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IS SECTION ‘498-A OF INDIAN PENAL CODE’ A TOOL IN THE HANDS OF A DISGRUNTLED WIFE?

(By: Rajdeep Ghosh)

ABSTRACT

Women in the Indian society are often treated as the second gender and are subjected to ill treatment and discrimination in varied forms. Cruelty against women in the matrimonial home is one of the glaring examples of ill treatment meted out to women. The instances of cruelty meted out to women in the matrimonial home reached such heights that a new provision in form of Sec. 498-A was inserted in the Indian Penal Code, 1860 by the way of Act 46 of 1983 to deal with the same. The insertion of this provision was welcomed by all and sundry but its deterrent effect in as much as to curb the offence effectively even after 37 years of its insertion as the cases have been rising day by day and the conviction rate is reaching new lows year after year. This article endeavours to critically examine the efficacy of Section 498-A of IPC, 1860 in order to protect women from cruelty in matrimonial homes along with providing useful guideposts.

Keywords: Women, matrimonial home, discrimination, Cruelty, Section 498A, inadequate deterrent effect, low conviction rate.

Introduction:

Women have been considered to be the vulnerable section of the society. It is undoubtedly true that women have been thought of to be the weaker gender as the Indian society has deeply seated patriarchal values. The Indian women post-independence have taken large strides to elevate their position in the society. India is also a party to host of International conventions, agreements and instruments chief among which are Universal Declaration of Human Rights, Convention on the Elimination of all forms of Discrimination against Women. In the process of their progress many laws have been enacted to safeguard their rights. Cruelty against women in the matrimonial home by the husband and/or the relatives of the husband of the women was an arena of great concern as the instances of cruelty against women in the matrimonial home was rampant and rising steadily and after huge deliberation by the Act No. 46 of 1983 Sec. 498A of IPC was inserted.

The offence of ‘Cruelty’ has been defined under Section 498-A of Indian Penal Code, 1860 as “(a) 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 (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”.
This Section makes the offence of Cruelty as cognizable, non-bailable and non-compoundable and further mandates that 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.

In the case of: Krishan Lal Vs. Union of India, it was held that the object of Section 498-A is to curb the vice of cruelty to the married women by her husband or in-laws. To give this object a reality Section 113A has been introduced in the Evidence Act, 1872 raising a presumption against the husband or other relatives of the husband. This was supported further by Section 304-B of Indian Penal Code, 1860 itself punishment for Dowry death is provided in as much as where a woman commits suicide within seven years of her wedlock or died in unnatural circumstances raising a reasonable assumption and suspicion that some other person has committed an offence whereby her death is caused, provisions are being made for the purpose of inquest by Executive Magistrates of the locality of the deceased wife concerned.

**Objectives:**

1. To find out whether the provisions contained in Section 498-A have been successful in eliminating the offence of cruelty against women in matrimonial homes.
2. To check whether the conviction rate for the offence of cruelty is low and if yes then to find out the reasons for the same.
3. To gauge the implication of the Apex court judgments in cases registered under Sec.498-A.
4. To suggest changes and steps for the proper adjudication of the cases registered under Sec. 498-A of IPC.

**Research Question**

(1) Is Sec. 498A of IPC an effective tool to deal with cruelty meted out to women in their matrimonial home?
(2) Why the conviction rate in offence under Sec. 498-A low inspite of rise in registration cases under the same section?
(3) What is the implication of the Apex court judgments in cases registered under Sec.498-A?
(4) Whether any change needs to be made in the present law in Sec. 498-A ?
(5) What are the steps needed to be formulated for proper adjudication of the cases registered under Sec. 498-A of IPC?

**Research Methodology**

Throughout this work, doctrinal research method was adopted. That is to say, sources and materials have been utilized and collected from books, articles, journals, judgments, libraries to make this
work done. Further, analytical types of research and secondary data have been followed.
Now, an attempt is hereby taken under the following heads to evaluate the above stated research questions.

**Is Sec. 498-A of IPC an effective tool to deal with cruelty meted out to women in their matrimonial home?**

Women in their matrimonial homes have always been subjected to cruelty, force and torture by their husbands and in-laws in any patriarchal form of society including that of India. That is why crime against women never got reduced rather getting increased day after day. Section 498-A has been the only provision which supports the wives in matrimonial homes to fight against tortures and atrocities committed against them by husbands and their relatives. A woman can directly file a complaint if she is subjected to any kind of cruelty.²

The concept of cruelty is not static and varies from case to case and cannot be circumscribed within a straitjacket. Cruelty necessarily depends upon the social and economic status of the aggrieved women. If the Reports published by the NCRB are observed, it can be ascertained that the crime reported under Section 498-A of I.P.C. is on a steady rise.

