



Email:editorijless@gmail.com

Volume: 5, Issue4, 2018 (Oct-Dec)

## **INTERNATIONAL JOURNAL OF LAW, EDUCATION, SOCIAL AND SPORTS STUDIES (IJLESS)**

<http://www.ijless.kypublications.com/>

ISSN:2455-0418 (Print), 2394-9724 (online)

2018©KY PUBLICATIONS, INDIA

[www.kypublications.com](http://www.kypublications.com)

**Editor-in-Chief**

**Dr M BOSU BABU**

**(Education-Sports-Social Studies)**

**Editor-in-Chief**

**DONIPATI BABJI**

**(Law)**

©KY PUBLICATIONS



## **Section 498A IPC – A Brief Analysis**

**J.RAJA KUMAR**

Research Scholar, P.G. Dept. of Legal Studies and Research, Acharya Nagarjuna University,  
Nagarjuna Nagar, Guntur



### **ABSTRACT**

As is widely recognised violence against women is one of the most pervasive forms of human rights abuse in the world. Women and girls, in all societies, to a greater or lesser degree are subjected to physical, sexual and psychological violence. The violence cuts across lines of class, caste, religion, region, sexual orientation, ethnicity and culture. India could be a country wherever Rites and customs have compete a significant role of the society. During which dowry was one amongst the practices prevail in our society from long amount. Initially, this apply was treated as blessing however it took an unpleasant flip and became a curse for the society as a result of the ladies fell prey of the greed of their husbands and of his family. Moreover, this apply became a reason for harassing the ladies and inflicting mental in addition as physically cruelty. Thus, for the protection of girls, the Government of India inserted and there's a desire of amendment in section 498A therefore on defend men and for effortful ladies misusing identical. Misuse of dowry laws is not a recent phenomenon and the judiciary of India is totally responsible for the growing misuse of dowry law and the result is abuse of innocent men in the process.

This paper aims to understand the access to justice and the justice delivery system from the perspective of victims of marital violence especially in the context of recent debates around Section 498 A of the Indian Penal Code. In many cases, men have even committed suicide, when their wives have harassed them to approach police or court, to send them behind jail, for no reason.

**Key Words :** Dowry, Matrimonial Cruelty, Section 498A , Indian Penal Code, Section 113-A , Domestic Violence, Misuse.

---

"No nation founded upon injustice can stand. From the sand enshrouded Egypt, from the marble wilderness of Athens, from every fallen, crumbling stone of once mighty Rome Comes a wail, as it were the cry. No nation founded upon Injustice can permanently stand." - Robert Ingersoll.

### **1. Introduction**

To start with first we have to look that what this word marriage means. 'Marriage is the voluntary union for life of one man and one woman to the exclusion of all others.' It is a social institution where husband has the responsibility to take care and maintain his wife. He cannot neglect his duties. But on this great institution a stigma called 'dowry' still exists. Women are illtreated, harassed, killed, divorced for the simple reason that they didn't brought dowry. India has additionally been a rustic wherever customs and rituals are not solely followed however praised,

dowry was one among them that were followed in our society since ancient times. Dowry is an quantity of property or cash brought by a bride to her husband on their wedding. dowry given during a wedding is for the security of the female offspring and it thinks like blessings for her. it's seen that the husband and their families were harassing bride for dowry and torture her to require cash from her parental house. once seeing this practice Central government has created a law to shield the ladies from ill effect of dowry. Dowry Prohibition Act 1961 was enacted to protect ladies and additionally Section 498 A of Indian Penal Code 1860 came into force to shield the bride from her husband and their in-laws. This Section 498A is reliable for the protection of ladies, however during a recent situation it had been seen that these legislation has become a curse to men within the society. The women were started misusing these laws for his or her profit. The question arises that Dowry Prohibition Act 1961 is for the protection or for the advantage of women and Section 498A is reliable within the society.

