

Discrimination of men under Sec 498A IPC: Myth or Reality

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Abstract

India is a country where Rites and customs have played a major role of the society. In which dowry was one of the practices prevail in our society from long period. Initially, this practice was treated as blessing but it took an ugly turn and turned into a curse for the society because the women fell prey of the greed of their husbands and of his family. Moreover, this practice became a cause of harassing the women and causing mental as well as physically cruelty. Thus, for the protection of women, the Government of India inserted Section 498A under IPC by the Amendment Act 1983. But in the recent scenario, there are cases seen where women misuse Sec 498A of IPC and legal Provision of Dowry Prohibition Act etc. by filing case against her husband and her in-laws and get the advantages of the alimony and other remuneration. This section has created biggest problem in a current scenario for men as they are being discriminated and such laws are being misused by women and there is a need of amendment in section 498A so as to protect men and for punishing women misusing the same.

Keywords: Section 498A, Misuse, Amendment, Husband, In-laws

1. Introduction

India has also been a country where customs and rituals are not only followed but praised. Dowry was one of them which were practice in our society since an ancient period. Dowry is an amount of property or money brought by a bride to her husband on their marriage. Dowry given in a marriage is for the security of the daughter and it thinks like blessings for her. It is seen that the husband and their families were harassing bride for dowry and torture her to take money from her parental house. After seeing this custom Central government has made a law to protect the women from ill-effect of dowry. Dowry Prohibition Act 1961 was launched to protect women and also Section 498 A of Indian Penal Code 1860 came into force to protect the bride from her husband and their in-laws. This Section 498A is reliable for the protection of women. But in a recent scenario it was seen that these legislation has become a curse to men in the society. The women were started misusing these laws for their benefit. The question arises that Dowry prohibition Act 1961 is for the protection of women or for the benefit of women and Section 498A is reliable in the society. Men`s were started exploiting by their women. After the study of this scenario observed that, there is no such law to protect the men from exploitation.

My research was based on to protect the men from such exploitation and make some laws or amendments to protect him. My Research on “Section 498A of I.P.C.” is a Social Legal Research with an objective Impact Analysis. The Research is wholly based on the combination of both Doctrinal & Empirical with an Experimental Studies of research design. My research is based on both Primary and Secondary data. I have collected a present case of such misuse from District Court Raipur C.G. which was not yet decided by the court. This research aims at clarifying the position of men in this regards and also at framing laws which will be protecting men against such exploitation.

According to this Act¹ ‘dowry’ means any property or valuable security given or agreed to be given either directly or indirectly:

- a. by one party to a marriage to the other party to the marriage; or
- b. by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

In ancient period dowry was not a crime. It is just a way of giving blessings to the daughter by their parents. By giving dowry too the groom the parents of daughter assume that her daughter will be safe and live a happily life to their matrimonial house. Dowry is also a legal ethic for marriage in an ancient period. Dowry is mainly started by the period of kings and kingdoms during their rule. The high caste people or rich people started the traditions dowry in our society mainly in Hindu`s. In the ancient time, it was started with the concept of giving any property or valuable security with their own willingness but slowly and steadily it turned into a way of torturing the bride`s family as the groom`s family started demanding for dowry.

The people now facing many problems regarding dowry concept, because the groom were following this concept like a business. They marry with a girl and demanding lum sum amount of dowry. After that they left the girl or to make her die or they kill her by giving some reasons than again the groom remarry with another bride. This concept was totally fraud and there were no laws at that time. The government of India finally launched anti-dowry laws by happening of so many cases named Dowry Prohibition Act 1961. By laying this act, the concept of dowry is totally get stopped and banned. This law has passed firstly on certain states after that all over India. The giving and receiving of dowry is now

¹Section 2 of Dowry Prohibition Act 1961

crime whether directly or indirectly. This law is framed only for the protection of bride during society. The dowry prohibition act has fixed the penalties and punishments for the people who were asking for dowry. By this act, the concept of dowry is stopped but not totally. This act helps the woman and their parents for not giving the dowry and make a happily marriage life.

Section 498A Indian Penal Code 1860, insert against the cruelty caused by in-law with the women due to the need of dowry. This section were came to protect the women from their husbands and their in-laws. It was observed that before enforcement of this section 498A the young girls were torture and harassed by the husband and her in-laws. Due to un-fulfillment of their conceiving demands, money after the marriage. There are many cases of dowry deaths and young girls have suffered. To protect them from their husband and their in-laws, Section 498A enforced. So the dowry death should be stopped.

