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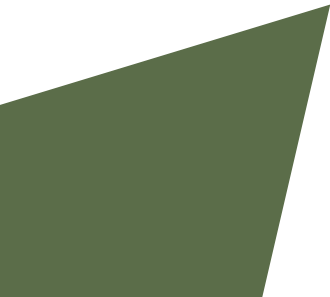
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Misuse of Section 498A of IPC- Judicial Trend

Sohom Nandi

ABSTRACT

Once in a while, the very provisions of law which are intended to be ameliorative become a wellspring of harassment. Section 498A of IPC has become scandalous for its notoriety. The NCRB 2012 Report shows the degree to which the section is abused. According to the report, the pace of charge-sheeting was as high as 93.6% while the conviction rate was as low as 15%. My research paper seeks to evaluate the judicial trend vis-à-vis sec.498A, helping us understand why section 498A has become a necessary evil and what steps are recommended to check its misuse. I have also explained about the constitutional validity of section 498A of IPC with the help of relevant case laws.

INTRODUCTION

India's heavenly past is hosed by its abuse towards women. In the advanced occasions of equivalent rights, the obsolete practices of dowry and subordination of women keep on being glorified. With the object to battle the threat of dowry and cruelty towards women, section 498A was embedded inside the scheme of the IPC. While presenting section 498A, regardless of how great the aim of the law-making body may have been, today it has been diminished to a mode of badgering and flippant applications.

Section 498-A was acquainted in the year 1983 to shield married women from being exposed to cruelty by the spouse or his family members. A punishment stretching out to 3 years and fine has been endorsed. The expression "cruelty" has been characterized in wide terms to incorporate inflicting physical or mental damage to the body or wellbeing of the woman and indulging in demonstrations of badgering so as to force her or her relations to fulfill any unlawful need for any property or important security. harrying for dowry falls inside the breadth of last appendage of the section. Making a circumstance driving the woman to commit suicide is likewise one of the elements of "cruelty".

Section 498A¹ which looks to punish the spouse/family members of husband for exposing the wife to cruelty has given a wide inclusion to the term 'cruelty'. It incorporates

- any wilful conduct which is of such a nature as is probably going to drive the woman to commit suicide or to cause grave injury or danger to life, limb or well-being (regardless of whether mental or physical) of the woman; or
- harassment of the lady where such badgering is with the end goal of forcing her or any individual identified with her to satisfy any unlawful demand for any property or important security or is because of failure by her or any individual identified with her to fulfil such demand.

CONSTITUTIONAL VALIDITY OF SECTION 498A

In **Inder Raj Malik and others v. Mrs. Sumita Malik**², it was battled that this section is ultra vires of Article 14 and Article 20 (2) of the Constitution. There is the Dowry Prohibition Act which additionally deals with such kinds of cases; along these lines, both statutes together make a circumstance commonly known as double jeopardy. but Delhi High Court negatives this conflict and held that this section doesn't make circumstance for double jeopardy. Section 498A is absolutely distinguishable from Section 4 of the Dowry Prohibition Act on the grounds that in the

¹ K.D Gaur, Textbook on Indian penal code (6th ed. 2016)

² Inder Raj Malik and others v. Mrs. Sumita Malik, CriLJ 1510(Delhi high court:1986)

latter mere demand of dowry is punishable and existence of element of cruelty is not at all required, while Section 498A deals with aggravated type of the offence. It punishes such demand of property or valuable security from the spouse or her family members as are combined with cruelty to her. Subsequently an individual can be prosecuted in regard of both the offences punishable under Section 4 of the Dowry Prohibition Act and this section.

This section gives wide discretion to the courts in the matters of understanding of the words happening in the laws and furthermore in issues of awarding punishment. This provision isn't ultra vires. It doesn't give any subjective or arbitrary powers on courts.

In **Sushil Kumar Sharma v. UOI**³ – SC, a prayer was made before the Honourable Supreme Court under Article 32 of the Constitution to declare section 498A of IPC as unlawful or unconstitutional and in the alternative to outline guidelines to limit its abuse. Further, the petitioner was looking for tough and stringent action against those women who approached the courts with unclean hands.