## **2. Legal Protection to Women in India**

In India, dowry related violence on women by their husband and his relatives often culminating in continuous harassment, killing or suicide was on an alarming rise in 70s and 80s. Due to the seriousness of the issue and demands by the women's movement to change the laws relating to dowry a Joint Parliamentary Committee was constituted to locate the causes of the failure of Dowry Prohibition Act 1961 and further suggest effective measures to eradicate dowry. The committee located several impediments such as the narrow definition of dowry, procedural lapses in filing cases and lack of deterrent punishment against the offenders. It also recommended that the cruel treatment to a married woman for demanding and procuring dowry must be made punishable and stringent punishment was required to deal with the offenders. Based on committee's recommendations, comments received from the state governments and most of all on sustained campaigns of women's organisations Section 498 A IPC was introduced in the year 1983. After a long struggle by the women's movement for the first time, violence against women within marriages was made a criminal offence which was cognizable, non-bailable and non-compoundable. Several amendments were made in the IPC 1860, the Code of Criminal procedure 1973 and the Evidence Act 1872. Apart from the introduction of Section 498 A in 1983, Section 174, 175 and 176 were amended in the Code of Criminal Procedure (CrPC) directing post-mortem and inquiry in cases of unnatural death of a woman within 7 years of marriage in order to determine the cause of death. Section 113A was added to the Evidence Act 1872 in 1983 stating that if a woman had committed suicide within 7 years of her marriage and her husband or his relatives had subjected her to cruelty the court will presume that such suicide had been abetted by her husband or such relative of her husband. Thereafter in 1986 certain other amendments were made in the Indian Penal Code and in the Dowry Prohibition Act. The offence of dowry death was introduced in Section 304 B of the IPC. An amendment was made in the Indian Evidence Act with the insertion of a new Section 113 B which raised a presumption that if a person had subjected a woman to cruelty or harassment in connection with a demand for dowry soon before her death he would be presumed to have caused the death.

To curb the menace and cruelties to women being the weaker sex several legislations have been enacted in India, i.e. section 498A of the Indian Penal Code, Section 113-A of the Evidence Act, Section 125 of the Code of Criminal Procedure, Dowry Prohibition Act and some other provisions in the Indian Penal Code and also the latest legislation Protection of Women from Domestic Violence Act 2005 was enacted. The latest legislation was enacted in consonance with several International Accords and Conventions under the norms and principles adopted by the United Nations for protection of women.

### **3. Domestic Violence Act, 2005**

Violence is an act of aggression that crosses the boundary of another person's autonomy and identity. It is a coercive instrument to 'assert one's will over another, to prove or feel a sense of power'.

The term 'domestic violence' implies the incidents of familiar or intimate battering having reference to an idealised family unit functioning in a protected and secluded manner, appropriately shielded from the public. Domestic violence is undoubtedly a human rights issue and serious deterrent to development. It manifests as verbal, physical or psychological abuse, often in forms that are more subtle than the violence elsewhere in the society. The reconciliation with the subrogation, in the wake of limiting social circumstances, violates the case of human rights -liberty and human dignity.

Domestic Violence Act, 2005 is a result of Legislative Dynamism, it is a wellintended Social Legislation that was introduced when all the other previous Statues failed to achieve the desired results as a last resort and to protect the women from Domestic Terrorism. Therefore, this paper attempts to cover the situation of Women Protection laws before the enactment of the Domestic Violence Act. 'Power tends to corrupt and absolute power corrupts absolutely' therefore, this paper also tries to scrutinize the potential of these provisions to be misused by the Domestic Violence Act. The phenomenon of Domestic Violence is widely prevalent but has remained largely invisible in the Public Domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, is an offence under Sec 498-A of The Indian Penal Code. The victim's inability to access the law makes the legal remedies ineffective, and the four walls of the so-called 'home' render the law incapable of reaching the victims, which is even more tragic. Most victims of the domestic violence are at risk of further violence or even death when they attempt to leave the abusive relationships. Most incidents of domestic violence go unreported because women are reluctant to bring a complaint against the members of their own family. All these factors render the issue of domestic violence very different from other forms of violence, because of women's weak and vulnerable position inside their matrimonial home. It also explores the myth that the women are subjected to harassment and violence on the streets and at their workplace while the home is the safest 'heaven'. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives under, Sec. 498-A of the Indian Penal Code. The civil law does not, however, address this phenomenon in its entirety.

Domestic Violence is a long-debated issue and its journey started long back in the year 2001 when the bill was introduced in Parliament, in 2005, and finally, the Act was passed. This Act was important to prevent women who were ostracised by their was passed. This Act was important to prevent women who were ostracised by their 'own' people in their 'own' homes. There were long discussions to have consensus, a number of changes were made, and serious lacunae which existed were filled.

#### **Objectives**

The objective of this Act is to provide for more effective protection of the rights of women, guaranteed under the Constitution, who are victims of violence of any kind of occurring within the family and for incidental matters.

The Act was brought into force in October, 2006.

The basis of which a woman files the case of domestic violence-

- Physical Abuse
- Sexual Abuse

- Verbal Abuse
- Economic Abuse

**Physical Abuse** is defined as any act or conduct which is of such nature as to cause bodily pain, harm, or danger to life, limb or health.

Thus physical violence is:

- i. Any kind of bodily harm;
- ii. A threat of bodily harm;
- iii. Beating, slapping and hitting; and Includes criminal intimidation and criminal force.

**Sexual abuse** is any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the person and covers the instances where a woman is forced to have sexual intercourse with her husband against her will.

