
***Misuse Of Section 498A By Women Under
The Indian Penal Code, 1860***

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Abstract

The practice of dowry was one of the practices that was commonly used in our culture in India, a country where rituals and customs may have a significant societal impact. This application was at first seen as a godsend, but when the women fell victim to their husbands' and his family's greed, it took a bad turn and turned into a burden for society. Additionally, this application was used as an excuse to harass the women and treat them cruelly on top of physically harming them. Thus, the Government of India added Section 498A to the IPC by the Change Act 1983 in order to safeguard girls¹. However, in the current state of circumstances, there are instances where women abuse Section 498A of the IPC and other legal provisions like the dowry prohibition act. through the initiation of a lawsuit against her spouse and her in-laws and the discovery of the advantages of the support payment and other compensation.

There is a desire to alter section 498A in order to defend men and for hardworking women abusing the same. This part has created the biggest disadvantage in the current situation for males as being discriminated against and such laws are being victimized by ladies. The mistreatment of innocent males as a result of dowry laws is not a novel problem; rather, it has been escalating and is entirely the fault of the Indian judiciary². In numerous instances, men have even killed themselves after being abused by their wives to go to the police or court and have them put behind bars without cause.

Keywords: Dowry, Section 498A , Indian Penal Code, Misuse, Cruelty.

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¹ <https://acadpubl.eu/hub/2018-119-17/1/98.pdf>

² [file:///C:/Users/Downloads/9047-Article%20Text-16060-1-10-20210713%20\(2\).pdf](file:///C:/Users/Downloads/9047-Article%20Text-16060-1-10-20210713%20(2).pdf)

I. Introduction

India has also had a traditional culture where conventions and rituals are respected in addition to being observed. One of them that was practiced in our society since a very early time was the dowry. A bride's dowry, which she presents to her husband on the wedding day in the form of property or money, is provided to ensure the safety of the female offspring and is considered a blessing for the woman. It has been seen that the bride was subjected to abuse by the husband and their relatives in order to extract money from her parents' home as dowry. The Central government passed a law to protect women from the negative effects of dowry after becoming aware of this practice. In order to safeguard women, the Dowry Prohibition Act of 1961 and Section 498 A of the Indian Penal Code of 1860 were both passed. These laws protect the bride from her husband and their in-laws. The protection of women is assured by Section 498A. However, it has now come to light that this regulation has turned into a scourge for men in society. The women began abusing these laws in order to benefit themselves. The issue of whether Section 498A of the Dowry Prohibition Act of 1961 is dependable in society and serves to protect or benefit women is raised. Men began taking advantage of their women.³ The analysis of this issue revealed that no such statute exists to protect the ladies from exploitation. India's mistreatment of women dampens the country's beautiful heritage. The outdated customs of dowry and female subjugation are still praised in today's world of equal rights. Section 498A of the IPC was added with the intention of combating the threat of dowry and the treatment of women with cruelty. Whatever the legislature's intentions were when it passed s. 498A, it has now been reduced to a tool for harassment and pointless applications.⁴

II. Section 498A in the Indian Penal Code

The Indian Penal Code's Section 498A addresses any type of maltreatment of a married woman by her husband or her in-laws about dowry demands that are not legal. The victimized party may be the woman herself or a member of her family. The results of which lead to a fine and up to three years' worth of possible prison time.

³ <https://acadpubl.eu/hub/2018-119-17/1/98.pdf>

⁴ <file:///C:/Users/shrey/Downloads/SSRN-id3465901.pdf>

For the purpose of this section — Cruelty, as used in this section, includes:

- a) - Intentional actions that could drive a woman to suicide or cause serious injury or danger to her life, body or health (mental or physical).
- b) If such harassment is intended to compel a woman or a person related to her to comply with an illegal demand for property or valuable security, or if she or a person related to her harassing women for not complying with

As previously mentioned, in 1983, a new chapter XXA, titled "Of Cruelty by Husband or Relatives of Husband," was added to the Penal Code to address the widespread and unheard-of abuse of women by spouses and parents-in-law. As a result, the burden of proof for some claims was shifted under a subsequent change to the Evidence Act. Defendants plead not guilty to prosecutors for aiding the suicide of a married woman and the death of a woman within seven years of her marriage. The National Crime Records Bureau's huge number of recorded cases of cruelty and torture for the years 1997 (36592), 1998 (41376) and 1999 (43823), which show a rise of 5.9%, can give one an idea of the severity of the issue. The purpose of adding this chapter is to punish husbands and their families who abuse or abuse their wives in order to coerce them or one of their family members to comply with illegal solicitations or to encourage her to commit suicide. A husband who exposes a woman to cruelty faces three years in prison and a Section 498A fine to deter her crime.

