



**SECTION 498A IPC – HELP OR HINDRANCE**

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**INTRODUCTION**

Family is contemplated to be the commencement stone of the society and wedding is one in all the first tools utilized in enlargement of family however having aforementioned that the muse of wedding has undergone monumental changes within the previous few decades. wedding is that the deliberate union forever of 1 man and girl to the exclusion of all others.

it's aforementioned to be a sacred and pious commitment created by the spouses towards one another. it's thought-about to be the social alliance between 2 families; however because it is splendidly far-famed that each coin has 2 aspects, thus there's presence of each sensible and unhealthy facet of a specific act.<sup>1</sup> The establishment of wedding is stricken by a significant social evil i.e. dowry, it's definitely that cash or property brought by a girl to her husband's house at the time of wedding, and for gift husband typically exercises physical additionally as mental cruelty on mate. girls ar maltreated, harassed, divorced, and killed for the easy reason that they didn't brought gift.

This section was ab initio enacted to combat the menace of gift deaths. it had been initial introduced within the Code by the legal code modification Act, 1983. By the virtue of same Act section 113-A has been further to the Indian proof Act for raising the presumption concerning instigation of suicide by a partner. For securing the interest of girl against the cruelty they face in their married home, the Indian legal code, 1860 was amended in 1983 and inserted Section 498A that deals with 'Matrimonial Cruelty' to a girl.<sup>2</sup>

Matrimonial Cruelty could be a cognisable, non compoundable and non bailable offence. it's outlined beneath Section 498A as:

Husband or relative of husband of a girl subjecting her to cruelty: Whoever is that the husband or the relative of the husband, subjects such girl to cruelty shall be disciplined with imprisonment which can reach 3 years and shall even be prone to fine.

Explanation: For the aim of this section, "cruelty" means—

- (a) Any wilful conduct that is of such a nature as is probably going to drive the lady to kill or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the lady wherever such harassment is with a read to coercing her or a person associated with her to fulfill

<sup>1</sup> Joy Sarker, *A Doctrinal Research on Section 498a IPC, 1860 - A critical Analysis*, October 7, 2014.

<sup>2</sup> Law warrior, *Section 498A I.P.C.- Its Use & Misuse*, February 25, 2011.



any unlawful demand for any property either tangible or intangible or any valuable security or is on account of failure by her or a person associated with her to fulfill such demand.

An analysis of the section makes it comprehensive that the whole section is based upon four basic issue of law they're as follows:-

Any action, gesture or conduct that's doubtless to cause any reasonably grave injury to the limb, life or health of a girl

Any action, gesture or conduct that's doubtless to drive a girl to kill.<sup>3</sup>

Harassment is caused to the lady and her family with the intent of extracting some property

Harassment caused to the lady or her family within the event of not having the ability to yield to the demand of cash or of any property.

The section came into force to combat the peril of gift deaths. it had been introduced within the code by the legal code modification Act, 1983. By the previous act solely section 113-A has been further to the Indian proof Act to lift presumption concerning instigation of suicide by partner. the first objective of section 498-A of I.P.C is to safeguard a girl World Health Organization is being pestered by her husband or relatives of husband.

### REASONS BEHIND INSERTION OF SECTION 498 A

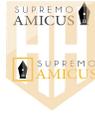
The main purpose of section 498-A of I.P.C is to safeguard a girl World Health Organization is being pestered by her husband or the relatives of husband. For the target of this section 'dowry death' shall have the similar that means as in section 304-B of the Indian legal code. The purpose that section 498A IPC was introduced is comprehensively mirrored within the Statement of Objects and Reasons whereas enacting legal code Act. As plain declared in this the increasing range of gift deaths could be a matter of significant concern.<sup>4</sup>

“The purpose of the supply is bar of the gift menace. however as has been properly contented by the petitioner that a lot of instance have come back to lightweight wherever the cases don't seem to be genuine and are filed with another oblique motive.

With the intention of kerb this atrocious crime of gift harassment and positively gift deaths Parliament within the year 1986 inserted section 304B to avoid the murder following the gift so in 1983 Section 498A was enclosed in Indian legal code with the intention of shaping cruelty additionally as harassment that has been a typical event in a very married relationship. Parliament has established a brand new Chapter XXA named cruelty by husband or relatives of husband in

<sup>3</sup> Indian Penal Code, 1860 Section 498 A.