**NCRB data on number of registered cases against Cruelty by and husband relatives (Cruelty)³**

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Year</th>
<th>Number of registered cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>01</td>
<td>1990</td>
<td>13450</td>
</tr>
<tr>
<td>02</td>
<td>1995</td>
<td>31127</td>
</tr>
<tr>
<td>03</td>
<td>1999</td>
<td>43669</td>
</tr>
<tr>
<td>04</td>
<td>2001</td>
<td>49170</td>
</tr>
<tr>
<td>05</td>
<td>2005</td>
<td>58319</td>
</tr>
<tr>
<td>06</td>
<td>2010</td>
<td>94041</td>
</tr>
<tr>
<td>07</td>
<td>2015</td>
<td>113404</td>
</tr>
<tr>
<td>08</td>
<td>2019</td>
<td>126575</td>
</tr>
</tbody>
</table>

The above table clearly showcases the rising instances of offence of cruelty against women in matrimonial homes in India even after an explicit law in the form of Section 498-A which is meant to

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Why the conviction rate in offence under Sec. 498-A low in spite of rise in registration cases under the same section?

Though the offence under Sec. 498-A makes the greatest chunk of all the offence against women but the conviction rate is the lowest. Cases under Section 498-A had a mere conviction rate of 12.1% which is quite low. The following table showcases the conviction rates of the offence of ‘Cruelty’ under Section 498-A of the Indian Penal Code, 1860 among all the various categories of crimes under the same Code.

<table>
<thead>
<tr>
<th>Year</th>
<th>Ranking of 498A (Highest conviction ranked 1)</th>
<th>Total number of categories (IPC Crimes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>21</td>
<td>23</td>
</tr>
<tr>
<td>2007</td>
<td>20</td>
<td>23</td>
</tr>
<tr>
<td>2008</td>
<td>21</td>
<td>23</td>
</tr>
<tr>
<td>2009</td>
<td>22</td>
<td>23</td>
</tr>
<tr>
<td>2010</td>
<td>23</td>
<td>23</td>
</tr>
<tr>
<td>2011</td>
<td>21</td>
<td>23</td>
</tr>
<tr>
<td>2012</td>
<td>23</td>
<td>23</td>
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<tr>
<td>2013</td>
<td>23</td>
<td>23</td>
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<tr>
<td>2014</td>
<td>33</td>
<td>34</td>
</tr>
<tr>
<td>2015</td>
<td>33</td>
<td>34</td>
</tr>
<tr>
<td>2016</td>
<td>32</td>
<td>32</td>
</tr>
<tr>
<td>2017</td>
<td>46</td>
<td>52* (Conviction is zero for four categories)</td>
</tr>
<tr>
<td>2018</td>
<td>54</td>
<td>55</td>
</tr>
</tbody>
</table>

Reasons for low conviction:

There are many reasons for low conviction rate in cases registered under Section 498-A. Main reasons among them may be as follows:

i. The offence under Sec 498A is applicable against the husband and/or relatives of the husband and the term “cruelty“ needs to be defined in more clearer terms so that the ambiguity is resolved as it is often difficult to prove physical and mental cruelty.

ii. The low conviction rate is also attributed to the misuse of the provision of law and there is no conclusive evidence apart from the falling conviction rate in itself is very alarming and will need a deeper analysis to understand the underlying causes.5

iii. Evidence is everything what Courts of Law need to look into to render justice. The conviction rate is also low as the offence takes place within the four walls of the matrimonial house and so cannot be proved by independent witness.

MISUSE OF SECTION 498-A OF IPC


5 Retrieved from https://www.thequint.com/news/india/section, accessed on 05/03/2021
The basic idea behind framing this provision of law is to protect women from cruelty at the hands of the husband and his relatives but the same in the modern era has been seen to be a weapon for blackmailing and harassing the husband and the in-laws. At the present date however no exact data is available which can clearly state whether the provision is mis-utilised. However, the low conviction rate is a clear indication of the fact that frivolous complaints against the husband and their families is definitely on the rise and thus the very objective for the enactment of the concerned provision is certainly being mis-utilised. The Supreme Court of India observed that the provisions for the offence of Cruelty as provided in section 498-A of IPC was often being seen utilised as weapon rather than shield by the disgruntled wives.6

What is the implication of the Apex court judgments registered under Sec. 498-A?

In the case of: Pawan Kumar Vs. State7 it was held that Cruelty or harassment need not be physical. Even mental torture in a given case would be a case of cruelty and harassment within the meaning of Sec. 304-B and 498-A. ‘Explanation A’ of Section 498-A itself refers to both mental and physical cruelty. A girl dreams of great days ahead with hope and aspiration when entering into a marriage and if from the very next day the husband starts taunting her for not bringing dowry and called her ugly, there cannot be any greater mental torture, harassment or cruelty for any bride.

In the case of: U. Saveetha V. State8, it was held that as per terms of sec. 498-A, the husband and the relatives of the husband shall be held responsible for the acts of cruelty both physical and mental, upon the wife and the “girl friend” even if she had physical relation with the husband, cannot be treated as a relative of the husband.

In the case of: Badal Deb V. State9 it was held that offence under Section 498-A is not compoundable in nature and if the parties have amicably settled the dispute the effect of the same should be considered at the time when the sentence is recorded.

In the case of: Manju Ram Kalita V. State of Assam10 it was held that cruelty for the purpose of Sec. 498A is different from cruelty under other statutory provisions. It should be determined by considering the conduct of the man and the gravity of his acts and whether it can drive the women towards committing suicide. “Petty quarrels” cannot be brought into the ambit of “cruelty”.

