



**PROTECTION AGAINST
MATRIMONIAL CRUELTY U/S 498-A,
INDIAN PENAL CODE, 1860: SHIELD
OR WEAPON**

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CHAPTER 1: INTRODUCTION

CRUELTY MEANING:

According to SECTION 13[1][ia], Hindu Marriage Act, the concept of cruelty has varied from time to time along with a change in social and economic conditions. Scolding and nagging and even compatibility of temperament have been held to be cruelty. No precise definition of cruelty is there in any book or statute, because cruelty may be subtle or brutal or physical or mental. The social conditions, the social status and parties, the nature of the parties, financial conditions of the parties also effect when cruelty is defined. In cruelty the petitioner has to prove that it is a cruel act and it hampers the physical and mental condition of the petitioner. It is necessary to prove to the court that it is impossible to live with the respondent in future after the act of cruelty is done by the partner. The relation in between them is not remained such that they can live with each other without any mental stress.

Matrimonial cruelty: In matrimonial life, cruelty can be defined in many ways or situations because it depends on person to person or the socio-economic conditions. Matrimonial cruelty can be:

1. Physical cruelty
2. Mental cruelty

¹ Textbook on Indian Penal Code by KD Gaur, 6th edition.

SECTION 498-A, IPC: '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.' For this section, cruelty means:

1. Any willful conduct which is of such a nature which is likely to drive the woman to commit suicide or any grave injury or damage to her life [mental or physical] of the woman, or
2. Harassment of the woman where such harassment is with a view 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. ¹

The offence under this section is cognizable, non-compoundable, and non-bailable. This provision has been made to protect females for domestic violence due to dowry [the durable goods, cash, and real or movable property that the bride's family gives to the bridegroom, his parents, or his relatives as the condition for the marriage]. In India 24,771 dowry deaths have been reported in the last three years, according to the National Crime Bureau.

This paper discusses the effects of use and misuse of this legal provision by some females in today's scenario whether they are using this provision as a weapon or a shield, resulting in the present conditions of the husband and the relatives. The paper attempts to propose with the help of case laws and statistics or the guidelines to check whether the provision is used or misused.



The study aims to understand whether the section 498-A of Indian Penal Code, 1860 is misused by women.

RESEARCH QUESTION:
WHETHER THERE IS MISUSE OF SECTION 498-A OR NOT?

OBJECTIVES OF THE STUDY:

1. To understand Section 498-A, IPC along with Section 113A Indian Evidence Act, 1872
2. To understand the misuse of Section 498-A IPC by women
3. To suggest or give suggestions to avoid the misuse without harming the woman rights.
4. To conclude the research with the help of the result.

HYPOTHESIS

Before conducting the further study, the hypothesis is given under the following types:

NULL HYPOTHESIS:

According to the null hypothesis, Section 498-A, Indian Penal Code, 1860 is not misused by women against their husband or his relatives, and henceforth, this legal provision is used for the protection of women by women.

ALTERNATIVE HYPOTHESIS

According to the alternative hypothesis, Section 498-A, Indian Penal Code, 1860 is misused by the women against their husband or his relatives. In recent Judgments by the Court of Law, it has been seen that this legal provision is used by the women to harass or humiliate or to take revenge from husbands or his relatives.

MATERIALS AND METHODS USED IN THE STUDY:

The method which is used to conduct the research is the **Doctrinal Method of Research**, which is typical legal research. A doctrinal approach is followed in the study which will include landmark case laws, as well as recent case laws, statutes, sections, and other legal sources. The **purpose** behind choosing the doctrinal method of research is that legal research involves a systematic examination of problems relating to the law within the appropriate methodological framework, which will deal with the different aspects of the law including case laws, statutes, and other legal sources.

CHAPTER 2: ABSTRACT

India is a country which is blessed to have many Rites, Rituals & Customs which have a considerable effect on all Indian societies. Dowry was one of the practices which have been and which are triumphing in India for a large amount of time. Initially, this practice turned into a dealt with as a blessing, but unexpectedly this practice became a curse for the society and the ladies fell prey of the greed of their husbands and his family. Therefore, for the safety of ladies, the Government of India inserted Section 498A, IPC by the change Act 1983. However, once in a while this very provision of the law which is supposed to be ameliorative will become a source of harassment. Soon, Section 498A, IPC became infamous for its misuse. The National Crime Records Bureau 2012 record demonstrates the extent to which the section is being misused. As per the reports, the price of fee-sheeting turned into excessive as 93.6% while the conviction rate was as low as 15%. This segment has created the biggest downside in a completely cutting edge scenario for men as well for his family as false allegations can bring humiliation to



the family and can harm their reputation. In many cases, men have even dedicated suicide because the false allegation introduced an awful lot humiliation to the family. The debate surrounding Section 498A, IPC is taking vicinity inside the area of criminal law for far too long. Fundamentally, the debate centres on the following parameters: Is there any misuse of Section 498A? Has its outlived its software? Are there any safeguards which might be required to be constructed into Section 498A to introduce its vital checks and balances? Through this research paper, I try to compare the judicial developments in Section 498A IPC, that could assist us to understand why there, is a misuse of Section 498A, IPC and why it has become an essential evil and what steps have been recommended to minimize its misuse.

