



Constitutional Validity of Section 498A of Ipc

KEYWORDS

Cruelty, Justice Malimath Committee and Criminal Justice System.

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ABSTRACT *The Indian State is responsible to ensure that all its citizens, especially the most historically marginalized, are provided protection to live a life of dignity and respect. Article 15 of the Constitution of India and International Conventions like Convention for Elimination of all forms of Discrimination against Women (CEDAW), which India has ratified recognized the unequal status of women and therefore made special provisions for women to address this inequality. Sections 498A, 304B Dowry Prohibition Act (DPA), Protection of Women against Domestic Violence (PWDVA) are all legislations to address the gendered nature of violence against women and also illustrate the position of the government that the institutions of marriage and family are not insulated from State interventions, particularly where there is violence against women within such institutions. This paper has analyzed the meaning of cruelty as under section 498A of IPC and inferences of judicial decision regarding the validity of section 498A of IPC.*

INTRODUCTION:

Section 498-A of IPC states, that whoever being the husband or relative of the husband of woman, subjects such woman to cruelty shall be punished with the imprisonment for a term which may extend to three years and also be liable to fine.

Characteristic of 498A

- *Cognizable* – The accused can be arrested and jailed without warrant or investigation.
- *Non-Compoundable* – The complaint cannot be withdrawn by the petitioner.
- *Non-Bailable* – The accused must appear in the court to request bail.

Meaning of Cruelty:

It was held in *Kaliyaperumal v. State of Tamil Nadu*,¹ that cruelty is a common essential in offences under both the Sections 304B and 498A of IPC. The two sections are not mutually inclusive but both are distinct offences and persons acquitted under Section 304B for the offence of dowry death can be convicted for an offence under Section 498A of IPC. Section 304B does not contain its meaning but the meaning of cruelty or harassment as given in Section 498A applies in Section 304B as well. Under Section 498A of IPC cruelty by itself amounts to an offence whereas under Section 304B the offence is of dowry death and the death must have occurred during the course of seven years of marriage. But no such period is mentioned in Section 498A.

Kinds of cruelty covered under this section includes following:

- (a) Cruelty by vexatious litigation
- (b) Cruelty by deprivation and wasteful habits
- (c) Cruelty by persistent demand
- (d) Cruelty by extra-marital relations
- (e) Harassment for non-dowry demand
- (f) Cruelty by non-acceptance of baby girl
- (g) Cruelty by false attacks on chastity
- (h) Taking away children

Constitutional Validity of Section 498A:

*In Inder Raj Malik and others v. Mrs. Sumita Malik*², 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 498A 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 498A 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 virus. It does not confer arbitrary powers on courts.

In Pawan Kumar v. State of Haryana,³ death of the deceased was caused by burn injuries. There was evidence that the deceased was tortured for dowry demand. In view of preponderance of evidence of torture and dowry demand a presumption under Section 113A of the Evidence Act arises. Hence the conviction of the husband and his parents under Section 306 and 498A, Penal Code was proper.

In Giiridhar Shankar Tawade v. State of Maharashtra,⁴ it was held that some cogent evidence is required to bring the charge under Section 498A. There was no such evidence available on record. Therefore the accused would be required to be acquitted of the charge under Section 498A of IPC.

Supreme Court in Mohd. Hoshan v. State of A.P.,⁵ case observed as: "Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact

of complaints, accusation or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of the sensitivity, degree of courage and endurance to withstand such cruelty. Each case has to be decided on its own facts whether mental cruelty is made out".

In Ruchi Agarwal v. Amit Kumar Agrawal and others,⁶ Supreme Court has quashed the criminal complaint alleged offences under Section 498A, 323 and 506 IPC, and Section 3 and 4 of Dowry Prohibition Act on the ground of lack of territorial jurisdiction. It would be an abuse of process of court if a criminal proceeding from which this appeal arises is allowed to continue.

In Sushil Kumar v. State of Haryana,⁷ Supreme Court held that in absence of any evidence to show that victim was subjected to cruelty or harassment soon before death, no offence under Section 304B is made out. Absolutely no evidence of coercion, conviction under Section 498A becomes unwarranted. Convictions and sentences of appellant set aside.

The State of Andhra Pradesh v. Raj Gopal Asawa and another,⁸ the Supreme Court held that Sections 304 B and 498 A of IPC, Section 113 B conjoint reading shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment.

In Hans Raj v. State of Haryana,⁹ it was held by the Supreme Court that having regarded to the fact of the case, though the prosecution failed to establish the offence under Section 306 IPC, the evidence on record justified the conviction of the accused under Section 498A of IPC.

