

Cruelty Against Married Women and the Legal Framework with Reference to Sec. 498 A of Indian Penal Code, 1860

Krushna Uttamrao Bhusare

LL.M 4th Semester

School of Law, Sandip University, Nashik, Maharashtra, India

kbh496@gmail.com

Abstract: *The document discusses the evolution of the institution of marriage, focusing on the concept of cruelty against married women in the context of the Indian Penal Code, 1860. It highlights the introduction of Section 498A to address matrimonial cruelty towards women, the impact of the provision, and its misuse leading to the term 'legal terrorism.' The study emphasizes the need for recommendations to address the misuse of the law and protect both women and men from its abuse. The document also delves into the ingredients and implications of Section 498A, reflecting on historic cases and the challenges faced by the judiciary in dealing with dowry-related issues.*

The document explores the changing dynamics of marriage and the prevalence of cruelty against married women within the Indian legal framework, particularly focusing on Section 498A of the Indian Penal Code, 1860. It discusses the historical context of marriage, the significance of vows and commitments, and the emergence of dowry-related issues leading to cruelty and harassment towards women. The study examines the objectives of Section 498A, its impact as a social reform measure, and the challenges in its implementation, including the misuse of the provision termed as 'legal terrorism.' Recommendations are proposed to address the misuse of the law and protect both women and men from its negative consequences. Historic cases and the complexities faced by the judiciary in distinguishing genuine cases from false accusations are also highlighted.

The document discusses the concept of marriage as a sacred commitment and the emergence of cruelty against married women, particularly related to dowry issues. It highlights the introduction of Section 498A in the Indian Penal Code to address matrimonial cruelty towards women but also points out its misuse, leading to the term 'legal terrorism.' The study emphasizes the need for recommendations to address the misuse of the law and protect both women and men from its abuse. It also delves into the ingredients and implications of Section 498A, reflecting on historic cases and the challenges faced by the judiciary in dealing with dowry-related issues.

Keywords: Marriage, Woman, Dowry, Cruelty, IPC Section 498A, Family, Husband, Relatives, Misuse

I. INTRODUCTION

Family is considered to be the founding stone of the society. And this very family at the same time has been considered a sphere of intimacy and devoid of conflicts of interests among the members that poses ideal cultural and focus of identity. Marriage is one of the principal tool used in expansion of family but having said that the institution of civil marriage has undergone monumental changes in the last few decades.

First we have to look that what the word 'marriage' means i.e. 'Marriage is the voluntary union for life of one man and one woman to the exclusion of all others.' It is considered to be a sacred commitment made by the spouses towards each other. It is regarded to be the social alliance between two families. It is essential that vows, promises, commitments that are exchanged by the spouses are revered with a sincere heart because it is this institution which eulogizes the hallmark of love, bonding, union of families and harmony. Endeavour should always be made to sustain

the sanctity of such divine institution since it is such an edifice which must be rebuilt every day. Here in this social institution the husband has the responsibility to take care of and maintain his wife. He cannot neglect his duties.

But like all good aspects bad aspects of a particular act too exist. The institution of marriage suffers from a major social evil i.e. dowry (Money or property brought by a woman to her husband at the time of marriage); and for the dowry husband exercises physical as well as mental cruelty on wife. Women are ill-treated, harassed, killed, divorced for the simple reason that they didn't bring dowry. For safeguarding 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 Section 498A which deals with matrimonial cruelty to a woman.

Having said that, now in 21st century the concept of cruelty which was earlier exercised by the husbands on married women, nowadays took a new colour and situation is vice-versa. At the time of introduction of the section it instilled some hope and optimism in the hearts of the woman and her family as it was seen as an 'armour' to combat against the brutality of the male members of the society nevertheless with the passage of time it became transparent that the provision of Section 498A IPC, 1860 left a host of loopholes which seemed to become a powerful 'weapon' if falls on evil hands.

So by looking in to the above situation we may draw two conclusions i.e. firstly, the main intention behind the penal law of cruelty against married women by husband is not fulfilled and secondly, on the other hand the law is being misused and the in-laws and the husband are mentally and monetarily harassed.

II. RESERCH METHODOLOGY

The research methodology adopted by the researcher is a doctrinal research. However the researcher with a view to compliment and substantiate his research paper corroborated his study with other forms of legal research such as comparative legal research, case studies and also critical analysis. It also throws light on the list of study materials and data and their sources, procured by the researcher as the instrument to conduct the research. Comparative legal research enabled the researcher to critically appreciate and compare the legal interpretations of various courts.

