



# SECTION 498-A IS HARMFUL FOR THE FUNDAMENTAL RIGHTS OF A PERSON OR NOT

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## ABSTRACT :-

Sec. 498-A is one of the most powerful sec. against domestic violence. When this sec. first time introduced in 1983 by the criminal law (second amendment) Act 1983 on 26<sup>th</sup>-dec.-1983 amended the I.P.C. 1860 and inserted a new sec. 498-A under chapter XX-A of cruelty by husband or relatives of husband, sec. 498-A was inserted for the safeguarding of women's rights and empowerment, the extortion of any kind of property by subjecting a women to cruelty is punishable under sec. 498-A of the india penal code

When this sec. First time inserted it is helpful for women to protect herself from the cruelty enforced by the husband or relatives of the husband. For some decades an honorable court gave landmark judgement under this sec. to protect the integrity of a woman's.

But in the last few years it seems like women are getting this sec. as an opportunity given by the law. By the use of this sec. and many other sec. related to this sec. imposed by the woman on her husband or relatives of husband to pull-down there moral values or as a harassment In this paper, an attempt has been made to understand the above title whether sec. 498-A is harmful for the fundamental right of a person or not. By the help of case law, reports published in the media or judgement given by honorable courts.

What is sec. 498-A :---

Sec. 498-A of I.P.C.-----

Husband or relative of the husband of a woman subjecting her cruelty.

(A) However, being the husband or the relatives of the husband of a woman subjecting such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

(B) For commission of an offense under sec. 498-A following necessary ingredients require to be satisfied; (a) the woman must be married; (b) she must be subjected to cruelty or harassment; and (c) such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband. ( U. Suvetha v. state, (2009) 6 SCC 757).

Husband :---

The absence of a definition of “husband” to specifically include such person who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as husband is no ground to exclude them from the purview of 498-A IPC, (Reema Aggarwal v. Anupam, (2004) 3 SCC199).

Relatives of husband:-----

In order to be covered under sec. 498-A IPC one has to be a “relative” of the husband by blood, marriage or adoption, ( Vijeta gajra v. state (NCT OF DELHI), (2010)11 SCC 618

U. Suvetha vs State (2009) 6 SCC 757; The meaning of relative is relation by blood, marriage or adoption. Therefore, girlfriend or concubine is outside the purview of Section 498A.

What is cruelty:-----

“cruelty” means -----

For the purpose of this section, Any wilful 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 demand.

Cruelty can either be mental or physical. It is difficult to straitjacket the term cruelty by means of a definition because cruelty is a relative term. What constitutes cruelty for one person may not constitute cruelty for another person. ( G.V,Siddaramesh v. state of karnataka, (2010) 3SCC 152)

Dinesh Seth vs State (NCT of Delhi) (2008) 14 SCC 94; Scope of Section 304B and 498A are different. While Section 304B deals with cases of death as a result of cruelty or harassment within 7 years of marriage, Section 498A has a wider meaning as it includes all forms of cruelty by husband or relative of husband which may result in death by way of suicide or injury to life and health for unlawful demand for propert

Where sec. 498-A is

Sec. 498-A is most

helpful:-----

powerful sec. in Indian penal code to protect women against cruelty by the husband or relatives of the husband. When India became independent, many types of customs were prevalent in india. By this custom, In the olden time, Indian women were tortured by such practices. With the passage of time, Indian women needed rules to avoid such practices.

In 1983 by the criminal law (second amendment) Act 1983 amended the I.P.C. 1860 and inserted a new sec. 498-A under chapter XX-A of cruelty by husband or relatives of husband, sec. 498-A was inserted. sec. 498-A is in force since 1983 till today and is providing protection to Indian women from their mental and physical harm.

Through important court judgment and government reports, we will try to know how sec. 498-A has been helpful.

