



## Misuse of section 498A IPC-Judicial trend

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ABSTRACT

Sometimes, the very provisions of law which are meant to be ameliorative become a source of harassment. S.498A IPC has become infamous for its notoriety. The NCRB 2012 Report demonstrates the extent to which the section is misused. As per the report, the rate of charge-sheeting was as high as 93.6% while the conviction rate was as low as 15%. My research paper seeks to evaluate the judicial trend vis-à-vis sec.498A, helping us understand why section 498A has become a necessary evil and what steps have been suggested to curb its misuse.

### KEYWORDS

498A, IPC, Dowry, cruelty, harassment, Misuse

### "By misuse of the provision (498A IPC), a new legal terrorism can be unleashed".

-The hon'ble Supreme Court in *Sushil Kumar Sharma v. UOI*

#### Introduction:-

India's glorious past is dampened by its maltreatment towards women. In the modern times of equal rights, the archaic practices of dowry and subordination of women continue to be glorified. With the object to combat the menace of dowry and cruelty towards women, section 498A was inserted within the scheme of the IPC. While introducing s.498A, no matter how good the intention of the legislature may have been, today it has been reduced to a medium of harassment and frivolous applications.

Reflecting the extent of its misuse, the '*Crime in India 2012 Statistics'-NCRB, 2012 Report* notes that the rate of charge-sheeting u/s 498A is as high as 93.6% while conviction rate is as low as 15%.

Sec 498A which seeks to punish the husband/relatives of husband for subjecting the wife to cruelty has given a wide coverage to the term 'cruelty'. It includes-

- Wilful conduct by husband/relative of husband amounting to physical or mental cruelty.
- Harassment by husband/relative of husband for purpose of meeting/failure to meet dowry demands.

Section 498A was inserted by the amendment act of 1983. Ever since its insertion, it has been the subject of deliberations in various forums including the Supreme Court. Some of the more pertinent observations have been discussed below to throw light on the issues surrounding the section and their solutions.

Observations in the Justice Malimath Committee report, 2003:-

The Justice Malimath committee was constituted by the home ministry in the year 2000 to consider measures for revamping the criminal justice system. After careful perusal of section 498A, it came to the conclusion that the section suffered from certain shortcomings and accordingly suggested changes.

The committee noted that s.498A, being non-bailable and non-compoundable operates against the interest of both, the husband and wife because-

- It poses a serious challenge towards resumption of matrimonial relations between the estranged couple as such complaints embitter relationships for life.
- Being non-compoundable, the case against the husband/

relatives continues in spite of there being reconciliation between parties.

- Being non-bailable it causes grave harassment to husband/relatives in case of frivolous complaints.

Perturbed by the flagrant misuse of this ameliorative provision

"The offence being non-bailable and non-compoundable makes an innocent person undergo stigmatization and hardship", the committee recommended making 498A a bailable and compoundable offence.

#### Constitutionality of section 498A:-

In *Sushil Kumar Sharma v. UOI -SC*, a prayer was made before the Hon'ble Supreme Court under Article 32 of the Constitution to declare 498A as unconstitutional and in the alternative to frame guidelines to restrict its misuse. Further, petitioner was seeking stringent action against those women who approached the courts with unclean hands.

Referring to an array of decided cases, the Supreme Court came to the conclusion that merely because there is possibility of abuse of a provision of law, it would not render it unconstitutional. More importantly, the object of section 498A being prevention of the dowry menace, it could not be struck down.

The Supreme Court did not shy away from observing that a large number of cases have come to light where the complaints u/s 498A IPC are not bonafide but since it is for the legislature to legislate, until it did not devise mechanisms to tackle frivolous complaints under 498A, the courts would have to continue to function within the prescribed parameters of law.

#### The Judicial trend highlighting the rampant misuse of s.498A:-

As has been held in *Sushil Kumar Sharma's* case and many others, in case of misuse, the 'action' and not the 'section' must be struck down. The courts, using inherent powers u/s 482 Crpc have time and again quashed frivolous complaints filed u/s 498A IPC. Some of these cases have been discussed below-

In *Saritha v. R.Ramachandra -A.P*, the family court had rejected the wife's plea for divorce on the ground that the allegations leveled against husband could not be proved. During the hearing before high court, it came to the attention of the court that a criminal complaint u/s 498A IPC had been filed by the wife against the husband.

The high court speaking through Justice B.S.A Swamy, without mincing words went on record to state

"For nothing the educated women are approaching the courts for divorce and resorting to proceedings against their in-laws under 498A IPC implicating not only the husbands but also their family members, whether they are in India or abroad.

This is nothing but abuse of beneficial provisions intended to save the women from unscrupulous husbands".

The high court left it open to the Law Commission and Parliament, either to continue with 498A in its present form or to make it a non-cognizable and bailable offence, thereby softening its rigour.

In *Harjinder Kaur & others v. State of Pb-P&H*, a complaint had been filed by wife u/s 498A against members of husband's family, including his 5 sisters who were the petitioners in the present criminal quashing.

The high court took note of the fact that one of the sisters had been married and residing elsewhere since 1994, 5 years prior to marriage of the estranged couple while another was only 15 years when his brother got married making their involvement unlikely and went on to observe that "it appears that a wider net has been knitted so as to rope in the present petitioners".

In *Ramgopal v. State of M.P-SC*, the Apex court recommended that s.498A be made compoundable so that amicable settlement can be reached at between the parties.

