



Tribulations around Section 498A of IPC, 1860 in India

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Abstract

In our country India, where customs and traditions have played a significant role in a society. Marriage is one of the social institution in society and dowry was one of the social problem prevailing in Indian society which was untimely treated as benediction but now, it took a vicious form and become a malediction for the society which leads to dire consequences in the form of deteriorating position of women in our society such as dowry death, physical torture and mental agony by husband and in laws. Prior to 1983, there was no provision given in Indian law to deal with crimes relating to cruelty and for the protection of women from domestic violence. Afterwards, an amendment came under IPC in 1983 wherein section -498 A was inserted. In last few years, women have started misusing such laws by filing false complaints against her husband and in laws for the motive to get revenge from her in laws and also for let down their fame in society. According to NCRB Report 2020, around 1,11,549 cases were registered under section 498-A IPC out of which 5,520 cases were found to be false and 16,151 cases were closed by police either they were false or was a mistake of fact or law or it was a civil dispute or insufficiency of evidence etc.

Keywords: Tribulation, Indian penal code

Introduction

One of the primary concerns raised by critics is the potential for misuse of Section 498A. It has been alleged that in some cases, individuals, particularly women, have filed false cases to settle personal scores, gain an advantage in divorce proceedings, or harass the accused parties. Another criticism is that the section has been misused to arrest the accused without proper investigation or evidence, leading to the violation of the rights of the accused. Critics argue that the mere filing of a complaint can lead to immediate arrests, and this has resulted in instances where innocent individuals have been arrested and detained without proper evidence. There have been instances where entire families have been implicated in cases under Section 498A, including elderly parents and minor children. Critics argue that this can lead to the unnecessary harassment of family members who might not have been directly involved in any wrongdoing. The existence of Section 498A has been criticized for potentially creating a hostile environment within marital relationships. Some argue that it can exacerbate conflicts between spouses and lead to unnecessary legal battles. India's legal system is known for its slow-paced proceedings. Cases filed under Section 498A have also faced issues with delays, which can result in a prolonged ordeal for both the accuser and the accused. Critics argue that in some cases, the genuine concerns of dowry-related harassment get overshadowed by the misuse of the law, thereby diluting its original intent.

Our fundamental right provided under Article -14 of Indian Constitution i.e. right to equality is progressing efficiently in our society in a positive way. After inserting Article -14 in the constitution women's position started getting their rights from which they were deprived off earlier. Now women are getting equal rights of education. They are now paid equally for the work done by them. However, nowadays, women use all their rights provided for their upliftment, as a sword rather than a shield. They use these laws as weapon against

men. Women has always been a victim of domestic violence, cruelty or other laws made for her upliftment but it would also not unfair to say that a man also suffers a lot such as mental agony, trauma if false complaints are filed against him even for once. Men also face a domestic violence is which is seen after a Ross investigation and said by high court or Supreme Court. This is the reason why it is call anti male laws. As the abuse rates of sec 498A is increasing day by day because this section is both cognizable as wells as non-bailable and also, after a simple filing of FIR or complaint by woman the police officer was bound to take action against husband and his relatives and immediately also put them behind the bars.

After the approval from Indian parliament in year 1983, under IPC sec-498 A was added after amendment. "Whoever, being the husband or the relative of the husband of a woman, subjects such women to cruelty shall be punished with imprisonment for a term which may extend to 3 years and shall also be liable to fine".

Cruelty

- a. Any wilful conduct which of such a nature as if likely to drive the woman to commit suicide or to cause grave injury or damage to life, limb, or health (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 a demand.

Characteristics of tribulation of section -498A of IPC

- Women misuse section -498A by blackmailing her husband and his parents for fulfilling her pecuniary needs.
- Women use this law as a sword than a shield.
- Due to misuse of this law man are provoked to commit suicide.

Essentials

- There must be a woman.
- Such woman must be married.
- Cruelty or harassment must be done on a woman.
- The cruelty or harassment must be done either by husband of women or by his parents.

