

# LEGALFOXES LAW TIMES

## SECTION 498A IPC: A BOON OR A BANE?

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### INTRODUCTION

Most of the people are mostly unaware about the section 498A IPC or what the action has to be taken when case related to section 498A IPC has been registered. It was introduced in the year 1983 to protect the married women against the cruelty faced by them against her husband and relatives. This section provides protection to women against the cruelty, harassment and dowry-demand. On the other hand this section has also been misused by many of the married women against their husband or filing false complain against their husband. That's why it is one of the controversial section of the IPC.

### ABOUT SECTION 498AIPC

Section 498A IPC deals with violence done on married women against her husband or relatives of the husband and such act prescribes punishment with imprisonment of 3 years and liable for a fine as well. This section provides new definition to cruelty.

Cruelty can be defined as;

- Any act of nature which is likely to made women to commit suicide or cause grievance danger whether mental or physical.
- An act done to harass women or any other person related her to meet unlawful demand.

### SECTION 498A USE AND MISUSE

#### Use of Section 498A by Indian Courts

Courts in India have been using this provision to protect women from cruelty and abuse they face in their matrimonial homes. 9 out of 10 cases are dowry related where women are continuously threatened for goods and money, and if the demand is not fulfilled, the woman then would be subjected to torture and abuse by her husband and his family.

In the case of **Ram Kishan Jain v State of Madhya Pradesh**<sup>1</sup>, the woman was so tortured and traumatised as the dowry demands could not be fulfilled that she took sedative pills and cut the arteries of both her hands. Sometimes dowry may not be the reason but still women are tortured because of their family status and skin colour and their appearance.

In the case of **Surajmal Banthia v Sate of West Bengal**<sup>2</sup>, the deceased was so tortured that she was not even given food several times and was molested by her father-in-law. This is the kind of behaviour that certain women have to go through in their matrimonial homes, which becomes the duty of the court to prevent this from happening.

Abuse of this part is seen by many women's rights groups as a common feature of all other laws, and the ratio of false cases to true cases is also very low. But this still cannot change the fact that S.498A IPC abuse is slowly increasing. In many judgments, the court did not consider mental abuse inflicted on women, but only paid attention to any signs of physical abuse. If the evidence does not show that the woman was physically harassed by, the court will not investigate the case. The court's approach is to call the woman hypersensitive or low tolerance and mentally unstable. In addition, S.498A IPC not only involves death by dowry, but also any intentional behaviour by the husband that causes harm to the wife's life, limbs, or health (whether mentally or physically).

According to explanation a) of S.498A IPC, it is not important to indicate or affirm that the woman was beaten, insulted, denied her marital rights or even talked to her inappropriately. Everything is spiritual cruel. It is completely wrong to show mercy to the abuser or give him "dubious benefits" when he has some evidence of torture on his hands, as in the case of **Ashok Batra & Ors against the State**<sup>3</sup>, although the letter from the deceased indicated that the harassment had occurred, but he did not regard it as strong evidence, and made the appellant suspect that the matter was wrong without ordering further investigation.

In the case of **Bomma Ilaiah v State of Andhra Pradesh**<sup>4</sup>, the complainant's husband forced his wife to have sex with him and physically tortured the woman. He inserted a finger and a stick into her vagina, causing severe pain and bleeding, but the court only found the woman's husband guilty based on S. 325 IPC and not S, 498A IPC. Her body and spirit were both tortured.

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<sup>1</sup> II (2000) DMC 628

<sup>2</sup> II (2003) DMC 546 (DB)

<sup>3</sup> I (2003) DMC 287

<sup>4</sup> II (2003) DMC 461

## MISUSE OF SECTION 498A IN THE MODERN WORLD

Supreme Court considers Sec 498 A as 'Legal Terrorism'. Women have violated this section, by frivolously making false allegations against their husbands with the intent of hurting or getting rid of the husband and his family.

Women who are often well-educated abuse this law and know that this section is both cognizable and non-bailable. Also, in most cases, the husband and the relatives are prosecuted.

Women use this law as a weapon to shield themselves. In the case of, **Arnesh Kumar v. State of Bihar**<sup>5</sup>, it was stated that bedridden grandparents and even relatives residing overseas were detained.

In the case of **Savitri Devi v Ramesh Chand**<sup>6</sup>, the Court held that there was clear misuse and exploitation of the provisions to such extent that it was hitting the foundation of the marriage itself and proved to be harmful for the society. The court held that legislation should review the situation and legal provisions from preventing this to happen in future.

