



“Provisions relating to Matrimonial Cruelty under Section 498-A of the Indian Penal Code: An Analysis”

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Abstract: Domestic violence, also known as intimate partner violence, is any type of torture, including physical, emotional, and sexual abuse that occurs in a marriage or other intimate relationship. In spite of the fact that it happens frequently over the planet, it is especially widespread in India where dowry, male supremacy, and joint families are the tradition. As a result, these variables also contribute to the domestic violence that women experience. Women encounter abuse not just from the husband but also from the husband's family, particularly when there is a dowry problem, whether it be a dearth of dowry or an inadequate quantity. Because of the associated stigmatization and the general Indian mindset of being concerned with other people's opinions, figures do not accurately depict the situation. Most of the time, the victim's death from the harm, their suicide, or their arrival at the hospital to receive treatment are the only ways the problem is brought to the attention of the police and legal authorities. Otherwise, the less severe kinds of abuse are typically kept secret. Prior to 1983, there was no explicit statute in India that addressed domestic violence. Section 498A was added in 1983 when the Indian Penal Code (45 of 1860) was modified. In section 498A, "Matrimonial Cruelty" against a woman is dealt. In India, marital cruelty is now a punishable offence that is not subject to bail and cannot be compounded.

It is shocking to hear that even though this provision was added to the Indian Penal Code for a legitimate reason, some women are openly abusing it to harass their husbands and his family. This has frequently evolved into a new form of extortion, harassment, divorce, and retaliation. Numerous times, without conducting an investigation, the police have detained elderly parents, unmarried sisters, and even pregnant sister-in-laws, causing them to endure mental anguish, humiliation, and pain. Some of the accused spouses' or their family members' suicides were motivated by embarrassment. This study examines how some women today are abusing section 498-A's mandates, utilising them as weapons rather than defences, leading to the miserable state in which the husband and his family currently find himself. The report makes the suggestion that rigorous rules should be issued to stop the growing misuse of 498A using case law and data.

Keywords: Section 498A Indian Penal Code, Cruelty, Misuse, Domestic violence, Dowry, Victim, Suicide.

1.1 Introduction

India has always been a country where traditions and customs are respected and valued in addition to being observed. Notably, according to Hindu Law, "marriage" is the voluntarily binding together for life of one man and one woman. It is regarded as a holy vow taken by the spouses to one another. It is thought to represent the social ties connecting two families. According to Hindu traditions and culture, the bride's relatives give the bride and bridegroom and his family members gifts in accordance with their wishes, capacity, and pleasure. This tradition has evolved into dowry over time, which is the durable objects, money, and real or personal property that the bride's family pays to the bridegroom's parents or other family members as a prerequisite of wedding.

Originally a gift, it has evolved into a need for marriage over time. The desire reached its zenith with dowry-death-level torment and cruelty. Another one of them that was common in India was the idea of dowry. In accordance with section 21 of the Dowry Prohibition Act of 1961, the term "dowry" is defined. According to section 304-B of the Indian Penal Code, a woman's death within seven years of marriage that is brought on by burns, bodily harm, or occurs under unusual circumstances is to be viewed as a "dowry death," and her husband or a close relative is presumed to be responsible. In addition, section 498-A was added to the Indian Penal Code in 1983 to protect women from dowry-related cruelty and domestic abuse, as well as to provide the authorities the ability to step in. The urgent necessity to end all forms of maltreatment towards a married woman, which was a burning issue for the nation, led to the introduction of section 498-A. One fundamental reality is that the offence described in the section's requirements has as its foundation the demand for dowry and the dowry system as an institution. The purpose of this section was to shield women from the brutality of their husbands and other family members. To protect the women from cruel treatment and humiliation, the section was added. But in the current atmosphere, law has turned into a social ill. Instead of serving as a "shield," this area is now intentionally employed by women as a "armour" to harass and intimidate men in order to serve their own selfish interests. As a result, it can be claimed that women who abuse the provisions of this particular section for her utilize section 498A as a weapon. Section 498A defines, "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 be extended to three years and shall also be liable to fine. The offence is Cognizable, non- compoundable and non-bailable.” There is the direct arrest of a husband and his relative without investigation under this offence.

Three interconnected legislative and judicial provisions intended to protect the interests of married women in India include sections 498A and 304B of the Indian Penal Code, as well as the Protection of Women Against Domestic Violence Act, 2005. Even while these laws' aims are admirable, some women have unhappily turned to them as a means of retaliation, divorce, and humiliation. There are numerous instances where women have reportedly employed this region as a weapon as opposed to a shield.

The first topic covered in this essay is the definition and purpose of Indian Penal Code sections 304-B and 498-A. Second, explain the alarming rise in the abuse of these parts. Thirdly, it makes the case that stringent regulations should be developed to prevent its abuse.

