



## PROTECTION OF CRUELTY— AGAINST S. 498A

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*“All cruelty springs from weakness” –  
Lucius Annaeus Seneca*

### I. Introduction

The Indian family is generally viewed as an arena of love, cordiality, gentleness and solidarity. But not all families practice love. There are thousands of incidents every year where a family member is treated cruelly by her own. This poses a threat to the safety and security of that married woman and also to the institution of family.

The insertion of section 498A in the Indian Penal Code (IPC) in 1983 finally criminalized cruelty and harassment of married women by the husband or his relatives in any form. Specific objects and reasons were taken into consideration before adding this section to the IPC.

Ever since, there have been complaints and allegations by men’s rights activists, and a portion of the public, that alleged victims frequently misuse this provision to harass the husband and his family members. There are websites dedicated towards spreading awareness and preparing men against the abuse of S. 498A<sup>1</sup>. There are accounts of

law teachers asserting in class that S. 498A is the most misused provision in Indian law. It makes the section one of the most controversial provisions in the IPC. What follows is a study into the claim that S. 498A is the most “misused” provision in IPC.

### II.

### III. Background to Section 498A

The Constitution of India provides for equality and protection of the dignity of women. India has also ratified international conventions like the Convention for elimination of all forms of Discrimination against Women (1979). As a result of these, Indian legislature has had to make special provisions to address the inequality against women. Provisions like section 113B, 498A and 304B of the IPC and enactments like the Dowry Prohibition Act and Protection of Women against Domestic Violence Act address different kinds of familial violence against women. These statutes also reveal that institutions such as marriage and family are not out of the reach of law.

In the decade of 1980, dowry deaths rose at an alarming rate in India. The Times of India on November 12, 1987, reported that in Maharashtra alone, there were 896 dowry and “accidental” deaths of housewives in three months i.e. from July to September, 1987<sup>2</sup>. The increasing number of dowry deaths and instances of cruelty expressed the need to address these matters effectively. Various organizations all over the country pressurized and urged the government in providing legislative protection to women against domestic

<sup>1</sup>[www.498a.org/contents/Publicity/498aSurvivalGuide.pdf](http://www.498a.org/contents/Publicity/498aSurvivalGuide.pdf)

<sup>2</sup> *Crime Against Women*, P.K. Giri



violence and dowry. The main objective was to facilitate rapid intervention by the state and prevent the murders of young women unable to meet the unlawful demands of their in-laws.

With this object, the Indian Penal Code, 1860, was amended by way of the Criminal Law (2<sup>nd</sup> Amendment) Act, 1983, and the new section 498A under Chapter XX-A, “Of Cruelty By Husband Or Relatives Of Husband”, was inserted on the 26<sup>th</sup> of December, 1983. The amendment focuses **IV.** on dowry deaths and cases of cruelty **V.** towards married women by their in-laws. Subsequent amendments were made in the Code of Criminal Procedure, 1973 (CrPC), and the Indian Evidence Act, 1872, by the same amendment to solidify this provision. According to the British Broadcasting Corporation (BBC), an incident of domestic violence is reported in India about once every five minutes, under its legal definition of “cruelty by husband or his relatives”<sup>3</sup>. India’s National Crime Records Bureau (NCRB) found that there was an increase of 26.7% in crimes against women from 2012<sup>4</sup>. In 2013, more than 8,000 women were killed in dowry-related crimes, and more than 1,00,000 were victims of cruelty by their husbands or relatives<sup>5</sup>. These staggering numbers show how the situation of married women has only continued to worsen with time. Despite of the graveness of these offences, a study in 2015 by Claire Snell-Rood, a medical anthropologist at the Department of Behavioral Science with the University

of Kentucky, revealed that 75-86% of women do not disclose that they are victims of abuse by their families<sup>6</sup>.

With such statistics in light, investigation into the claims of abuse of women protection laws is required. Section 498A has saved countless lives and flawed marriages. It remains to be seen just how much this provision is misused and why this “misuse” has garnered the attention of the public as well as the judiciary.

#### Fact Sheet of Section 498A

Since the very beginning, S. 498A has been targeted by claims such as “women are misusing this provision”, “misuse is reflected in the low conviction rate and high arrest rate”, etc. However, it is an established fact that mere low conviction rate does not equate to the innocence of accused persons and misuse of the law. The higher acquittal rate may also result from inadequate investigation, benefit of doubt given to the accused, reconciliation between the spouses, etc. The NCRB statistics are used very casually to paint an ugly picture of women using the law to address the violence they face.

#### ❖ Independent Research Conducted<sup>7</sup>:

‘Vimochan’, a women’s rights organization, conducted a study in Bangalore from 2012 to 2015 to understand the implementation and effectiveness of S. 498A and its sister provisions, like sections 3 and 4 of the Dowry Prohibition Act, 1961. The study was able to ascertain how defectively

<sup>3</sup> [www.bbc.com/news/world-asia-india-29708612](http://www.bbc.com/news/world-asia-india-29708612)

<sup>4</sup> [ncrb.gov.in/StatPublications/CII/CII2015/chapters/Chapter%205-15.11.16.pdf](http://ncrb.gov.in/StatPublications/CII/CII2015/chapters/Chapter%205-15.11.16.pdf)

<sup>5</sup> [www.ecoi.net/en/document/1229781.html](http://www.ecoi.net/en/document/1229781.html)

<sup>6</sup> [www.ecoi.net/en/document/1229781.html](http://www.ecoi.net/en/document/1229781.html)

<sup>7</sup> [thewire.in/166766/section-498a-domestic-cruelty-laws/](http://thewire.in/166766/section-498a-domestic-cruelty-laws/)



classified NCRB data is manipulated to portray a negative picture. Among other important conclusions, two major findings of the study were about arrests and suicides of married men.

