

COMPOUNDING SECTION 498A-CONSCIENCE AGAINST LAW

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Section 498-A of the Indian Penal Code was enacted with the salutary objective of protecting the harassed, tortured woman from the vice grip of a patriarchal society. In a span of three decades and more the law has indeed achieved its intention in a multitude of matrimonial disputes.

The author uses the phrase matrimonial dispute instead of offence to promote, at the outset itself, the notion that a marriage is of sacrosanct and inviolate significance in a stable, civilized social order and terming all such acts that may vary in degree of harm as offences may cause irreparable harm to the psyche of an innocent accused spouse. The woman who had only her tears and her Lord to comfort her now has a shield against inhuman oppression.

However the law has also had certain anomalous consequences as exemplified by statistics mentioned in the Law Commission Report¹.

According to information's received from the Hon'ble High Courts (during the year 2011), 3,40,555 cases under Section 498-A IPC were pending trial in various courts towards the end of 2010. There were as many as 9,38,809 accused implicated in these cases. The implication of the relatives of husband was found to be unjustified in a large number of decided cases.

According to the statistics published by National Crime Records Bureau for the year 2011 (Table4), 3,39,902 cases under Section 498A were pending trial in various courts at the end of the year and 29,669 cases under S. 304-B of IPC.

The conviction rate in Section 498A cases is 21.2% and in S. 304-B cases, it is 35.8%. Number of cases reported under Section

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¹ Page 8, Paras 3.1, 3.2, 243rd Report, The Law Commission of India.

498A in the year 2011 are 99,135 and during the two previous years, they were 94,041 and 89,546.

A lazy reading of the above numbers indicates that the provision is clearly not being used the way as was intended at inception. A perfect illustration would be that of a woman frustrated by her husband's nonchalance at attempts of reconciliation of the matter rushing at the drop of a hat to file a complaint at the Police Station against the husband and his relatives as well. In *K. Srinivas Rao v. D.A. Deepa*, the respondent filed a complaint just four months after her marriage having stayed at her matrimonial home for just a day after marriage. In *Harjinder Kaur v. State of Punjab*², the complaint was filed against the husband and his five sisters with the FIR against the five sisters being quashed in the end.

Such moves and misuse of this law are symptomatic of a rising trend of ascending sensitivity in interpersonal conflicts and issues between life partners. But for what it is worth the opportunity costs of the misuse to an extent throw off balance the benefits being derived from the provision. Breakdown of the family as a social unit assumes paramount importance. Welfare of children must not be disregarded. Multiple relationships get affected due to the shock, humiliation, disrespect and distrust that build up in the minds of members of an entire family.

Work-life imbalance, disconnect in emotional needs, mismatch in personal ambition, difference in sexual needs are amongst many factors responsible for the present malaise of false fabrication and innocent yet improper use of the provision. It is a matter of surprise that urbanized women resort to the provision a lot more than their rural counterparts. Reference may be had:

While so, it appears that the women especially from the poor strata of the society living in rural areas rarely take resort to the provision, though they are the worst sufferers.³

Further on, the report goes on to state the following:

As noticed earlier, the conviction rate in respect of the cases under Section 498A is quite low - it is about 20%. It is learnt that on account of subsequent events such as out-of-court settlement, the complainant women do not evince interest in taking the prosecution to its logical conclusion.

² 2012 Manu PH 3147.

³ *Supra* at 1.

This demonstrates utter lack of comprehension of the legal provision by both urban and rural women. If education and literacy are not the determinants then what one may ask has led to such a wasteful expenditure of personal time as weighed against family relationships and financial and social burden on the state. The answer lies no further than in a parallel rising trend of compromise between life partners in many cases. But the major problem lies in the offence under Section 498A not being compoundable. Compounding in the context of criminal law means forbearance from the prosecution as a result of an amicable settlement between the parties.⁴ Compounding of an offence signifies "that the person against whom the offence has been committed has received some gratification, not necessarily of a pecuniary character, to act as an inducement of his desiring to abstain from a prosecution".⁵ The State's prosecuting agency is not involved in the process of compounding.⁶

An analysis of Section 320 reveals the following salient features:

No offence other than that specified in the Section can be compounded.- The offence can only be compounded by the persons specified in Col.3 of the Table concerned and such person is the person directly aggrieved in the sense that she/he is the victim of the crime. As a result of composition of the offence under Section 320, the accused will stand acquitted of the offence of which he/she is charged and the Court loses its jurisdiction to proceed with the case. Unlike in some of the provisions of special laws, no one on behalf of the State is empowered to compound the offences. However, the public prosecutor may withdraw from prosecution with the consent of the Court, as provided for in Section 321 CrPC.⁷

The broad principle that forms the basis of the present scheme is that where the offence is essentially of a private nature and relatively not serious, it is compoundable.⁸ Hence the authors fail to understand why Section 320 makes no provision for compounding the offence under Section 498A.