Thus it includes:

- i. Forced sexual encounter;
- ii. Forcing a woman to look at pornography or any obscene pictures; and
- iii. Any act of sexual nature to abuse, humiliate or degrade a woman's integrity.

**Verbal and emotional abuse** has been defined as an insult, ridicule, humiliation, name calling and such acts as:

- i. Any kind of accusation on a woman's character or conduct;
- ii. Insult for not bringing dowry;
- iii. Preventing a woman from marrying a person of her choice and;
- iv. Any form of threat or insults for not producing a male child.

**Economic abuse** is deprivation of economic or financial resources which an aggrieved person requires out of necessity. Other examples of economic abuse are

- i. Not providing money, food, clothes or medicine;
- ii. Causing hindrances to employment opportunities;
- iii. Forcing a woman to vacate her house; and
- iv. Not paying rent.

#### **4. Section 498A of the Indian Penal Code and Matrimonial Cruelty**

The marital relationship between a husband and wife and is a mutual bond of trust and understanding. Though marriage isn't gleeful and jubilant in all the cases, in some cases marriage becomes a stumbling block to happiness and peace of mind. Matrimonial matters demand trust, regard, respect, love, affection and belief. Cruelty is one of the aspects that becomes a hamper against a happy marital relationship. For safeguarding the interest of woman against the interest of woman against the cruelty they face behind the four walls of their matrimonial home, the Indian Penal Code, 1860 was amended in 1983 and inserted S.498A which deals with 'Matrimonial Cruelty' to a woman. Section 498A underneath IPC by the change Act 1983. However with the recent state of affairs, there square measure cases seen wherever ladies misuse Sec 498A of IPC and legal Provision of Dowry Prohibition Act etc. By filing case against her husband and her in-laws and find the benefits of the support payment and different remuneration. The main objective of section 498-A of I.P.C is to protect a woman who is being harassed by her husband or relatives of husband. This section has created biggest downside in a very current state of affairs for men as being discriminated and such laws are being victimized by ladies.

Matrimonial cruelty in India is defined in Chapter XX A of IPC under Section 498 A 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 her to cruelty shall be punished with imprisonment for a term, which may extend to three years and shall also be liable to a fine.

Explanation – for the purpose of this section, “cruelty” means:

- (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 demands 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 has deliberately been defined in the Indian Penal Code in two ways.

In part (a) of Section 498 A cruelty has been defined as “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.”

Secondly in part “b” it has also been defined as “harassment of the woman” to coerce her or any person related to her “to meet any unlawful demand for any property or valuable security”. This sub-section further states that harassment “on account of failure” by a woman to meet the demand of dowry will also be punishable. The offence was made punishable with imprisonment up to 3 years and with fine. The offence was also made cognizable, if reported by the victim or any person related to her or by notified public servants. It was further made non-bailable and non-compoundable. According to the National Family Health Survey 2007, one third of women in the age of 15-49 have experienced physical abuse, one in ten women has experienced sexual abuse, nearly two of every five women have experienced some form of sexual or physical violence from their husband and only one in four abused women seeks help to end the violence they have experienced. The Indian Government has taken various initiatives in the form of policy, legislation and institutional mechanisms to address the issue of violence against women.

## **5. Section 113-A of Indian Evidence Act**

Violence against women was given top priority in the Tenth Five Year Plan. Again, the Eleventh Five Year Plan has included violence against women as one of the three aspects relating to the problems of women besides women's economic empowerment and women's health. Elimination of discrimination and all forms of violence against women and the girl child is one of the objectives of 'National Policy for Empowerment of Women, 2001. In addition, India has ratified various international Conventions and Human Rights Treaties . Key among them are the ratification of the Convention on Elimination of All Forms of Discrimination Against Women in 1993, the UN Declaration on Elimination of Violence Against Women, the Beijing Declaration and the Platform for Action in 1995. The section was enacted to combat the menace of dowry deaths. It was introduced in the code by the Criminal Law Amendment Act, 1983 (Act 46 of 1983). By the same Act section 113-A has been added to the Indian Evidence Act to raise presumption regarding abetment of suicide by married woman.

### **Sec. 113-A, Presumption as to dowry death –**

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation –

For the purpose of this section ‘dowry death’ shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860). The object for which section 498A IPC was introduced is amply

reflected in the Statement of Objects and Reasons while enacting Criminal Law (Second Amendment) Act No. 46 of 1983. As clearly stated therein the increase in number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some of cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, which constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short 'the Cr.P.C') and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-laws and relatives. The avowed object is to combat the menace of dowry death and cruelty. The act of harassment would amount to cruelty for the purpose of this section. Drinking and late coming habits of the husband coupled with beating and demanding dowry have been taken to amount to cruelty within the meaning of this section, but this section has been held not to include a husband who merely drinks as a matter of routine and comes home late. In a case before Supreme Court it was observed that this section has given a new dimension to the concept of cruelty for the purposes of matrimonial remedies and that the type of conduct described here would be relevant for proving cruelty.