Before this Section 498A of IPC 1860, there is a Section 304B under IPC 1860, namely “Dowry Death” for the benefit or protect of women from ill effect of dowry. But it was seen that this section is not sufficient to safeguard the women from ill effect of dowry and by harassment suffers from husband and their in-laws. This is one of the reason to launch or amend section 498a under IPC 1860.

Cruelty includes both physical and mental torture. Willful conduct in Explanation (a) to section 498A, I.P.C. can be inferred from direct and indirect evidence. The word cruelty in the Explanation clause attached to the section has been given a wider meaning.

The Supreme Court, in *Mohd. Hoshan vs. State of A.P.*² observed: “Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusation or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of the sensitivity, degree of courage and endurance to withstand such cruelty. Each case has to be decided on its own facts whether mental cruelty is made out”

The meaning of cruelty within section 498A, when the husband or his family torture or harassed the wife for dowry or give any mental or physical hurt to her or any disorder it all comes under the cruelty. The meaning of cruelty also arose in a section 113B of Evidence Act 1872, that when any dowry death happened due to the demands by the husband and his family to the wife or make her give mental disturbance or any type of hurt either physical or mental.

Section 4 of the Dowry Prohibition Act talks about penalty for demanding dowry which is imprisonment of minimum 6 months which may extend up to 2 years and fine up to Rs. 10000/-. The Section is Gender neutral i.e. it's applicable to any person who demand dowry from the parents, other relatives or guardian of the bride or the bride-groom. However, discretion is given to the Judicial Officer to impose a sentence of less than 6 months but on the condition that he

has to mention the reasons for imposing a sentence of less than 6 months in his judgment.

Cruelty according to the section means any willful conduct which 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) or harassment of a woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or the harassment is by husband or the relative of the husband is because of the failure by the woman or any person related to her to meet such a demand. Thus, the section is strongly gender biased in favour of the fairer sex. Whereas, Section 4 of DP Act defines a single offence, cruelty under section 498A may take into its ambit number of offences which may be assault, battery, libel, character assassination, *et al.*

Dowry prohibition act enforce to stop the dowry concept in a marriage. And in that there is a various laws which bind the receiving and giving of dowry. There is a strict punishment for demanding dowry and for giving also. There is a section called burden of proof its an important section of dowry prohibition act which show the real validity of this act

Section 498A IPC made to protect the women from their husband and their in-laws. This section helps the young girl to survive in their maternal homes. This section made strict punishment for the husband and their in-laws and make a direct arrestment after complaining by the wife. This section helps the women to fight with their husband and their in-laws.

2. Constitutional validity of section 498A IPC

Section 498A is seen that it contravene the Article 14 of the Constitution. But Delhi High Court has given judgment on *Inder raj malik & others v. Mrs sumita malik*³, that does not contravenes the powers of article 14. It is separate from all the section. Section 4 of Dowry prohibition Act 1961 is also different from the section 498A IPC. Where Section 498A talks about the cruelty given by husband and in-laws to the wife for the demanding of dowry.

In the leading case *wazir chand v. state of Haryana*⁴, that the death caused by burning of a newly married woman, the reason for that is not establish either murder or an abetted suicide, but after the investigation. The facts says that the death cause for the persistently demanding dowry by husband and her in-laws from the girl's side, till her last breath of life.

With these circumstances, section 498A of IPC launched as a weapon to the women against their husband & their in-laws. But now many of the girls were misusing this section, they blackmailing the husband and fixing the case with lum sum amount of compensation out of the court. By these the supreme court given an order and make an amendment on section 498A that there will be no direct arrest of husband and their family without proper investigation.

³ 1986 (2) Crimes 435; 1986 (92) CRLJ 1510; 1986 RLR 220

⁴ 1989 SCC(Cr) 105; 1989 (1) SCC 244; 1989 AIR(SC) 378; 1989 (1) Crimes 173; 1989 (95) CRLJ 809