<sup>4</sup> Anonymous, Section 498A I.P.C.- Its Use & Misuse, 25 FEBRUARY 2011.



IPC, 1860 so as to create cruelty against girls punishable.<sup>5</sup>

**(VII) MENS-REA: a crucial component OF SECTION 498-A, I.P.C.**

The intent to injure is that the most significant component of cruelty contemplated beneath section 498-A, I.P.C. the only constituent of the offence beneath sec. 498-A is 'cruelty' that mean 'wilful conduct'<sup>6</sup>. The word wilful contemplates obstinate and deliberate behavior on the a part of the bad person for it to quantity to cruelty. therefore 'Mens-rea' is a necessary ingredient of the offence. although intention to cause injury isn't a necessary ingredient regard could also be had on the particular intention or information on the a part of the offending married person on act or the probable impact whether or not it might cause injury to physical or mental state. once more acts or conduct ought to be judged from the angle of someone possessing normal intellectual capabilities.

Requirement of planning the principles ar that:

(a) The standards of proof of cruelty ar a lot of higher in degree to prove on the far side affordable doubt in legal code than in civil law beneath the married causes.

(b) The intention of planning on the a part of either married person to injure the opposite isn't a necessary component of cruelty, in civil law for married cases, whereas it's a primary component in legal code.

(c) it's enough if cruelty is evidenced by contradiction, preponderance and certification of chances in civil law whereas in criminal cases the conduct of cruelty has got to be evidenced on the far side all affordable doubt; and<sup>7</sup>

(d) For the help in married case in civil law the conduct of either married person needn't essentially lead to any reasonably danger of life, limb or health, however a mere affordable apprehension of such a danger is ample, whereas in Section 498-A, I.P.C., it contemplates such a conduct besides being 'Wilful' to finish within the chance of lashing the lady to cause either suicide or grave injury or danger to either life, limb or health.

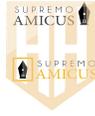
**CONSTITUTION VALIDITY OF SECTION 498A**

The issue in relation with women's rights and family law reforms has been progressively tangled at intervals the polemics of politics and minority rights. it's correct that the hardship and sufferings fully fledged by girls of all the communities, minority and majority, can't be neglected with the assistance of persuasive or effective freedom of faith.

<sup>5</sup> Anonymous, cruelty by husband or relatives of husband, May 05, 2015.

<sup>6</sup> BHASKAR RAO,J, Basic ingredient of offence punishable u/s 498A of IPC, 13 December 2012.

<sup>7</sup> K.A. Pandey, The Problem Behind Dowry Deaths Law, 2011.



Section 498 A explains that Cruelty includes each physical additionally as mental torture. Wilful conduct in clause (a) to section 498A, I.P.C. may be inferred from direct or evidence. The word cruelty within the rationalization connected with the section has been given a wider that means.<sup>8</sup>

In *Kaliyaperumal vs. State of state*<sup>9</sup>, that cruelty is a normal essential in offences beneath each the sections 304B and 498A of Indian legal code. each the sections don't seem to be reciprocally inclusive however definitely each of them are completely different offences and therefore the persons World Health Organization get clean-handed beneath the section 304B for the crime of gift death may be condemned for AN offence beneath section 498A of IPC. The gist of cruelty is given in rationalization to section 498A.

In the landmark case of *Inder Raj Malik et al vs. Sunita*<sup>10</sup>, it had been aforementioned that this section is ultra vires to Article fourteen and Article twenty (2) of the Indian Constitution. Law has enacted gift Prohibition Act, 1961 that deals with cases associated with gift and married cruelty; thus, each these statute along creates a scenario and a far-famed issue the prosecution. however urban center supreme court opposed this rivalry and command that this section doesn't produce any such scenario for prosecution. Section 498-A is clearly distinguishable from Section 4 of the gift

Prohibition Act as a result of in this act sheer demand of gift is punishable and therefore the primary presence of the component of cruelty isn't needed, whereas in section 498-A it deals with AN altogether alternative style of the offence. It tends to penalise such demands of land, expensive tangible, intangible property or valuable security from the mate or her family as ar let alone cruelty to her. thus a private may be prosecuted in respect of each the offences that are punishable beneath section four of the gift Prohibition Act and section 498 (A). it had been therefore command that though, this section offers a far wider discretion to the courts within the matters of analysing of the words occurring within the laws and additionally in matters of subsidization penalization.