## **Ram Kishan Jain And Ors. vs State Of Madhya Pradesh on 10 February, 2000**

### **Equivalent citations: II (2000) DMC 628**

As sunita and his father are not in the condition to fulfill the demand of dowry by the side of sunita's husband's family. by the mental or physical tortured a day sunita administered sleeping tablets and thereafter she even cut the arteries of both the hands sometime, dowry

may not be the cause but the woman for several reasons like her complexion or family status is tortures to death.

## **Surajmal Banthia And Anr. vs State Of West Bengal on 21 March, 2003**

**Equivalent citations: (2003) 2 CALLT 164 HC, II (2003) DMC 546**

The prosecution case, in short, is that Kusum Bothra (Banthia), the daughter of Dhanraj Bothra (PW 1) and Mr. Mohini Bothra (PW 2) was given in marriage with Indrajit Banthia, son of the appellant on 19th April, 1980. After marriage of Kusum Banthia her husband and parents of husband started physical torture on her and ill treated her. On 15.9.1982 at about 18.15 hours PW 1 and 2 received information over phone from Bijoy Singh Baid (PW 5) that Kusum Banthia (deceased) fell unconscious in her in-laws flat at 132/1, M.G. Road. Accordingly, PW 1 and 2 rushed to the flat of father-in-law Kusum Banthia and found their daughter Kusum lying unconscious on bed. PW 1 did not find pulse beat or heart beat of Kusum and at his request Kusum Banthia was removed to Marwari Relief Society Hospital where she was declared brought dead at 19.35 hours on 15.9.1982. The inquest and post mortem examination were made on 16.9.1982 and the autopsy surgeon who held the post mortem examination opined that death was due to poisoning. It was learned that the deceased Kusum Banthia committed suicide by consuming poison. S.I. of Police S. Roy of Jorasankho P.S. lodged suo motu FIR (Ext. 6) and on the basis of it Jorasankho P.S. Case No. 487 dated 16.9.1982 under [Section 306/34](#) of IPC was started. After completing investigation the police submitted charge-sheet against Surajmal Banthia (deceased) and Doly Debi Banthia and after trial the learned Judge held them guilty under [Section 306/34](#) of IPC and convicted them to suffer rigorous imprisonment for 8 years each and to pay fine of Rs. 25,000/- each in default to suffer rigorous imprisonment for one year more as already mentioned earlier.

## **Bomma Ilaiah vs The State Of A.P. Rep. By Public ...**

**on 9 January, 2003**

**Equivalent citations: 2003 (1) ALD Cri 965, 2003 (2) ALT Cri 340, 2003 CriLJ 2439, II (2003) DMC 461**

The brief facts that are necessary for the disposal of the present revision case are that Bomma Kanakamma (P.W.1) was married to A1 in the month of February 1992, that at the time of the marriage, the parents of P.W.1 gave one cycle, one wrist watch and some household articles to A1, that two months after the marriage A1 started harassing his wife with a view to get rid of her and to marry another girl, that on coming to know about the same, in the month of April 1992, the parents of P.W.1 took her to Guntupally and stayed there for about 20 days and later on the advice of elders P.W. 1 returned to the house of her husband, that on 13.8.1992, A1 forced his wife to have sexual intercourse with him, relieved her clothes, inserted his fingers and a stick in her vagina, and caused severe pains and bleeding and she became unconscious, that for about four days thereafter she was not allowed to come out of the house, that the parents of P.W.1 and other relatives held a Panchayat, that then she was shifted to a private hospital at Gajwel where she was referred to Gandhi Hospital, Secunderabad, that she underwent treatment till 23.11.1992, and that thereafter she gave a report to police and the police registered the case and investigated into. On behalf of the Prosecution, P.Ws. 1 to 10 were examined and Exs.P1 to P6, besides M.Os. 1 to 5, were marked. The trial Court after considering the evidence on record came to the conclusion that the Prosecution proved its case beyond all reasonable doubt for the charge under [Section 498-A](#) I.P.C. against A1 to A3, and accordingly sentenced them to suffer simple imprisonment for one year each and to pay a fine of Rs. 500/- each, in default to suffer simple imprisonment for one month each. The trial Court further convicted and sentenced A1 under [Section 325](#) I.P.C. to undergo simple imprisonment for two years and to pay a fine of Rs. 500/-, in default to suffer simple imprisonment for one month. Accused No. 4 in the case was acquitted by the trial Court for the offense under [Section 498-A](#) I.P.C. In the

