Section 498a Ipc: Analysing The Need To Create Safeguards Against The Misuse Of This Double-Edged Sword

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ABSTRACT

Marriage is a religious and/or social institution wherein two people come together to be united for life, to the exclusion of others. The institution of marriage is a very old concept and has gone through numerous changes. There are many factors which affect the type of marriage, especially on religious grounds and cultural grounds. It leads to the procreation of children and therefore it is the basic group in a country. A successful marriage leads to a successful family, a successful family is necessary for a successful community, a successful community is necessary for a successful society and finally a successful society is necessary for a successful nation. Therefore it becomes of prime importance that marriages be protected by well-established rules.

1 Introduction

Marriage is a religious and/or social institution wherein two people come together to be united for life, to the exclusion of others. The institution of marriage is a very old concept and has gone through numerous changes. There are many factors which affect the type of marriage, especially on religious grounds and cultural grounds. It leads to the procreation of children and therefore it is the basic group in a country. A successful marriage leads to a successful family, a successful family is necessary for a successful community, a successful community is necessary for a successful society and finally a successful society is necessary for a successful nation. Therefore it becomes of prime importance that marriages be protected by well-established rules.

In spite of the above mentioned importance of a marriage in India and many other countries, this institution is plagued with a number of evils. One of the biggest evil is that of cruelty. India has been a patriarchal society for the most part. Patriarchy has been responsible for the systematically rendering women in a position of less power and agency. Dowry is probably the biggest form of abuse against married women by their husbands and his family members. Dowry is the practice of taking money or other material things having monetary value by the family members of the husband from the family members of the wife. This practice originated from a very old way of life. Back in the day it was mostly the males who went for higher studies and jobs. The husband was the sole bread earner of the family and therefore his parents thought that the money that they invested in his studies, must be recovered. Also since the girl will leave her home and come and stay with the husband hence the girl’s parents must compensate for her additional liability. This fact is longer true as more and more women are today employed and self-independent. Dowry graduated fast into a system that perpetrated oppression and often times violence against women. To the extent that it was declared unlawful. However this illegal practice of dowry is still prevalent in large parts of India.

Failure to provide for dowry had serious consequences on the woman. She was subjected to several forms of cruelty and this was to such an extent that she would sometimes take the unfortunate step of committing suicide. To

1 Hinduism, marriage and mental illness, Indian J Psychiatry. 2013 Jan; 55(Suppl 2), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3705690/ accessed on 10/05/2020
2 Violence against women: Where are the solutions?, Indian J Psychiatry. 2015 Apr-Jun, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4462781/ accessed on 08/05/2020

3 This of course does not justify dowry in any form. The author is only making an attempt to understand the origin and reason behind dowry practice, and not its justification. Also see Ranjana Sheel, Institutionalisation and Expansion of Dowry System in Colonial North India, Economic and Political Weekly, Vol. 32, No. 28 (Jul. 12-18, 1997), pp. 1709-1718
prevent this growing menace of cruelty against women, the government took several initiatives and one such legal initiative was that of the introduction of Section 498A in the Indian Penal Code. It provides for a punishment of up to 3 years to the husband or any of his relatives if they happened to subject the wife to cruelty. This Section was seen by many as the much needed armour of a woman. However the strict wordings of the section and the loose interpretations given by the law enforcement authorities has significantly increased the misuse of this section. Such was the misuse that the section has been called as means to a legal terrorism by the Supreme Court of India.

2 Cruelty: A Social Evil.

History is proof of the hypocrisy of the Indian society. While on one hand it has worshiped goddesses such as Durga and Kali, on the other hand it reduced the stature of a woman to a mere decorative character who was given a superficial attractiveness but was snatched from any forms of growing intellect. India being a patriarchal society the woman were reduced to being chattel for their male relatives. Conditioned to fit into subservient roles that the society for this own convenience has designed for them, they were seldom given opportunities to fully develop their potential - a fundamental human right. Perhaps the godly personification of women was done only with the purpose to hide the real situation which was rampant in the society or perhaps it was a means to silence the prickling consience of the perpetrators. Whatever be the reason the fact remains that the reverence shown to Deities never culminated into actual respect for a woman beyond her defined role in the society.

