

MISUSE OF SECTION 498-A IPC AND DOWRY PROHIBITION ACT VIS-À-VIS HUMAN RIGHTS: NEED FOR STATUTORY CHANGES

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1. Increasing number of false cases of Dowry harassment against the husbands is now become so serious that the Government of India is proposing to amend Sec 498A to make the offence as 'compoundable'.¹ It may also be necessary to make it 'bailable'. There is no denial of the fact that woman require special protection in enjoying the human rights being enforced as integral part of Fundamental Rights guaranteed in Part III of the Constitution of India. Sec 498A was enacted by the legislature to provide special safeguards to protect their rights. There is no denial of the fact that they were denied of their rightful and just place and position in society for centuries.² Sec 498A was enacted with the object to prevent torture to women by her husband or his relatives in connection with the demand for dowry, as the dowry harassment was on the side of increase and required a strong penal measure to deal with it very effectively.
2. Sec 498A provides that the husband or relatives of the husband subjecting the woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
Explanation to Section 498A deals with what constitutes 'cruelty'. It states that any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman or 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

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¹ *Times of India* dated 22/3/2015 at P.1.

² See Lawrence Gomes 'Section 498A of IPC. Its implication and liabilities in our present day daily life and socio-economic system' 2004 Cr LJ Journal Section P.11.

demand. In other words, practice of cruelty includes harassment. As observed by the apex court, a new offence is created by giving a new dimension to the concept of cruelty.³ The first case recorded conviction under Sec 498A of IPC was *Wazir Chand's* case.⁴ The husband of the woman and his father were sentenced to one year RI and a fine of Rs.100/-. Prosecution under Sec 498A has to prove the case beyond all reasons of doubt, otherwise the case would end in acquittal.⁵

3. Consequent upon the insertion of Sec 304B providing the offence of Dowry death, the expression 'cruelty' occurs in that section but it has not been defined but the same meaning is attributed to cruelty including harassment as given in the explanation to Sec 498A.
4. It has been reported that more than 10,000 cases are found to be false.⁶ In other words Sec 498A is being misused by the women to harass their husbands and in-laws and even the Dowry Prohibition Act is also misused as a weapon in the hands of wives and they are found to be threatening their husbands, if they fail to carry out the wishes or demands of the wives.

Where such false complaints are filed, the husband and his relatives are subjected to arrest, bail being denied and even to enter into an understanding with the wife to withdraw such cases is not available, as the offences under Sec 498A are cognizable non-bailable and non-compoundable. Serious violation of human rights takes place of the person who are subjected to such false complaints. Among the persons so involved are a large number of women like husband's sister, mother and other female relatives. It is now used as a weapon by a woman against other woman resulting in 'cruelty' to those who are the victims of false complaints.

It is understood that women's organization are agitating against any step being taken to make the offence under Sec 498A as bailable and compoundable.⁷ How can the human

³ See *Shoba Rani v. Madhukar Reddy*, AIR 1988 SC P.121.

⁴ *Wazir Chand v. State of Haryana*, AIR 1989 SC P.378.

⁵ *Davakabai v. Namdev Doka* (1995)2 Crime 443 (Bombay).

⁶ *Supra* note 1.

⁷ It is reported that the Ministry of Women and Child Development has dropped the amendment. *Supra* note 1. P.11.

rights of husband or his relatives be seriously violated without any effective remedy?

5. Time is ripe now that women's organization should be made to realize that Sec 498A is for protection of the married women and not to be used as a weapon to harass or cause mental or physical suffering to husband or to his relatives. The need for a balancing norm is imperative, so that while protecting the married women, the need to protect the husband or his relatives is also met by the legal process.
6. The apex court in *Arnesh Kumar's* case⁸ observed that a complaint under Sec 498-A allows immediate arrest and jailing of the accused, since the offence is cognizable and non-bailable. This is evidence of violation of human rights, if the complaint is false and motivated. The apex court also observed that complaints under Sec 498-A were being filed with an oblique motive to wreck personal vendetta.⁹ In the light of this observation, the need to consider the issue as to how the complaints in false cases be dealt with suitably to protect the human rights of the victim's involved in the prosecution. This has been reiterated again by apex court in *Joginder Kumar's* case.¹⁰ The power of arrest should be exercised, when it is imperative¹¹ and not as a matter of routine. The facts and circumstances of each case need a thorough examination before the power of arrest is invoked.¹²
7. The guidelines¹³ given by the apex court on 2/7/2014 needs to be adhered to strictly. These guidelines may be summarized thus:
 - i) Sec 41 Cr Pc may be circulated with a list of items to be satisfied, before the power of arrest is exercised;
 - ii) The power of arrest should not be automatically exercised, merely because of FIR being registered;
 - iii) The police officers effecting the arrest should furnish all the details as required under Sec 41 to the magistrate explaining the expediency to arrest and the need for further detention to be ordered by the

⁸ See Special Leave Petition (Crl) No. 9127 of 2013 decided on 2/7/2014.

⁹ In Re Sushil Kumar's case, 2005 (6) SCC P.281.

¹⁰ AIR 1994 SC P.1349.

¹¹ AIR 2011 SC P.312.

¹² See also Sec 41 of Cr Pc.

¹³ These guidelines were given in a special leave petition (Crl) 9127 of 2013.

- magistrate. The material should satisfy the criteria laid down under Sec 41 Cr Pc.
- iv) The magistrate must apply his mind to the police report before authorizing further detention of the accused persons and record his reasons in writing in support of his order; and
 - v) In case of the persons not being arrested, a report should be sent to the magistrate by the police officer concerned containing
 - a) the reasons for not arresting
 - b) other material facts and circumstances justifying the non-arrest of the person concerned.
8. A suitable amendment to Sec 498-A is the imperative need of the hour. The number of false cases is not a material consideration, as even an accused person is harassed, it is sufficient to protect his rights. After all human rights of persons, whether of husband or wife or the relatives of the wife have to be protected.

The amendment may be in the following terms:

Sec 498-B- Any women or other person making a false complaint under section 498-B against her husband or his relatives shall be guilty of an offence punishable by law upto two years of imprisonment or a fine which may extend to Rs.15,000/-.

An offence under this section shall be non-cognizable, bailable and compoundable.