

IMPACT OF 243RD LAW COMMISSION REPORT ON THE EFFICACY OF SECTION 498-A

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Abstract

It is a matter of serious concern that large number of cases continue to be filed under Section 498-A alleging the harassment of married women.....sensitization, involvement of the civil society and general settlements are some remedies to the situation.

- S.C in *Rajesh Sharma & Ors. v. State of U.P. & Anr.*

Cruelty and violence is detrimental to the health of marriage institution. Section 498-A of IPC is a tool of extreme remedy where realizing *ipso facto* the presence of cruelty by husband and relatives accounts for more than 44% of the crimes against women. The patriarchy and the deep history of domestic violence in India add to its importance whereas the misuse evident from the cases in the recent past provides a compelling reason for denuding its teeth. The 243rd Law Commission Report examines the jurisprudential aspect and the social object behind implementing this law and providing a method of striking a balance between these two extreme approaches. This paper aims at comprehensive study of the 243rd Report in a critical approach. Moreover, the protection of married women, marriage institution in the light of Gender Justice and Women Empowerment examining the international law perspectives relating to concept of cruelty without prejudice is also discussed in the paper. This paper also discusses the impact of Section 498-A on marriage institution and remedies in brief.

Key words: marriage institution, cruelty, Section 498-A, gender justice, women empowerment

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Introduction

Law must be stable but it should not stand still.

- Roscoe Pound

The status of women in any society is a determinant of its development. It has swung from one pedestal to another where if we analyze deeply the dynamic changes in the social structure and the family; women enjoyed a secondary status in this patriarchal society and were subjected to a danger of life, limb or health, body or mind or its apprehension¹.

The intent of legislature was in favor of the motion where we demand for the equality of women, the liberty of women, will a society hold good if the women on the other hand face cruelty? For the efficient implementation of the constitutional rights of women² it is necessary to protect them from the violence which they face upfront in the community.

Coming down to the other extreme, we observe here that due to endeavors by the feminist society and the rise of women empowerment, women are now considered at par in every hemisphere. The era of 21st century is witnessing high female literacy rates in urban and rural areas of India. Due to campaigning and various awareness programs 498-A is now become a tool to harass the family members even though such actions aren't required. The concept of cruelty while making special laws to uplift the status of women emerged as a remedy where the victimized sect of male counterparts was unforeseen or left unprotected.

The jurisprudence behind the enactment of laws was however could not met the object sought in most of the reported cases. Ironically, it is not the only side of cruelty laws a widespread misuse and false allegations exists along with the women who have had a long suffering and still suffer the force of cruelty and ill-treatment without any remedy or justice. However, this is not the only failure of cruelty laws in India where some issues like cruelty towards husbands; maintenance to husbands is still not present. Therefore, there should be a litmus test of the laws of cruelty pertaining to the current socio-legal environment addressing and balancing the interest of all the stakeholders of the society. And therefore Section 498-A has been one such move

¹ Russell v. Russell, 1895 PD 315.

² Art. 15(3), Constitution of India, 1950.

as explained in the report was deeply analysed to test the relevance of socio-legal aspects associated with it.

Cruelty

‘Cruelty’ is a word easy to use and hard to define due to obvious reasons of infinite possibilities of diverse unpredictable human behaviour³. However, a broad classification and wide possible interpretations have always been the endeavour of all the jurists.

Merriam-Webster Dictionary defines cruelty as “a cruel action or inhuman treatment or a marital conduct held to endanger life or health or to cause mental suffering or fear.”

No statute had ever defined cruelty before 498-A came into existence in India. The definition of cruelty however was interpreted by various judges in different ways. They have remarked and pointed out that cruelty not only includes physical cruelty but includes other facets such as mental cruelty, sexual cruelty, economic cruelty etc. At present, Domestic Violence Act, 2005 accounts for such facets in an express form.

