



Misuse of Section 498(a) In India*

INTRODUCTION

A woman is subjected to the whims and caprices of man, especially when it relates to the relation of husband and wife or matrimonial life. This is a criminal law use to combat domestic violence and dowry harassment. It was introduced in the Indian penal code by criminal law (second amendment) act of 1983. Indeed, this overwhelming power is used as a tool for blackmail and dominance over groom's family. However, in present era a synonym of fear for the groom's family, which created this law a draconian law. Are victims coming under this law actually benefitted or it is simply a lawful tool for extortion?

Definition under Indian penal code:

Section 498(a) of IPC - As per this section 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 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".

Explanation —For the purpose of this section, "cruelty" means

(a) Any willful 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.

A draconian law creating remedy or punishment:

Marriage is a very prestigious social institution. Not simply a bond between two individual but their family also. This law creates a dominance of will of bride on groom's family. This crime becomes heinous when a bride falsely implicates groom's family on dowry basis.

The Section 498(a) is an offense which is

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Cognizable: The police will register a Section 498(a) case since it is required by law, but they don't investigate, but go on to arrest people because of the money to be made in bribes from both sides in a Section 498(a) case.

Non-Compoundable: Though Section 498(a) is non-compoundable, the courts are allowing the withdrawal of the case when the parties agree to reconcile or settle cases. In real terms, if you pay up, the case goes away. If you don't, you'll get stuck with a criminal case that will go on for years.

Non- Bailable: Since bail is at the discretion of the magistrate, all sorts of games will be played to have families locked up while negotiations go on to settle the case. This may happen in cases where the magistrates are allegedly corrupt or, the public prosecutor and the cops are in cahoots

It empowers a wicked woman to control her husband and in-laws according to her. It is a perfect apparatus for extortion and/or to wreak vengeance on the family. In **Sushil Kumar Sharma v/s Union of India** Supreme Court mentions the Section 498(a) and domestic violence act as a **legal terrorism**.

- **Sushil Kumar v/s Union of India and OR's 2005**

By this petition purported to have been filed under Article 32 of the Constitution of India, 1950 (in short the Constitution') prayer is to declare Section 498(a) of Indian Penal Code, 1860 (in short the IPC') to be unconstitutional and ultra vires in the alternative to formulate guidelines so that innocent persons are victimized by unscrupulous persons making false accusations.

Further prayer is made that whenever, any court comes to the conclusion that the allegations made regarding the commission of offenses under Section 498 IPC are unfounded, stringent action should be taken against the person making the allegations. This, according to the petitioner, would discourage persons from coming to court with unclean hands and ulterior motives. Several instances have been highlighted to show as to how commission of offense punishable under Section 498(a) IPC has been made with oblige motive and with a view to harass the husband, in-laws and relatives.

According to the petitioner there is no prosecution in these cases but persecution. Reliance was also placed on a decision rendered by a learned Single Judge of the Delhi High Court wherein concern was shown about the increase in number of false and frivolous allegations made. It was pointed out that accusers are more at fault than the accused. Persians try to take undue advantage of the sympathies exhibited by the courts in matters relating to alleged dowry torture.

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There are approximately 50 pro women, law, but till now no law has been created for men's rights. In Every situation men are presume as offender. There is not a single law to defend them. This shows the dominance of female rather than male. Accused is presumed culprit unless proved and being a non – Bailable warrant doesn't need any proof prior to arrest. On one complaint bride could arrest every person whom she named. Family members who are not related in 'day-to-day' life could also be arrested if bride mentions them in the complaint; even pregnant women and children are included. Old parents have to live with the stigma of harassing their daughter in law for their whole life. A fabricated case of Section 498(a) doesn't simply gives acquittal from court indeed it comes as a curse to groom family which shaken their family economically and socially. Even after divorce a wife can sue her husband in Section 498(a).

A good precedent case in Section 498(a) section which give a good interpretation of this law.

MIL kicking DIL is not cruelty under Section 498(a)

The Supreme Court (SC) in **BHASKAR LAL SHARMA Versus MONICA** case has made it to front columns of most newspapers.

Given that it is an SC judgment, it automatically sets binding precedent for further cases which may have a similarity. For purposes of IPC Section 498(a), following portion of judgment could be of value in setting precedent about what constitutes Cruelty under IPC Section 498(a):

The allegations relating to the place where the marriage took place has nothing to do with an offence under Section 498(a) of the IPC. Allegations that appellant No.2 kicked the respondent with her leg and told her that her mother to be a liar may make out some other offence but not the one punishable under Section 498(a). Similarly her allegations that the appellant No.2 poisoned the ears of her son against the respondent; she gave two used lady suits of her daughter to the complainant and has been given perpetual sermons to the complainant could not be said to be offences punishable under Section 498(a). Even threatening that her son may be divorced for the second time could not bring out the offence under Section 498(a) of the IPC.

Basically all above acts have been alleged to be done by appellant No. 2 MIL to DIL. But according to SC these acts do not fall under Cruelty as defined under IPC Section 498(a).

Convictions Vs. Acquittals

While the number of convictions was more or less close to 7000 cases in each of these 7 years, the number of acquittals increased consistently. From 25791 acquittals in 2007, this number went up to 38165 in 2013. The number of cases withdrawn was more or less equal to the number of convictions in each of these 7 years. For every case that is resulting in conviction, 5 other cases are resulting in acquittal while one other case is being withdrawn. The net result is that only one out of every 6-7 cases are resulting in conviction. In fact the conviction rate for cases under this category is less than half of the average conviction rate for all other IPC crimes. The conviction rate in this category is also one of the lowest.