KEYWORDS: CRIMINAL LAW, INDIAN PENAL CODE, DOWRY, HARASSMENT, CRUELTY, MISUSE OF THE LAW.

CHAPTER 3: LITERATURE REVIEW

I. WIFE'S ACT OF MATRIMONIAL CRUELTY AND RUINATION OF MARRIAGE: A STUDY, BY DR. MUKUND SARDA, APRIL 2016.²

Under this article, the professor has focused on the issue where there is cruelty on part of wives towards their husbands or his relatives. Professor has emphasized a deep study context where there is cruelty on part of wives and not husbands and gives guidelines on how to have a healthy and safe matrimonial relationship. In this article,

Section 498-A, IPC has been described along with the meaning of the word 'cruelty'. Professor illustrated the following provisions where there is cruelty towards husbands by their wives:

- a. Where wives underwent abortion against the wishes of her husband or his family.
- b. Where wives made false complaints against her husband for non-bailable offence.
- c. Where wives threat to commit suicide. Etc.

II. WIFE PARTYING ALL NIGHT NOT A MATRIMONIAL CRUELTY, HIGH COURT. BY: latestlaws.com.³

The article initially illustrates the meaning of cruelty through Section 13 of The Hindu Marriage Act, 1955, Section 27 of The Special Marriage Act, 1954, Section 2 of The Dissolution of Muslim Marriages Act, 1939, Section 32 of The Parsi Marriage and Divorce Act, 1936, Section 10 of The Indian Divorce Act, 1869. None of the acts gives a proper meaning of cruelty. The article includes various examples of matrimonial cruelty. A wife's conduct to:

- a. Humiliate her husband,
- b. Denying him for a physical relationship,.

III. DOWRY: A SOCIAL CURSE AND ITS LEGAL REMEDIES, BY DR. LAXMIKANTA DAS [ASSISTANT PROFESSOR, LAJPAT RAI COLLEGE, ODISHA]⁴

The professor emphasis on the fact that dowry is a social evil which is prevailing in

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https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2758090

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<https://www.latestlaws.com/latest-news/wife-partying-night-not-matrimonial-cruelty-high-court/>

⁴ National Digital Library of India [NDLI]



our society. The author then compared the marriage and the custom of dowry that how still these evil customs are prevailing in India that the spreading of education couldn't help in curbing this curse. The Dowry Prohibition Act, 1961 is not a complete code. Besides, this Act, the Indian Penal Code contains, Section 304B dealing with dowry death and section 498-A dealing with cruelty, related to dowry. The Indian Evidence Act, 1872 contains a presumption in section 113B as to dowry death. The author explains the legal remedies through Section 3 of the Dowry Prohibition Act.

IV. THE DANGEROUS, FALSE MYTH THAT WOMEN ROUTINELY MISUSE DOMESTIC CRUELTY LAWS – THE WIRE”2017⁵

The article covers Section 498-A, IPC in which the wife and her family can charge against her husband and his relatives for physical and mental cruelty. In the beginning the Section 498-A, IPC has been targeted by various 'men's right activists'. They claim that the law is misused by the women and that the misuse is reflected in the low conviction rate and high arrest rate and so on. They have completely succeeded in influencing various institutions of the state which has now resulted in dilution of the law. It is also a fact that a mere low conviction rate does not mean that the law is being misused because the higher acquittals may also result from the inadequate investigation.

⁵ <https://thewire.in/featured/section-498a-domestic-cruelty-laws>.

⁶ <https://factly.in/conviction-rate-for-cases-registered-under-sec-498a-ipc-is-among-the-lowest-for-all-ipc-crimes-2/>

V. CONVICTION RATE OF SEC. 498-A CASES IS AMONG THE LOWEST OF ALL IPC CRIMES, BY VENU, SNEHA, AND RAKESH DUBBUDU, JULY 29, 2017.⁶

The authors emphasized on the fact that the Supreme Court did not look away from observing that a large number of cases have come to light where the complaints u/s 498-A IPC are not bonafide but since it is for the legislature to legislate until it did not have proper mechanisms to tackle such cases u/s 498-A, IPC, the courts would have to function in the prescribed limits of the law. The authors also put some light on the judicial trend on the misuse of these legal provisions. With the help of the Sushil Sharma's case which is the case of misuse, it has been suggested that the 'action' and not the 'section' must be struck down. The courts using their inherent powers u/s 482 CRPC have many times quashed complaints filed u/s 498-A IPC. The Supreme Court now has directed that the family welfare committee to be constituted by the District Legal Services Authority and that the committee shall submit the report in one month after looking after the cases.