Nallam Veera Stayanandam and others v. High Court of Andhra Pradesh,¹⁰ Presumption under Section 113B of the Evidence Act is available to the prosecution; first dying declaration is accepted Secondly presumption stands rebutted. Unless the prosecution is able to establish that the cause of death was not accidental by evidence other than the dying declarations, the prosecution case under Section 304B IPC as against the appellants must fail. On facts of the evidence Supreme Court held that conviction of accused under Section 498A, IPC is justified.

In Balbir Singh v. State of Punjab,¹¹ the Supreme Court held that in view of the fact that victim was rescued by neighbor. Case of suicide must be ruled out and the conviction of the accused under Section 302 IPC was held proper. However, in view of inconsistencies between two dying declarations benefit of doubt must be given to mother –in-law as for the offence under Section 302 IPC. is concerned. However conviction of both the accused under Section 498A was held proper. It was also made clear that only because dying declaration was not recorded by a magistrate it by itself may not be a ground to disbelieve entire prosecution case.

In Surender v. State of Haryana,¹² the Supreme Court held that it is not necessary that express words should be used in order to instigate. The offence of abetment depends upon the intention of the person who abets and not upon the act which is done by the person who is abetted .A young pregnant woman having a child in womb would not ordinarily commit suicide unless she was compelled to do so. Hence conviction of accused was held to be proper

under Section 306/34 and also Section 498A/34 as there was enough evidence of harassment for demand of dowry.

Justice Malimath Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs, 2003 observed the following and gave the recommendation to amend the law immediately:

The Code may be suitably amended to make the offence under Section 498 A of the I.P.C Code, bailable and compoundable. These are only a few observations of their lordships from scores which conclusively prove that:

A woman (not necessarily every woman) can be much more cruel than a man (not necessarily every man).

While intending to protect the life of a person, Section 498A of IPC jeopardizes around a dozen innocent persons. Hence, the provision is discriminatory and in violation to the Article 14 of the Constitution of India.

Instead of restoring equilibrium, the provision aggravates disequilibria. Hence, there is a failure of guarantee of right to life under Article 21 of the Constitution of India.

For the reasons stated under conclusions 2 and 3 above the provision is not only imbalanced but also ultra virus.

The Malimath Committee in 2003 proposed making amendments to this section although such amendments have been opposed by women's groups and radical feminists. The Centre for Social Research India has released a research report opposing amendments to Section 498A. According to this report, in the studied cases there were no convictions based solely on Section 498A.

On 20 July 2005, Justices **Arijit Pasayat and H.K. Seema** of the Indian Supreme Court declared Section 498A to be Constitutional. The object is to strike at the root of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not an assassin's weapon. If [the] cry of "wolf" is made too often as a prank, assistance and protection may not be available when the actual wolf appears, the Bench said.

The non compoundability of the Act is a principled position it takes and important to the spirit in which it was enacted i.e. violence is not negotiable and unacceptable under any circumstances. Any amendment to Section 498A to say the least will abrogate the constitutional mandate of Articles 14 and 15 (3); it will be a failure of the State to achieve its intended goal of gender equality. The courts have also upheld the validity of the special measures in legislation and executive orders favoring women (e.g. in *Laxman Ram Mane Vs. State of Maharashtra*¹³; *Nripen Roy and others v State of West Bengal*¹⁴; *Saty Narayan Tiwari @ Jolly & Anr. Vs. State Of U.P*; *Inder Raj Malik And Ors vs Sunita Malik; Gurbachan Singh vs Satpal Singh & Ors*). It may be added that through the Code of Criminal Procedure (CrPC) Amendment Bill 2010, there are restrictions now on the police as far as arrests are concerned; the arrest can be done only after proper investigation in the reported matter

CONCLUSION:

The need for Section 498A is more urgent than ever before. Hence, Section 498A must remain gender specific, non-bailable, cognizable and non-compoundable. The pro-

vision is the only Section which acts as a preventive mechanism for marital violence.

END NOTES:

- 1 2003 Cri L.J.4321 (SC)
- 2 1986Cri L.J 1510(Del.)
- 3 2001Cri.L.J.1679 (S.C.)
- 4 2002 Cri.L.J.814(S.C.)
- 5 CriLJ 4124 2002
- 6 Appeal (Cri.) 1274 of 2004, Arising out of SLP (Cri.) No. 3769 of 2003
- 7 Criminal Writ Petition No. 361 of 2010
- 8 RD -SC-172 (17 March, 2004)
- 9 2004Cri.L.J1759(SC)
- 10 1996(2) ALT Cri. 191
- 11 2006 Cri.L.J.4646(S.C.)
- 12 2007 Cri.L.J.4124(SC)
- 13 2010 Indlaw SC 217
- 14 2010 Indlaw CAL 763

REFERENCE;

1. ANNUAL REPORT-2010 – 2011, NATIONAL COMMISSION FOR WOMEN,4, DeenDayalUpadhyayaMarg, New Delhi-110002 <http://www.ncw.nic.in>
2. KD GOUR,The Indian Penal Code,2012edition.