appeal preferred by A1 to A3, the learned Sessions Judge acquitted A2 and A3 for the charge under [Section 498-A I.P.C.](#), but confirmed the sentence under [Section 498-A I.P.C.](#), imposed against A1 and modified the sentence under [Section 325 I.P.C.](#) to simple imprisonment for one year and to pay a fine of Rs. 5,000/-, in default to suffer simple imprisonment for six months. The substantive sentences imposed on A1 were directed to run concurrently. Aggrieved by the said judgment, A1 preferred the present revision petition, questioning the legality and correctness thereof.

(National Crime Records Bureau (Ministry of Home Affairs))

A total of 45,485 cases of crime against women were registered during 2019, showing an increase of 7.8% over 2018 (42,180 cases). Majority of cases under crime against women were registered under 'Cruelty by Husband or his Relatives' (30.9%).

MISUSE OF SEC. 498A:-----

from the last two or three decades by the growth of the knowledge of law, education, social awareness, digital media and many other factors have also made sec. 498-A of IPC, as a weapon in her hands than a shield. women impose this sec on her husband or the relative's of the husband for the harassment or disregard the family in front of the society.

woman represent herself as a victim of cruelty by the husband or by the the relatives of the husband and this drama created only for the purpose of threat or built a terror in the inlaw's family, the second purpose of this drama is to tack divorce and many more factors are in practice.

- **blackmail attempts**
- **degradation of marriage**
- **self satisfaction**

Arnesh Kumar v. State of Bihar

In this case, the Court observed that the fact that Section 498A, IPC is a cognizable and non-bailable offense, it's more often than not used as a weapon rather than shield by disgruntled wives. It results in harassing the husband and his relatives by getting them arrested under this Section and it is more disturbing to see bedridden grandfathers and grandmothers being arrested without a prima facie case. Thus, the Court laid down certain guidelines which the police officer must follow while arresting under Section 498A, IPC or Section 4 of the Dowry Prohibition Act, 1961 and that such arrest must be based on a reasonable satisfaction with respect to genuineness of the allegation. Moreover, even the Magistrates must be careful enough not to authorize detention casually and mechanically.

### Manju Ram Kalita v. State of Assam (2009) 13 SCC 330

The Court held that "Cruelty" for the purpose of Section 498-A IPC is to be established in the context of Section 498-A IPC as it may be different from other statutory provisions. It should be determined by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide, etc. It is to be established that the woman has been subjected to cruelty continuously or at least in close proximity of time of lodging the complaint. The Court further held that petty quarrels cannot be termed as "cruelty" to attract the provisions of Section 498-A IPC.

### *Kanaraj vs. State of Punjab :-----*

It was observed that there is a strict need to protect the relatives of the husband who are deliberately held to be involved in such cases having no fault on their part. They cannot be held responsible for their mere acts of concern; rather their acts have



to be proved beyond reasonable doubts in order to hold them guilty.

## WHAT IS FUNDAMENTAL RIGHTS:-----

fundamental rights are those rights that are given by the constitution of india. in the constitution of india part 3 (Articles 12-35) is about the fundamental rights. There are six fundamental rights (Article 12 - 35) recognised by the Indian constitution:

- the right to equality (Articles 14-18),
- the right to freedom(Articles 19-22),
- the right against exploitation (Articles 23-24),
- the right to freedom of religion(Articles 25-28),
- cultural and educational rights (Articles 29-30) and
- the right to constitutional remedies (Article 32 and 226).

At the time when the constitution was in the beginning stage the developers of the constitution thought about the total development of the people as mental, physical and social. By this thinking the developers introduced fundamental rights in the constitution.

fundamental rights gives as many opportunities regarding self development or social development. by the use of those rights a person can develop herself.