VI. ATTEMPT AT DILUTION OF SECTION 498-A IPC – A STEP IN REGRESSION, BY DIVYA SHARMA SACHDEVA, OCTOBER 2017.⁷

According to the author, an increasing number of false Dowry harassment against the husband now become so serious that the

⁷ <http://www.lawyersupdate.co.in/legal-articles/attempt-at-dilution-of-section-498-a-ipc-a-step-in-regression/>



Government of India is initiating to amend Section 498-A IPC to make the offence as 'compoundable' and also 'bailable'. The fact that women require special protection in enjoying human rights being enforced as an integral part of fundamental rights guaranteed in Part III of the Constitution of India. Section 498-A IPC was inserted in the year 1983 in the Indian Penal Code, 1860 to make an end towards dowry deaths. The provision aims at punishing husband or his relatives on amount of cruelty against her wife, particularly when such cruelty has the potential to result in suicide or murder of a woman as mentioned in the statement of Objectives and Reasons of Act 46 of 1983.

VII. THE CONVICTION RATE OF SECTION 498A IPC CASES FALLS AS CONVICTION RATE OF IPC CRIMES INCREASES, BY PAVITHRA KM, JANUARY 2020.⁸

The conviction rate of all IPC crimes reached 50% in 2018, the highest in 13 years. At the same time, the conviction rate of cases under Sec 498A has fallen and reached 13% in 2018, the 2nd lowest in 13 years, according to the author. As per the 2018 report of National Crime Records Bureau [NCRB], more than one lakh cases were reported u/s 498A IPC and these cases made up of 27.3 % of all the cases of crimes against the women in 2018. The Supreme Court ruled out automatic arrests in the year 2014. After three years, in 2017, the Court further directed that family welfare committees at district level were to be set up by District Legal Services Authority to look into all the cases reported

under Section 498A and submit their reports within a month, after which an investigation officer will be assigned to investigate the case, but this judgment got altered by SC in 2018 and held that since family welfare committees were extra-judicial committees, these committees could not exercise statutory functions. The number of cases pending under Section 498-A has increased by 2.6 times in 13 years. The number of conviction in 2018, the lowest in ten years.

VIII. 80 PER CENT OF ALL DOWRY CASES IN INDIA END IN ACQUITTAL, BY AVNEET ARORA, FEBRUARY 2019.⁹

India's anti-dowry laws are being misused, often resulting in acquittal of accused once the courts have pursued the matter, says a law officer at Punjab and Haryana High Court. The author talks about the Dowry Prohibition Act, 1961, Section 304B & 498A of IPC and that the offence u/s 498-A IPC is non-bailable. The author quotes that the legal provision is being misused by the women, quoting the NCRB data, the bench said that nearly 200,000 people were arrested over dowry offences in 2012, but only 14.4% of the accused were convicted. Supreme Court ordered the formation of family welfare committee in every district. The state also shows the number of pending cases at the end of 2016 is more than twice the number of pending cases at the end of 2006.

IX. WOMAN CANNOT FILE A DOWRY HARASSMENT FIR AFTER DIVORCE, SAYS SUPREME COURT, BY

⁸ <https://factly.in/the-conviction-rate-of-sec-498a-cases-falls-as-conviction-rate-of-ipc-crimes-increases/>.

⁹ <https://www.sbs.com.au/language/english/80-percent-of-all-dowry-cases-in-india-end-in-acquittal>



UTKARSH ANAND CNN-NEWS18, SEPTEMBER 2018.

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The maximum punishment under penal provisions for dowry harassment goes up to 5 years in jail along with a monetary penalty. The Supreme Court has held that once the spouse has been separated under the pertinent law, there can be no prosecution u/s 498A IPC or under other provisions of the Dowry Prohibition Act. The Allahabad High Court in 2016 quashed the plea for exoneration in an FIR in Uttar Pradesh when a man and his family came and approached the court for the same. The lawyer for the husband or his family submitted before the bench there has been a divorce between the couple almost four years before filing an FIR. The court then held that the couple got divorced four years ago and the prosecution is not sustainable under Section 498A IPC. It then quashed all the proceedings against the accused persons under dowry harassment charges.