The study revealed that over 70% of the accused persons had paid anticipatory bail and only about 24% of the accused were arrested in 498A complaints. The NCRB thus made a grave error by not distinguishing between persons apprehending arrest and persons arrested.

NCRB statistics for the year 2013 state that 64, 089 married men and 29, 491 married women committed suicide that year. Prior to 2014, there was no separate category called “marriage-related issues” in the NCRB data. However, there was one called “family problems”. The category “marriage-related issues” was added only in 2014 and it accounts for 6, 773 suicides, out of which 4, 411 are women and over half of that number are men, i.e. 2, 362. The NCRB reports mention that “economic” and “social” causes have led to most male suicides.

Based on the above analysis, it is irresponsible to assume that married men are depressed and traumatized in such large numbers because of criminal proceedings under S. 498A. There is no qualitative or quantitative data to back such allegations. Relying on this data to draw conclusions of this nature results in grave injustices to the women facing various forms of violence every day. It is put in better terms by the 243<sup>rd</sup> Law Commission Report on S. 498A

*“In course of time, a spate of reports of misuse of the section by means of*

*false/exaggerated allegations and implication of several relatives of the husband have been pouring in. Though there are widespread complaints and even the judiciary has taken cognizance of large scale misuse, there is not reliable data based on empirical study as regards the extent of the alleged misuse. There are different versions about it and the percentage of misuse given by them is based on their experience or ipse dixit, rather than ground level study”<sup>8</sup>.*

#### **VI. Dangers of Relaxing these Laws**

The guidelines of the Supreme Court in cases like that of *Arnesh Kumar v State of Bihar* <sup>9</sup> and *Rajesh Sharma v The State of Uttar Pradesh* <sup>10</sup> state that complaints under S. 408A would now have to be referred to Family Welfare Committees, who would then submit their report to the District Legal Service Authority. That, there shall be no arrest of the accused persons until such conditions are satisfied, defeats the very purpose of S. 498A.

Flavia Agnes, women’s rights lawyer, observed regarding the judgment in *Rajesh Sharma’s* case –

*“No voices from the women’s movement were heard during the hearings. So, the judgment is perceived by many women’s rights activists as an exercise in male bonding”<sup>11</sup>.*

<sup>8</sup>[www.lawcommissionofindia.nic.in/reports/report243.pdf](http://www.lawcommissionofindia.nic.in/reports/report243.pdf)

<sup>9</sup> (2014) 8 SCC 273

<sup>10</sup> (2017) SCC Online SC 821

<sup>11</sup>[www.indiatoday.in/magazine/supplement/story/20170904-women-rights-lawyer-flavia-agnes-indian-penal-code-1031375-2017-08-25](http://www.indiatoday.in/magazine/supplement/story/20170904-women-rights-lawyer-flavia-agnes-indian-penal-code-1031375-2017-08-25)



While many have welcomed the judiciary's stance on S. 498A, critics of this approach have expressed concern over how regressive a step it is to necessarily put hurdles into the achievement of the object of S. 498A. Women who dare to register complaints under the section now may have to live in their marital homes with their alleged abusers until the charges against them are, if, accepted. Moreover, the number of suicides and "accidental" deaths of married women in India is much higher than that of the number of cases registered under S. 498A which are later declared to be false. This number of deaths will only keep on increasing if the dilution of women protection laws is not stopped.

The fact that women protection laws exist in a 21<sup>st</sup> century civilized country is evidential in itself that we, as a nation, need to keep on improving our laws to extend better protection to women. It is a setback to the process of social reformation to send the law a step behind.

## VII. Conclusion

Terms like "women's rights" and "feminism" often leave a bad taste in the mouths of a majority of the country's population. The fact exists that women have been discriminated against and continue to be so. The rise in the voices demanding better lives for women and their security, or the development of women in different spheres of life, are phenomena to be proud of, not to be looked upon sourly. The laws that aim to provide better legal protection to these persons against gender-specific crimes are in place for reasons well-founded. Despite of modernization and "woman development", there has not

been any significant improvement towards reducing crimes against women. Specific provisions of law such as S. 498A secure to women the right to life under Article 21 of the Constitution, and the right to equality under Article 15. Denying the required protection of law to a specific sex is discrimination in its basest form.

There are allegations against the advocate community that they often advise women clients in marital distress to complain of cruelty and harassment by husband and his relatives. There has not been particular research done into this claim. If this is true, the blame lies with the lawyers who advise so. But the adverse effects are faced by the society at large. It directs the rage of wrongly accused persons and the general public towards women who are genuine victims and can make use of S. 498A to save their ramshackle marriage or to save their own lives.

A practical feature of the law is its possible misuse. Numerous provisions of law are abused to harass innocent people, S. 498A not being an exception. However, the amount of its misuse is not so significant that it can dwarf the positive change it has brought into society. Countless lives have been saved by this provision and a number of abusive marriages mended.

Relying on flawed data and public opinion to amend or render ineffective a life-saving provision of law cannot be a positive characteristic of judicial activism. While Indian law-makers express ambitions in the areas of liberalization and globalization, laws that fail to protect almost half the population of India serve as nothing but



barriers. Women have been trying to break the glass ceiling for decades. It is a fair expectation that the judiciary should lend them a helping hand, and not reinforce that barrier.

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