Alluding to a variety of decided cases, the Supreme Court arrived at the resolution that only on the grounds that there is a probability of abuse of a provision of law, it would not render it unconstitutional. More importantly, the object of section 498A being counteraction of the dowry menace, it couldn't be struck down.

The Supreme Court didn't avoid seeing that countless cases have become exposed where the objections u/s 498A IPC are not bonafide however since it is for the law making body to enact, until it didn't devise instruments to handle flippant grievances under section 498A, the courts would need to keep on working within the recommended parameters of law.

THE JUDICIAL TREND HIGHLIGHTING THE RAMPANT MISUSE OF SECTION 498A

With the rise in the pace of education, financial security, and modernization the more independent and the extreme women's activists have likewise made Section 498A of IPC, as a weapon in her grasp than a shield. Due to which numerous helpless spouses and their family members have become the survivors of the wrathful daughter's in-law of their home.

Nowadays much of the time where Sec 498A is invoked, they end up being false cases (and this is acknowledged by the High Courts and Supreme Court of India), as they end up being insignificant coercion attempts by the wife (or her nearby family members) when messed with a stressed marriage. As a result, in most cases the Section 498A grievance is followed by the interest of gigantic measure of cash to settle the case outside the court.

³ Sushil Kumar Sharma v. UOI, AIR 2005 SC 3100(SC: 2005)

As has been held in **Sushil Kumar Sharma's case** and numerous others, if there is an occurrence of abuse, the 'action' and not the 'section' must be struck down. The courts, utilizing intrinsic forces u/s 482 Crpc have time and again quashed frivolous complaints filed u/s 498A of IPC. few of these cases have been discussed below-

In **Saritha v. R. Ramachandra**⁴ - A.P, the family court had dismissed the wife's plea for divorce on the ground that the charges levelled against husband couldn't be proved due to lack of evidence. During the hearing under the watchful eye of high court, it went to the consideration of the court that a criminal complaint u/s 498A of IPC had been filed by the wife against the husband.

The high court speaking through Justice B.S.A Swamy, went on record to state that for nothing the educated women are approaching the courts for divorce and resorting to proceedings against their in-laws under 498A IPC implicating not only the husbands but also their family members, whether they are in India or abroad. This is nothing but misuse of beneficial provisions which are meant to save the women from unscrupulous husbands.

The high court left it open to the Law Commission and Parliament, either to proceed with 498A in its current structure or to make it a non-cognizable and bailable offence, in this manner softening its meticulousness.

In **Harjinder Kaur and others v. state of Pb-P&H**⁵, a grievance had been filed by the wife u/s 498A against individuals from husband's family, including his 5 sisters who were the petitioners in the current criminal quashing.

The high court observed that one of the sisters had been married and living somewhere else since 1994, 5 years preceding marriage of the repelled couple while another was just 15 years when his sibling got married making their contribution impossible and proceeded to observe that “it appears that a wider net has been knitted so as to rope in the present petitioners”.

In **Ramgopal v. state of M.P**⁶, the Apex court suggested that S.498A be made compoundable with the goal that friendly settlement can be reached at between the parties.

In **Preeti Gupta and Anr v. state of Jharkhand and Anr**⁷ a criminal complaint was recorded asserting that the wife was truly physically at Mumbai by all the accused mentioned in the complaint and a demand for an extravagance vehicle was made.

however, the facts proceeded to show that appellant no 1 was a permanently staying at Navasari, Surat, Gujarat and had been living with her better half for over seven years. Likewise, appealing

⁴ Saritha v. R. Ramachandra, ALD 319(Andhra Pradesh High court:2002)

⁵ Harjinder Kaur and others v. state of Pb-P&H, ACJ 221(Punjab-Haryana high court:2013)

⁶ Ramgopal v. state of M.P(SC:2010)

⁷ Preeti Gupta and Anr v. state of Jharkhand and Anr, AIR 2010 SC 3363(SC:2010)

party no.2 was a permanent inhabitant of Goregaon, Maharashtra. Both the appellants had never visited the spot of supposed occurrence nor lived with respondent no.2 and her husband.

The Supreme Court noticed that such grumblings were made with sole object to disturb the family members of spouse and allowing the complainant to seek after this grievance would be a maltreatment of the procedure of law.