X. WOMAN DRIVEN OUT OF MATRIMONIAL HOUSE CAN FILE CASE WHERE SHE HAS TAKEN SHELTER, SAYS SC, BY NEWS18 INDIA, APRIL 2019¹¹

The Apex Court's verdict came on an appeal filed by Rupali Devi against the Allahabad High Court which dismissed her plea to file a dowry harassment case from her parent's home. According to the Supreme Court, women can file matrimonial cases including matters relating to cruelty from the place where she has taken shelter after being driven out of her matrimonial home. On the other

hand, Allahabad High Court has a different view which says that cruelty punishable u/s 498A IPC is not a continuing offence and therefore, cannot be investigated or punished outside the jurisdiction of the house where such cruelty had taken place. According to the bench headed by Chief Justice, Ranjan Gogoi held that the mental health of wife by her husband's acts and the mental trauma of being driven away from the matrimonial home cannot be ignored

CHAPTER 4: SECTION 498A IPC & RELATED LEGAL PROVISION

SECTION 498A OF THE INDIAN PENAL CODE, 1860

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 purposes 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..

¹⁰ <https://www.news18.com/news/india/woman-cant-file-dowry-harassment-fir-after-divorce-says-supreme-court-1871953.html>

¹¹ <https://www.news18.com/news/india/woman-driven-out-of-matrimonial-house-can-file-case-where-she-has-taken-shelter-sc-2095419.html>



The section was enacted to combat the situation of dowry deaths in India. It had been introduced within the code of Criminal Law of Amendment Act, 1983 [Act 46 of 1983].

SECTION 498A, not ultra vires:

The High courts of Andhra Pradesh and Calcutta have decided upon the two cases where the accused had been held guilty u/s 498A IPC for the cruelty to the wife. The following cases are important as the definition of cruelty was being **violative of Article 14 of the Indian Constitution.**¹²

In **Polavarpu Satyanarayana v. Soundaravalli**,¹³ the husband who was held guilty u/s 498A for subjecting cruelty to her wife challenged the definition of cruelty as 'arbitrary' and 'delightfully vague' and as such *ultra vires* of the fundamental right to equality under Article 14 of the Constitution. The Andhra Pradesh High Court held that there was no vagueness in the definition or the meaning of 'cruelty' and thus it is not *ultra vires* of the Constitution.

SECTION 498A, IPC AND SECTION 4 OF DOWRY PROHIBITION ACT DO NOT ATTRACT DOUBLE JEOPARDY¹⁴
[INDER RAJ MALIK CASE]:

In **Inder Raj Malik v. Sunita Malik**, the Delhi High Court held that a person can be convicted under both the legal provisions, i.e, u/s 4 of the Dowry Prohibition Act, 1956 and u/s 498A, IPC because it does not create any situation for double jeopardy. U/s 498A IPC a person can be punished for the cruelty against his wife whereas u/s 4 of the Dowry Prohibition Act, only demand of dowry is

punishable and the element of cruelty is not necessary for this section to be established. The accused were greedy family. They wanted to extort more and more money through dowry. The complainant was beaten, starved and abused and also given the threat from time to time. The court then held that such threats and harassment amounted to cruelty u/s 498A, IPC.

SECTION 113A OF THE INDIAN EVIDENCE ACT, 1872.

Presumption as to abetment of suicide by a married woman.

When it is shown that the suicide by a woman had been abetted by her husband or relative of her husband within seven years from the date of her marriage and,

- That her husband or any relative of her husband has subjected the cruelty to his wife, the court may presume that such suicide had been abetted by her husband or his relative.¹⁵

The offence under Section 498-A IPC is cognizable (a case in which a police officer may arrest the accused without an arrest warrant) if the information relating to the commission of the offence is given to an officer-in-charge of a police station by the person aggrieved by the offence or by any person related to her by blood, marriage or adoption or if there is no such relative, by any public servant belonging to such class or category as may be notified by the State Government in this behalf. Also, it is a non-bailable offence.

when a person inflicts such cruelty and harassment as to lead his mistress to commit suicide.

¹⁴ Textbook on the Indian Penal Code by KD GAUR, 6th edition.

¹⁵ The Law of Evidence by Batuk Lal.

¹² Textbook on Indian Penal Code by KD GAUR, 6th edition.

¹³ Vungarala Yedukondalu v. State of Andhra Pradesh, 1988 Cr Lj 1538 [AP]. Held, sec. 498A, IPC applies



IMPORTANT GUIDELINES OF SECTION 498A, IPC [Rajesh Kumar & Ors v. Sate of U.P.]

In a landmark move, the Supreme Court in Rajesh Sharma & Ors. V. The State of U.P., issued a set of guidelines to the application of Section 498A, IPC to prevent the misuse of this section, which are the following:

1. **Family welfare committee:** The court docket held that there should be a Family Welfare Committee in every district which shall encompass of three contributors and that this committee will be indulging in social work and volunteering. No member shall be called in a court as a witness. As soon as the complaint is filed u/s 498A IPC, it has to be brought under this committee. The committee will then research the matter and finish its findings in its record. No arrest should be made earlier than the file is submitted
2. **Investigating officer:** After one month of each case which is registered u/s498A IPC, an investigating officer has to be appointed to deal with the complaints registered beneath such section. The investigating officer shall inspect such complaints and undergo special training relating to cases underneath home violence subjects, and such training shall not be less than one week.
3. **Issue of a Red Corner Notice:** In cases where accused is a non -resident, impounding of passports of such persons or issuance of Red Corner Notice cannot be allowed to turn out to be habitual.
4. **Clubbing of cases:** The District Judge or a designated senior judicial officer that is nominated by the District Judge shall club or integrate all the cases related to matrimonial

issues between both the parties to attain the best end.