Causes

- **Greedy:** The women sometimes is of greedy nature who wants to grab all her husband's property which leads to the breakage of family in the form of filing false cases by the women.
- **Nuclear Family:** Some women are not habitual to live with in laws or with other relations. They just want to live with her husband and children as a nuclear family. This ultimately could be a reason of framing false charges under section -498A.
- **Adultery:** It could also be a reason of filing false charges under section -498a. if the husband indulges in extra marital affairs with someone then wife could take this as cruelty. Such action of husband can have termed as mental cruelties, which pressurize her to file cases under section -498A.
- **Married Against Will:** Sometimes, parents got her daughter married against her will which provokes her to file false cases against her husband and in laws.
- **Fraud, Misrepresentation and Coercion:** when marriages is solemnized through a fraud, misrepresentation or coercion on the part of the women, and the man or his parents wants to get rid from such marriage as they were being threatened or misrepresented. In this situation, woman use section -498a as a weapon against her husband, or her in laws.

Effects

- Women's husband and her in laws reputation got down in their society.
- In family members includes young sisters and brothers of a husband who are currently studying their career will be affected badly and in future, they would not be able to avail any government job.
- Scope for marriage for the young siblings will become narrower as no one wants share bond with such a family of criminal record.
- The entire family got provoked to commit suicide to get rid from false allegations and face the societies.

Procedure

- A wife who has been the subject of cruelty by her husband or in laws can file a suit or complaint in police station and which is transferred to Mahila Thana/Parivar Parmash Kendra/Mediation Centre depending on states.
- After that, notice is sent to opposite party who tries to do settlement between parties.
- If there is, no settlement occurs, between parties then police officer would lodge FIR or at the time of filing of FIR, there is no requirement of evidence and complainant also get free of cost FIR copy.

- After that, police officer does investigation and collects all the statement of witnesses and evidences of complainant.
- Then police officer or investigation officer submits charge sheet before magistrate, which contains all the details or criminal accusations against the defendant collected by police during investigation.
- Then, both parties got opportunities to defend themselves before magistrate and magistrate take cognizance and will prepare charge against the accused and give a date for trial.
- Evidence can be presents orally or in writing and magistrate can issue summons to witnesses.
- Prosecutor call upon witnesses in favour of complainant and conduct examination in chief and defence counsel get an opportunity to cross examine the prosecution witnesses.
- After that, statement of accused is recorded in which accused present all the evidences and facts in his favour.
- Defence counsel calls upon witnesses in favour of accused and conducts examination in chief and then counsel gets an opportunity to cross-examine the defence witnesses.
- After seeking all statements of witnesses, and cross-examination and evidences from the both sides present their final arguments and counsel defend it.
- Court will have discretion to pass an order or judgement in favour of either party.
- Because of which conviction or acquittal is decide by the court.
- If either party does not satisfy with the decision of court then the aggrieved party may approach higher court by the way of appeal within 30 days from the date of decision.

Remedy

1. Husband can file a case of conspiracy under section-120B of IPC if he find that his wife and in laws did criminal conspiracy against him.
2. Husband can also file a case against wife under section -506 IPC (criminal intimidation) if she threatens to cause harm to him or family in law members.
3. Husband has right to file a suit of defamation under section 500 of IPC against his wife for malign his or his relative's good reputation.
4. Husband can also take help of section -191of IPC if evidence used against him is false and he is being false implicate in the present case.
5. Husband may apply for an anticipatory bail under section -438of Cr. PC if he has reason to believe that he may be arrests on false accusation of having committed cruelty under section -498A of IPC or his wife against him or his relatives registers false FIR.
6. Husband can also move to H.C. for QUASHING OF FIR under section 482 of CRPC if he gets sufficient proof of not guilty under section -498a of IPC on which FIR is falsly registered against him by his wife.
7. Husband can also take compensation from his wife under section -358 of Cr. PC if his counsel proves that there was no sufficient ground of causing arrest of his client or his relatives in such a false FIR, which is register by wife.

8. Husband can also acquire compensation under section-250 of CRPC from his wife for accusation without reasonable cause.
9. Husband may apply for sec-9 of Hindu Marriage Act i.e. Restitution Of Conjugal Rights which says if his wife goes anywhere without his knowledge and after that she file a false FIR against him for not giving her a shelter and false cruelty case against him.

Arnesh Kumar v. state of Bihar and ANR 2014 SC

Arnesh kumar's wife filed a case under section -498a IPC and section -4 DOMESTIC VIOLENCE ACT against her husband and in laws and she alleged that there was demand of 8 lacs rs, a MARUTI CAR, an AIR Conditioner, Television SET etc. which was made by her husband parents and he also supported them and threatened to get marry again with another woman. Due to non fulfilment of dowry demand, she was driven out of the matrimonial home. After all arnesh denying these allegations and go to session court and high court for getting an anticipatory bail which was rejected by them.