I. STATUTORY PROVISIONS IN RELATION TO CURELTY UNDER PERSONAL LAW

Hindu Law:

The Hindu Marriage Act, 1955 after going through amendment under the marriage laws (Amendment) Act, 1976, cruelty is being made a ground for divorce as well as for judicial separation.¹ Another significant change brought by the amendment is that the concept of cruelty has been enlarged as because earlier it was only confined to 'such cruelty so as to cause reasonable apprehension in mind of the petitioner that it will be harmful or injurious for the petitioner to live with other party.' However, now simply it is to be established that 'the respondent has treated the petitioner with cruelty.

Parsi Law:

Under the Parsi Marriage and Divorce Act, 1936 prior to 1988, cruelty was only a ground for judicial separation, and cruelty was explained as such behavior 'as to render it in the judgment of the court improper to compel him or her to live with the respondent'.²

Christian Law

The Indian Divorce Act, 1869, prior to its amendment in 2001, a wife could seek divorce if the husband had been guilty of cruelty coupled with adultery. However now, after the amendment in the year 2001, it completely transformed the original act and the grounds for matrimonial relief have been brought at par with that of the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955.³

Muslim Law:

Under the Dissolution of Muslim Marriages Act 1939, cruelty is mentioned as one of the grounds to obtain divorce from a matrimonial relationship.⁴

II. THE PROVISION RELATED TO CRUELTY UNDER INDIAN PENAL CODE, 1860

‘The judiciary must not take on the coloration of whatever may be popular at that moment, we are the guardian of rights, and we have to tell people things they often do not like to hear’

Rose Elizabeth Bird, the 25th Chief Justice of California once said that.⁵ Thus judiciary in its role as a guardian of the nation is essentially handicapped to tilt in favour of a particular sex but on the contrary it is expected that its belief system should not sway with the popular frenzy of speculation endorsed by the crowd and media.

Witnessing the vulnerable condition of women where they were being subject to relentless mental trauma physical torture and character assassination because of their inability to pay such cosmic demands of dowry made the poor fuming crowd to sling mud at court. This wrath and fury of the common masses grew strong when the immeasurable bride burning cases in open daylight across the nation started showing thumbs to the judiciary.

With the intention of curbing this heinous crime of dowry harassment and dowry deaths Parliament in 1986 inserted the section 304B to prevent the murder following the dowry and in the year 1983(25th December) Section 498A was incorporated within Indian Penal Code with the intention of defining ‘cruelty’ and ‘harassment’ which has been a common phenomenon in a matrimonial relationship.

Parliament has inserted a new Chapter XXA titled ‘of cruelty by husband or relatives of husband’ in Indian Penal Code, 1860 in order to make cruelty against women punishable.

Section 498A of IPC, 1860 i.e. “HUSBAND OR RELATIVE OF HUSBAND OF A WOMAN SUBJECTING HER TO CRUELTY” reads as

‘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 purposes 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.’

Ingredients of the provision are as follows:

- The woman must be married.
- She must be subject to cruelty or harassment; and
- Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.

Section 498A is a cognizable, non-bailable and non-compoundable criminal offence

A close analysis of the section makes it clear that the entire section is founded upon four basic question of law they are as follows:-

- Any action, gesture or conduct that is likely to drive a woman to commit suicide.
- Any action, gesture or conduct that is likely to cause grave injury to the life, limb or health of a woman
- Harassment caused to the woman and her family with the intention of extracting some property
- Harassment caused to the woman and her family in the event of not being able to or not in agreement to yield to the demand of money or of any property.

In 1989 the nation witnessed two historic cases where in 20th April, 1989 Justice Natrajan, in the case of BrijLal v. Prem Chand 6 reversed the High Court’s order which acquitted the accused since there was no record exhibiting that the murder of the bride, Veena Rai was instigated by the accused.