5. **Personal appearance:** The court has ordered that the bodily appearance of any family member is not vital. The court can order the arrival of any family member via video convention only if such conference does not disturb the development of the trial. This rule shall not follow where there is any physical injury or death has taken vicinity. The Supreme Court additionally requested the National Legal Services Authority to record on a tribulation of six months to look whether the rule is powerful or not and recommend adjustments, if any.¹⁶

IMPORTANT JUDGEMENTS [MISUSE OF SEC.498A, IPC]

I. ARNESH KUMAR V. STATE OF BIHAR¹⁷

The petitioner was arrested u/s 498A IPC and Section 4 of the Dowry Prohibition Act, 1961. Initially, he was unsuccessful to secure anticipatory bail afterwards he approached the apex court for anticipatory bail by way of special leave petition. There were allegations by the wife against the appellant that there was the demand of Rupees Eight lakhs, a Maruti car, an air-conditioner, television set etc. by his parents and also the husband threatened her to marry another woman. Another allegation that she was driven out of her matrimonial home was made by the wife due to non-fulfilment of the demand of dowry.

The appellant denied a lot of allegations and desired an application for anticipatory bail which was rejected by way of the Sessions

¹⁶ <https://www.otj247.com/blog/page/119/landmark-judgments-that-changed-course-of-section-498a-of-indian-penal-code/>.

¹⁷ [2014] 8 SCC 273: AIR 2014 SC 2756.



Judge and thereafter the High Court. The Apex Court by using saying that there's a growth in matrimonial disputes in recent years granted and allowed him the provisional bail. Section 498A, IPC was introduced to protect women from harassment through her husband or his relatives and the truth that this felony provision is a cognizable and non-bailable offence, **it is used as a weapon and not shield by the wives.** The want for caution in exercising the power of arrest has been emphasized over and over via the courts but has no longer given the favourable result. The Apex Court gave the following guidelines:

1. The State Government has to instruct its police officers not to make an immediate arrest when there is a complaint registered u/s 498A, IPC rather look into the matters of section 41, Cr.P.C for the arrest;
2. Every police officer is provided with a checklist which shall contain specified sub-clauses u/s 41[1][b][ii];
3. The police officer shall forward the checklist before the Magistrate after filing reasons necessary for the arrest;
4. While authorizing the detention of the accused, the Magistrate shall pursue the report furnished by the police officers and only after having his satisfaction the Magistrate will authorize the detention.
5. If the police officer took a decision not to arrest the accused, then he has to forward this decision to the Magistrate within two weeks from the date of institution of the case.
6. When the accused fails to comply with the terms of the notice or is unwilling to identify

himself then the police officer shall arrest him for the offence mentioned in the notice.¹⁸

II. SUSHIL KUMAR SHARMA V. UNION OF INDIA¹⁹

The Apex Court stressed that this provision is to prevent the dowry menace, but many petitioners have brought into the fact that many complaints under this provision are not *bonafide* and thus are false. The court suggested some remedial measures to prevent abuse of such important legal provision. The court is of the view that only because this provision is intra vires and constitutional, it does not give licence to people to misuse it or to harass some innocent. Henceforth, it is necessary according to the court that the legislature shall find ways to minimize this situation and to initiate matters on how to deal with false allegations.²⁰

III. MANJU RAM KALITA V. STATE OF ASSAM²¹

FACTS:

The wife alleged physical and mental cruelty at the hands of the husband and accused him under Section 498A, IPC. The husband, however, denied all the charges.

DECISION:

The Court held that "Cruelty" for the purpose of Section 498-A IPC is to be established in the context of Section 498-A IPC as it may be different from other statutory provisions. It should be determined by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide, etc. It is to be established that the woman has been subjected to cruelty

¹⁸ Textbook on Indian Penal Code by KD GAUR, 6th edition.

¹⁹ 2005 6 SCC 281.

²⁰ <https://www.vakilno1.com/legal-news/important-judgments-on-section-498a-of-ipc.html>.