The Supreme Court observed that they come across a large number of such grievances which are not even bona fide and are filed with an evil intention. At the same time, there is also an increase in the number of genuine cases of dowry harassment which is also a matter of serious concern.

In **Bibi Parwana Khatoon v. state of Bihar**⁸, the facts of this case are that the spouse was executed by setting her up on fire by her husband and her family members. The sister-in-law and brother-in-law of the deceased spouse challenged the conviction in the apex Court.

The Court brought under notification the realities that the appellants in this case didn't live at the spot of accident. There was no proof to demonstrate their charge beyond reasonable doubt. Consequently, the Court acquitted them and held that the Court must make preparations against false and illogical implications of the family members.

THE PERSPECTIVES OF THE LAW COMMISSION

The Law Commission already, in its 237th and 154th reports had recommended making 498A compoundable. The same was emphasized in the 243rd report. In any case, in the wake of gauging the advantages and disadvantages, the commission was not in favour of making 498A a bailable and non-cognizable offence considering the way that the fundamental objective behind the section was to defeat the social wickedness of dowry and cruelty towards women and no measure of abuse of 498A could legitimize its re-assessment.

The Law commission noticed that the attitude of arrest first and afterward continue with the rest is despicable and the police must utilize its capacity to arrest in 'cognizable cases' sparingly, acting inside the areas of section 41 and 41-A of Crpc as opposed to making ridiculous arbitrary arrests. As is evidenced by the Law commission, the solution lies in following sections 41 and 41A Crpc in letter and soul instead of expelling the sting from s.498A inside and out.

⁸ Bibi Parwana Khatoon v. state of Bihar, S.L.P. (Crl.) No. 6630(SC:2017)

CHECKING THE ABUSE OF S.498A, SUPREME COURT'S DIRECTIONS TO THE POLICE: -

To check the subjective and arbitrary use of power of arrest u/s 498A IPC, the Supreme Court in **Arnesh Kumar v. state of Bihar-SC**⁹, gave some necessary direction comparable to 'when police may arrest without warrant' and matters coincidental thereto.

For this situation, the petitioner who was apprehending arrest for a situation enlisted u/s 498A favoured a SLP before the Hon'ble Supreme Court as his endeavour to secure such alleviation had been turned down by the high court.

The charges against the appellant husband were that he endorsed of her parent-in-law's demand for Rs.8 lakhs, a maruti vehicle, an air-conditioner, among different things and threatened to remarry if such demands were not fulfilled.

Justice Chandramauli Kr. Prasad, delivering the judgment on behalf of the Hon'ble Supreme Court observed the gross abuse of s.498A and stated that The fact that section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shields by discontented wives. The most straightforward approach to annoy and harass is to get the spouse and his family members arrested under this provision. In a number of cases, confined to bed grand-fathers and grand-mothers of spouses, their sisters living abroad for quite a long time are arrested. Expressing the substance of section 41 and 41A Crpc, the Supreme Court saw that in light of the fact that an offence is cognizable and non-bailable doesn't give the police the right to arrest, it should likewise fulfill itself that the capture is justified, that the conditions precedent u/s 41 Crpc are met. The cop must put an inquiry to himself, why arrest?

The court coordinated the police not to make automatic and arbitrary arrests u/s 498A however to arrest only if the conditions laid down u/s 41 of the Crpc are fulfilled. The court likewise emphasized the serious nature of the magistrate's obligation to satisfy himself that conditions u/s 41crpc are met when police brings the accused before justice for looking for additional detainment. The court closed by admonishing the cops and the magistrates that inability to conform to the expressed bearings would draw in departmental inquiry.

⁹ Arnesh Kumar v. state of Bihar, SCC 273(SC:2014)

CONCLUSION

From the Judicial trend and perceptions of different commissions, it turns out to be evident that section 498A has become a fundamental malice. There is absolutely no doubt that it must continue to be there in the statutes for the truly necessary insurance of women however with a proviso, its abuse must be checked.

Following the judgment in the Arnesh Kr case, apparently the police and justices will complete their obligations with more prominent persistence, generously cutting down the abuse of s.498A without downgrading the utility of section 498A in genuine cases.