Justice Natrajan also precipitated his disappointment on witnessing the degradation of society due to the inimical social structure by the depraved and unscrupulous husbands and their relatives with their unconscionable limitless demands of

dowry. With grave disappointment and presumption of a dark future, the Apex court proclaimed its stratagem of adding section 113A and 113B7 of the Indian Evidence Act, 1872 to corroborate section 498A, with the intention of accentuating two focal points:

1. That the woman had committed suicide within a period of seven years of marriage
2. That the husband or relation had subjected her to cruelty

However this was the first genuine endeavor made by the judiciary to curb this parochial social menace which further seeks the attention of section 306 IPC, 1860.8

Retrospective effect of section 498A Indian penal code 1860:

Section 498A IPC, 1860 is not retrospective in nature and no such cognizance can be taken under this section in case the offence was committed before the enforcement of the section.9

Co-relation between section 302 and 498A Indian penal code 1860:

In *Thati Konda v. State of A.P.*10 there was a quarrel between the wife and the husband and the husband wanted to perform second marriage. It was a strong circumstance for the wife to commit suicide and for the husband to do away with his wife. As favourable view to the accused is to be taken and it is clear that the husband wanted to marry 2nd time, it amounts to cruelty.

Co-relation between section 304b and 498A Indian penal code 1860:

The two provisions are not mutually inclusive. They deal with different and distinct offences. Persons charged under section 304B but acquitted can be convicted under section 498A IPC, 1860 even in absence of any charge. The deceased have been subjected to cruelty by her husband and mother-in-law over the demand of maruti car as dowry and persistently pressed by them after about six months of the marriage and continue till her death. Accused was convicted under 304B and 498A IPC, 1860.11

Co-relation between section 306 and section 498A Indian penal code, 1860:

Distinction between section 306 IPC, 1860 and section 498A IPC, 1860 is that of intention. Under the latter, cruelty committed by the husband of his relations drag the woman concerned to commit suicide, while under the former provision suicide is abetted and intended.12

III. CONSTITUTIONAL VALIDITY

Interestingly in the case of *Inder Raj Malik v. Sunita Malik*,13 the Court held that Sec 498A is violative of Article 14 and 20(2) of the Constitution since it gives arbitrary powers in the hands of the Court and it also criticized that the distinction drawn between 'cruelty' and 'harassment' is ambiguous and vague. Moreover it contradicts with Art 20(2) of the Constitution as Section 4 of the Dowry Prohibition Act, 1961 has already made demand of dowry a punishable act and inadvertently creates a situation of double jeopardy. However Delhi High Court negating such contention held that Sec 4 of the Dowry Prohibition Act is different from that of the 498A IPC, 1860 since in the former mere demand of dowry is punishable and it does not necessarily need to establish the factor of 'cruelty' however the latter case essentially deals with much graver heinous crime.

IV. DISCUSSION

THE CONCEPT OF "CRUELTY" AS A SOCIAL EVIL

India being multifaceted democracy discrimination can never be entertained on the social, civil, political and economic rights guaranteed by the nation. Nevertheless owing to certain broad situations where Indian women do cross the hurdles and participate in the social activities.

Since time immemorial women have been reduced to a demeaning decorative character endowed with superficial attractiveness but intellectually docile, who could only serve the purpose of male entertainment. Because of the pristine orthodox hierarchical malpractices they were encouraged to embody the role of mother, wife or that of a home maker only to be pushed to live a confined life with restricted mobility or in worse cases to live in total seclusion. In spite of

India's reputation of worshipping and treating women as Goddess history reveals the dark bitter secret that is buried under the godly personification of women which was only being used as a camouflage for securing the superior position of the male members of the society indirectly. Since medieval times as women played a rather subservient role in the society. Hence it is a fact that women are not respected in a true manner earlier.

This can be proved from the instances of past, e.g. Sati i.e. self-immolation by a widow on the pyre of the dead body of her husband. It is yet another phenomenon peculiar to an illiterate, conservative and tradition bound society. It is nothing but a manifestation of the barbaric attitude of man towards a helpless woman who becomes widow on the death of her husband.

The irony of fate is that instead of the poor woman getting solace, sympathy and shelter to bear the tragic loss of her husband, she is forced to become or encouraged to be sati.¹⁴ Thereby we may say that this practice of treating women in an inhuman manner leads to the concept of Cruelty. Cruelty against women has been age-old phenomenon, where women have been subjected to brutality and inexplicable exploitation for one reason or the other. Cruelty can be both mental as well as physical cruelty which is being practiced in different modes in the society in different circumstances. Here for the purpose of the research, the researcher is going to look into the effects of cruelty from the perspective of matrimonial relationship.