#### **6. Constitution Validity of Section 498-A**

In *Inder Raj Malik and others vs. Mrs. Sumita Malik*, it was contended that this section is ultra vires Article 14 and Article 20 (2) of the Constitution. There is the Dowry Prohibition Act which also deals with similar types of cases, 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 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 existence of element of cruelty is not necessary, whereas section 498-A deals with aggravated form of the offence. 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 offences punishable under section 4 of the Dowry Prohibition Act and this section. This section gives wide discretion to the courts in the matters of interpretation of the words occurring in the laws and also in matters of awarding punishment. This provision is not ultra vires. It does not confer arbitrary powers on courts. In the leading case of *Wazir Chand vs. State of Haryana*, involving the death by burning of a newly married woman, the circumstances did not establish either murder or an abetted suicide and thus in-laws escaped the jaws of Section 300 and 306, but they were caught in the web of this newly enacted section for prevention of harassment for dowry. Not to speak of the things they are persistently demanding from the girl's side, the fact that a large number of articles were taken by her father after her death from her matrimonial abode showed that there was pressure being exerted on in-laws and continued to be exerted till death for more money and articles. With the rise in modernisation, education, financial security and the new found independence the radical feminist has made 498A a weapon in her hands. Many hapless husbands and in-laws have become victims of their vengeful daughter-in-laws. Most cases where Sec 498A is invoked turn out to be false (as repeatedly accepted by High Courts and Supreme Court in India) as they are mere blackmail attempts by the wife (or her close relatives) when faced with a strained marriage. In most cases 498A complaint is followed by the demand of huge amount of money (extortion) to settle the case out of the court.

#### **7. Article 15 of Indian Constitution**

Article 15 of the Constitution prohibits discrimination on grounds of religion, race, caste, sex or place of birth. However, it allows special provisions for women and children. Article 21A provides for free and compulsory education to all children from the ages of six to 14 years. Article 24 prohibits employment of children below 14 years in mines, factories or any other hazardous employment. The

court also took note of Article 14 guaranteeing equality, and Article 21 providing that a person cannot be deprived of life and liberty except according to procedure established by the law. Similarly, Article 23 prohibiting human trafficking and forced labour was also referred to in the court's judgment. Moving away from fundamental rights to the directive principles, the court pressed into service provisions relating to the health of women and children. Article 39(f) directs the State to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation and moral and material abandonment. Article 42 directs the State to make provisions for just and humane conditions of work, and maternity beliefs. Article 45 stipulates that the State shall provide early childhood care and education for all children until the age of six. Article 47 lays down the raising of level of nutrition and standard of living of people, and improvement of public health as a primary duty of the State. This section tries to maintain that every married woman needs to be given due respect and treated with care. It reinforces the fact that a woman is not a toy to be played with, to be thrown away at one's whims and fancies and treated as inferior to any other. It inherently asks for husbands to treat their wives well and not misbehave or demand unjustly which in a way sends forth a message that a woman is a commodity for sale. What section 498A IPC tries to do is prevent and punish the above act and re-assert a woman's right to live a peaceful and happy life. As has often been pointed out, the Indian Constitution not only guarantees equality to women vide Articles 14, 15 and 16, but also empowers the state to adopt measures of positive discrimination in favour of women in order to achieve gender equality. Yet, crimes against women in the country continue to be on the increase. This not only has grave implications for the health and well being of a woman but it has also been pointed out that in India, one incident of violence translates into losing seven working days for women.

#### **8. Allegations of Misuse of Section 498 A**

There are people alleging the misuse of section 498A IPC which was inserted in the Indian Penal Code in 1983 after due deliberations for the protection of women from marital violence and dowry harassment. Their allegation goes like women have grossly misused and abused this section to fulfill her ulterior motives.

Some of the allegations are understated –

- The women want to separate her husband from his family want to control his actions and lifestyle and also to take advantage of the financial resources of husband.
- The wives also file a case under this section to save the marriage when her family at the time of marriage has concealed certain facts like her health or education level from the bridegroom's family which the later discover.
- The women use this as a tool to bargain for the ill deeds done by her like indulging in adultery and other wrongs which can break her marriage.
- Some women file a case against their husbands to get divorce so that she can revive the premarital relationship and due to which she was not willing to get married and married only under pressure of family.
- In the cases where there is already a pending petition of divorce of the couple the wives file the case in order to deny the husband of the custody of the children.
- In order to take vengeance and settle the score with the husband and his family by inflict suffering on them through this case.