Section 498-A: Then and now

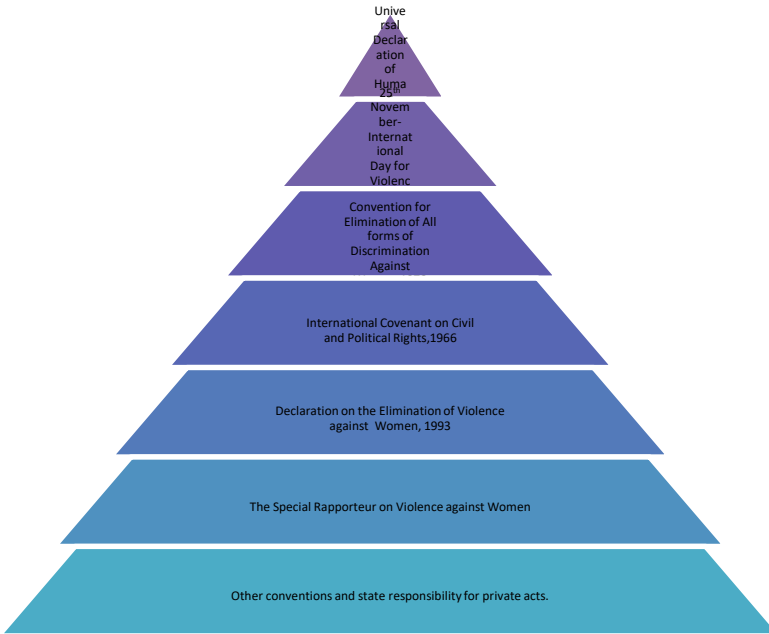
The *raison d'être* for the existence of cruelty is the long suffering and agony of women in a marital relationship with a patriarchy developing into a practice which is a paradox in itself.

What can constitute cruelty?

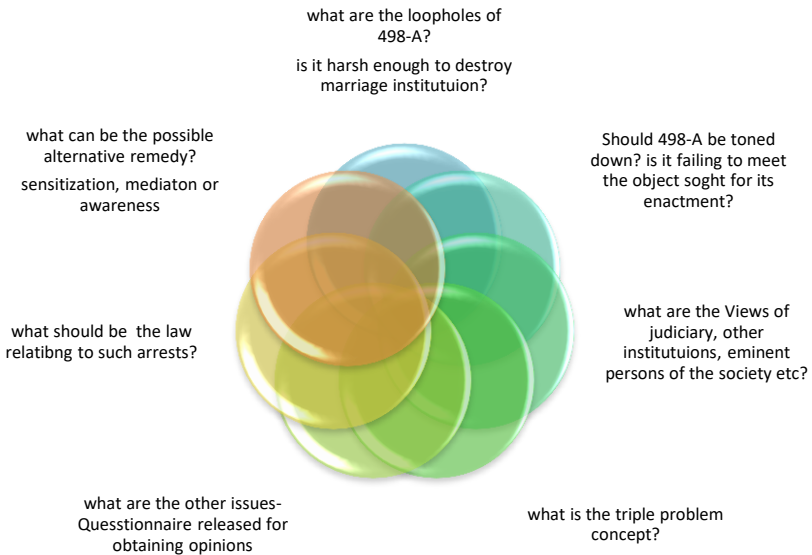
- Willful conduct that drives a woman to commit suicide or;
- Willful conduct causing grave injury to life/health or;
- Harassment for forcibly obtaining property of her relatives or;
- Harassment because the relatives did not give some property.

³ Sukumar Mukharjee v. Tripti Mukharjee, AIR 1992 Pat 32.

International law on cruelty



Highlights of the 243rd Law Commission Report



Summary of the 243rd Law Commission Report

The Law Commission Report has been discussed and formulated in the light of the case of *Preeti Gupta v. State of Jharkhand*⁴, pertaining to the Section 498-A of the Indian Penal Code and in the light of the complaints that were received by the courts on the misuse of the legal provision of cruelty.

The report briefly discusses if any amendments are necessary in the legal provision or its effective implementation to prevent its misuse in the society and for it to remain a way of granting justice to people actually in need of the same and majorly to prevent the disruption of families which is a direct cause of its misuse.

It also discusses and put light on the fact that 237th law report had made the offence of cruelty compoundable but the commission had forced for it to remain non-bailable. The commission has also made sure that in its report it mentions all the encumbrances that are faced by people of the society who come within the ambit of this legal provision on cruelty.

This report is a subset or inspired by the United Nations Convention 'Implementation of 'United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment through Legislation'.

The Law Commission Report traces the history of torture from the ancient Indian texts and basically in all societies across the world that over the passage of time and with the development of the societies have prohibited the practice in their national laws. But perhaps the most significant reminders contained in the report can be understood by two ways: recognition above all of the *jus cogens* nature of torture, that it is prohibited as a part of customary law without any exceptions; and the condemnation within Indian case law of the use of torture based on constitutional protections under Article 21 (right to life and liberty) and Article 20 (3) (right against self-incrimination). The report also notes an acknowledgement within Indian jurisprudence of the court's inability to ensure the prohibition of torture in everyday policing despite such attention.

