisions to such a degree, to the point that it was hitting at the establishment of marriage itself and turned out to be not all that great for soundness of society on the loose. The court trusted that authorities and officials needed to audit the circumstance and legitimate arrangements to avert such from taking place. These are just a few such case among the thousands of cases that are levied against the husband and his family members with false accusations. With the established laws for the protection of women being misused it is making it difficult for courts to protect the rights of women. Hence, Section 498A is clearly being misused by few women and there are various purposes identified which drive the women to exploit this provision made for their protection against their own family members. There are several reasons as to why a woman would falsely charge her husband and his family members under this section. A woman in a prior relationship who marries simply to satisfy the wants of her parents would use Section 498A as a weapon to abandon her marriage. Dominance over her husband is another instance where Section 498A proves handy to a woman by which she would use it as a tool to threaten her husband to abandon his family members and live a private life with her or may levy the threat to gain control over his financial assets. This brings to light another reason as to why a woman would misuse this section which is for the purpose of legal extortion of large sums of money from her husband. A woman may also use Section 498A as a means of gaining custody over her child and to deny the father and his family access to their children. Further, fraud and infidelity are also reason that attribute to the misuse of this section. In the case of infidelity it could function both ways where the husband is having an affair and the wife uses Section 498A as a means to avenge her or where the woman is having an affair and instead of simply getting a divorce she files a complaint under section 498A which offers both protection to her name as well as money from her husband. Further there is a growing menace with regards to Section 498A being poorly handled by the Judges as well. A judge may grant interim bail but then inevitably ends up extending the bail for every 5 or 7 days and thus the man is neither arrested nor free but keeps on attending court dates without any reason. After giving interim bail, the cases are referred to mediation where the man is psychologically tortured to bow down before wife's demands and if he does not do so, his bail is canceled and he is sent to

¹⁰ II (2003) DMC 328

jail.

There are certain characteristics and traits of women like these that misuse the law, they are typically women suffering from pre-existing mental problems such as borderline personality disorder, bipolar disorder, schizophrenia, or any such order disorder. Other characteristics that are typically displayed by these kinds of women are that of jealousy, insecurity, possessiveness or women that marry for money in order to exploit their husbands and his family.

11

It is of shame that with the struggle that women face in society there are still women that misuse this section that was solely created for the purpose of offering protection to women.

Conclusion

In light of all that has been happening recently it is necessary for the Court and Legislature to make changes if the laws of matrimonial cruelty are to be of any deterrence. With the increasing misuse of this law there should be certain amendments brought into action and there have been. One such major amendment was the set of directions issued by the Supreme Court of India in 2014. In the case *Arnesh Kumar v. State of Bihar & Anr.*, the judgment essentially altered the relationship between the police and the public. The verdict came about through an appeal filed by the husband under the apprehension of being charged under section 498A of the Indian Penal Code. The judges during the case found it fitting to discuss the rampant misuse of Section 498A as a weapon rather than a shield by disgruntled wives. Furthermore the case also took notice of the charges levied against that of the husband's relatives. The Supreme Court acknowledged the fact that its rampant misuse owes to its nature of being a cognizable and non-bailable offence. The Judgment stated that the endeavor of the Court was now to ensure that there was no unnecessary arrest of the accused by the police officers and that the Magistrates do not authorise detention casually and mechanically. In order to curb and prevent this arbitrary arrest it laid down the following directions:

1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;

¹¹ <http://www.lawyersclubindia.com/articles/Sec-498A-of-the-Indian-Penal-Code-a-weapon-in-the-hands-of-vamps-585.asp>

2. All police officers be provided with a check list containing specified sub- clauses under Section 41(1)(b)(ii);
3. The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;
4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;
5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;
6. Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;
7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.
8. Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.¹²

After this judgment the home ministry took a step further and circulated a letter to all States and Union Territories informing them about the judgment and it was sent to all the State Secretaries, the Director General of Police of each State and the Registrar General of all High Courts for the onward transmission and ensuring of its compliance.¹³

¹² <https://indiankanoon.org/doc/2982624/>

¹³ https://deveshwar.in/wp-content/uploads/2014/08/498a-arrest-SC-judgment-Circular-Issued-by-GOI_July_2014.pdf

Further, in the recent judgment in the case of *Rajesh Sharma & Ors. v. The State of U.P.* the judges of the Supreme Court laid down certain directives to curb or rather prevent the misuse of Section 498A. This case came about recently in 2017 and a two Judge Bench comprising of Justices AK Goel and UU Lalit were of the belief that the involvement of civil society in the aid of administration of justice could perhaps be one of the steps to remedy the situation of gross misuse of Section 498A, apart from the investigating officers and the trial courts concerned being sensitized¹⁴. The Supreme Court then proceeded to lay down directives for the establishment of a District Family Welfare Committee which is to be constituted by the District Legal Services Authorities consisting of 3 members comprising of para legal volunteers, retired persons, social workers, wives of working officers and other citizens who are willing and suitable for the job. The Magistrate or the police is required to refer any dissension under Section 498-A to this Committee which, after satisfactory personal interaction with the parties involved, needs to send a report stating the factual aspects, and its conclusion, to the referring authority within a month. Till such receipt of this report, which the referring authority can consider on there shall be no arrest normally effected. The judgment further went on to state that complaints under Section 498A and other connected offences may be investigated only by a designated Investigating Officer of the area and that such designations may be made within one month from the date and that the officer may be required to undergo training for a duration of not less than one week and may range within four months. These directives enable any senior judicial officer or District and Sessions Judge to discard the criminal proceedings, in situations where a settlement is reached between parties. With regards to a bail application if it is filed with at least one clear day's notice to the Public Prosecutor or complainant then the same may be decided as far as possible on the same day and the recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife or minor children can otherwise be protected. In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine.¹⁵The District Judge, or a designated senior judicial officer nominated by him has the option to club all connected cases between the parties as a result of matrimonial disputes. It is also not mandatory for the personal appearance of family members especially outstation members through the course of the trial. Finally, none of these directives are applicable to instances of tangible physical injuries, or death. The judgment is currently receiving criticism from several feminist NGO's that strive to

¹⁴ <https://indiankanoon.org/doc/182220573/>

¹⁵ <https://indiankanoon.org/doc/182220573/>

protect the rights of women in particular. However, from a realists perspective there is a pressing need to protect the rights of those thousands of helpless men and family members of those men that are falling victims to the misuse of Section 498A.

Another important step that is to be taken by the Court is with regards to Section 498A being non-compoundable. An attempt should be made to make the offence compoundable. This would enable complainants to enter into a compromise with the accused and agree to have the charges dropped which will protect the sanctity of marriage and make it easier to retract a false charge as well.

Thus, through this whole study we can see how some women have abused and misused section 498A of the IPC, a section made for the protection of women from the savagery of her husband, twisted and manipulated for their own benefit which in turn takes away the justice of genuine, helpless women trapped in an unhealthy marriage. However, the government has taken precautionary measures and all of the above mentioned directives and initiatives taken by the government show a keen promise in taking a step towards curbing and even perhaps abolishing the misuse of Section 498A while at the same time safeguarding women's rights.



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