²¹ (2009) 13 SCC 330.



continuously or at least in close proximity of time of lodging the complaint. The Court further held that petty quarrels cannot be termed as “cruelty” to attract the provisions of Section 498-A IPC.²²

IV. **INDER RAJ MALIK V. SUNITA MALIK**

It was argued that the Section 498A totally against the principle against double jeopardy mentioned under Article 20(2) of the Constitution. The said doctrine envisages that a person once tried and acquitted under any provision cannot be punished twice under the same law. Section 4 of the Dowry Prohibition Act 1961 makes a demand for dowry or any property punishable by law, and prima facie it might look that both statutes are dealing and providing punishment for the same crime. Delhi High Court rejected the contention and held section 498A is constitutional. The Court held that ‘cruelty’ is precisely defined in the section; hence no arbitrary powers are given to the police. The discretion as to what sentence can be passed is not arbitrary, judges always exercise the power judicially and thus Article 14 is not violated. The Article 20 of Constitution is not violated in the view of the fact that while Section 498A punishes for the demand of property or valuable security coupled with cruelty, on the other hand, the Dowry Prohibition Act 1961 penalizes even mention demand for dowry at any time during or after marriage and the element of cruelty is not necessary under this Act and thus these are two distinct offences. Section 498A deals with a serious form of the offence. Hence a

person can be prosecuted at the same times under both viz., Section 4 of the Dowry Prohibition Act and Section 498A.²³

CHAPTER 5: MISUSE OF SECTION 498A IPC

Section 498A, IPC became drafted to protect the girls against the harassment employing their husband or his household. It becomes shaped retaining in thoughts to shield the girls who suffer from diverse types of cruelty, dowry, harassment, and so on. However, there are situations or cases where the segment has been misused or violated by the women and making false allegations towards the husband and his own family so that she will be able to bring disgrace to the circle of relatives inside the eyes of the public. Women recognize that this offence is both cognizable and non-bailable, therefore, they misuse this provision and ensure that the husband and the circle of relatives get at the back of the bars as quickly as the complaint is filed employing the women. Thus, the Apex courtroom, numerous High Courts and Parliamentary Committee on Petitions [Rajya Sabha] have taken the word of this misuse. Justice J.D. Kapoor made controversy with his judgment in the case **Savitri Devi v. Ramesh Chand & Ors.** The court held that there were a clear misapplication and misuse of the legal provision to such an extent that it was shaking the foundation of the marriage. Justice Kapoor who was both, judge and a marriage counsellor, said that Section 498A, IPC was responsible for bringing social havoc to the meaning of an ideal family.²⁴

²² <https://blog.iplayers.in/top-5-supreme-court-judgment-on-misuse-of-498a/>.

²³ <https://www.otj247.com/blog/page/119/landmark-judgments-that-changed-course-of-section-498a-of-indian-penal-code/>.

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http://docs.manupatra.in/newsline/articles/Upload/4BBD0F1C-78F9-4C69-BFFD-4DB01BE38F01.2-E__criminal.pdf.



In **Arnesh Kumar v. State of Bihar**²⁵, Justice Chandramauli Kr. Prasad has taken forward this issue and continued from where Justice Kapoor had finished and stated numerous statistics and data about this legal provision and made the following statement: 'The fact that Section 498A is the cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than a shield by the wives.' He ordered that the police cannot arrest any person under this provision before investigating every matter of the case, and ordered every State Government to order every police office to restrain from automatic arrests without analyzing the allegations made on the husband by the wife. **Advocate and women right activists Abha Singh agreed with the Supreme Court judgment that this legal provision is being misused.**

In **State of Karnataka v. Dattaraj & Others**, Justice Jagdish Singh Khehkar and Justice S.A. Bobde stated that the alleged dowry demand from the husband and his dad and mom of a stitching system shall no longer be taken into consideration as a dowry call for. One of the prosecution witnesses in her cross-examination advised that the petitioner girl knew to tailor business and the sewing system became given to her for tailoring her clothes. This was a present to the petitioner lady and thus, cannot be considered as demand for the dowry. Also, there was no evidence of violence towards the petitioner girl by using either the husband or his mother and father. The High Court, besides said that

²⁵ Arnesh Kumar V. State of Bihar &Anr., CrI. No.9127 of 2013.

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inlibnet.ac.in/bitstream/10603/208201/10/8_%20chapter%205.pdfhttps://shodhganga.inflibnet.ac.in/bitstream/10603/208201/10/8_%20chapter%205.pdf.

²⁷ 2016[2] AIR Bom. R 173; 2016 [2] ALL MR 551 : 2016[2] DMC 671.

even the statements of the prosecution witnesses did not make contributions to the fact that the accused husband or his own family is responsible. Thus, the High Court acquitted the respondent husbands and his own family for the offences punishable beneath segment 498A, 304B examine with section 34 of IPC, as additionally, for the charges under sections 3, 4, and 6 of the Dowry Prohibition Act, 1961.²⁶