However, in a recent case of *Lalita Kumari v. State of Uttar Pradesh*, the question whether a police officer is bound to register the FIR when a cognizable offence is made out or he has the discretion to conduct some kind of preliminary inquiry before

⁴ Preeti Gupta v. State of Jharkhand, AIR 2010 SC 3363.

registration of FIR, has been referred to a larger bench of Supreme Court in view of the apparent divergence in views. The law on this point is therefore in an uncertain state. In this situation, the police in various States have to follow the law laid down or directives issued by the respective High Courts in regard to registration of FIR till the law is settled by the Supreme Court. Shri Amarjit Singh, Member of the Commission has suggested that except in cases of physical violence, the FIR need not be registered instantaneously without any enquiry being made. Whether there should be a legislative provision in this regard specifically with reference to F.I.Rs under Section 498-A is a matter on which a fresh look could be taken after the Supreme Court interprets the relevant Sections in the above case as indicated by this above mentioned report.

Further the Report continues with the mentioning of the prosecutions that have been already dealt with under the Section 498-A of IPC. Such as it mentions that the complaints of over-implication noticed by the Courts is borne out by the statistical data of the cases under Section 498-A. According to information 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. This does not include cases pertaining to Punjab and Haryana (statistics not available). The implication of the relatives of husband was found to be unjustified in a large number of decided cases. 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. However, according to Delhi Police officials, with whom the Commission had interacted, women from poor background living in slums are also coming forward to file complaints.

Further it deals with the arguments that go pro and against the provision provided with in the penal code. It has to be kept in mind that this report with itself have a lot of shortcomings attached with itself, but it prevents the misuse by keeping in mind the essential need and methods of implementation and also preventing the constitutional essentials.

The arguments for relieving the rigour of Section 498-A by suitable amendments (which find support from the observations in Court judgments and Justice Malimath Committee's Report on Reforms of Criminal Justice System) are:

The harsh law, far from helping the genuine victimized women, has become a source of blackmail and harassment of husbands and others. Once a complaint (FIR) is lodged with the Police under Sections 498A/406 IPC, it becomes an easy tool in the hands of the Police to arrest or threaten to arrest the husband and other relatives named in the FIR without even considering the intrinsic worth of the allegations and making a preliminary investigation. When the members of a family are arrested and sent to jail, with no immediate prospect of bail, the chances of amicable reconciliation or salvaging the marriage, will be lost once and for all. The possibility of reconciliation, it is pointed out, cannot be ruled out and it should be fully explored. The imminent arrest by the Police will thus be counterproductive. The long and protracted criminal trials lead to acrimony and bitterness in the relationship among the kith and kin of the family. Pragmatic realities have to be taken into consideration while dealing with matrimonial matters with due regard to the fact that it is a sensitive family problem which shall not be allowed to be aggravated by overzealous/callous actions on the part of the Police by taking advantage of the harsh provisions of s.498A of IPC together with its related provisions in CrPC. It is pointed out that the sting is not in s.498A as such, but in the provisions of CrPC making the offence non-compoundable and non-bailable.

The arguments, on the other hand, in support of maintaining the status quo are briefly: Section 498A and other legislations like Protection of Women from Domestic Violence Act have been specifically enacted to protect a vulnerable section of the society who have been the victims of cruelty and harassment. The social purpose behind it will be lost if the rigour of the provision is diluted. The abuse or misuse of law is not peculiar to this provision. The misuse can however be curtailed within the existing framework of law. For instance, the Ministry of Home Affairs can issue 'advisories' to State Governments to avoid unnecessary arrests and to strictly observe the procedures laid down in the law governing arrests. The power to arrest should only be exercised after a reasonable satisfaction is reached as to the bona fides of a complaint and the complicity of those against whom accusations are made. The "Crime against Women Cells" should be headed by well trained and senior lady police officers. These steps would go a long way in preventing the so-called misuse. Side by side, steps can be taken to effect conciliation between the spouses in conflict and the recourse to filing of a charge-sheet under Section 498A shall be had only in cases where such efforts fail and there appears to be a prima facie case. Counseling of parties should be done by professionally qualified

counselors and not by the Police. These views have been echoed among others by the Ministry of Women and Child Development. Further, it is pointed out that a married woman ventures to go to the Police station to make a complaint against her husband and other close relations only out of despair and being left with no other remedy against cruelty and harassment. In such a situation, the existing law should be allowed to take its own course rather than over-reacting to the misuse in some cases. There is also a view expressed that when once the offending family members get the scent of the complaint, there may be further torture of the complainant and her life and liberty may be endangered if the Police do not act swiftly and sternly. It is contended that in the wake of ever increasing crimes leading to unnatural deaths of women in marital homes, any dilution of Section 498-A is not warranted. Secondly, during the process of mediation also, she is vulnerable to threats and harassment. Such situations too need to be taken care of. Thus, the triple problems that have cropped up in the course of implementation of the provision are:

- the police straightaway rushing to arrest the husband and even his other family members (named in the FIR);
- tendency to implicate, with little or no justification the in-laws and other relations residing in the marital home and even outside the home, overtaken by feelings of emotion and vengeance or on account of wrong advice; and
- lack of professional, sensitive and empathetic approach on the part of the police to the problems of woman under distress.

Concluding the above summary by mentioning that the Report did not fail to acknowledge the views of the National Commission for women, Home Ministry etc. Also it is very difficult to acknowledge all the parameters of the report which is so elaborative in nature, thereby we have tried to include all the essentials. The last important thing is that the report mentions another legislative change which the Commission recommends to discourage false and frivolous complaints leading to the arrest and prosecution of the suspect/accused is to amend Section 358 of Cr.PC so as to raise the compensation from rupees one thousand to rupees fifteen thousand. The words “not exceeding one thousand rupees” shall be substituted by the words “not exceeding fifteen thousand rupees”. This amendment is necessary to check to some extent the false and irresponsible FIRs/complaints in general, not merely confined to Section 498A. This is without prejudice to the Provision in IPC (Section 211) under which falsely charging a person of an offence is punishable.

Analysis and recommendations

- Mechanical, casual and hasty application of the power of arrest.
- The need for caution in exercising the drastic power of arrest is/was emphasized time and again by the Courts and the Parliamentary Committee.
- Needless to say that the power of arrest is coupled with the duty to act reasonably.
- Uniformity of approach in exercising the power of arrest is bound to result in undue hardship and unintended results.
- At the same time, there are also reports that the complaints under section 498-A do not receive serious attention of police and the victim is always viewed with suspicion. Such police inaction too has to be disapproved.
- The provision of cruelty was introduced in the statute to give justice to women and implementation of their own rights in a better manner. As the Report suggests that it has been statistically proved that the law is being misused to victimize the husbands and their relatives. It can be to seek divorce at an early stage or to demand larger shares of property etc.
- The *status quo* of the provision can still be backed by a few points such as:
 - If the rigour of this provision is brought down then the whole social purpose behind enacting the provision will be lost.
 - Women seek relief and go to the police station as a last resort against cruelty.
- The report suggests ways and measures to prevent the misuse and being fully satisfied about the *bonafide* of the complaint to take further actions of arrest etc.
- Recommendations of various institutions as in the Report:
 - Ministry of Women and Child Development suggested that the arrest of the husband to be done only after reaching a *bonafide* satisfaction of the complaint. Women cell should be headed by trained lady officers; also, conciliation to be taken as recourse among the spouses.
 - National Commission for Women: Section 498-A has to be seen in the context of violence and impairment against women's liberty in the matrimonial fold.
 - The Report has discussed broadly its views on the provision and the distinct ability of the police to use it arbitrarily and how it is different from other

provisions of IPC which deal with crimes in the society at large.

- Domestic Violence Act, 2005: The Act was enacted to give women protection effectively against any sort of domestic violence they face in their matrimonial homes. Section 3 of the Act which defines as to what is domestic violence and in its essentials of the definition it covers the essence of section 498-A as well. The Act enjoins the appointment of protection officers who will be under the control and supervision of a Judicial Magistrate of First Class which will further prevent the arbitrary actions if their lies any in the functioning of the system and further implementation of Act efficiently.

Diagnosis and the remedy suggested by the Law Commission

- The Law Commission beautifully addressed the issues associated with the laws relating to cruelty. It suggested a mechanism where it still lacks a force or a proper action. The commission recommended that a balanced approach or a realist approach could be the solution⁵.
- While addressing the problem of arrest it was suggested to adopt a constitutional and fundamental right jurisprudence in *Joginder Kumar v. State of U.P.*⁶ Similarly, in *Siddaram Satlingappa v. State of Maharashtra*⁷ (Para 123): “The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case”.
The abuse of the provision by resorting to the power of arrest indiscriminately should be checked at all cost. Section 157 along with the necessary decision or directive of High Court to be followed: To cross-check correctness of content the lady might be interviewed or questioned by Counsellor, lady official/respectable lady/NGO Counsellor.
- Speedy initial investigation
- Proper safety and liberty of the complainant.
- Refer matter to mediation/conciliation and obtain report maximum before 30 days.
- I.O. shall also take such action as is necessary to restore the valuable belongings of the complainant woman.