The Supreme Court of India ruled in **Preeti Gupta v. State of Jharkhand**<sup>7</sup> in 2010, pointing out that the legislature needs to carefully review the clause, and stated that large number of complaints reflects an exaggerated version of the incident.

This section was made to protect married women from unscrupulous husbands, but few women abuse them, as described in **Saritha v. R. Ramachandran**<sup>8</sup>, where the court noted the opposite trend and asked the Law Commission and Parliament to classify the crime as a non-cognizable and bailable. It is the court's duty to condemn wrongdoing and protect the victim but what happens when the victim becomes an abuser? But what is the remedy for the husband?

On the ground, the woman can divorce her husband and re-marry or even obtain money in the form of compensation. Many women rights activists are against this idea as they feel that making this offence non-cognizable and bailable would give defendant a chance to escape conviction. But this would only give a person a fair chance and most importantly, it will help achieve justice.

Due to such false charges, the innocent husband and his family members, have to suffer exponentially and during this period of pain and shame, few men give up and commit suicide. In

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<sup>5</sup>(2014) 8 SCC 273

<sup>6</sup> II (2003) DMC 328

<sup>7</sup>AIR 2010 SC 3363

<sup>8</sup> I (2003) DMC 37 (DB)

the case of **Chandra Bhan v State**<sup>9</sup>, the Delhi High Court introduced certain steps to avoid the misuse of section 498-A of IPC:

1. FIR should not be registered in a routine manner.
2. The endeavour of the police should be to scrutinize complaints carefully and then register FIR.
3. No case under section 498-A/406 IPC should be registered without the prior approval of DCP or ACP.
4. Before FIR registration, every effort should be made to settle. If it is determined that it is impossible to solve the situation, the necessary measures must be taken first to ensure the return of the stridhan and the goods to the complainant.
5. In the case of indemnity accused such as in-laws, prior agreement of DCP should be there on the file.

### **PAST RECORDS**

The National Criminal Records Bureau publishes crime data across India every year. The number of cases registered under Section 498A has increased year over year, but the conviction rate has decreased year over year.

<b><u>YEA R</u></b>	<b><u>Total Cases where trial complete d in that year</u></b>	<b><u>Convict ed</u></b>	<b><u>Acquit ted</u></b>	<b><u>Withd rawn</u></b>	<b><u>Total Cases Pendi ng at the end of the year</u></b>	<b><u>Convictio n Rate of Cases under 498-A in %</u></b>	<b><u>Average Convictio n Rate of all IPC crimes in %</u></b>
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

<sup>9</sup> AIR 1954 AII 39

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

According to the "CrimeStatistics India 2012" published by the National Criminal Records Office of the HomeOffice, in 2012, 1, 97,762 people were arrested across India for violating IPC 498-A, compared to 2011. Almost a quarter of those arrested under this clause in 2012 were women, or 47,951, indicating that their arrest network included a large number of husbands' mothers and sisters. Among the total number of people arrested for crimes committed under the Indian Penal Code, their proportion is 6%. It represents 4.5% of the total number of crimes in different parts of criminal law, more than any other crime, except theft and injuries.



### **Punishment under Section 498A**

All convicted persons will be sentenced to a prison term of up to 3 years or may be fined under the penalties of Section 498A. There are also some other regulations related to the IPC part, namely the Protection of Women Against Domestic Violence Act of 2005, the Indian Evidence Act of 1872, etc.

Section 113B of the Indian Evidence Act of 1872 presupposes death by dowry by cruel physical and mental torture of women. The applicable period of this part is 7 years. Therefore, it is applicable to the case where the wife commits suicide or dies within seven years of marriage.

IPC Section 306 also plays an important role in 498A matters. Those who instigate others to commit suicide will be sentenced to prison terms of any kind, up to 10 years and fines.

### **Who can file a complaint under 498-A?**

The most important thing is the victim, that is, the woman must marry the person in order to register the case in accordance with the procedure of the 498A case. Even the second wife has the right to sue her husband and other perpetrators for abuse and harassment. However, any other woman who is not married to this person cannot file an abuse complaint under IPC Section 498A. Complaints can be made by the victimized woman or any other person related to the victimized woman by blood, adoption or marriage. In fact, they can also be civil servants notified by the state government.