These are the major arguments taken up by accused against whom the case under section 498A is being filed and it is a myth that the wife has a lethal weapon in form of this provision which she uses to settle scores and take vengeance and not because of the need. The mode of operation is said to be such that the husband and family is being falsely accused and suffering is indiscriminately implicated the husband and his relatives. The above said arguments are without any basis or proofs



and are based on the assumption that women can best be served encouraging reconciliation with the husband and his family and accepting of subordinate roles. The idea that women are treated with cruelty for dowry only and that the actual form of violence is "physical" only which we be concerned of.

The arguments also sometimes claim the the law has been harsh not only on men but on women too because of the lodging of the FIR which becomes a tool into hands of police for extortion and badgering of husbands and in laws without even considering the worth of the allegations and making proper investigation. At the point when the individuals from a family are arrested and sent behind the bars with no quick prospect of safeguard the option of reconciliation also fades away or then again rescuing the marriage will be lost completely. In such cases the loopholes are not in the law itself but the acts of the police authorities as they fail to honor their duty of making proper background check and investigation for before arresting the husband and family. The corruption in the department of the state cannot be blamed on the law put down for the protection of women. The other argument says long and extended criminal trials leads to sourness in the relationship among the friends and relatives of the family. Realities must be taken care of while managing marital issues with due respect to the way that it is a sensitive family issue which should not be permitted to be exasperated by insensitive activities with respect to the Police by exploiting the brutal arrangements of s.498A of IPC together with its related arrangements in CrPC. The time taking trials is not a not a drawback of the law but of the process the need here is for making trails under section 498A to be time bound so that people can resume their normal lives. Reality of the situation is claiming that life of family and friends will be disturbed will not change the gravity of the offence committed against the victim.

#### **9. Other Side of the Coin**

The rate of conviction being low is major argument people alleging misuse of the section 498A but this can be explained very well by the situation of this patriarchal society and the nature of domestic violence which takes place in the house boundaries and witness are hard to find as those who live in the house are usually reluctant to involve themselves or their son in the legal cases. Not having witnesses is a huge disadvantage as the offense is of such a nature that other type of evidences are not much involved. It also reflects to the fact that the investigation done by the police is weak because despite presence of prima facie evidence in 94% of the cases most of them does not lead to conviction for the reason of loopholes in the investigation. In many cases priority is not given to the seriousness of the situation due to which the investigation gets delayed leading to losing of crucial evidence. Besides the trials also are delayed and the victims have to wait for years to get justice. In the cases where the cruelty and torture is magnified due to animosity if the cases and hence the life of victim becomes all the more difficult.

` The public prosecutors fighting on behalf of the women are not that competent as senior advocates appointed by the accused and in most cases the women end up losing the case due to this. It is socially accepted that the women will face problems in their marital home and they are expected to adjust in the environment. The society where women are asked to compromise instead of taking a stand for their rights it becomes all the more difficult fight the accused and win despite having everyone against her. The domestic verbal abuse and crimes are not seen as crimes by the society and hence it is all the more difficult to convict a person for mentally harassing his wife as many of the women accept this marital violence as fate so the problem is only for the husbands whose wives stands against this cruelty. Many a times it is the societal pressure or lack of options with the women who are more vulnerable to family politics that they chose to withdraw the case and settle for the same environment than fight for justice.

Statistics have contradicted the commonly claimed fact that majority of 498A cases are false because more than 90% of the cases are found to be true on investigation but the mistaken notion of the false cases have lead to more loss to the women than the loss of losing the case against her husband. Low conviction rate does not necessarily mean the case was false but there are variety of reasons for low conviction rate like lack of evidences to prove the case lack of financial help to appoint good advocates the patriarchal mindset of judiciary corruption by the accused and many more. The less number of convictions are interpreted as lack of truth in the allegations and false facts of the case which is mostly not the case.

The allegation of misuse of law have just been general statements without being substantiated by any proofs. The idea is based only on the fact that women having law in her favor will give her independence and power to misuse the law. What this stand lacks is the understanding of situation of women in Indian households and the attitude of police against the offense against women. The amount of misuse of law is not as high as it is claimed to be but still there is misuse of law and that is not only because of the ill intentions of women but also because of the loopholes in the law itself. All the other criminal laws are misused like criminal breach of trust kidnapping and abduction cheating etc. but the fingers are pointed only at the laws which are for protection of one gender. This idea of gender specific laws being prone to misuse and gender neutral laws being immune to the same is in itself flawed.