Likewise, its constitutionality was challenged in *Polavarpu Satyanarayana v. Soundaravalli*<sup>11</sup> wherever it had been command once more that 498A isn't ultra vires to the constitution.

In *Surajmal Banthia & Anr. Vs. State of state*<sup>12</sup>, the deceased was maltreated and agonised for many days and not given food for a protracted time The court thereby acknowledged that this type of treatment is visaged by many young brides once they move from their parent's house to her in-laws, and later on the husband and father was command liable beneath section 498- A.

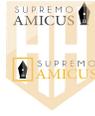
<sup>8</sup> Akshay Goel, Matrimonial cruelty-section 498a of ipc, February 11, 2012.

<sup>9</sup> 1995 CriLJ 4021.

<sup>10</sup> 1988 Cr.L.J 1538 (AP).

<sup>11</sup> II (2003) DMC 546 (DB).

<sup>12</sup> 1988 Cr.L.J 1581.



Allahabad supreme court in Vijai Ratna Sharma v. State of province<sup>13</sup> took a realistic read within the criminal continuing admitted by a gift victim, by doing away with the technicalities of jurisdiction within the matter. The court scraped aside the argument of lack of jurisdiction on the technical grounds and command that since from the start, the gift demand had been living and therefore the later behaviour was AN ultimate and expected consequence, all the offences may be tried along.

Later Supreme Court in Bhagwant Singh v. Commissioner of Police<sup>14</sup>, command that the insatiability for gift and therefore the gift system as AN society incorporate the severest condemnation and conviction by all sections.

Supreme Court command in Mohd. Hoshan vs. State of A.P.<sup>15</sup> command that “Whether one married person has been responsible or is guilty of cruelty to the opposite is basically an issue of reality. The impact of accusation, complaints or taunts on someone amounting to degree of cruelty depends on various factors just like the sensitivity of the victim, the social background, the education, setting, etc. Also, mental cruelty varies from person to person relying upon the force and intensity of the sensitivity, degree of spirit, audacity and endurance to survive such cruelty. each case has got to be determined on its own facts whether or not mental cruelty is created out”

## CORRELATION OF VARIOUS SECTIONS WITH 498 A

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

In ThatiKonda v. State of A.P there was a quarrel between the mate and therefore the husband and therefore the husband wished to perform second wedding. it had been a robust circumstance for the mate to kill and for the husband to try to to away along with his mate. As favourable read to the defendant is to be taken and it's clear that the husband wished to marry 2ndtime, it amounts to cruelty.

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

The two provisions don't seem to be reciprocally inclusive . They subsume completely different and distinct offences. Persons charged beneath section 304B however clean-handed may be condemned beneath section 498A IPC, 1860 even in absence of any charge. The deceased are subjected to cruelty by her husband and relative-in-law over the demand of maruti automotive as gift and persistently ironed by them when concerning six months of the wedding and continue until her death. defendant was condemned beneath 304B and 498A IPC, 1860.

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

<sup>13</sup> AIR 1983 SC 826.

<sup>14</sup> 2002 Cr.L.J 4124

<sup>1515</sup> JT 2005(6) SC 266



Distinction between section 306 IPC, 1860 and section 498A IPC, 1860 is that of intention. beneath the latter, cruelty committed by the husband of his relations drag the lady involved to kill, whereas beneath the previous provision suicide is abetted and supposed.

### **SECTION 498A and therefore the ALLEGATION OF MISUSE**

The Sections 498A and 304B of the Indian legal code additionally because the Protection of ladies against force Act, 2005, ar closely connected legal and judicial provisions designed to forestall the interests of a partner in Republic of India. they're important considering the big range of ladies that suffer the agony of force physical, verbal, sexual, mental, emotional at the hands of their husbands or his relatives or family.

The Indian judiciary, right from the court upto the apex level has expressed concern over the matter of misuse of Sec. 498-A I.P.C in its recent judgments. In their judicial observations and remarks, the courts have expressed deep anguish over this law. However, there's neither reliable knowledge nor empirical study to prove the extent of the alleged misuse, nor have the judiciary through their judgments offered any knowledge to support this conclusion.