Under Old English law, according to Blackstone, a husband could correct his wife by beating.

E.g. a husband broke the legs of his wife since she had disregarded his instructions to visit a particular place.¹⁵ In *Holmes v. Holmes*,¹⁶ the husband used to assault and abuse his wife and on occasion he insisted upon sexual intercourse with her in the presence of two men and threatened that if she refused, the men would hold her down. In spite of all this, the wife was held not to be entitled to any relief on the ground of cruelty. This was the poor condition of justice then under old English law.

According to Manu, a husband should beat his wife only with a rope or split bamboo, so that no bones are broken in the process.¹⁷

The Supreme Court of India through various decisions has explained the concept of cruelty such as:

- In *N.G. Dastane v. S. Dastane*, the Supreme Court has observed that conduct charged as cruelty should be of such a character as to cause in the mind of the Petitioner, a reasonable apprehension that it is harmful or injurious to live with the respondent.¹⁸
- In *V. Bhagat v. D. Bhagat*, the Supreme Court held that the mental cruelty must be of such a nature that the parties cannot be reasonably expected to live together. While arriving at such conclusion regard must be had to the social status, educational level of the parties, the society they move in and all other relevant facts and circumstances.¹⁹
- In *Neelu Kohli v. Naveen Kohli*, it was held by the apex court that in order to constitute
- cruelty the acts complained of as causing cruelty must be more serious than ordinary wear and tear of marriage. Not any and every abnormal act of the other party can be viewed as mental cruelty. ²⁰
- In *A. Jayachandra v. Aneel Kaur*, the apex court held that for physical cruelty there can be tangible and direct evidence but in mental cruelty there may not be direct evidence. When there is no direct evidence, courts are required to probe into the mental process and mental effect of incidence that are brought out in evidence.²¹

Few instances of cruelty as a social evil in modern era.

- Slow starvation - is cruelty: The wife was compelled to do all the domestic works single handed. She was ill-treated and subjected to physical assault when she protested. She was not getting sufficient food and it resulted in slow starvation, thereby giving an emaciated look, to meet an unlawful demand of money. When she committed suicide cruelty stood proved in a court of law.²²
- Repeated demands of dowry amounts to cruelty: If repeated demands of dowry are made and harassment is meted out to a woman, which may be physical or mental, it is an act of cruelty.²³
- False allegations in litigation amounts to cruelty: The wife was subjected to a series of malicious and vexatious litigations in which extremely hurtful and offensive accusations were leveled against the wife of a sense of vindictiveness and wherein she was humiliated and tortured through the execution of search warrants and

seizure of her personal property. These very acts when repeated and carried on, constitute cruelty of an intense degree.²⁴

- Repeated taunts calling her ugly and mal treatment is cruelty: The wife was ill-treated from the next day of marriage and she was repeatedly taunted and mal-treated and mentally tortured by calling her ugly etc. This amounts to cruelty, mental torture for any bride.²⁵
- Neglect by husband also amounts to cruelty: the act of the husband was only that of disregarding his duty to provide the wife and the child elementary means of sustenance while he himself was squandering his earnings on gambling and other vices and was starving his wife and infant child to death. ²⁶

Misuse of section 498A Indian penal code 1860:

- “The highhanded behaviour of the laws and the breakup of the marriage has another side. Lodging of cases with the 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.”²⁷
- A critical study of the section 498A reveals that a provision which was originally designed to protect the bride from being harassed and physically tortured by the husbands or relatives unfortunately has been abused to hassle the husband and his family.
- The Supreme Court in one of its rulings said that -“But by misuse of the provision (IPC, 1860 498A - Dowry and Cruelty Law) a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not an assassin’s weapon”.²⁸

V. MAJOR FINDINGS OF THE DISCUSSION

The major findings of the project according to the researcher are as follows:

- The Researcher is of the opinion that the whole provision is harboring the possibility of massive social upheaval in large scale. Presently it is now a herculean task for the court to differentiate between the false accusations and defending the real victims since the whole provisions aims at protecting the women from being tortured on the hands of her husband or his family.
- The law made for relief under the Indian penal Code is being totally misused. Along with it, many other problems are working as ancillary part of such misuse such as corruption among the policemen and law enforcers who usually take bribes from one party to harass the other; shrewd politicians who take advantage of the scenario in spite of knowing that many frivolous complaints are being lodged by women just to harass the in-laws, while they support them in order to secure the vote-bank; even the lower judiciary disposes of such cases quickly without looking into the facts in hand carefully.
- The researcher after conducting the study found out that the Apex court has stated this research problem to be “legal terrorism” and given certain guidelines in relation to it.