⁵ Nandani Sathpathy v. P. L.Dani, AIR 1978 SC 1025.

⁶ Joginder Kumar v. State of U.P., AIR 1994 SC 1349.

⁷ Siddaram Satlingappa v. State of Maharashtra, AIR 2011 SC 312.

- In cases of Non-Residents, bonds and sureties for heavy amounts.
- The prosecution taking necessary steps to expeditiously complete the trial rather than irreversible damage to visa/livelihood etc.
- Home Ministry's advisory and further action to be taken *D.K. Basu*⁸ Case: "Therefore, in any matrimonial dispute, it may not necessary in all cases to immediately exercise the powers of arrest. Recourse may be initially taken to dispute settlement mechanism such as conciliation, mediation, counseling of the parties etc."
- Circular/Standing order to be issued by the DGPs/Police Commissioners.
- Amendment-Section 41 Cr.PC by the addition of sub-section (3).
- S. 358 of Cr.PC – raising the compensation limit.
- Punishment for misuse – no specific provision necessary.
- However, misuse (the extent of which is not established by any empirical study) by itself is not a ground to abolish S. 498-A or to denude the Section of its teeth.
- The social objective of deterrence and ulterior motives.
- Awareness: Especially in rural areas both among women and men is necessary and in this regard the District and Taluka Legal Services Authorities, the media, the NGOs and law students can play a meaningful role.

Awareness about legal remedies

- All endeavours shall be made for effecting reconciliation, mediation or legal aid.
- Action plan-forming the panels in every district as well as extending necessary help to the aggrieved women.
- The I.O. should refrain from participating in the conciliation process.
- The offence under S, 498-A shall be made compoundable, with the permission of Court and subject to cooling off period of 3 months, as already recommended by this Commission in 237th Report⁹.
- Hostels or shelter homes for the benefit of women with necessary facilities.
- The passport of non-resident Indians involved in Section 498-A cases should not be impounded mechanically and

⁸ Law Commission of India, 237th Report.

⁹ *D.K. Basu. v. State of West Bengal*, (1997) 1 SCC 41.

instead of that, bonds and sureties for heavy amounts can be insisted upon.

- Expeditious disposal of cases under Section 498-A.
- The report did not recommend that Section 498-A should be decriminalized.

Effect of the Law Commission Report: Developments at present

After the publication of this report many more academicians, scholars, jurists, media-persons, other stakeholders suggested various methods including the recognition of cruelty towards husbands and maintenance to husbands. However, no amendments to existing laws in Section 125 of CrPC or Section 498-A of IPC have been done in this regard.¹⁰ Moreover, several judicial pronouncements speak to strengthen the efficacy of this report. The guidelines in *Arnesh Kumar v. State of Bihar*¹¹ is an addition to the human rights jurisprudence as discussed in the report with the help of *Joginder Kumar*¹² Case or *Siddaram Satlingappa v. State of Maharashtra*¹³ or any other case addressing the issue of arrest. Sensitization programmes, awareness campaigns, rise in the use of ADR methods like mediation, conciliation is trending but still at a nascent stage.

Conclusion

The Law Commission recommended a mechanism but it failed to reach its effective implementation through the suggested mechanism. The development of alternative dispute resolution methods may be a remedy to save marriage institution with a balanced approach as sought in the report. Moreover, the sensitization of policemen, other executives may be achieved through more number of induction programmes. The authors here agree with the motion that Section 498-A should not be decriminalized. In addition to that we suggest that a more comprehensive law on cruelty without a gender bias or gender prescriptive approach should be developed by the legislature.



¹⁰ Das P.K, Law Relating To Cruelty to Husband: Divorce and Maintenance to Wife (2nd ed., 2010) Universal Law Publishing Co. Pvt. Ltd.

¹¹ *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273.

¹² *Joginder Kumar v. State of U.P.*, AIR 1994 SC 1349.

¹³ *Siddaram Satlingappa v. State of Maharashtra*, AIR 2011 SC 312.