III. Constitutional Validity Of Sec 498A

Both Article 14 and Article 20 of the Constitution are violated, it is claimed in the case of Inder Raj Malik and others vs. Ms. Sumita Malik[iii]. In circumstances like these, the Dowry Prohibition Act also applies. In light of this, double jeopardy—the combination of these two laws—is a legal concept. The Delhi High Court disagreed, concluding that the provision will not lead to double jeopardy. The Prohibition of Dowry Act's Section 4 differs from Section 498-A in that the latter deals with serious offenses and punishes those who demand the protection of valuables, women, or both. Section 4 does not require any cruel aspects; it merely requires a straightforward request for the transfer of dowry. A person may therefore be held responsible for both offenses against sections 4 and 498A of the Dowry Prohibition Act.

The court is given a great deal of latitude in this provision when it comes to interpreting the law's language and setting penalties. This clause is not unconstitutional. It does not give courts unbridled authority. It was noted and suggested that the law be changed in 2003 by the Justice Malimath Committee on Criminal Justice System Reforms of the Ministry of Home Affairs, Government of India. The Indian Penal Code's Section 498A offense can be amended appropriately to allow for bail and compound sentences. Just a few of the nobles' observations demonstrate the following, which is undeniably true:

Women can be more violent than men, though not necessarily all women (not necessarily all men). The IPC's Section 498A seeks to safeguard lives while endangering about a dozen innocent persons. The measure therefore breaches Article 14 of the Indian Constitution and is discriminatory. The disposal has aggravated the imbalance rather than bringing it back to balance. As a result, the right to life guaranteed by Article 21 of the Indian Constitution is not being upheld. The aforementioned factors make this viewpoint not only imbalanced but also unlawful.

Despite opposition from radical feminists and women's organisations, the Malimath Committee proposed revisions to this clause in 2003. In a survey report that challenged the amendments to Section 498A, the Social Research Center of India found that none of the instances it examined resulted in convictions solely on the basis of that section. The Hon. Supreme Court to declare 498A unlawful in accordance with Article 32 of the Constitution and, alternatively, to establish rules to limit its abuse. Additionally, the petitioner demanded harsh punishment for any women who showed up to court with dirty hands.

The Supreme Court reached the judgment that just because there is a chance that a legal provision could be abused does not make it unlawful by citing a number of previously decided decisions. More crucially, since the goal of section 498A was to prevent the dowry threat, it could not be overturned. The Supreme Court did not hesitate to point out that a significant number of cases have come to light in which the complaints under Section 498A of the IPC are not legitimate. However, since it is the responsibility of the legislature to enact laws, the courts must continue to operate within the bounds of the law until this happens.

IV. Concept Of Cruelty

The term "cruelty" covers both physical and psychological abuse. From direct and indirect evidence, it is possible to infer "willful conduct" as defined in Explanation (a) of Section 498A of the IPC. The word "cruelty" has been given a wider definition in the explanation clause connected to the section, and now includes:

- a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide, or to cause a grave injury or danger to life, limb or mental or physical health of the woman, or
- b) 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.⁵

The few instances of cruelty as a social evil in the contemporary age are as follows:

- **The persistent demand for dowry constitutes cruelty:** If a woman is subjected to torture or harassment of any type, whether it be physical or mental, as a result of the recurrent demand for dowry, this constitutes cruelty.
- **Repeatedly calling her ugly and mistreating her is cruel:** The wife was mistreated starting on the day they got married, and she endured mental torment as a result of being called ugly, among other insults. This is horrible, and it would torture any bride mentally.
- **False charges in court proceedings are cruel:** The wife was subjected to a number of malicious lawsuits in which she was the target of exceedingly bitter and offensive accusations, and she was tortured by the execution of search warrants and the confiscation of her personal belongings. When committed repeatedly, these acts are considered cruel.
- **Husbands' neglect of their obligations to provide for their wives and children constitutes cruelty:** In this case, the husband did nothing more than ignore his need to do so while simultaneously starving his wife and infant kid to death and wasting his money on vices like gambling.⁶

⁵ <https://blog.ipleaders.in/cruelty-under-the-hindu-law/>

⁶ State of Karnataka v. Moorthy, 2002 Cr. L J 1683 (Karnataka).