⁴ Page 1, Para 1.1, 237th Report, The Law Commission of India.

⁵ (1894) 21 ILR 103 at 112.

⁶ Para 1.3, 237th Report, The Law Commission of India.

⁷ Para 2.2, 237th Report, The Law Commission of India.

⁸ 41st Report, The Law Commission of India.

At this point the observations of the Supreme Court of India in *G.V. Rao v. L.H.V. Prasad & Ors*⁹, must be mentioned:

Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts.

Courts have thus recognized the necessity of exercising their jurisdiction under the vague yet just umbrella of equity and good conscience. *B.S. Joshi v. State of Haryana* is the first case in this regard. An affidavit was filed by the complainant wife that the disputes were finally settled and the accused and the victim prayed for quashing the FIR. The High Court declined to exercise its inherent power under Section 482 Cr.PC on the ground that power under the said Section cannot be exercised to quash the prosecution for non-compoundable offences even if the parties have settled the dispute. In appeal, the Supreme Court reversed the order of the High Court and held that the High Court in such cases can quash criminal proceedings/FIR/complaint in exercise of its inherent powers under Section 482.

The observations in this regard were:

We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power.¹⁰

The ultimate exercise of discretion under Section 482 CrPC or under Article 226 of the Constitution is with the court which

⁹ (2000) 3 SCC 693.

¹⁰ *B.S. Joshi v. State of Haryana*, 2003 (4) SCC 675.

has to exercise such jurisdiction in the facts of each case. It has been explained that the said power is in no way limited by the provisions of Section 320 CrPC. We are unable to disagree with such statement.

The section gives no new powers, it only provides that those which the court already inherently possess shall be preserved and is inserted lest it should be considered that the only powers possessed by the court are those expressly conferred by the Criminal Procedure Code and that no inherent power had survived the passing of the Code.¹¹ The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.¹²

A five-Judge Bench of the Punjab and Haryana High Court in *Kulwinder Singh and others v. State of Punjab and Another* was called upon to determine, inter alia, the question whether the High Court has the power under Section 482 of the Code to quash the criminal proceedings or allow the compounding of the offences in the cases which have been specified as non-compoundable offences under the provisions of Section 320 of the Code and they stated in clear terms that the scope of the provision extended to cases of matrimonial discord even with aggravated offences present.

The Courts play role of paramount importance in achieving peace, harmony and ever-lasting congeniality in society. Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a Court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery.¹³

Certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been

¹¹ Emperor v. Khwaja Nazir Ahmed, (1945) 47 BOMLR 245.

¹² State of Karnataka v. L. Muniswamy and Others, 1977 SCR (3) 113.

¹³ Kulwinder Singh and Others v. State of Punjab and Another, 2007 (4) CTC 769.

made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.¹⁴

Although such course of action may be taken it is fraught with criticism. The matter can only be resolved by approaching the High Court which means extra legal costs to be borne by the parties, more emotional turmoil, and protraction of the litigation amongst other concomitant factors. Thus, compounding of the offence is a perfect measure for the doing away with the practical inconvenience in the present remedy.

Section 498A penalizes the husband or the relatives of the husband for subjecting a woman to cruelty. The definition of cruelty as given in the Section is in two parts:

- Willful conduct of such a nature that is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (mental or physical).
- Harassment of the woman with a view to coercing her or her relatives to meet an unlawful demand for any property or valuable security. Thus the dowry relates.

Normally, if the wife is prepared to condone the ill-treatment and harassment meted out to her either by reason of change in the attitude or repentance on the part of the husband or reparation for the injury caused to her, the law should not stand in the way of terminating the criminal proceedings.¹⁵

The first argument advanced against the compoundability of the offence as mentioned in the Law Commission's 237th Report is that dowry is a social evil which ought not be condoned by compounding the offence. Composition amounts to according social approval to a heinous crime. What the advocates of such a proposition should not eschew is the rationale behind the implementation of Section 498A was never to create a forum for false and baseless claims. It could not have been the intention of the legislature to accept a situation wherein the very fabric of social order is being torn apart due to misinformation of one's legal rights combined with heightened emotional and mental sensitivity on behalf of the erring partner.

¹⁴ Gian Singh v. State of Punjab, (2012) 10 SCC 303.

¹⁵ Para 5.4, 237th Report, The Law Commission of India.