### **Limitation period for filing a complaint under Section 498A IPC**

There is a certain time limit to file an appeal. According to section 468 of the CrPC, complaints regarding crimes under 498A must be filed within 3 years from the date of the last alleged cruel incident. In special circumstances, even after the statute of limitations for which justice is urgently needed, the court can determine such offenses.

### **Validity of Constitution in Section 498A IPC**

In **Inder Raj Malik**<sup>10</sup> case it was held that section 498A is ultra vires to Article 14 and 20(2) of the constitution. There is act of dowry prohibition which also deals with similar types of cases, therefore both command and policy commonly create a situation which was often referred to as double jeopardy. But Delhi High Court refused the argument and held that section 498A IPC does not create the situation of double jeopardy.

They were a different between the two sections because in dowry prohibition act mere demand of dowry is punishable not cruelty, whereas section 498A IPC deals with serious forms of offenses. Section 498A IPC give wider choice to the courts in the matter of interpretation of words which occurs in laws and in the matters of awarding punishment.

In a case of **Wazirchandvs State of Haryana**<sup>11</sup>, they involve the death of a newly married women by burning, but the situation did not establish either by suicide or a murder and thus-in-laws were charged under section 300 and 306, but they were trapped in newly ratified section for the prevention of harassment against dowry. The facts that many numerous dowry articles were

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<sup>10</sup> 1986 Cri.L.J 1510 (Del)

<sup>11</sup> 1989 SCC(Cr) 105; 1989 (1) SCC 244; 1989 AIR(SC) 378; 1989 (1) Crimes 173; 1989 (95) CRLJ 809

taken aback by Veena's family from Wazir chand which showed that pressure was being exerted from in-laws side for the demand of more money.

In case of **Surendervs State of Haryana**<sup>12</sup>, the Supreme Court held that express words was not necessary to instigate. The offense of abetment depend upon the person's intent who abets and not upon the act done by the person who is abetted. Pregnant women would not commit suicide unless she was force doing so. Hence, opinion of accused was held under section 306 and 498A as there was enough evidence for the harassment of dowry. After several cases Justice Malimath Committee gave the recommendation to amend the law straightaway. In 2003, the Malimath Committee proposed making amendments to this section, although such amendments had been opposed by women's groups. The Centre for Social Research India had released a report showing opposed to amendments of Section 498IPC.

In the Landmark case of **Sushil Kumar Sharma**<sup>13</sup>, Justices H.K. Seema and Arijit Pasayat of Supreme Court had declared Section 498A IPC as Constitutional. But due to misuse of provision a new legal violence can be unbridled. The provision is to use as a shield and not as a cut-throat's weapon. The court had also laid down several measures in executive orders which are favoring women. It was also added through the Code of Criminal Procedure Amendment Bill 2010, there are several measures and restriction on the police as far as arrests are fretful, the arrest can only be done until the proper investigation had been done on the reported matters.

### **DEVELOPMENT OF SECTION 498A**

This section had been established in order to protect the women against dowry, cruelty, and harassment. But on the other hand its misuse had become everyday affair. In the landmark case of Sushil Kumar Sharma, the Supreme Court convicted this section as Legal Terrorism. As cruelty is a ground for divorce under section 13(1) (ia) of Hindu marriage Act, 1955. Wives may often use to threaten their husband. As we all know that 'justice delayed is justice denied', hence 243<sup>rd</sup> report of Law commission had been come on section 498A IPC which lays down various changes which had to be made in order to remove the flaws and cons of this section as well its misuse. A tough law had to be passed by the parliament in order to punish those who try to

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<sup>12</sup>2007 Cri.L.J.4124 (SC)

<sup>13</sup> JT 2005 (6) SC 266

misguide the system of law. Law commission in its 243<sup>rd</sup> report orated that the section along with Cr.PC provision shall not act as an instrument of counter-Harassment and cruelty.

**CONCLUSION**

Section 498A can be a woman's weapon and shield. The government needs to ensure that no false cases are filed and show that the couple is a balanced act. Women's emancipation is the immediate need, and all measures must be taken to stop harassment and dowry deaths. In addition, the hotline number for women's help is 1091. Women can call this number in emergencies and when they need emergency help. Therefore, this part is very necessary for society, despite some modifications. "All the power and help you want is in you. Don't be afraid." - Swami Vivekananda.