V. Exceptions To Cruelty

Section 23 (1) Condonation by the victim party

This Section states that any party may have his or her divorce petition canceled by any Court if, after filing the divorce petition, that party engages in any conduct that could be seen as condoning cruelty. For instance, Mr. A files a divorce case with the court after his wife treats him cruelly. He nevertheless visits her and aids in her recovery after learning of the accident. The Court will dismiss the husband's divorce petition because this behavior toward the respondent would be viewed as condoning cruelty.

Section 23 (1)(b) Effect of Condonation of Cruelty

If any party to the proceeding, whether they are defending the case or not, has denounced the cruelty, the court will dismiss their divorce petition.

Section 23(2) The fountain of love and affection

This Section only requires the Court to determine whether or not the parties' mutual love and affection has completely dried up before giving any divorce decision. If not, the Court makes every endeavor to mediate a settlement between the parties. However, it is challenging to ascertain the same.⁷

⁷ <https://blog.ipleaders.in/cruelty-under-the-hindu-law/>

VI. Abuse Of The Section 498A Of IPC, 1860

Basic analysis of section 498A demonstrates that a rule that was initially put in place to shield women from harassment and abuse by their partners or other family members regrettably has been handled inappropriately to produce problems for the husband and his family.

According to one of the Supreme Court's rulings, "However, by abusing the arrangement (IPC, 1860 498A - Dowry and Cruelty Law), another justifiable fear mongering can be produced. The setup is suggested to be used as a shield rather than a weapon by a skilled murderer ". In one of the cases, the court in particular came to the conclusion that the rules were being misused and exploited to the point where they were eroding marriage itself, which ultimately proved to be detrimental to society's overall welfare. However, the Supreme Court warned in one of its rulings that by exploiting the provision (IPC, 1860 498A - Dowry and Cruelty Law), a new type of judicial terrorism might be unleashed. The clause is not meant to be an assassin's tool, but rather a shield.

There is a "general concern" that Section 498A of the IPC has been subject to excessive overuse, according to the 2003 Malimath Committee report on reforms in the criminal justice system; as a result, the same report recommended amending the in question provision. Because it only provides protection to women in the struggle against a spouse and his family, Section 498A IPC, 1860 is occasionally criticised as being discriminatory towards sexual orientation. The truth is that a careful reading of the section revealed some challenging concerns that may affect the broader public.⁸

Why do people misuse the provision 498A IPC, 1860?

There are certain specific reasons stated below:

- a) Legal Extortion: A get-rich-quick technique to extort substantial sums of money.
- b) Prior Relationship - The wife is stuck in a previous relationship. She gets married to appease her parents, then abuses the 498a divorce statute to get a divorce.
- c) Adultery - Adulterous women employ 498A as a negotiating tactic.

⁸ <https://www.legalserviceindia.com/legal/article-8141-misuse-of-section-498a-in-today-s-era-and-its-protection.html>
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- d) Domination: The wife wants complete control over the husband's finances and social interactions, as well as for him to reject his parents and siblings.
- e) Custody - Refuse to provide the father's family visitation rights with the kids.
- f) Fraudulent marriages, in which the bride (and her family) conceal the extent of her education or the state of her mental health; and when the person who entered into the marriage without knowing all the circumstances is legitimately sought to be released;⁹

VII. Supreme Court Instructions To The Police For Preventing The Abuse Of Section 498A

In *Arnesh Kumar v. State of Bihar*- SC, the Supreme Court provided some very important guidelines regarding "when police may arrest without warrant" and matters incidental thereto, in an effort to reduce the arbitrary use of the power of arrest under Section 498A IPC. The petitioner in this instance, who was anticipating arrest in a case filed under Section 498A, filed an SLP before the Honorable Supreme Court after his attempt to obtain such relief was denied by the high court.