In all, the institutional response to Sec. 498-A I.P.C has been that ladies ar "misusing the law". within the case of Savitri Devi vs. Ramesh Chand<sup>16</sup>, the Hon'ble urban center supreme court had

flatly declared that the supply has been ill-used to "...such AN extent that it's touching at the muse of wedding itself and has evidenced to be not thus sensible for the health of the society at large". within the same judgment, the court had counselled to the authorities to review Sec. 498-A, that court was of opinion that "thousands of marriages are sacrificed at the altar of this provision".

In Sushil Kumar Sharma vs. Union of India<sup>17</sup>, the Hon'ble Supreme Court declared that "...it is important for the general assembly to seek out ways in which however the manufacturers of trivial complaints or allegations may be befittingly dealt with". Similarly, within the case of Preeti Gupta State of Jharkhand, the Hon'ble Supreme Court discovered that "It could be a matter of public knowledge that exaggerated versions of the incident ar mirrored in a very sizable amount of complaints. The tendency of over implication is additionally mirrored terribly} very sizable amount of cases". As already declared, no knowledge has been collected nor evaluated to warrant that the majority complaints ar created on trivial grounds. Surveys like the National Family Health Survey foreground the seriousness and impact of force on girls. The study indicates that the majority girls don't seem to be receptive coverage cases of force to police. This solely reinforces that ladies ar compelled to file a proper grievance only if the violence committed by their married person or their family takes a flip of event, changing into so

<sup>16</sup> 2014) 8 SCC 273.

<sup>17</sup> JT 2005(6) SC 266



much graving tool ANd intolerable for the ladies to not keep in an abusive relationship. Secondly, one doesn't consider that the overwhelming increase of complaints over the years could also be attributed to growing awareness among girls about the law. Statements like these replicate institutional bias that exists at intervals the criminal justice system. Instead, they flip a blind eye to the insufficiency that exists at intervals the system in handling cases of violence against girls.<sup>18</sup>

In last twenty years of legal code reform features a common argument created against laws with reference to protection of violence against girls has been that ladies tend to misuse these laws. The police, politicians, civil society and even judges of the supreme court additionally as Supreme Court have offered these arguments of the misuse of laws fervidly. The allegation of misuse is created significantly against Section 498A that is to safeguard a girl World Health Organization is being pestered by her husband or the relatives of husband and against the offences of gift death in Section 304B. One such observation was expressed by former Justice K T Thomas in one in all his article titled 'Women and therefore the Law', additionally the 2003 Malimath Committee report on reforms within the criminal system additionally noted, significantly, that there's a "general complaint" that Section 498A of the IPC is subject to foul misuse; it used this as rationalization to counsel AN

modification to the individual provision, however provided no knowledge to specify however oftentimes the section is being ill-used.

Again Supreme Court, in a very moderately recent case of, Sushil Kumar Sharma vs. Union of India<sup>19</sup> et al, discovered that: "The object of the supply is to securing of the gift menace. however as has been accurately contented by the petitioner that there ar several instances that have come back to lightweight wherever the complaints don't seem to be genuine in nature and are filed with oblique motives. In such cases the final judgment of the defendant doesn't wipe out the shame or humiliation suffered throughout and before the trial. typically adverse media coverage adds up to the misery. The question, consequently, is what measures may be taken to forestall abuse of the well-meaning law. just because the supply is constitutional in nature and intra vires, doesn't provide AN authorization to unscrupulous persons to use personal feud or unleash harassment. It may, therefore, become essential for the general assembly to seek out out measures as in however the manufacturers of trivial complaints or allegations may be properly addressed.

The Supreme Court in a very recent judgment in Arnesh Kumar v. State of state and Anr<sup>20</sup> command that no arrest ought to be created without delay within the offences that ar allegedly committed by the defendant and therefore the offence is cognisable and non-bailable,

<sup>18</sup> Vishvesh, MISUSE OF SECTION 498A, July 13, 2016.

<sup>19</sup> JT 2005 (6) SC 266

<sup>20</sup> (2014) 8 SCC 273.



with explicit regard to Section 498A. It provided sure tips for the police to follow in cases associated with the arrests created beneath this section, owing to increasing range of false complaints.

Of course, from the previous few years, united efforts are created to discredit the complaints filed beneath them on the grounds that Section 498A, in particular, is being ‘misused’ by purportedly revengeful wives and daughters-in-law. In fact, even the Supreme Court issued AN order in July 2014 preventing the arrest of the husband or his relations until there have been ample and valid reasons.

