

**DE JURE NEXUS LAW JOURNAL**

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4<sup>th</sup> Year, B.A. LL.B. (Hons.).

**PROSECUTION OF OFFENCE UNDER SECTION 498A OF IPC****INTRODUCTION**

India is a country where rites and customs have been compete significance role in the society which lead dowry as one amongst the practices prevailed in our society from long ago. Initially this practice was treated as blessing but subsequently it took a wrong direction in the society which became a curse for society where women fell prey of greed of her husband and her in-laws and this lead to harassing the ladies, inflicting mental and physical cruelty.

Section 498A IPC has been introduced in the year 1983 which was inserted for protecting the women who were married where she was suffered to cruelty by her husband or by the relatives of her husband. For such cruelty the punishment implicated by the court is for 3 years extension and the fine which was ordered.

*ingredients of 498A of the Indian Penal Code are*

- a) woman needs to be married
- b) the woman need to be forced to cruelty or torture or harassment
- c) and the cruelty or torture or harassment should be shown by the husband or the relatives of her husband.

The word cruelty is defined in larger terms which includes inflicting physical or mental harm to the women and indulging in act of harassment, coercing her and her relations for unlawful demand of property. Cruelty leading to death of the women also leads to cruelty which falls under this section.

According to *National Crime Records Bureau of India*, there are 10 millions of weddings are held in a year where 10000cases of dowry were reported and according to 2015 censuses 7646. deaths are reported relating to the disputes of dowry which means 21 women were caused to death every day by their husbands or by in-laws due to the reason of dowry demand. Hence, it can not be said that, dowry is completely in practice or isn't in practice. But the study reveals that all the people are aware of dowry system and its facts that it is a crime to demand and offer dowry. Definitely, this awareness influence the people in the issues regarding the dowry demand.

Provision 198A was inserted in CrPC by sec 5 of Amendment Act as;

***Prosecution for offence of IPC under section 498A:*** Cognizance will not be taken by any court of an offence which is under IPC where punishable under section 498A is except basing on a police report by his facts which known such offence and aggrieved person made complaint on that offence. This complaint can also be given by her parents or brother and sister or by her by siblings of her parents with the permission of the court or they can also take permission of the blood relation of her.

### **CRUELTY TO WOMEN BY HER HUSBAND AND HIS RELATIVES**

Two offences were inserted into the IPC to combat the ever increasing of dowry death and cruelty by husband and his family. Section 498A IPC a special concept on cruelty caused for the purpose of matrimonial remedies. Under this section the greed for the dowry is the main essential. This section is inserted to protect the wife from her husband the in-laws. The husband or her in laws family met her to cruelty will be punishable of imprisonment upto 3 years and fine.

Relatives means, members of family belonging to such same family by birth or by adoption or by marriage. Close friend of the family are not considered as relatives under this section and term 'relatives'.

***In Vasant Bhagwat Patil v State of Maharashtra***<sup>1</sup>. In this case the contention is Whether only for legal married wife will get support of sec 498A during cruelty on her or not? For this court gave an pronouncement the word in this section as women will get protection to any women.

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<sup>1</sup> 2012 CRI.L.J.65

Here in case accused and the lady who was deceased were living together as husband and wife in one house without any marriage and there was no proof of valid marriage between them. Evidence shown as those both were married in rituals known as **sulagna procedure** which is a marriage proof for them. As there was no valid or reasonable proof or evidence as it is valid marriage and court denied their contention and said it will not come under 489A

### **Types of cruelty under section 498A**

- Cruelty on women by vexation of litigation
- Cruelty caused due to deprivation or can through wasteful habits
- Husband telling his wife that she is a barren woman is also subjecting a wife into cruelty
- Cruelty caused by demands
- Subjecting to cruelty as saying she is in extra marital relations
- Not accepting a baby girl is also a kind of cruelty and false attack on chastity also can be a cruelty.