The demand has arisen time and again from the society for the amendment in section 498A for the only reason that it is a gender specific laws and because it protects women from the clutches of the patriarchal society. It is the general myth that the section 498A is misused and there is not support to this claim as the statistical data and the experience of the organizations working in the grassroot level with the women who face domestic violence shows that this section is not misused rather it is hardly used by the victim of domestic violence. The provision for the protection of such suffering women have-not yet reached them as the actual extent of domestic violence occurring in the country is very high and the number of cases filed under this section is far less.

The National Family Health Survey in its report showed that the 40% of the married women in India suffer domestic violence in any form as physical sexual or mental. And in contrast to this the number of cases filed against domestic violence under this section are less than 1% of the women suffering. Instead of claiming it as misuse of the law it should be looked at from the perspective that it is being underused and there are still sections of the society where this section is yet to reach. In a contest it is the fact that most women are dependent on husband and their family for basic necessities and they did not get support from their families or the state agencies. Many a times the women does not have proper channel for help or support to file a case against their husbands and families. When the society expects from women to adjust and compromise in the marital relationship and accept violence it is not a surprise to see that most of the cases of violence go unrecorded and all that remains in the hands of the defense is to allege misuse of the laws. Such allegation has arisen from the patriarchal mindset and attitude of the society towards women.

In the last 11 years between 2006-2016, for every case that resulted in a conviction, five other cases resulted in an acquittal and one case was withdrawn with the net result being that only one out of every seven cases resulted in a conviction-National Crime Records Bureau. The stats also show the number of pending cases at the end of 2016 is more than twice the number of pending cases at the end of 2006.

Disposal of cases filed under Sec 498-A of IPC by Courts							
Year	Total Cases where trial completed in that year	Convicted	Acquitted	Withdrawn	Total Cases Pending at the end of the year	Conviction Rate of Cases under 498-A in %	Average Conviction Rate of all IPC crimes in %
2006	31261	6857	24404	5679	206431	21.9	42.9
2007	32622	6831	25791	6364	228614	20.9	42.3
2008	34347	7710	26637	7310	251759	22.4	42.6
2009	37323	7380	29943	7111	278921	19.8	41.7
2010	40751	7764	32987	6601	309991	19.1	40.7
2011	40338	8167	32171	7450	339902	20.2	41.1
2012	46054	6916	39138	8162	372706	15	38.5
2013	45423	7258	38165	8218	412438	16	40.2
2014	46853	6425	40428	8922	443885	13.7	45.1
2015	46217	6559	39658	10318	477986	14.2	46.9
2016	44681	5433	39248	8437	515904	12.2	46.8

#### 10. Landmark judgements of the Supreme Court

##### Arnesh Kumar v. State of Bihar (2014)

The wife alleged that dowry was demanded from her and that she was driven out of the matrimonial home on non-fulfilment of such demands. The husband applied for anticipatory bail which failed. Therefore, by special leave petition, the husband approached the Supreme Court. In this case, the Court observed that the fact that Section 498A, IPC is a cognizable and non-bailable offence, it is more often than not is used as a weapon rather than shield by disgruntled wives. It results in harassing the husband and his relatives by getting them arrested under this Section and it is more disturbing to see bedridden grandfathers and grandmothers being arrested without a prima facie case. Thus, the Court laid down certain guidelines which the police officer must follow while arresting under Section 498A, IPC or Section 4 of the Dowry Prohibition Act, 1961 and that such arrest must be based on a reasonable satisfaction with respect to genuineness of the allegation. Moreover, even the Magistrates must be careful enough not to authorise detention casually and mechanically.

##### Manju Ram Kalita v. State of Assam (2009)

The wife alleged physical and mental cruelty at the hands of the husband and accused him under Section 498A, The Court held that "Cruelty" for the purpose of Section 498-A IPC is to be established in the context of Section 498-A IPC as it may be different from other statutory provisions. It should be determined by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide, etc. It is to be established that the woman has been subjected to cruelty continuously or at least in close proximity of time of lodging the complaint. The Court further held that petty quarrels cannot be termed as "cruelty" to attract the provisions of Section 498-A IPC.

**Bibi Parwana Khatoon v. State of Bihar (2017)**

Similar to previous cases, the facts of this case are that the wife was killed by setting her up on fire by her husband and her relatives. The sister-in-law and brother-in-law of the deceased wife challenged the conviction in the Supreme Court. The Court brought under notice the facts that the appellants in the case did not even reside at the place of mishap. There was no evidence to prove their charge beyond reasonable doubt. Therefore, the Court acquitted them and held that the Court must guard against false implication of the relatives.

**Rajesh Kumar & Ors v. Sate of U.P. (2017)**

In the present case, the husband, along with other relatives, was accused for causing cruelty to the wife in lieu of demand for dowry. However, the other relatives demanded that there should be certain guidelines to prevent over-implication. Thus, in most of the cases the relatives of the husband are also being dragged into Courts in cases of Section 498A. However, it is not necessary that they have been party to the offence. Thus, a question with respect to the need for directions to prevent misuse of Section 498A, IPC was raised in the appeal.