One of the grounds on that the Apex Court gave its judgment was the 2013 National Crime Records Bureau (NCRB) knowledge. Jayna Kothari, a Bengaluru-based litigant, elaborates, “The NCRB knowledge, that the Supreme Court spoken whereas saying, the judgment concerning 498A, reveals) that in 2013, around ninety three p.c cases of crimes against girls were set-aside beneath section 498A. Among them, the defendant was condemned in precisely i.p.c of the cases.”

**CONCLUSION AND SUGGESTIONS**

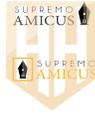
The establishment of wedding is not any longer thought-about a sacred union of 2 hearts however has rather become a lot of of a civil contract between 2 people in literal sense of the term wherever one is duty-bound to a different to perform legal right.

No matter however arduous we have a tendency to might try and sweep the

uneasiness of gift, gift connected deaths and force beneath the carpet, the tough reality of them being still extremely prevailing, among all strata of society, remains. Sec.498-A and alternative legislations just like the Protection of ladies from force Act are specifically enacted with the thing of protective a vulnerable section of the society (read ‘women’, and ‘married women’ in particular) that has been the victim of cruelty and harassment. If the rigour of such provisions is diluted, the social purpose behind them are lost.

The abuse or misuse of law isn't peculiar to the present provision alone. it's necessary to illustrate that partner solely ventures to travel to the police headquarters to create a grievance against her husband ANd alternative shut relations out of an abject sense of despair; and when being left with no alternative remedy against cruelty and harassment disbursed to her. In such a scenario, the present law ought to be allowed to require its own course, instead of succumbing to a reflex reaction to its misuse in some cases. there's additionally a sound apprehension expressed that when the offending relations get to understand concerning the existence of a grievance of such a nature; there's a awfully real risk of a backlash within the style of additional torture of the litigant and her life and liberty could also be at peril, if the Police weren't to act firmly against them.

Section 498A that has otherwise incurred the infamy of being a legal terrorist act was primarily incorporated to combat the



evil practices of gift and gift deaths. however recent study shows that over the years it's modified its color and has become a weapon of ill fame. With the assistance of books of distinguished legal personalities and eminent lawyers, articles written or printed by social activists the investigator has developed some hypothesis in respect to the kerb of this social cancer. in spite of everything the analysis we are able to conclude that Section 498-A of IPC, 1860 was brought in forth for the protection of ladies from the cruelty of her husband and his relatives however currently that section itself is being abused. These girls are turning the law alternative means spherical by being cruel to their husband and his relatives and obtaining them tried beneath Section 498A of IPC, 1860 that deals with Cruelty by husband or relatives of husband. henceforward sure legal actions ought to be taken as shortly as doable to curtail growth of legal terrorist act, by misuse of provisions of law.

The following are some suggestions for securing the quality of section 498A:

In India, the trial of criminal cases particularly of significant nature continues for eight to ten years if no more counting on the gravity of crime. however a speedy trial is judicious in order that the innocent victims entrapped beneath the section of 498A gets prompt redressal. thus it's of utmost importance that besides being effective the judiciary should try and expedite the method of trial with respect to the 498A cases.

An effort should even be created in order that the investigation concerning this 498A cases is operated solely by civil authorities and solely on the finding of affordable proof, enough to ascertain the individual's crime, ought to the peace officer take actions against him.

The provision lay down beneath section 498A IPC, 1860 wants a right away modification and it ought to be one in all the most important issues of the law-makers in recent times.

In Republic of India there's no correct or formal organization that gives family direction. Establishing of a recognized family direction association is crucial in order that the people will speak out their grief and may additionally take the recommendation of consultants and practitioners.

The NGO's allied with the human rights activities should put together act in a very neutral manner and may build the gang awake to not filing cases supported trivial matters.

A genuine try should be created in order that section 498A cases are continuing as bailable offence and not non-bailable thus on stop the innocent ones from languish in custody.

Penalizing the corrupt Investigation Officers: If it's evident to the court that an inexpensive investigation has not been conducted by the officers which the husband and his family are charged while not correct verification of the grievance, the investigation officer ought to be penalise for negligence of duty.



NRI Issues, unless they're evidenced to be guilty when following the due judicial method, NRIs ought to be a supplied with a good probability to justice by reassuring them of the following:

- a) Authorization to come to country of the use.
- b) No revocation of passport additionally as no international law enforcement agency Red Corner Notices.
- c) No redundant arrests and;
- d) prompt investigation and trial.

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