1.2 Meaning of ‘Cruelty’ and difference between 304B and 498A of Indian Penal Code

Torture on a physical or mental level is considered cruelty. It is possible to infer "willful conduct" in Explanation (a) of section 498A of the Indian Penal Code from both direct and indirect evidence. The definition of cruelty in the section's explanation clause has been expanded to incorporate the following: (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide, or to cause a grave injury or danger to life, limb or mental or physical health 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.

Cruelty is a specific element in offences under sections 304B and 498A of the Indian Penal Code, which were adjudicated in *Kaliyaperumal v. State of Tamil Nadu*. People who have been found not guilty under section 304B for the crime of dowry death may nonetheless be found guilty under section 498A of the Indian Penal Code because the two sections deal with different offences. In the section 498A explanation, the definition of cruelty is provided. Although section 304B does not define cruelty or harassment, section 498-A's definition of these terms also applies to section 304-B. The Indian Penal Code 's section 498-A defines cruelty as an offence when it occurs by itself, whereas section 304-B defines dowry death as an offence when it happens during the first seven years of a marriage. But section 498-A makes no mention of such a time frame.

In the case of *Inder Raj Malik v. Sunita Malik*, it was decided that the definition of "cruelty" can be found in the explanation, which states, among other things, that harassing a woman with the intention of forcing her or any connected persons to comply with an illegal demand for any property or valuable security is cruelty.

Various forms of cruelty are described by this section. The few examples of cruelty as a social menace in the contemporary age are as follows:

- (a) Cruelty by vexatious litigation
- (b) Cruelty by deprivation and wasteful habits
- (c) Repeated demands of dowry amounts to cruelty
- (d) Cruelty by extra-marital relations
- (e) Harassment for non-dowry demand
- (f) Cruelty by non-acceptance of baby girl
- (g) Cruelty by false attacks on chastity
- (h) Taking away children
- (i) Repeated taunts calling her ugly and mal treatment is cruelty
- (j) False allegations in litigation amounts to cruelty
- (k) Neglect by husband also amounts to cruelty

The aforementioned examples suggest that the concept of "cruelty" is abstract in nature. Any Act lacks a clear definition of cruelty. It can take many different forms and is influenced by a variety of conditions and causes, including the woman's family history, physical and mental characteristics, societal upbringing, etc.

When a husband had an unethical relationship with another woman and used to assault his wife, there was an assumption of cruelty within the meaning of section 113-A of the Evidence Act, 1872, which led to the husband being found guilty of abetting suicide within the terms of section 306 and constituting continuous cruelty within the meaning of Explanation (a) of section 498-A. Whether section 498-A creates double jeopardy?

In *Inder Raj Malik and others v. Mrs. Sumita Malik*, It was argued that this provision violates both Article 14 and section 2 of the Constitution. The Dowry Prohibition Act also addresses incidents of a similar kind, therefore when both acts are combined, a situation known as double jeopardy results. However, the Delhi High Court rejected this argument and determined that this clause does not give rise to a case of double jeopardy. The difference between section 4 of the Dowry Prohibition Act and section 498-A is that the latter criminalises the mere demand for dowry without requiring the presence of any element of cruelty, whereas section 498-A deals with the more severe form of the



offence. It penalizes those requests for valuable security or property from the wife or her family members that are accompanied by maltreatment towards her. Therefore, a person may be charged with crimes under both this section and section 4 of the Dowry Prohibition Act.

1.3 Misuse of Section 498-A

Although all of the aforementioned regulations are designed to safeguard women from marital cruelty, some estranged wives have blatantly abused them for their own personal advantage in some instances, using them as a tool to embarrass and defame their husbands and his kin.

Due to the fact that section 498-A is a non-bailable, non-compoundable, and cognizable offence, the police can immediately detain a husband and a relative upon receiving a complaint from a wife without conducting any further investigation. Unfortunately, the complainant did not fully comprehend the significance and repercussions at the moment of bringing the complaint, which may have resulted in overwhelming humiliation, misery, and pain for the complainant, the accused, and his or her family. There are many cases in which Court after observing the misuse of these provisions has intervened affirmatively and redressed the grievance of the victimized husband and his relatives.

In *Jasbir Kaur v. State of Haryana*, the Court observed It is well recognized that an estranged wife would do whatever it takes to involve as many of the husband's family members as she can in a desperate attempt to save what little of the estranged marriage still exists. In *Kanaraj v. State of Punjab*, the apex court observed, "The in-laws or other relatives cannot always be held responsible for the husband's mistakes. Such individuals cannot be held accountable for merely speculative or implied actions; rather, the actions attributed to them must be proven beyond a reasonable doubt. There should be less of an inclination to accuse the husband's relatives. Karnataka High Court, in the case of *State v. Srikanth*, observed "Roping in the entire family, even brothers and sisters-in-law, has to be devalued unless there is a definite piece of evidence against these people; it is not acceptable on the part of the police to include the entire family as accused." The Supreme Court, in *Mohd. Hoshan v. State of A.P.* observed, it is primarily a factual issue as to whether one partner has been harsh toward the other. The effect of complaints, accusations, or insults on a person that constitute cruelty relies on a number of elements, including the victim's sensitivity, the victim's social background, the environment, their education, etc. Furthermore, the degree of sensitivity, strength, and fortitude required to bear such violence differs from person to person. It is up to the facts of each case to determine if mental cruelty is proven.