The Supreme Court laid down comprehensive directions to prevent the misuse of the provision of Section 498A, IPC.

*Family Welfare Committee*

- The constitution of one or more Family Welfare Committees in every district which shall preferably consist of three members. Such a constitution is to be made by the District Legal Services Authorities.
- The members may be volunteers/social workers/retired persons/wives of working officers/other citizens or anyone who may be found suitable and willing.
- Frequent review of constitution and working of such committees in addition to the yearly review which is a minimum requirement. Such review shall be done by the District and Session Judge of the district who is also ex-officio chairman of the District Legal Services Authority.
- The Committee members will not be called as witnesses.
- Every complaint has to be referred to the Committee and the committee has to submit the report to the authority who referred to such complaint. The report may be then considered by the Investigating Officer or the Magistrate on its own merit.
- The work of the committee includes looking into every complaint under Section 498A received by the police or the Magistrate.
- No arrest should normally be effected till report of the committee is received.

*Investigating Officer*

- Investigating Officers to be designated within a month from the delivery of judgment to investigate the complaints under Section 498A and other connected offences.
- Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from the date of delivery of the judgment.

*Settlement*

- In cases where a settlement is reached, the District and the Sessions Judge to dispose of the proceedings. Such disposal also includes the closing of the criminal case if the dispute

primarily relates to matrimonial discord. The District and Sessions Judge may also nominate any other senior Judicial Officer to do the same.

#### *Bail Matters*

- Cases where a bail application is filed with at least one clear day's notice to the Public Prosecutor or the complainant, the same may be decided 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 or minor children can otherwise be protected.
- Further, in dealing with bail matters, certain things such as individual roles, the prima facie truth of the allegations, the requirement of further arrest or custody and interest of justice must be carefully weighed.

#### *Issuance of Red Corner Notice*

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

#### *Clubbing of cases*

- It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the Court to whom all such cases are entrusted.

#### *Personal appearance*

- Personal appearance of all family members and particularly outstation members may not be required.
- Further, the trial court ought to grant exemption from the personal appearance or permit appearance by video conferencing without adversely affecting the progress of the trial.

However, the Court further said that these directions will not apply to the offences involving tangible physical injuries or death. The Court also said that the National Legal Services Authority may submit a report after a trial of 6 months of such arrangement and latest by March 31, 2018, for any change in the directions issued or for any further directions.

#### **Social Action Forum for Manav Adhikar v. Union of India**

The petition was filed under Article 32 of the Constitution. The petitioners contended that it is not untrue that there are a number of women suffering from violence at the hands of husband and his relatives and that the accusation that Section 498A is being misused is not supported from any concrete date on such misuse. It was further argued that the social purpose behind Section 498-A IPC is being lost as the rigour of the said provision has been diluted and the offence has practically been made bailable by reason of various qualifications and restrictions prescribed by various decisions of this Court including *Rajesh Sharma v. State of U.P.* After referring to the directions, the Court concluded that the direction with respect to Family Welfare Committees and their duties are not in accordance with any provision of Code of Criminal Procedure, 1973. The offence of cruelty is non-bailable and cognizable offence but due to the direction making it impossible to arrest before the report of such committee has made this ineffective. Thus the directions given in *Rajesh Sharma* case has been modified by Court as further explained.

- The direction with respect to constitution and duties of Family Welfare Committee has been declared impermissible.

- Further, direction pertaining to the settlement has been modified to include that if a settlement is arrived at, the parties can approach the High Court under Section 482 of the Code of Criminal Procedure. The High Court, keeping in view the law laid down in *Gian Singh v. State of Punjab* shall dispose of the same.

## Conclusion

From the judicial trend and observations of various commissions, it becomes clear that section 498A has become a necessary evil. It must continue to remain in our statute books for the much needed protection of women but with a caveat, its misuse must be curbed. Following the judgment in the recent cases, it appears that the police and magistrates will carry out their duties with greater diligence, substantially bringing down the misuse of s.498A without devaluing the utility of section 498A in genuine cases.

Thus, in conclusion it can be said that the solution does not lie in taking away all the powers of the said Section and making it toothless but calls for a more effective use of the law. The law needs to be implemented for the reason of protecting the victims of abuse in marriage and not merely use as a tool for harassment. The real and actual cases must be separated from the frivolous ones and it is the duty of the police to investigate matters properly and thoroughly. Another essential point is to ensure speedy trial of 498-A cases, as this will not only ensure justice for the innocents that have been implicated in false charges, it will also lead to prompt redressal of the grievances of real dowry victims. The reduction in false cases will also reduce the burden on judiciary and expedite the processing of real cases. Thus, there can be a constant battle between the genders on such laws, but the test lies in truly realising the rationale and purpose of the Section, finding the correct balance, and not making a mockery of the law by its persistent abuse.