² 2002 Cr.L.J 4124

3. Misuse of section 498A IPC

Table 1.1

s.no	Questionnaire	Total	Percentage
1	Do you accept the practice of dowry in our society?		
	Yes	6	6.7
	No	84	93.3
		0	0.0
2	Whether sec 498A of IPC in real practice safeguards women's from ill effect of dowry?	0	0.0
	Yes	79	87.8
	No	11	12.2
		0	0.0
3	Whether Section 498A of IPC contravenes right to equality entrusted under fundamental rights?	0	0.0
	Yes	47	52.2
	No	43	47.8
		0	0.0
4	Whether there is any Misuse of section 498A of IPC?	0	0.0
	Yes	90	100.0
	NO	0	0.0
		0	0.0
5	Whether misuse of Section 498A results harassment to men in the society?	0	0.0
	Yes	86	95.6
	No	4	4.4
		0	0.0
6	Do you agree that such misuse should be punished by making a strict law?	0	0.0
	Yes	86	95.6
	No	4	4.4
		0	0.0

Table 1.2

7	Whether there is any need of amendment under section 498A of IPC?	0	0.0
	Yes	87	96.7
	No	3	3.3
		0	0.0
8	If yes, what should include:-	0	0.0
	To make it as a bail able offence.	37	41.1
	There should be a very strict punishment for misusing of section 498A IPC by the women.	74	82.2

Section 498A Indian Penal Code 1860, was state a misuse law by women to men for their personal benefit. After educating girls, they studied and known that section 498A IPC is cognizable and non-bailable and it works to safeguards women from their and their in-laws. After complaining report under section 498A of IPC direct arrest was made by the public servants without taking any proper or complete information regarding the incident the husband and his parents were immediately caught and make them behind the bar.

Because of this many women`s were misusing this section for their benefits and its get very bad impact to the society at large.

In the case Preeti Gupta & Anr vs State of Jharkhand & Anr⁵ on 13 August, 2010, the facts says that the case was filed under section 498A of IPC false allegation and charged was framed by wife to her husband and her in-laws and the witnesses during the incident was fake and not truth. Likewise there are many cases in which wife charging the false allegation to their husband and her in-laws, supreme court order that their will be no direct arrest without proper investigation and make section 498A of IPC a bailable offence.

In the case Savitri devi v. Ramesh Chand ors.⁶ The court held that the provision was not correct misuse and exploitation was happening, the section were using for such basic reason that marriage was not so good and it is not healthy to the society. By these lawmaker has understand and think to review the provision and make some amendment on it.

4. Results

Dowry practice was almost end in our society 6% people in Raipur District of Chhattisgarh were accepting the dowry practice in our society and 93.33% people were not accepted the dowry practice. It has very grateful to know this radical change in our society.

Dowry has become a curse to the women after marriage in the period of 18 century thereby Govt. make separate laws and section for protection of women from dowry i.e. Sec 498A IPC 1860, this Section protect women from the practice of dowry 87% people believed and it really safeguards women.

But the women were started misusing Sec-498A IPC against their men, the people were accepted during survey in Raipur district. Whole 90 people were stated that there is a misuse of sec 498A by wife to their husband for alimony or maintenance with the total percentile of 100. This section was really gives harassment to men in the society this is conferred by 95% people in Raipur.

And with the same percentile of 95% people also agree that there should be punishment for misusing sec-498A IPC by making a stringent law. Because it was seen that this section has bias against the men to safeguard them from dowry practice as compared with women. 96% people were saying the Govt. should make an amendment in the section498A IPC and give some privilege to men also. And 82% people want a strict punishment for misused of Section 498A IPC by the women.

5. Research Case law

There is a cases which are pending in a District Court Raipur Chhattisgarh, these cases are filed by women under sec 498A IPC for allegation of dowry demand. The women were living their matrimonial house and went to their parent`s home and charging a false allegation against their husband and in-laws. This cases has shown the misuse of section 498A and also that how this section were used as a weapon by wife against husband for alimony and maintenance.

Abha sahu v. State of C.G., The fact says that the petitioner filed a case after seven years of marriage. The charges framed

⁵ AIR 2010 SC 3363

⁶ II (2003) DMC 328

by petitioner were sec-498A and 34 of IPC, under this section petitioner filed a case. The petitioner was living with her husband and her in-laws. The petitioner said that her husband and her jethani were harassing her and giving mental torture for dowry. Then she was told about all the instances to her parental home. Then their parents want to talk and solve all the problems related to it. But the matrimonial house after discussing they were not saying anything to her but as soon as days go on they again started torture her. By thing all this instances the mother of petitioner was died. After 3 years, the parental house was continuing harassing her and then she left their home and lives with their parental home. At last the petitioner has no option other than to leave their house. The petitioner also said that the husband has neglected from conjugal rights. He never maintains a physical relation with her. The petitioner file a suit in a district court Raipur under se-498A and 34 of IPC and also demand for divorce with the alimony of monthly compensation. The case was pending for the evidence in a district court Raipur.