1.4 Conclusion

In a larger sense, marriage is an enduring tie that needs to be managed with care. Dowry and matrimonial cruelty are a burden on our civilization since they lead to the mistreatment, burning, and even death of several women. Dowry and matrimonial cruelty are undoubtedly serious offences that should carry harsh penalties. Numerous changes have been made to the Indian Evidence Act and Indian Penal Code with this in consideration.

Some of the most important laws exist to shield women from the abuse of their husbands and his family members. Some laws were passed to protect them, but lately they are being utilized more as weapons than as a defence. Unfortunately, by improperly utilizing these rules, an effort is being made to unleash a brand-new type of legal terrorism. The subsequent criminal trials have caused everyone involved great agony. The deep wounds of the suffering of ignominy could even remain after the trial's final verdict of acquittal. Women are using this as a tool to discredit and degrade their spouse and his family, as we have already described before in this paper, sometimes even over insignificant issues. These numerous complaints have not only clogged the courts but also caused a great deal of social instability that has harmed the society's balance, tranquility, and pleasure.

However, it is clear from a review of the recent views expressed by several courts that the Courts have expressed serious concern regarding this matter. It should be made a bailable offence in the first place, in all sincerity. The natural justice concept ought to be used if a person is not guilty. The husband and his family should be given a fair chance to prove their innocence. This will spare the husband's family members from the ensuing psychological, bodily, and emotional suffering by at least giving them a chance, especially the elderly and young children who may not even be aware of the separation between the husband and wife.

Second, it should be a repeatable offence, allowing the parties to choose whether they want to end their marriage through amicable divorce or resolve their differences amicably in order to save it. This will provide separated partners the opportunity to rekindle their marriage if they so choose.

Thirdly, no immediate arrest shall be made without conducting an inquiry, per the Supreme Court's directive. Only after taking cognizance and against the primary accused should an arrest warrant be granted. Family members of the husband, particularly those who are young, female, or elderly, should not be jailed unless there is concrete proof of their maltreatment.

Fourthly, stern measures should be taken against the female making the accusations if any false cases are found. Because the appellant's actions obviously amount to cruelty and resulted in her husband and other in-laws being jailed, she should face severe punishment.



Last but not least, suitable instructions should be issued to the police and investigative personnel to prevent them from handling such delicate cases improperly. The Judiciary and the Legislation both have a responsibility to stop the victimization of the innocent. In order to prevent the misuse of 498A of the Indian Penal Code, it is also crucial for the legislature to take into account the educated public opinion and make the necessary amendments to the existing legal requirements.

References:

- The Domestic Violence Act, 2005.
- The Dowry Prohibition Act, 1961.
- The Indian Evidence Act, 1872.
- The Indian Penal Code, 1860.
- The Criminal Procedure Code, 1973.
- Inder Raj Malik and others v. Mrs. Sumita Malik 1986 (2) Crimes 435.
- Kaliyaperumal v. State of Tamil Nadu 2004 (9) SCC 157.
- In Jasbir Kaur v. State of Haryana (1990)2 Rec Cri R 243.
- Mohd. Hoshan v. State of A.P. 2002 CriLJ 4124.
- In Kanaraj v. State of Punjab 2000 CriLJ 2993.
- State v. Srikanth 2002 CriLJ 3605.
- S.R. Myneni, Muslim Law and Other Personal Laws, Family Law-II (Asia Law House, Hyderabad 2nd edn., 2018).
- K.D. Gaur, *Indian Penal Code* (Universal Law Publishing Co. Pvt. Ltd, Delhi, 6th edn., 2018 Reprint).
- U.P.D. Kesari, *Modern Hindu Law* (Central Law Agency, Allahabad, 12th edn., 2020).
- F. Agnes, *Family Law: Family Laws and Constitutional Claims* (Oxford University Press, New Delhi, 2011).
- Dr. Ashok Jain, *1 Law Guide for Judicial Examination: Hindu Law* (Ascent Publications, Delhi, 2nd 2018 reprint).
- Dr. Paras Diwan, *Modern Hindu Law* (Allahabad Law Agency, Faridabad, 24th edn. 2020 reprint).
- F. Agnes, *Law and Gender Inequality* 141 (Oxford University Press New, Delhi, 1999).