An excerpt from the Law Commission's 237th Report deserves mention at this juncture¹⁶:

While no impediments shall be placed against the effective operation of law enacted to curb a social evil, it should not be forgotten that the society is equally interested in promoting marital harmony and the welfare of the aggrieved women. A rational and balanced approach is all the more necessary for the reason that other avenues are open to the reconciled couple to put an end to the criminal proceedings. One such course is to file a 'quash' petition under Section 482 of CrPC in the High Court. Whether it is necessary to drive them to go through this time consuming and costly process is one pertinent question. If a wife who suffered in the hands of the husband is prepared to forget the past and agreeable to live amicably with the husband or separate honourably without rancor or revenge, the society would seldom condemn such move nor can it be said that the legal recognition of amicable settlement in such cases would encourage the forbidden evil i.e. the dowry. Section 498A should not be allowed to become counter-productive. In matters relating to family life and marital relationship, the advantages and beneficent results that follow from allowing the discontinuance of legal proceedings to give effect to a compromise or reconciliation would outweigh the degree of social harm that may be caused by non-prosecution. If the proceedings are allowed to go on despite the compromise arrived at by both sides, either there will be little scope for conviction or the life of the victim would become more miserable. In what way the social good is achieved thereby?

The next argument against compounding of the offence under Section 498A proposes that to do so would be tantamount to recognizing and validating violence against women. The elucidation is that the legal intent behind Section 498A can only be achieved by going through with the entire process of prosecution of the supposed offender. It is submitted that this can never be the intention of a socially beneficial legal provision as the accepted paradigm in social policy is that of the sanctity of a marital relationship. The law cannot be used to thwart attempts at reconciliation.

Reconciliation without compounding will not be practically possible and the law should not ignore the important event of reconciliation. The emphasis should not be merely on the punitive

¹⁶ *Ibid.*

aspect of the law. In matters of this nature, the law should not come in the way of genuine reconciliation or revival of harmonious relations between the husband and estranged wife. Wisdom behind all prosecutions and punishments is to explore a judicious mix of deterrence, deprivation of liberty and repentance and reformation.

Another argument advanced against compounding is that the process if adopted would lead to the helpless illiterate woman being compelled to compromise. This argument can be met by recalling that such compounding should be allowed only after the permission of the Court has been taken. As stated in the Law Commission Report the additional safeguard is:

After the application for compounding an offence under S.498A of Indian Penal Code is filed and on interviewing the aggrieved woman, preferably in the Chamber in the presence of a lady judicial officer or a representative of District Legal Services Authority or a counselor or a close relation, if the Magistrate is satisfied that there was prima facie a voluntary and genuine settlement between the parties, the Magistrate shall make a record to that effect and the hearing of application shall be adjourned by three months or such other earlier date which the Magistrate may fix in the interests of Justice. On the adjourned date, the Magistrate shall again interview the victim woman in the like manner and then pass the final order permitting or refusing to compound the offence after giving opportunity of hearing to the accused. In the interregnum, it shall be open to the aggrieved woman to file an application revoking her earlier offer to compound the offence on sufficient grounds.

Advocates against compounding of the offence also go on to argue that by adopting such a move the other laws such as the Protection of Women From Domestic Violence Act lose their sheen and rigor. It must be stated at the outset of opposition that reconciliation lies at the soul of any reparable marital relationship. Provision for composition gives the couple a second chance to mend the tears in the relationship for the sake of the family, children and themselves. As has been stated earlier no law should come in the way of such intended objective.

Conclusion

In conclusion the authors would like to make the following suggestions in general:

- Awareness must be created regarding powers of quashing of the offence under Section 482 by the High Court. Lawyers with no scruples do not hesitate to keep the suffering client in dark so as to extort money in the form of legal fees for a protracted criminal litigation as envisaged under the Code of Criminal Procedure.
- A standard must be evolved by consolidating all judicial pronouncements regarding the quashing of Section 498A offence so as to streamline legal discourse on the criterion to be met for a case to be deserving of quashing.
- The Police must refrain from arbitrary arrests of the supposed offender. Guidelines laid down in *Arnesh Kumar v. State of Bihar* must be followed diligently.
- The Presiding officer of a court seized of such a matter must ensure a holistic and objective approach to appreciation of facts and proof must disregard latent bias in rendering the ultimate decision.
- If a dispute bears primarily civil flavor then an attempt must be made at the threshold to reach a compromise and direct the parties to approach the High Court to exercise its power of quashing.
- Last but not the least, all necessary legislative amendments as may be necessary to effectuate compounding of the offence must be brought about so as to simplify an otherwise complicated and impractical course of action to truly realise the fruits of a marital compromise.