But according to section -41(1)(b) of CRPC, if anyone commits a cognizable offence whose punishment may be less than 7years or may extend to 7 years whether with or without fine. While making an arrest there must be a reasonable complaint, or credible information or reasonable suspicion exists. A police officer can make a arrest on suspicion that if they does not arrest his/her then he/she will tampering with evidence, creates problem in proper investigation, or commits offence again or does not present in court when court wants. A woman uses sec -498a as weapon against husband by arresting him or in laws. Court observes that there was many false cases file under section -498A IPC and arrest brings cast scars, curtails freedom which destroys husband's life.

Afterall Supreme Court gives guidelines for arresting persons

1. All the state government to instruct its police officers to follow sec-41 of Cr. PC while making an arrest under section 498a IPC instead of automatically arrest.
2. Before forwarding the accused to magistrate for further detention police officer must have to provide check list and reasons for making an arrest.
3. Magistrate will authorise detention only after got satisfied by police officers report.
4. Police officer must have to inform magistrate and record reasons in writing within 2 weeks about why not to arrest an accused.
5. According to sec 41A Cr. PC notice of appearance be served to accused within 2 weeks from date of institution of case which may also be extended by superintendent of police of district with reasons in writing.
6. If police officer does not comply with the directions of court then they shall be liable either for departmental inquiry or for contempt of court.
7. If authorising detention without recording reasons as foresaid by judicial magistrate concerned shall be liable for departmental action by appropriate high court.

Preeti Gupta & ANR.V. state of state of Jharkhand (2010)

In this case court observed the case and said there is difficult to know real truth of case and said court must have to careful while dealing with matrimonial compliant cases. because in this case, husband relatives on whom false allegations were made. They were actually living in different cities and never came to meet them at once where complainant resides. Hence, court quashed all charges against appellants because allegation could not be proved.

Neelu chopra & Anr. V. bharti (VI) (2009)

In this case the complainant did not show the exact role played by appllants (husband and his parents) in the commissions of the offence. Some allegations were made against her husband rajesh but he was no more and expired.so, to continue prosecution against his parents on the basis of vague and general compliant about the precise acts of appellants (aged parents) it would an abuse of process of law. thus court directed to quash complaint under section 482 of CRPC.

Conclusion

Every law are made for justice and good for society. As section-498A is made for protection of women. However, in today's era this law get misuses continuously by women. A coin has two sides head or tail. Similarly, this law uses as a weapon as well as shield to a women, which is seen in many cases. Due to giving, more priority to women is a reason behind the misuse of these laws. Like that, "A man is guilty until proven innocent and a women is innocent until proven guilty." This laws was made in 19th century when woman's condition was not good at all but today's women get literated and well known about there rights given by law and know How to protect themself but some evil minds of women become a threat for the society and use such laws as their untrammelled rights. So, There must be amendment on this law in future so that no false cases are registered under section – 498A.

Suggestion

- This section should be of bailable nature because it affects the life of innocent, old parents, pregnant sisters and school going children's due to its non-bailable nature due to their custody for weeks without any of their fault.
- This section should be of compoundable nature because due to its non-compoundable nature if women realises that she has done wrong with family or her husband after the filing of FIR then, she can't withdraw that FIR and also it creates problem while taking mutual divorce.
- There should be a fast redressal of trial in sec 498 a cases to save innocent persons from false allegations or to provide a justice to victim.
- There should be proper investigation regarding this section -498a cases by investigation officer and after that based on evidences police officer take actions against him.
- There should be establishment of family counselling centres in every districts which can helps harassed man and his parents from wife and in laws by listen their version and to consult families who have been aggrieved by giving advice of experts and practitioners.

- There should be unbiased role of women NGO's i.e. who only prioritise women even if they are at fault, should organise awareness camps to organise spread awareness among women, so that they can use these laws as sec 498 a in a bonafide manner.
- There should be imposing of penalties and takes strict action on person who makes false accusations on defendant.
- There should be strict action taken against the police officer who is disloyal towards his job by making a suspension and penalise him.

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