These allegations towards the then society can be substantiated with several practices that occurred at that time for e.g Sati which was the self immolation of a woman on the death bed of her husband. This is pure manifestation of the barbaric practices that existed in our society. The poor widow was encouraged to burn herself to death only because her husband had passed away. Such practices while demonstrating the bitter truth that the society had denied a woman the recognition of her own independent existence, furthering the chattel argument and show that cruelty has existed against woman in a marriage since ages.

Cruelty can be both physical and mental and may be exercised on a person in many different forms. Contributing factors may be the traditions or custom prevalent in a particular place. It is important that we understand the contours of the legal definition of Cruelty as expounded by the judiciary of India from time to time.

The honourable Supreme Court of India has in many cases tried to explain the definition of cruelty since it is a very subjective concept and cannot be defined in a straight jacket formula and hence must be seen on a case to case basis. In Narayan Ganesh Dastane v Sucheta Narayan Dastane the Honourable court held that if the actions of the accused cause reasonable apprehension in the mind that it would be harmful to live with that person then this would amount to cruelty.

In V. Bhagat vs D. Bhagat it was observed that if the parties could not be expected to reasonably live together on account of acts done, social status and the type of society that they live in then such acts could be held to be a form of mental cruelty.

In Neelu Kohli v Naveen Kohli the highest court tried to narrow the ever growing definition of cruelty by stating that the acts alleged must be something more serious than ordinary wear and tear of marriage. We cannot say that each and every abnormal act would amount to cruelty.

In another case with reference to evidence in mental form of cruelty the court held that there may not be tangible evidence available in such situations and therefore the court must try and understand the consequences of the alleged act upon the mind of the individual.

In yet another case of Vinitha Saxena v. Pankaj Pandit the Supreme Court observed that cruelty is not dependant on the number of times an act has been done or that it must be continuous and happen recurrently. Rather the court found that even a single instance of extreme pain and depending upon the gravity of the situation may be deemed to be called as cruelty.

Other than the above descriptions of what may be constitute as cruelty, the court has in several cases mentioned specific acts which will fall under the definition of cruelty, the following are the acts noted by the courts in India.

5 Sushil Kumar Sharma v Union of India and Others, 2005 Indlaw SC 425
6 1975 Indlaw SC 159
7 1994 SCC (1) 337
8 1994 SCC (1) 337

10.32052/23364890.cemj.31.4.132 | 127 | Pag e
Starving a person slowly is cruelty: The husband and his family members demanded dowry and when the wife’s family refused, she was made to do all the household chores alone. On protest she was denied sufficient food and she grew weak due to starvation, eventually she committed suicide. The court said that the act of slow starvation was a form of cruelty.9

Harassment by making dowry demands repeatedly: The court in this case held that when the husband or his family members regularly make demands of dowry then this would cause mental cruelty to the woman.10

Making false allegations of extremely humiliating nature: During an ongoing litigation between a husband and wife, the husband made very offensive allegations against his wife and tried to cause humiliation and suffering to her by having search warrants executed and having her property seized. The honourable court found this to be an act of cruelty.11

Repeated taunts and body shaming accompanied by maltreatment: The court observed that every human being has a right to live with dignity and if a woman is repeatedly made fun of and is called ugly then this would also fall under the term cruelty.12

Confiscating a woman’s stridhan: If the husband takes away the stridhan of a married woman and does not return it back to her then this would be cruelty as per the decision of the court.13

Non-acceptance of baby girl: A child is the result of procreation of both the husband and the wife and if upon the birth of a female child the father refuses to accept the child then this will cause immense mental cruelty to the wife, and may even result to physical cruelty as well.14

3 Need for inserting 498a under the Indian penal code as a protective measure.

Law is a dynamic subject and changes with the change in society. When India saw that the status of women had been reduced and that she was subjected to many forms of cruelty the many eminent persons, Non-Governmental Organisations, Women’s Rights Groups and ordinary citizens began raising a voice against such practices. The Parliament eventually felt a need to introduce a law for the protection of wives from the onslaught of her husband and his relatives. Therefore with the noble intention of protecting women from demands of dowry and cruelty the Parliament introduced section 498A in the Indian Penal Code by way of an amendment in the year 1983.