Smt. Dhaneshwari Agrawal v. State of C.G., The facts says that the petitioner were done a inter cast love marriage with another caste guy. The marriage was done in a Raipur without the permission of their parents. After sometime they both are living in a bilaspur city of Chhattisgarh with a happily married life. After 1 year the parents of husband were accepted the marriage and told his son to come back and they will again re marry of their son with his wife with proper rights and rituals. The husband accepted the offer and came back, but the parents of wife doesn't want to marry with the other caste guy, so they are not accepting the marriage. Likewise, the husband also started to give a mental torture to their wife and demanding her dowry. The girl after so much hindrance taken decision that they want to leave their matrimonial house. And then she left the home and started living with their parents. Then she files a suit under jurisdiction of Raipur c.g. under sec-498A and 34 of IPC. The case was pending for the evidence in a district court Raipur.

Smt. Nitu Dubey v. State of C.G., the facts say that the petitioner was living with her husband after marriage in a rajnandgaon C.G. The Petitioner filed a suit on the district court rajnandgaon under sec-498A, 506,323 of IPC. That after one year of marriage the husband and his family were started torture her for dowry and also they demand a hero Honda bike with their parents. The petitioner after 8 years of marriage framed charges for divorce and permanent compensation from their husband. The petitioner also said that her husband and his elder brother were forcing her and gives her a mental and physical cruelty and they demanding dowry. The petitioner has 2 children one girl i.e. 8 years old and one boy. They want a compensation and live separate from her husband. The case is pending for evidence in the jurisdiction of rajnandgaon district court.

6. Discussion

Misuse of section 498A IPC is increasing day by day, there is a large number of cases seen by Supreme Court in India. My research is based on misuse of Sec-498A IPC is completed with the survey and research on cases of district court Raipur

(C.G.). I have authenticated 100 forms during survey in which 10 are rejected and 90 forms were accepted. With this survey report it was seen that there is exploitation against men and women were taking privilege. There was misuse of sec-498A IPC by women, this was accepted by whole 100% people and 95% people were believed that there should be strict punishment for misusing sec-498A IPC by making a strict law. Out of these 52% people were saying sec-498A is contravene the article 14 right to equality of constitution but 47% people have disagree against this contravene. This section has become a crucial problem to men in society. Misuse of section 498A IPC against men has become reality. All the people were accepting the misused and partiality of this section because men does not having any law or point to safeguard himself from the false charge of misused. This has made a very major issue for marriage. It lays fear in husband heart before marrying any girl. Misuse of sec- 498A should be stopped and make some privilege to men also under this Section.

7. Conclusion

Dowry was a custom which was started in an ancient period. It has followed since old times. Afterwards, the practice of dowry has stopped by enacted law by the central government in India. It has started creating problem in daughter's marriage life. So the law was made to protect women from their matrimonial house as there was an absence of knowledge in women and due to ill literate the women were just suffers the pains from their matrimonial house. Section 498A and dowry prohibition act was there to help and safeguard women. Afterwards girls were started studying and they also educated. They knew the laws and learn that how to use that laws against their men for permanent alimony and maintenance. The women's were framing a false charge under sec 498A IPC and make her husband should be punished under the law. The men have no laws to protect him against the exploitation from women. In a cases of district court also seen that there is a misuse of section 498A IPC. The cases were still pending and the husbands are paying maintenance to their wife just because he is husband doesn't mean that he is responsible for all the expenses and gains. The women have become a sharper as comparison to men in society. They use this section as a weapon to gain some money from it. Sec 498A is misused by wife to their husband it is proved.

'Discrimination of men under sec-498A IPC-myth or reality' so I conclude, its reality. Section 498A IPC is misuse by the women to husbands and in-laws. It is completed and already done with the results. It has reviewed that Sec-498A gives harassment to men in the society people were agree and it has to be change. It was seen that this section was partial to men. My survey report is done and the cases of sec-498A IPC which I have research during my survey, the cases of district court Raipur, were pending and it is correct that section 498A protect women but now it is misuse by wife to their husband and in-laws. This situation gets very bad impact to the society. Misuse of Section 498A IPC is not a rumor it has proved.

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