243rd Report of Law Commission of India:

Keeping in view the representations received from various quarters and observations made by the Supreme Court and the High Courts, the Home Secretary, Government of India through his D.O. letter dated 1st September, 2009 requested the Law Commission of India to consider suggesting amendment, if any to Section 498(a) of Indian Penal Code or other measures to check the alleged misuse of the said provision. Thereafter, in the case of **Preeti Gupta vs. State of Jharkhand, (2010)** the Supreme Court observed that "serious relook of the entire provision is warranted by the Legislature. It is a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over-implication is also reflected in a

very large number of cases". Copy of the Judgment has been directed to be sent to the Law Commission and Union Law Secretary for taking appropriate steps.

Justice Malimath committee report on Section 498(a)

Malimath committee recommendation to compromise and settle dispute between husband and wife at the onset of trial but in present it is non-compoundable and non Bailable which provides for immediate arrest of accused. Husband and family members is arrested on false implications to take vengeance of marital problems. This report also recommended for increase of fine from 1000rs to 15,000 on false implications. They also provided the facility to pay penalty instead of imprisonment. So, the growing scale of false cases in dowry demand can be reduced and this section could be used as a shield of aggrieved wives.

Overseas Indian and Section 498(a):

Section 498(a) many times used as a tool of extortion for NRI grooms. An oversea Indian wants to marry in his motherland sounds simple but this has become a curse they are imposed with false dowry cases to extract money. NRI's have become a resource of money, many wicked brides simply want to marry a groom who is from abroad just to get money In India marriage with an overseas Indian is presume as they will get a lavish life and better career opportunities.

Recent changes in Section 498(a):

- Government is trying to make it a compoundable offence under the proposal, Section 498(a) of the Indian Penal Code will be made a compoundable offence with the permission of the courts as suggested by the Law Commission and Justice Malimath Committee.
- Provisions will be kept to allow compromise and settlement between husband and wife at the onset of trial in dowry harassment cases, a Home Ministry official said.
- The offence at present is non-compoundable and non- Bailable, which provides for immediate arrest of the accused.
- Conciliatory efforts between the hostile parties are virtually impossible.
- A husband or his family members are presumed guilty till they prove their innocence in court.
- The offence is punishable with a jail term of up to three years.
- There have been allegations that husbands and in-laws are often charged with false dowry harassment when some marital problems arise.
- As per data provided by the National Crime Records Bureau, a total number of 99,135, 1, 06,527 and 1, 18,866 cases, respectively, were registered in 2011, 2012 and 2013 in the country under Section 498(a) for cruelty by husband or his relatives.

- After police investigation, 10,193 in 2011, 10,235 in 2012 and 10,864 cases in 2013 were found to be false or suffering from mistake of fact or law.
- If the offence is made compoundable, misuse of the law may come down hugely as there would be scope for initiating conciliation proceedings and out-of-court settlement.
- Permission from a court will be a guarantee against attempts where a wife may be compelled into a compromise by her husband or in-laws, the Home Ministry official said.
- Under the existing rules, if a dowry harassment case is proved wrong or it is proved that the law **was misused, a penalty of only Rs. 1,000 is imposed but new amendment provide 15,000.**

Delhi court says police must follow SC guidelines against casual arrest in Section 498(a) case etc. - SC judgment against automatic arrest under Section 498(a) and home ministry advisory to follow Code of Criminal Procedure Sections 41 and 41(a) guidelines to avoid arbitrary arrest in Section 498(a) (and offences less than 7 years punishment).

No automatic arrest in Section 498(a), says Supreme Court - Supreme Court has been giving judgments on misuse of IPC Section 498(a) for many number of years, and they had even asked the law ministry to consider amending it. Many states have police circulars already on doing investigation or taking permission of higher police like DCP before arresting under Section 498(a), but there is no guarantee that these rules are followed.

Recent judgments regarding this section misuse

- **Kumar v. Pooja [2015]**

Sandeep criminal law quashing of FIR criminal procedure code, 1973- Section 482, Indian penal code, 1860, Section 498(a), 406, 32- dowry prohibition act, 1961, section 3 and 4- Matter arose out of matrimonial dispute and has been settled between the two parties less likelihood is there of prosecution succeeding in this matter- held therefore, FIR quashed and proceedings emanating there from also quashed.

- **Avinash v. State [2015 STPL (Web) 1556 DELHI (Del)]**

In this present case bail was granted to husband along with condition to pay Rs.50,000 to wife for meeting day to day expenses of the child – Question that arose was whether that this

compensation to be paid as a condition to the bail can be termed as unreasonable which can have the effect of buying the bail-held that the complaint being lady, dependent on her parents – suggestion by court for making provisions for the immediate need of the child can 't be described as buying the bail- condition imposed,

Conclusion

The Section 498(a) is created in 80's to fight against rising dowry cases but from 2007 to 2013 its shows a drastic change in false cases. There is rise of false implications on grooms and his family. In present era it is used as a weapon not as a shield. Through this wicked wife extract money from their husbands and even respected and literate family have to face the stigma of disrespect. It is deviating from its sole purpose of restricting women violence rather it had created a curse for men with no way to get out . It is also used as a good way to get a quick divorce from husband but fragile matters like matrimony when false implicated, doesn't only create economic loss but a significant wound to social and psychological aspect of men as well as women. Elder parents of groom had to face the court and prisons. So it should be amended rather than debating on women empowerment. It should include negotiation between husband and wife and other improvement so that it can prove a safe passage for acquittals and even it didn't lose its gist.