**Mens rea [Cruelty should be intentional]:** it is not essential that cruelty or harassment should have essentials of criminal culpability. The actual intention or mere knowledge of the offender as he is causing effect as any way of cause injury to the physical and mental health is sufficient.

The legislation taking into consideration as there shall be a necessary mens rea to be proved for commission of dowry death offence and that is soon after the death of that woman where she subjected to cruelty by husband and his family. Soon after the death of woman need not be immediately after her death caused.

**Actus reus:** As per the law the court observed there should be proved that the family of the husband are also treating her cruelly which may cause her death or not and only charging them as they were family of her husband who was subjecting and treating her cruelly. The innocence of the in-laws cannot be convicted.

### **CONSTITUTIONAL VALIDITY OF SECTION 498A OF IPC**

There are many contentions from the offenders that section 498A is violative of Article 14, 20(2) of the constitution.

The husband and her in laws who are the relatives of her husband after marriage make her torture and it will be a reasonable classification when that women who was married is treated cruelly with intent at the house of her husband which causes no evidence. The husband and his family are on continuous threat of taking away the son and harassing the women for dowry which may leads to her family may sell away their property to fulfil his demands, and this leads to punishable under section 498A. Hence the supreme court held article 14 and 20(2) is not ultra vires

***Inder Raj Malik v sunita malik***<sup>2</sup>: harassment of a girl wilfully demanding to fulfil any unlawful demand for any property or any valuable security is cruelty. It was contended that this section is ultra vires of article 14 and Article 20(2) of constitution. Section 498-A is a aggravated form of offence which punishes the husband for making demands of property and any kind of valuable security from the partner or from relatives of wife will also be cruelty on wife. So it can not be a ultra vires.

When there is a possibility of abuse on any provision in law can not invalidate a legislation abuse of power which a possibility in this case will not be a ultra vires and unconstitutional. So here the action of accused will be seen and not the section.

When a women who is a wife of man coming to his house from respectable family where she was subjected to cruelty by him who is a bad natured man and insulting her like calling her as she is a prostitute and making hard to her family where they have no comfort and this husband not permitting any of her relations to meet her can also be a sufficient to convict that husband for cruelty.

***State of West Bengal V Orilal Jaiswal and another***<sup>3</sup>: A daughter-in-law who was dead and called as an evil women which followed unlucky and she is evil lady as because her father-in-law died when she got married. The husband of a wife come to home as drunk and beat her always. She was abused as the items which she bought as dowry is in less quantity. So the court tells all this can amounts as mental cruelty on women.

If husband or his family act or omit or commit such nature of offence resulting with mental and physical harassment such cruelty subjecting to her at her matrimonial home or at her parental home also is valid to constitute an offence against husband and his relatives.

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<sup>2</sup> 1986 (2) Crimes 435; 1986 (92) CRLJ 1510; 1986 RLR 220

<sup>3</sup> AIR 1991 SC 1226

## PROSECUTION OF THE OFFENCE

### **Cognizance of Offences:**

In view of the 3<sup>rd</sup> column of the 1<sup>st</sup> schedule to the CrPC, an offence under sec 498 A is cognizable and if any information relating to commission of this offence shall be informed to officer in charge in a police station. The aggrieved person relating to that offence or any of her relatives can inform to police or can give complaint.

All magistrates under section 190 regarding penal code can take cognizance either by receiving the complaint with facts which constitute those offences or by basing on a police report or through information given by any person which he receive and not by police officer or not on his own knowledge as that commission of offence has caused.

***In Manohar Singh v state of Madhya Pradesh***<sup>4</sup>: The accused was convicted under section 498a of IPC and also under sec 4 of dowry prohibition act and imprisonment of 6 months where sentence must run concurrently. If the appellant and respondents has arrived to compromise regarding the conviction order it cannot be quashed because the offence is non compoundable. So in this situation if by any way court feels that the parties really desire want to get away from this problem and get peace in their relationship then court can reduce the Sentence given to accused as his sentence already undergone.