When delivering the ruling on behalf of the honorable Supreme Court, Justice Chandramauli Kr. Prasad noted the flagrant abuse of Section 498A, noting that "The fact that Section 498-A is a cognizable & non-bailable offense has lent it a dubious place of pride among the provisions that are used as weapons instead of shields by disgruntled wives." The easiest form of harassment is to use this clause to have the husband and his family members jailed. Bedridden grandfathers and grandmothers of husbands, as well as their sisters who have been overseas for decades, are frequently detained.

The court ordered the police to only make arrests under Section 498A conditions and not as a matter of course. When police present an accused person before a magistrate for continued detention, the court emphasizes once more the seriousness of the magistrate's responsibility to ensure that the requirements of Section 41C of the Criminal Procedure Code are met. The court finished by warning the police officers and magistrates that departmental action would result from their failing to follow the given instructions.¹⁰

⁹ <https://www.ijlmh.com/wp-content/uploads/2019/09/A-Study-on-Misuse-of-Section-498A-of-Indian-Penal-Code-1860.pdf>

¹⁰ https://www.worldwidejournals.com/paripex/recent_issues_pdf/2015/September/September_2015_1492178619_81.pdf pg. 8

VIII. The Judicial Trend Highlighting The Rampant Misuse Of Section 498A

Sushil Kumar Sharma's case and numerous others have established that when something is misused, it is the "activity" and not the "section" that needs to be repealed. The courts have repeatedly dismissed baseless allegations brought under Section 498A IPC by invoking their inherent authority under Section 482. Some of these instances are covered below:

The wife's plea for a divorce was denied by the family court in *Saritha v. R. Ramachandra - A.P.* on the basis that the accusations made against the husband could not be verified. During the hearing before the high court, the court discovered that the wife had filed a criminal complaint against the husband in accordance with Section 498A of the IPC.

It was clearly stated by the high court through Justice B.S.A. Swamy that "educated women are seeking courts for divorce and resorting to procedures against their in-laws under 498A IPC, implicating not only the husbands but also their family members, whether they are in India or abroad. Simply put, this is an abuse of favorable rules designed to shield women from dishonest husbands."¹¹

The Law Commission and Parliament were given the option of maintaining 498A in its existing form or changing it to make it a non-cognizable and bailable offense, lowering its severity. The wife had filed a 498A complaint against her husband's relatives, including his five sisters, who were the petitioners in the current criminal quashing case, in the matter of *Harjinder Kaur & others v. State of Punjab*. One of the sisters had been married and residing overseas since 1994, five years before the divorced couple were married, and another was under 15 years old, making their involvement implausible, according to the high court. The high court continued by observing that "it appears that a wider net has been knit so as to rope in the present petitioners."¹²

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¹¹ <https://thelegallock.com/misuse-of-section-498a-indian-penal-code-1860>

¹² <https://lexpeeps.in/constitutional-validity-and-misuse-of-section-498a-of-ipc/>

IX. Conclusion

Its inclusion in the legislation was done so that actual victims of cruelty committed by the husband and his family may receive justice. But after examining the numbers, it appears that section 498A is being used more as a tool to harass males than as a defense for the women who are the targets of cruelty.¹³ More than just use is the misuse. Therefore, it is imperative to take the required, stringent measures to stop this unlawful conduct; otherwise, the misuse of this section will stifle the real, sincere calls for assistance from the actual victims of domestic violence and cruelty. The overall conclusion is that although Section 498-A of the IPC, 1860 was created to protect women from the brutality of their husbands and his relatives, it is currently being exploited. By treating their spouse and his relatives cruelly and filing charges against them under Section 498A of the IPC, 1860, which addresses "Cruelty by husband or relatives of husband," these women are making the law work against them. It is evident from the judicial tendency and the findings of numerous commissions that section 498A has turned into a necessary evil. With the caveat that its abuse must be limited, it must continue to be included on our law books for the much-needed protection of women. Following the verdict in the Arnesh Kumar case, it appears that the police and magistrates will perform their jobs more diligently, significantly reducing the abuse of section 498A without undermining its value in legitimate circumstances. From this point forward, specific legal actions should be taken as quickly as possible to stop the spread of "legal terrorism" by abusing legal provisions.¹⁴

¹³ <https://acadpubl.eu/hub/2018-119-17/1/98.pdf>

¹⁴ <https://www.drishtiiias.com/daily-updates/daily-news-analysis/misuse-of-section-498a-ipc>