It gives us the right to speak, it gives us freedom to walk around across India, it gives us freedom of community, it gives us right to education, it gives us protection against imprisonment and many other freedom to develop skills for a better way of living.

## AFFECTED FUNDAMENTAL RIGHTS:-----

by the misuse of sec 498-A a woman imposes false allegations against the husband or the relatives of the husband. by imposing false allegations against the husband or the relatives of the husband, the woman hits many fundamental rights of that person or the relatives of that person.

as we all know that sec 498-A of IPC is a non bailable and cognizable offense so if a woman impose this type of sec. it is the direct hit on freedom of that person or the relatives of the person to live with integrity, social status, or the protection against imprisonment.

by misuse of this sec. These are the fundamental rights affected by that person or the relatives of that person.

Article 14 :--- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15 :---- The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

Article 21 :--- No person shall be deprived of his life or personal liberty except according to procedure established by law.

above three and some other articles are also affected by the misuse of sec. 498-A of I.P.C. misuse of sec 498-A of I.P.C. is harmful for the fundamental rights of that person or the relatives of the person.

CRECTION:-----

As we can see that in today's time the sec. 498-A of I.P.C. is not used by the woman to protect herself; this sec. is used as the weapon or as the legal threat for the demolition of the husband or the relatives of the husband. This sec. is introduced in I.P.C. for the purpose of providing protection against domestic violence and the cruelty enforced by the husband or the relatives of the husband.

for the reconstruction of the provisions or the moto some suggestions are as below.

- bailable :-----

in present time misuse of this sec. are more in practice rather than actual use. So in a false case a innocent person may be safer by all legal or social demonstration so by the overview of investigation it found that no direct allegations were made in F.I.R. or no

direct involvement found in the investigation than that person must be released on bail.

guidelines by supreme court :-----

Arnesh Kumar vs. State of Bihar and Anr [(2014) 8 SCC 273] are put into practice. Some of the guidelines laid down by the Supreme Court in Arnesh Kumar's case which they have held should be applicable, not only in cases filed under Section 498A, but also in cases of arrests under any penal provision for which the punishment is imprisonment up to seven years are as follows. Not only should they be strictly followed, but as held by the Supreme Court, judicial magistrates and police officers should be held liable for violation of guidelines laid down.

1. State Governments must instruct Police officers against routine arrests under Section 498A unless the conditions laid down under Section 41 of the CrPC (arrest without warrant) are followed;
2. All police officers must be provided a checklist of the provisions of Section 41 of the CrPC to follow strictly;
3. That checklist must be filled up in the course of every such arrest elucidating reasons and material to support the arrest and the same must be forwarded to the relevant Magistrate;
4. Magistrates must peruse the forwarded report and record their satisfaction mandatorily before awarding detention;
5. The decision not to arrest an accused, with written reasons for the same, should be forwarded to the magistrate within two weeks from the date of the institution of a case;
6. Notice of appearance in terms of Section 41A of CrPC should be served on the accused within two weeks from the date of

institution of the case, with written reasons; 7. Police officers will be liable for departmental action and punishable for contempt by the high court for failure to comply with these directions;

8. Magistrates authorizing detention without recording reasons will be liable for departmental action by the high court.

In the case of, *Chandra Bhan v. State*, the Hon'ble Court introduced the steps to prevent the misuse of this Section:

1. FIR should not be regularly reported as such;
2. Police endeavor should be to carefully screen complaints and then register FIR;
3. No case should be registered under section 498-A/406 IPC without the prior authorisation of DCP / Addl. DCP;
4. Before FIR registration, all possible reconciliation efforts should be made and, if it is found that there is no possibility of settlement, necessary steps should be taken in the first instance to ensure that stridhan and dowry articles are returned to the complainant;
5. The arrest of the key accused can only be made after a proper investigation and with the prior approval of the ACP / DCP has been performed;
6. In the case of collateral accused such as in-laws, prior approval of DCP should be there on the file.