In the case of: Arnesh Kumar V. State of Bihar11 it was held that the offence under Section 498-A of IPC is a cognizable, non bailable offence and is used as a weapon rather than shield and laid down guidelines for police officials in case of arrest and to be sure about the allegations. The magistrate must also be careful and not to allow detention in a mechanical manner.

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6 Arnesh Kumar Vs. State of Bihar and anr. (2014) 8 SCC 273
7 (1998) 3 SCC 309
8 (2009) 3 SCC (CRI) 36
9 (2006) 10 SCC 540
10 (2009) 13 SCC 330
11 (2014) 8 SCC 273
In the case of: Social Action Forum for Manav Adhikar V. Union of India\textsuperscript{12}, The Apex court issued directions to effectively deal with cases of cruelty under Sec. 498-A of IPC which include: (a) Complaints under Section 498-A and other connected offences may be investigated only by a designated Investigating Officer of the area.

(b) If a settlement is reached between the parties, it is open to them to approach the High Court under Section 482 seeking quashing of proceedings or any other order.

(c) If a bail application is filed with at least one day's notice to the Public one Prosecutor/complainant, the same may be decided as far as possible on the same day. Recovery of disputed dowry items may not, by itself, be a ground for denial of bail if maintenance or other rights of wife/minor children can otherwise be protected.

(d) In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine.

(e) These directions will not apply in case of tangible physical injuries or death.

On analysis of the judgments of the Apex Court it can be clearly seen that the offence of cruelty towards married women in the matrimonial home is taken very seriously and the abit of cruelty has been considerably widened by the Apex court but the apex court has also time and again expressed concern on the unwanted harassment of the husband and in laws by the registration of frivolous complaint and so guidelines have been issued in various cases so as to ensure that the husband and in laws do not face undue hardship.

Whether any change needs to be made in the present law in Sec. 498-A?

The present provision of Sec. 498-A needs some changes to be incorporated so that the best benefit can be reaped out of the provision. There is ample advocacy that the instant offence involves matrimonial dispute and so the provision should be made compoundable as there is chance that the matter gets amicably settled and the completion of the trial becomes a futile exercise but making the provision compoundable would further amount to weakening the provision and the beneficial aspect of incorporating the provision would be lost.

The definition of the offence of ‘Cruelty’ as envisaged under Section 498-A says that there should be wilful conduct on the part of the husband or/and relative of the husband so as to cause likelihood that the wife would commit suicide or something which would cause injury or danger to life, limb or health (whether mental or physical) of the woman concerned but it does not cover the cases where simple hurt is caused to the woman or any injury other than causing injury or danger to life, limb or health (whether mental or physical). The so called left out cases often take place against the wives and are although covered under various other provisions of the Indian Penal Code, 1860 but wives do not generally approach the Court or police, as the case may be, as the registered cases under those

\textsuperscript{12} (2018) SCC Online SC 1501
provisions are very few because those offences have been made less serious, say for example, bailable, compoundable under the provisions of the Code.

Also the mental cruelty which is included is of such an extent which forces the women to commit suicide, but it is certainly true that mental cruelty not always forces a women to commit suicide but those cruelty cannot be brought within the ambit of Sec. 498A. The concept of mental cruelty certainly needs to be relaxed.

**What are the steps needed to be formulated for proper adjudication of the cases registered under Sec. 498-A of IPC?**

The present provision of Sec. 498A needs some changes to be incorporated so that the best benefit can be reaped out of the provision. The following may be few guideposts in this regard:

1. The time period for investigation of the case should be made 90 days and report in final form should be at all costs be submitted by 90 days so that the matter is dealt expeditiously.
2. The trial of cases registered under Sec. 498 A should be completed in a time bound manner and within six months from receipt of chargesheet.
3. The women making frivolous complaint should be penalised.
4. The trial of the instant case should be done in camera.
5. The cases should necessarily presided by women presiding officers.
6. The ambit of the definition of cruelty should be increased so that mental cruelty should not only be to the extent that it drives women to commit suicide.
7. The investigation of the case should be done by an officer not below the rank of SI of police and only after proper training.
8. That, if the complaint petition filed under Section 498-A contains details about dowry being given to the accused person then the victim’s family should also be penalised for giving dowry as per Dowry prevention laws.

**CONCLUSION**

Sec. 498-A of IPC was incorporated with a clear idea to deal with the offence of cruelty both mental and physical inflicted upon the women in their matrimonial home by the husband and the relatives of the husband. The incorporation of the same was a welcome step but the full-fledged benefit of the same could not be reaped and the cases of cruelty against women in their matrimonial home are still on the rise whereas the conviction rate is extremely low which in turn has started to be conceived as the complaints to be frivolous but it is definitely true that the best benefit of the provision is yet to be reaped. The provision relating to Cruelty should be used both as a weapon and as a shield by the victimized women as per the need of the particular case. But the lacunas and misuses of the law at hand should be curtailed so that the real objectives behind incorporation of the same law should be
realized and the victimised women in matrimonial homes should get justice and security without prejudicing illegally or unethically the interests of men.