**Jurisdiction:** The court has jurisdiction at the place where the offence has done and competent to entertain a complaint both under section 498A in respect of cruelty and also under section 181(4) of CrPC, in respect of misappropriation of her 'Streedhan'.

Offences under section 498A of IPC are tribal by Judicial Magistrate First Class.

**Burden of proof:** prosecution has a burden to prove the facts by showing the offence as relevant to the charges framed basing on ingredients of offence which is committed. Hence while the ingredients are not proved and when the accused gives any explanation as his wife was false alleging due to poor financial condition in her side then the Conviction can set aside and gets acquitted.

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<sup>4</sup> AIR 2014SC 3649

## MISUSE OF SECTION 498 IPC

The society is advanced the provision is being misused by some women for their benefit and as a result there are so many false charges being registered against husband and on his relatives in order to harass him and to keep him on pressure and to extort money from him. Concern about the misuse of the laws relating to violence against women in India is been repeatedly shown by the Judges of Supreme Court and High Courts.

### **Punishment for misuse of section 498A IPC**

There is no need of any special provision should be required to punish the persons who misuse this section. The existing provisions such as, sec 182, 211 of IPC and sec 250 of CrPC can take care of malicious accusations.

***In Rajesh Sharma and another v state of UP<sup>5</sup>***: supreme court stated a serious concern that a large number of cases continued to be filed under section 498A of IPC alleging harassment of married women. To provide a remedy to this situation the court on a view that involment of civil society in the aid of administration of justice can be one of step and investigation officers and trial courts being sensitized.

Supreme Court has given some guideline to combat the misuse of this provision and these directions will not apply on physical injuries and death.

- One or more family welfare committee be constituted by District Legal Service Authority consisting of 3 members in every district. So the working of those committees should be reviewed time to time or once in a year by district and sessions judge of that district as they are also a member of such committee.
- Those members of the committee cannot be called for witness.
- When any complaint under sec 498A received by police officer or by magistrate, they have look such matter with reference to such committee. So that committee will interact with the parties personally or by any mode of communication and try to solve their matter.
- The report consisting of factual aspects and its opinion of the committee will be given to authority who is reoffering it, within one month from receiving of such complaint.

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<sup>5</sup> 2017 SCC online SC 821

- Till report of committee is received no arrest can be issued. The report can be considered by investigating officer or by magistrate on its own merit.
- The members of the committee will be given training for time to time
- The district and session judge can utilize the cost fund where ever they think it is necessary to do so.

***In Social Action Forum for Manav Adhikar v UOI***<sup>6</sup>: supreme court gave certain directions to prevention of misuse of section 498A of IPC

- Offences of 498A for Complaints investigated must be done by a designated investigating officer.
- If the parties decides for settlement, they can legally approach to High Court under 482 seeking quashing of proceeding or other orders.
- If a bail application is filed with one day notice to public prosecutor then the same application must decided on the same day
- Persons residing out of territory of India impounding of passport or issuance of Red Corner Notice should not be routine.

## CONCLUSION

National Commission for Women was set up in 1992. It is an institution which monitors the effective functioning of the institution charged with the dispensation of justice to women. It also monitors the enforcement of legislation aiming at ensuring equality among women in all areas of social, economic, political development. This Act empowers the central govt to constitute a commission and nominate a chair person and five members from among persons of ability and standing experience in Law and legislature where on of member in committee must of ST and SC.

Even though many legislations against dowry has been introduced, there is no change in society because the legislative reality is external to society where the Indian women lead their life generally. But the change must be in socio cultural manner only then the dowry can be eradicated completely. It can be made only if men and women are aware of the dowry system. There are to many developments and recommendations in the law as well as misuse of provision. This study helps in understanding the loopholes and lacuna of the proper functioning of prosecution of offence under sec 498A of IPC.

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<sup>6</sup> 2018 SSC 1501



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