### Time-bound trial and investigation

A swift trial in 498A cases would not only ensure redress for innocent persons involved in false allegations but can also lead to a fast resolution of the concerns of the actual donor victims. Of false cases,

the reduction of legal costs and the disposition of true prosecutions will also increase.

- Compoundable

After FIR is registered the case can not be dismissed if the married lady realizes that she has done wrong calculations and has to return home. To save tons on the establishment of a wedding, this could be produced compoundably. In fact, the continuity of criminal investigations is hindered in the circumstances of the marriage wherever the couple wants to end by mutual divorce.

- Family Counseling Centers

Several cases of men abused by wives or/and in-laws have returned to light-weight from entirely different elements of the world. Because as of now, there is no organization that can make these harried people and their family members incredibly easy to pay attention to their side of the story and set their goal of reading ahead of the government. The desire of the hour is to make family substance centers throughout the country to assist those families who have been aggrieved.

- Role of Women NGOs

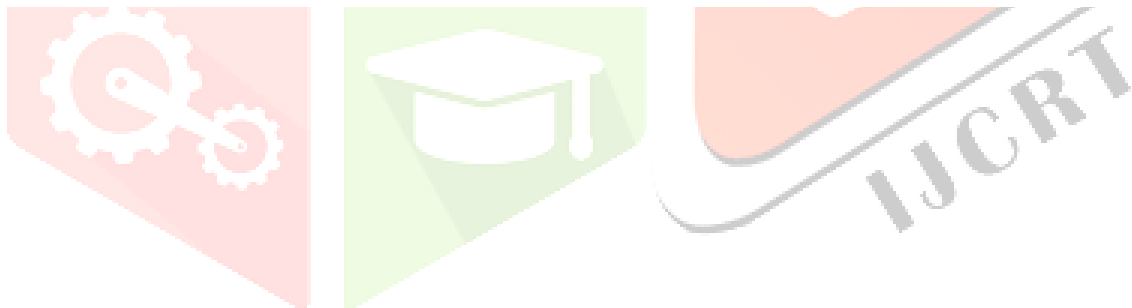
These organizations should properly study critique without prejudice to the girl, in the knowledge that most girls in the husband's family face harassment in law. No girl should be allowed to file a criminal complaint about frivolous affairs against her in-laws. In addition, these organizations will examine the abuse of the action and inform people about its implications.

- Penalty for making false accusations

If any court finds that the charges made in connection with the commission of the offense under section 498a of the IPC are false, tight action should be taken against the accused persons. It will deter people from going back to court with unclean hands and ulterior motives. Criminal charges should be brought against all officials who cooperate with falsely inculcating girls and their parent families.

- An investigation by Civil Authorities

Civil authorities disperse the inquiry into these crimes and only when the conclusion on the execution of the crime, cognizance will be taken. The government should raise awareness among officers about its misuse.



#### CONCLUSION:-----

Misuse of Section 498A is not a rumor, it is proved now, the woman laid down a false charge under the provisions of Section 498A IPC and created her husband under the rule. The boys have no laws to protect themselves from women's abuse. Moreover, in every district court case, section 498A IPC was misused. The cases were still unresolved, and the square measure of husbands paying maintenance to their wife just because

he's husband doesn't mean he's to blame for all the expenditures and benefits. The ladies are scammers as opposed to men in society. This section is used as a weapon by the wives to collect some cash from their husband's. It is the fact that Section 498A IPC is misused by the women to husbands and in-laws. The tests are finished and published already. This segment was seen to be keen on people. Section 498A is right to protect women, but it's actually harassment of husband and in-laws by a spouse. The effect on society of this example is terribly unhealthy. The Law Commission addressed the issue concerning abuse of this provision in its 243 reports on IPC Section 498A. The commission has recommended that the offense can only be made compoundable with the court's permission, and precautions must be taken before granting. The commission has recommended, however, that the offense should remain undeclared. The abuse does not mean that we are removing the usefulness of the laws that impact the wider public interest.

SOURCE:-----

1. government source
2. ipleaders.in
3. indiankanoon.org