In **Shri Mangesh Balkrushna Bhoir v. Sau. Leena Mangesh Bhoir**²⁷, the High Court considered the judgment in **Vishwanath Sitaram Agrawal v. Sau. Sarla Vishwanath Agrawal**²⁸, wherein the Supreme Court stated that the wife had filed a complaint u/s 498A IPC against her husband and in-laws, were incorrect and thus, such act creates mental trauma in the mind of the husband as no one would like to face humiliations based on false criminal allegations. In this case, the appellant and his family members were acquitted because the allegations by the respondent against them cannot be proved on merits. Then, High Court, in **Manoj Madhukarrao Pate v. Sou. Vijaya Manoj Pate**²⁹, laid down that if the wife had filed a false complaint against the husband u/s 498A IPC, provided that the husband and his family members are acquitted, the husband can be entitled to seek divorce on the grounds of cruelty u/s 13 [1] [ia] of the Hindu Marriage Act, 1955 against the wife.³⁰

In **Jwala Prasad v. State of Chhatisgarh & Ors.**³¹, there has been an attraction made

²⁸ AIR 2012 SC 2586.

²⁹ 2015[1] ALL MR 95.

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https://shodhganga.inflibnet.ac.in/bitstream/10603/208201/10/8_%20chapter%205.pdf.

³¹ 2016[3] Cri. CC 689 : 2016 ACJ [SC] 121.



against the order of the High Court of Chhatisgarh in which the appellant became granted with the punishment of imprisonment of 10 years u/s 304b and 498A IPC. Justice Pinaki Chandra Ghose and Justice Amitava Roy of the Supreme Court of India held that the prosecution has no enough evidence towards the appellant to prove the offence he has committed which covered, cruelty and harassment against the deceased lady before the loss of life for the need of dowry. The Supreme Court, also held that the lower courts had awarded punishment primarily based at the inferences of the case and no longer primarily based on the shreds of evidence and there's no purpose for the courtroom to uphold the judgment of the High Court of Chhatisgarh, convicting the appellant. Thus, the order of the conviction set apart via the Supreme Court and the appellant is acquitted from all the costs.

According to Manushi, a magazine devoted to gender studies female complaints often allege threats of dowry demands in complaints of domestic violence or cruelty, even when the dowry is not an issue. Manushi's investigations also revealed that the police would often use the threat to arrest u/s 498A IPC to extort a large amount of money from the husband or his family. There is also an allegation that lawyers force the complainants to exaggerate the amount owed to them as stridhan.³²

In the subsequent Manav Adhikar case, the court rightfully accepted that the social welfare committees have no role to play during investigation and prescribing duties to the social welfare committees will tantamount to judiciary overreaching its

power as it is the Parliament who makes the law. However, the Court has only done a half-baked job in correcting its error in its previous judgment. The Court has in fact further underlined its anxiety that “the abuse of the penal provision [referring to Section 498-A IPC] has vertically risen:” and has gone on to suggest that “it is obligatory on the part of the legislature to bring in protective adjective law and the duty of the constitutional courts to perceive and scrutinize the protective measure so that the social menace is curbed”.³³

There are various purposes identified which drive the women to misuse this provision made for their protection against her family members, the reasons are the following:

1. **Prior relationship:** Women often have relationships before the marriage and only enter into the institution of the marriage with someone else to fulfil her parent's wish. However, the ultimate aim remains separation and so she often uses 498A as a weapon for the same.
2. **Dominance:** Women often want the husband to abandon his family members and have a private life with her. In some cases, she may want control over his financial assets and thereby uses 498A.
3. **Custody:** to deny the father and his family access to their children.
4. **Fraud:** Women often lie about their education or personal life details and when it is revealed

³² International Journal for Legal Developments and Allied Issues [VOL. 2 Issue 1] pg. 179.

³³ <http://theleaflet.in/supreme-court-on-section-498a-says-no-to-family-welfare-committees-but-still-legitimises-the-anti-women-misuse-argument/>



and justification is asked for, they use 498A against her husband and his family.³⁴

The honourable Supreme Court, therefore, found that some directions given in the Rajesh Sharma case³⁵ had potentially entered into legislative field. Keeping this in mind, the Supreme Court, undertook a re-examination of directions to have a balanced approach of section 498A IPC.

CHAPTER 6: SUGGESTIONS

After completing the whole study and analysis over the problem, the following suggestions can be made for the betterment of the men in comparison to the women:

1. NEED OF 'AN EFFECTIVE ACT' TO SAFEGUARD THE INTERESTS OF THE MEN:

. There needs to be a powerful action to appearance out for the hobbies of the guys. Every year sixty-two thousand men are committing suicide. Often we listen to the information of men committing suicide after the police force them to stay with their abusive other halves, else the police threaten them with the arrest. There is no social recognition of burdened and victimized guys. Whenever guys percentage their problems, they are regularly neglected via society. Therefore, society and government need to understand this, and for it, a law needs to be exceeded, at the least for the burdened husbands

2. SUGGESTIONS SPECIFICALLY FOR S. 498A, IPC:

A strict law has to be made to punish the women who misuse this section. Women

working in NGO's should not influence women to file false complaints; rather they should be fighting against fake complaints, etc. Some of the suggestions for preventing the misuse of s. 498A IPC is the following:

- a. Some sub-sections should be added to section 498A IPC, so that accused cannot save himself and innocent cannot be held guilty.
- b. Section **498b** should be enacted with s. 498A which contains the provision relating to the abolition of the caste system and *gautra* system along with the dowry system.
- c. If the husband and the wife are living separate from the husband's family, and if any dispute arises between the two, the names of the husband's family should not be registered under FIR merely because they are the relatives of the husband.
- d. The punishment of section 498A at present is sufficient, but a charge sheet should be submitted within 180 days.
- e. Husband and wife should be awarded a decree of divorce immediately after they apply for the same if they have been living separately for one year. In such a way, both will get a new life. This can also result in a decrease in the number of suicide cases.
- f. The limitation period for filing the complaint u/s 498A IPC should be decreased, so that wife and her parents will not misuse the length of the limitation period for filing the case under s. 498A.
- g. Police should have a different department for dealing with the cases of marital affairs

3. NEED TO CONSTITUTE THE COMMISSION FOR MEN:

Nowadays, harassment of men has started by misusing s. 498 A IPC or some other reasons by educated women. This is the reason many

³⁴ Journal on Contemporary Issues of Law[JCIL], Vol. 3, Issue 2, pg. 4.

³⁵ Rajesh Sharma & Ors. V. State of U.P. & Ors. AIR 2017 SC 3869.



men have started to feel depressed, humiliated and helpless at the same time. Therefore, the demand for the constitution of the commission for men similar to the commission of women is rising. 'Association for the Welfare of Husband-Wife and Family' and 'National Coalition of Men', a group of 50 volunteer organizations, raised their voice. They also demanded the constitution of commission for men so that women who were forcing men to commit suicide shall be punished. They also reported 10 points, demanding to stop harassment of men.

4. LAW SHOULD BE EQUAL FOR EVERYONE:

Time has changed, the lifestyle of people have been changed however the notion regarding lady remains equal. The mentality of the humans in India has now not modified today. Due to this, Indian society and regulation are equal for women. The sympathy towards the girls results in the enactment of laws towards the ladies to be able to exercise their right accordingly and take motion towards the harassment. Laws have to be equal for each person. Both man and a girl ought to be treated as equals within the eyes of the regulation. Today, the want is to enact such legal guidelines under which the girls shall be punished for misusing the legal provisions.

5. DEFINITION OF MENTAL CRUELTY:

The definition of mental cruelty has been outlined within the act that leaves the scope of misuse which could be used as a loophole.

PENALIZE CORRUPT INVESTIGATING OFFICERS:

If it is seen that a proper investigation has not been conducted by the investigating officer,

the investigating officer ought to be punished by the court.

6. SUGGESTION OF MALIMATH COMMITTEE:

The Malimath Committee recommended that section 498A IPC should be made bailable and compoundable. The case can be withdrawn and settled by mutual agreement between the parties.

CHAPTER 7: CONCLUSION

This phase offers the remedy to the women. It's exceptionally debatable trouble currently and if this drawback isn't resolved through the regulation it's going to become to be an ailment for the society. People consider ought to be restored in the judiciary and thus, it is time that this segment is amended and few modifications ought to be remarked for the duration of the law. It is clear from the recent judicial developments and diverse fee reviews that phase 498A IPC has become a risk in our contemporary-day society. From the above judicial selection, it has been concluded that Section 498A keeps staying in our statutes books to guard the ladies however on the equal time, it needs to be highlighted it should be used judiciously and there may be a want to cut back the misuse of this provision via some married women.

Today section 498 A, is among the most debatable sections regarding women, as it is claimed that it is more often misused than used. Even when the former Union minister for Women and Child Development[1], stated about 70 % of women in India to be victims of domestic violence, there was a huge commotion in media, several foundations like that of Save India Family Foundation came forward and reported that



while giving the stats she deliberately avoided the actual convictions in dowry death trials after false cases were dismissed in the courts. But the question still remains, that can some handful misused cases, make us neglect and shut our eyes towards the real scenario of the society where a large section of the women are the oppressed section and have been subject to cruelty by the husband or his family?

This provision is used as a weapon to annoy husbands and in-laws. This section protects the women however searching into its fact; it's far developing a bad effect at the society with the aid of its misuse and calls for a legislative issue to overcome the loopholes supplied in segment 498A. Furthermore, thinking about that the hassle associated with the misuse of phase 498A persists inside the future, quickly it becomes a bane for the society.

Misuse of Section 498A IPC isn't a rumour it's proved.

Someone has rightly said that:

“A small mistake may spoil your life! We have already off-tracked our tradition. Women abused the value of minimum. Playing with minimum is not a game. Still, the government entertain wife's adultery. We are resentful and shameful of them.”³⁶

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