Section 498A is a non-bailable and non-compoundable offence, it is also cognizable in nature which means that an arrest can be made without warrant. The section provides for a punishment which may extend to 3 years. The acts prohibited by the section are any acts which may lead a woman to commit suicide or to cause a grave injury to her body or mind; also harassment with respect to demands of dowry are punishable under Section 498A.

4 Section 498a a tool for social reform:

One of the landmark cases after the introduction of Section 498A was that of Brijlal v. Prem Chand in this case the Supreme Court while reversing the High Court’s judgement held the accused husband guilty under Section 498A. The High Court had acquitted the accused on the ground that there was no substantial evidence to convict him. The Supreme Court condemned the decision passed by the High court. It also slammed the society for its falling moral values and the extent to which society had degraded wherein the husband and his relatives could resort to any means to have their greed of dowry fulfilled without any regard to conscience and the sufferings that such demands put on the wife and her relatives. The court also observed that there was need to make changes in the Indian Evidence Act so as to make certain presumptions to hold the accused liable. Therefore section 113A and Section 113B was incorporated into the Indian Evidence Act by way of amendment to supplement Section 498A and to further the cause which the Parliament aimed for.

Section 113A provides that a presumption would be created that a suicide has been abetted by the husband or his relatives if a married woman commits suicide within 7 years of her marriage, it would also be presumed that the wife had been subjected to cruelty.

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9 Hira Choudhary v. State of West Bengal, 1997 (1) WLC 543
10 Jagdish v. State of Rajasthan, 1998 RCR (Cr) 9
13 State of Karnataka v. Moorthy 2002 Cr. L.J. 1683
14 State of Karnataka v. Balappa, 1999 Cr. L.J 3064 (Kant)
15 1989 AIR 1661
Section 113B provides that if a woman commits suicide and it is proved that immediately before her death she had been a victim of cruelty or of demands of dowry then the court would presume that the death had been caused by the person who subjected her to the prohibited acts.

In the case of Gurbachan Singh v. Satpal Singh the apex court overturned the decision given by the High court and convicted the accused husband and his relative. This was one of those cases which shakes the very conscience of the society. A pregnant woman and wife Ravinder Kaur was constantly humiliated in front of others, she was also accused of carrying an illegitimate child, and she was repeatedly tortured and told to pay dowry failing which she was finally threatened to be thrown out of the house. In spite of all this she stayed in her husband's house quietly facing all the torture and abuse, but her husband and in-laws were not done yet and so in the end they burnt her alive. The High court acquitted the accused on grounds of technicality of law and lack of evidence. The father of Ravinder Kaur appealed with folded arms before the Supreme Court. The honourable court observed that in light of the Section 113A and 113B presumption could be made that the death was caused by the accused and therefore held them guilty.

Following are a number of other cases wherein the courts used Section 498A to give justice to women or their relatives.

*State of West Bengal v. Orilal Jaiswal* In less than one year post marriage the wife hanged herself to death. The court went through the facts and observed that this was a clear case of mental and physical cruelty by the husband and the mother in law, and therefore the case was cognizable under 498A.

The court in the case of *State of U.P. v. Ramesh Prasad Mishra* held the accused guilty under Section 498A of IPC after it found that the victim was regularly harassed with demands of dowry and also subjected to physical cruelty.

### 5 The Misuse Of 498a And Changing Attitude Of The Judiciary

“Lodging of cases with crime against women cell may not be genuine. Matrimonial discords unconnected with dowry demands or dowry related harassment are often given the colour of dowry by the wives to get even with their husbands”

The Supreme Court has held in the case of Sushil Kumar Sharma v. U.O.I that the misuse of Section 498A has unleashed a new legal terrorism, and that the provision was intended to be used as a shield and not as an assassin’s weapon.

The court in the case of M. Srinivasalu v. State of A.P. held that before an arrest is made of the husband and his relatives it must first be sufficiently established that cruelty was done which could lead to a woman to commit suicide or to cause grave injury to herself.

In yet another case the Supreme Court held that the abuse of the law contained in Section 498A had become such a menace that it was shaking the very foundations of marriage and thus was becoming an evil to the society. The court opined that it was high time that the legislature sat down to take effective measure to control such practices.

In Saritha v R. Ramachandran the court while acknowledging the reverse trend asked the Parliament to make the law bailable and non-cognizable.