VI. CONCLUSION

The institution of marriage is no longer considered a sacred union of two hearts but has rather become more of a civil contract between two individuals in literal sense of the term where one is obligated to another to perform conjugal rights.

Section 498A which has otherwise incurred the infamy of being a ‘legal terrorism’ was primarily incorporated to combat the evil practices of dowry and dowry deaths. But recent study shows that over the years it has changed its colour and has become a weapon of notoriety. With the help of books of distinguished legal personalities and eminent lawyers, articles written or published by social activists the researcher has formulated some hypothesis in regard to the curbing of this social cancer.

The inclusion of Section 498A IPC, 1860 though seemed fruitful and effective in the early years of its proclamation unfortunately a new era of ruthlessness emerged with the arrival of 21st century. Although judiciary has failed miserably in curbing the gross abuse of Section 498A nevertheless the very provision calls for an immediate redressal

to the sufferings of the real victims of dowry harassment. The protection should also be extended to male members of the society as recent study shows countless innocent husbands and their families have been affected by this stringent provision since the section provides shelter only to women rendering the provision to be biased, discriminatory and unconstitutional.

Anyone who has been awake the last two decades knows how section 498-A of IPC, 1860 has been heavily misused, dragging innocent men and women into police stations, lock-ups and courts, thus depriving many young children of a happy childhood, many youth of productive careers and many senior citizens of mental peace in the last leg of their lives.

Many women who really need protection from Domestic Violence will probably never know about it and even if they do, never use it. This law will be yet another weapon in the hands of unscrupulous women who will misuse it at the slightest opportunity. When a man is thrown out of his own house under true or false allegations of domestic violence or cruelty everyone who is dependent on him is bound to suffer. It is unfair enough to penalize an entire family even if an accused man is truly abusive. Unfair is a subtle word to describe a situation in which an innocent man, along with his family, is tortured by misuse of law.

After the entire study we can conclude that though Section 498-A of IPC, 1860 was brought in forth for the protection of women from the cruelty of her husband and his relatives but now it is being abused. These women are turning the law other way round by being cruel to their husband and his relatives and getting them tried under Section 498A of IPC, 1860 which deals with "Cruelty by husband or relatives of husband". Henceforth certain legal actions should be taken as soon as possible to curtail growth of "legal terrorism", by misuse of provisions of law.

BIBLIOGRAPHY

- [1]. Kusum, Family law lectures, Family law-I, Published by Lexis Nexis1 Butterworth Wadhwa, Nagpur, Edition 2nd (2008)
- [2]. J.D. Chandna, Law relating to dowry deaths dying declaration suicides & cruelties to women, Published by the Bright Law House, Delhi, Edition 1st (2005)
- [3]. Ratanlal Ranchoddas and Dhirajlal Keshavlal Thakore, Indian penal code Published by LexisNexis, Edition 34th, (2014)
- [4]. K.D.Gaur, Textbook on the Indian penal code, Published by Universal Law Publishing Co. Edition 4th (2009)
- [5]. K.D.Gaur, Criminal law: cases and materials, Published by Lexis Nexis Publications, Edition 7th, (2013)
- [6]. Mamta Rao, Law relating to women and children, Published by Eastern Book Company, Edition 3rd, (2012)
- [7]. S.R.Myneni, Legal research methodology Published by Allahabad Law Agency, Edition 5th 2012.
- [8]. T.Padma and KPC Rao, Legal research methodology, Published by New Age International Publishers, Edition 3rd, 2014
- [9]. C.K.KothariandGauravGarg.Researchmethodology,methods and techniques, Published by New Age International Publishers, Edition 3rd, 2014
- [10]. K.D.Gaur, The poor victim of uses and abuses of criminal law and process in India, Published in Indian Bar Review by the (BCI) Trust, Vol. XXVII, (July- Dec) (2000)
- [11]. Poonam Pradhan Saxena, Family law and settlement, Published in Annual Survey of Indian Law by ILI, Vol. XXXVI, 2000