## REFERENCES

- [1]. P. S. A. Pillai, Criminal Law , 13th Edition.
- [2]. Ratanlal & Dhirajlal , the Indian Penal Code , 35th Edition
- [3]. "Are Indian Women Misusing Section 498A? | Free Press Journal.2015. Free PressJournal.April 19,2018. <http://www.freepressjournal.in/weekend/are-indian-women-misusing-section-498a/568637>.
- [4]. "Attempt at Dilution of Section 498 A IPC -A Step in Regression | LawyersUpdate."n.d. Accessed June18,2018. <https://www.web.lawyersupdate.co.in/legal-articles/attempt-at-dilution-of-section-498-a-ipc-a-step-in-regression/>.
- [5]. LegalSalah. 2016. "„Section 498A of Indian Penal Code Has Led Whole Society in a Dilemma Regarding the Concept of Marriage'- LEGAL SALAH BLOG." LEGAL SALAH BLOG. September 21, 2016.<https://www.legalsalah.com/blog/section-498a-of-indian-penal-code-has-led-whole-society-in-a-dilemma-regarding-the-concept-of-marriage/>.
- [6]. Mahapatra, Dhananjay. 2014. "False Cruelty Cases under Section 498A Ruining Marriages, SC Says - Times of India." The Timesof India.December 9,2014. <https://timesofindia.indiatimes.com/india/False-cruelty-cases-under-Section-498A-ruining-marriages-SC->
- [7]. The works of robert g. ingersoll, by robert ingersoll, Robert Litke, 'Violence and Power', (1992) 44/2 International Social Science Journal 173-83.
- [8]. M.A. Fineman, Preface in M.A. Fineman and Mykituk R. (Eds.), The Public Nature of Private Violence, The Discovery of Domestic Abuse (Routledge, New York 1994)
- [9]. The United Nations Committee on Convention of Elimination of all Forms of Discrimination Against Women (CEDAW).
- [10]. The Indian Penal Code Ratanlal & Dhirajlal (Student Edition)

- [11]. <http://www.firstpost.com/india/flipside-of-dowry-law-men-recall-how-section-498a-is-unfairly-used-against-them-2172943.html>
  - [12]. <http://www.deccanherald.com/content/470904/misuse-section-498a-realitycheck.html>
  - [13]. "SC's New Directives on 498A Could Make Women More Vulnerable to Domestic Violence, Say Experts." 2017. The News Minute. July 28, 2018.  
<https://www.thenewsminute.com/article/sc-s-new-directives-498a-could-make-women-more-vulnerable-domestic-violence-say-experts>.
  - [14]. "Sec 498A of the Indian Penal Code a Weapon in the Hands of Vamps." n.d. Lawyersclubindia. Accessed June 1, 2018. <http://www.lawyersclubindia.com/articles/Sec-498A-of-the-Indian-Penal-Code-a-weapon-in-the-hands-of-vamps-585.asp>.
  - [15]. "Section 498A, Dowry: Most FIRs, Least Convictions." 2017. Legal Desire. December 26, 2017. <http://legaldesire.com/section-498a-dowry-firs-least-convictions/>.
  - [16]. "Section 498A of IPC, Cruelty." 2017. Law Times Journal. April 30, 2018. <http://lawtimesjournal.in/section-498a-indian-penal-code/>.
  - [17]. "Section 498A- THE FINEST SWORD." n.d. Accessed June 19, 2018. <http://www.theindiasaga.com/opinion/section-498a-the-finest-sword>.
  - [18]. Malimath Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs, 2003  
<[http://www.mha.nic.in/pdfs/criminal\\_justice\\_system.pdf](http://www.mha.nic.in/pdfs/criminal_justice_system.pdf)>chapter 16.
  - [19]. (2000) 10 SCC 662
  - [20]. (2005) 6 SCC 281
  - [21]. (2005) 6 SCC 281
  - [22]. (2010) 7 SCC 667
  - [23]. (2010) 13 SCC 540
  - [24]. Writ Petition (Criminal) No. 156 of 2017: Judgment Delivered on 14.09.2018
  - [25]. Arnesh Kumar v. State of Bihar and another (2014) 8 SCC 273
  - [26]. AIR 2017 SC 3869
  - [27]. (1994) 4 SCC 260
  - [28]. (1997) 1 SCC 416
  - [29]. (2014) 2 SCC 1
  - [30]. (2014) 8 SCC 273
-