In the case of Kanaraj vs. State of Punjab the court rightly observed that it was unimaginable that by the wrongdoings of the husband, the in-laws and other relatives were also being put in jail. It said that the case against each person should be specifically proved.

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References:

16 1990 AIR 209,1989
17 AIR 1994 SC 1418
18 1996 SCC (Cr.) 1278
19 Poonam Pradhan Saxena, Annual survey of Indian law, XXXVIASIL(2000)
20 Sushil Kumar Sharma v. UOI, JT 2005 (6) SCC 266
21 2007(4)RCR(Criminal)146
22 Savitri Devi v Ramesh Chand &Ors. II (2003) DMC 328
23 I (2003) DMC 37 (DB)
24 2000 Cri LJ 2993
An investigative report by an NGO called Rakshak pointed out that the reasons for misuse of Section 498A by the wife could be put under the following major heads:

Legal extortion, Prior Relationship, Adultery, Domination, Child Custody, to get away with Fraudulent marriages. Therefore the motive behind such misuse is many and the possibilities of misuse, because of the strict nature of 498A are just as high.

6 Legal Position

The Judiciary and other Stakeholders in the field of law have considered the challenge presented by Section 498A and have tried to design a solution that offers the apt balance between ensuring empowerment of women and preventing the misuse.

Following are some of the most crucial reflections on the issue:

1. The 243rd Report of the Law Commission\(^\text{25}\) which was set up pursuant to the reference made by the Home Ministry and the observations made by the Supreme Court in Preeti Gupta and another v State of Jharkhand and another\(^\text{26}\) suggested that the offence should be made compoundable with permission of the Court. However it suggested that the offence should remain non-bailable as the empirical data of the misuse is insufficient and also that the ground for misuse cannot denude the provision of its efficacy, keeping in view the larger social interest.\(^\text{27}\)

2. Also the Supreme Court in the matter of Rajesh Sharma and others v. State of U.P. and Anr.\(^\text{28}\) has passed the following guidelines.
   1. Family Welfare Committees should be formed in Districts having at least 3 members constituted by the help of District legal Service Authority. This is to be done to help mediate the issues which can be solved by reasonable dialogue.
   2. The complaints under Section 498A should be handed over by the police to the committee.
   3. Arrest should be suspended till the committee comes out with its report
   4. There should be special Investigating Officers for looking in to the matters reported under 498A. These officers should undergo special training for understanding the complexities of family life.
   5. When the dispute is not of actual physical harm but mere matrimonial discord and if the parties wish to reach a settlement then the Sessions Judge should close the criminal case.
   6. Impounding of passports for people who reside outside India should be done only in exceptional cases.
   7. Family members living out of station should not be compelled to make physical appearance in court and methods such as video-conferencing should be resorted to in such cases.
   3. In a subsequent judgement in Social Action Forum for Manav Adhikar and another v Union of India Ministry of Law and Justice and others\(^\text{29}\) the Supreme Court modified its earlier order passed in the Rajesh Sharma case (supra). The then CJI Dipak Mishra stated that there was no need to create a separate agency i.e. family welfare committee, also the Indian Penal code does not provide for setting up of such agencies.
   The Court however directed that investigating officers must comply with the arrest guidelines issued by the apex court in landmark cases such as D.K. Basu v. State of West Bengal\(^\text{30}\). The Court stated that “the fault lies with the investigating agency which sometimes jumps into action without application of mind” and hence what was required was that the investigating officers be reasonable and follow the guidelines given by the Supreme Court on how arrests are to be made.
   4. Recently, in the case of Kahkashan Kausar v. State of Bihar\(^\text{31}\), in a dowry demand and harassment case, a woman had lodged criminal complaint against her husband and in-laws but no specific role was attributed to the in-laws, the bench of SA Nazeer and Krishna Murari*, JJ of the Supreme Court of India, has held that it would be unjust if the in-laws are forced to go through the tribulations of a trial and that general and

\(^{26}\) 2010 Indlaw SC 616
\(^{27}\) Supra note 25.
\(^{28}\) 2017 Indlaw SC 538
\(^{29}\) 2018 Indlaw SC 808
\(^{30}\) (1997) 1 SCC 416.
\(^{31}\) 2022 SCC Online SC 162,
omnibus allegations cannot manifest in a situation where the relatives of the complainant’s husband are forced to undergo trial. The Court observed that, “a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must therefore be discouraged.” The Court also observed that, “while incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as 498A IPC as instruments to settle personal scores against the husband and his relatives.”