In *Preeti Gupta & Anr v. State of Jharkhand & Anr-SC* a criminal complaint was filed alleging that the wife was physically assaulted at Mumbai by all the accused named in the complaint and a demand for a luxury car was made.

However, the facts went on to show that appellant no 1 was a permanent resident of Navasari, Surat, Gujarat and had been living with her husband for more than seven years. Similarly, appellant no.2 was a permanent resident of Goregaon, Maharashtra. Both the appellants had never visited the place of alleged incident nor lived with respondent no.2 and her husband.

The Supreme Court noted that such complaints were made with sole object to harass the relatives of husband and "permitting the complainant to pursue this complaint would be an abuse of the process of law".

The Supreme Court observed "We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

In *Kulwinder Kaur and Anr v. Manjit Kaur and Anr -P&H*, The high court taking note of the fact that complaint was against uncle and aunt of complainant's husband, both of whom had been residing separate from the estranged couple since past 14 years, quashed the proceedings filed u/s 498A as there was no scope for the alleged interference in the matrimonial home.

The high court holding that the allegations did not inspire confidence observed- "Lately, a tendency has developed to roping in all the relations in dowry cases in order to browbeat and pressurize the immediate family of the husband. Accordingly, sometimes inflated and exaggerated allegations are made".

The wide amplitude of observations made by the various Courts and other quarters in regard to the gross misuse of section 498A culminated in the making of the 243<sup>rd</sup> report of the Law commission, which dealt extensively with section 498A IPC.

#### **The views of the Law Commission:-**

The Law Commission previously, in its 237<sup>th</sup> and 154<sup>th</sup> reports had suggested making 498A compoundable. The same was reiterated in the 243<sup>rd</sup> report. However, after weighing the pros and cons, the commission was not in favour of making 498A a bailable and non-cognizable offence in light of the fact that the main force behind the section was to overcome

the social evil of dowry and cruelty towards women and no amount of misuse of 498A could justify its re-evaluation.

The Law commission noted that the "attitude of arrest first and then proceed with the rest is despicable" and the police must use its power to arrest in 'cognizable cases' sparingly, acting within the precincts of section 41 and 41-A Crpc rather than making unwarranted arbitrary arrests.

As is evidenced by the Law commission, the solution lies in following sections 41 and 41A Crpc in letter and spirit rather than removing the sting from s.498A altogether.

#### **Curbing the misuse of s.498A, Supreme Court's directions to the Police:-**

To curb the arbitrary use of power of arrest u/s 498A IPC, the Supreme Court in *Armesh Kumar v. State of Bihar-SC*, tendered some much needed guidance in relation to 'when police may arrest without warrant' and matters incidental thereto.

In this case, the petitioner who was apprehending arrest in a case registered u/s 498A preferred a SLP before the hon'ble Supreme Court as his attempt to secure such relief had been turned down by the high court.

The allegations against the appellant-husband were that he approved of her in-laws demand for Rs.8 lakhs, a maruti car, an air-conditioner, amongst other items and threatened to re-marry if such demands were not met.

Justice Chandramauli Kr. Prasad, delivering the judgment on behalf of the hon'ble Supreme Court took note of the gross misuse of s.498A observing "The fact that s.498A is a cognizable & non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shields by disgruntled wives. The simplest way to harass is to get the husband & his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers & grand-mothers of husbands, their sisters living abroad for decades are arrested".

Stating the substance of s.41 and 41A Crpc, the Supreme Court observed that just because an offence is cognizable and non-bailable does not give the police the right to arrest, it must also satisfy itself that the arrest is justified, that the conditions precedent stated u/s 41 Crpc are met. "The police officer must put a question to himself, why arrest?"

The court directed the police not to make automatic arrests u/s 498A but to arrest only upon satisfaction of conditions laid u/s 41 Crpc. The court also reiterated the solemn nature of the magistrate's duty to satisfy himself that conditions u/s 41 Crpc are met when police presents accused before magistrate for seeking further detention.

The court concluded by forewarning the police officers and magistrates that failure to comply with the stated directions would attract departmental action.

#### **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 Armesh Kr case, 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.

## REFERENCES

Crime in India 2012 statistics'-NCRB, Ministry of Home Affairs, Govt of India – | <http://ncrb.nic.in/CD-CII2012/Statistics2012.pdf> Section 498A IPC reads as under- "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 wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand." Committee on Reforms of Criminal Justice System, Ministry of Home Affairs | [http://www.mha.nic.in/hindi/sites/upload\\_files/mhahindi/files/pdf/criminal\\_justice\\_system.pdf](http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf) Sushil Kumar Sharma v. UOI & others-SC, 2005 (3) R.C.R. (Criminal) 745 Saritha v. R.Ramachandra, (A.P) (D.B) 2003(1) R.C.R. (Criminal) 481 Harjinder Kaur & others v. State of Pb-P&H 2004(4) R.C.R (Criminal) 332 Ramgopal v. State of M.P-SC, SLP (Cri.) No. 6494 of 2010, order dt.30.7.10 Preeti Gupta & Anr v. State of Jharkhand & Anr-SC, 2010, Criminal appeal no.1512 Kulwinder Kaur and Anr v Manjit Kaur and Anr-P&H 2011(5) R.C.R (Criminal) 26 243rd report on section 498A-Law Commission of India, 2012 | <http://lawcommissionofindia.nic.in/reports/report243.pdf> Arnesh Kumar v. State of Bihar-SC, Criminal appeal No. 1277 of 2014, D/d. 2.7.2014