7 Suggestions

A welfare legislation is passed keeping in mind the unique position of a section of the society. It acknowledges that the position of the said section is vulnerable enough that the law needs to step in to protect it. Section 498A too is a representation of this very effort of the state to fight the social evil of dowry and cruelty against married women. However, the section has proven to be a double-edged sword with evident misuse of Section 498A by married women and their relatives to cause trouble and mental harassment to the husband and his relatives the honourable Supreme Court has on several occasions issued guidelines to curb the misuse of this Section.

Whereas the introduction of this section to the Indian Penal Code is demonstrative of the acknowledgement of the evils that a married woman is susceptible to and a will to empower her to fight the same. Its frequent misuse is also representative of the fact that we cannot possible demonize one section while protecting another. That the society cannot be divided on the lines of all men are evil and all women are good. It calls for a deeper appreciation of gender and gender roles. And also is an awakening call that while protecting one section we cannot demonize the other altogether. That while introducing a section that can potentially be double-edged sword we need to incorporate adequate safeguards so that we can prevent its misuse. In fact, by not anticipating misuse of the section we have succumbed again to our patriarchal conditioning. In assuming that the section will not be misused we have subscribed to the patriarchal notion that a woman needs to be representative of all things good and in doing so have denied recognition of the agency that rests in a woman.

The authors suggest the inclusion of the following safeguards to ensure that the section remains effective while curbing the possibility of its misuse against the innocent.

1. First and foremost the Section which is currently non-bailable should be made bailable at least in the cases where there is no prima facie physical abuse.
2. Secondly there should be a set of guidelines that the executives and the police authorities need to strictly adhere to, before arresting the husband and his family members. Since there have been instances where the husband’s relatives which included children as young as 6 years old and old parents as old as 75 years were put in jail on the mere accusations of cruelty. It is unimaginable how a child could cause cruelty when children are exempt from causing any offences under the Indian Penal Code.
3. Lastly, it is important that the law making and influencing bodies of our country understand that the society is changing at a rapid scale. This is steadily causing a shift in the gender equations between the society as well. Any law should be accommodative and responsive to these changes so that while it is effective in achieving its aim of protecting a vulnerable section it does not create new evils for another section. That the misusable nature of the law is proving counter-productive to the cause it was created for in the first place.

8 Conclusion

We have all heard about the kid who falsely cried wolf only to make fun of the villagers and one unfortunate day when he met a real wolf and cried for help, nobody came as they thought that it would be another one of his jokes, and so the wolf killed him. The same might become true of Section 498A. Too many women and their relatives have misused this provision, and this has happened to such an extent that the courts are reluctant and look at these cases with a suspicion. The result is that this will affect those wives who are actually abused and become
victims of cruelty. The Supreme Court has observed that “the rate of charge-sheeting in cases under Section 498A is as high as 93% while the conviction rate is only 15%”32 and this shows the amount of false cases in the country.

Section 498A was inserted with a noble intention and that was to act as a deterrence for those who actually committed cruelty on their wives and not for the wife to use it to commit cruelty on the husband, it was a legislation to provide for protection and not for false prosecution, its purpose was to serve as an shield and not as a sword. In a way its purpose was also to save a marriage and not to disrupt one. Unfortunately Section 498A has caused just as much injustice to a husband and his family as it has caused justice to the wife and her family and until the legislature does not suitably mild down the Section there will continue to be misuses of this law which will not only affect the husband but also many innocent wives and their relatives.

Dr. B.R.Ambedkar in his speech to the Constituent Assembly had stated that “However good a Constitution may be, if those who are implementing it are not good, it will prove to be bad. However bad a Constitution may be, if those implementing it are good, it will prove to be good”. If we apply the same analogy to other laws, it becomes clear that a law is only as good as the person in charge of enforcing and implementing it. The 243rd Law commission Report and the judgement given in the Social Action Forum for Manav Adhikar (supra) emphasise on this very issue. Thus to conclude it is not so much of the law which needs to be changed than the way in which it needs to be implemented.