SUPREME COURT GUIDELINES GIVING NEW DIMENSIONS TO SECTION 498 A IPC - LEGISLATIVE HISTORY AND DEVELOPMENTS IN THE LAST THREE DECADES

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We must ask ourselves how far we have come. What distinguishes us in what we perceive to be a civilized society, from the State of Nature theorized by Hobbes, Locke and Rousseau in the 17th Century? The state of nature, described by Thomas Hobbes as "*bellum omnium contra omnes*," or "the war of all against all," in which only the fittest survived in the society of men, without a common power.

It is a well-known fact that no Society can succeed without the rule of law or a necessary social order, which is an essential prerequisite for peace, liberty, stability, economic growth, development, and host of other characteristics which we now take for granted. This profound fact has resonated in our minds when we are reminded of horrific atrocities that are occurring on a daily basis in our society, from the Nirbhaya gang rape to the Nithari killings, and the list goes on. We are quick to condemn, in the most vociferous manner, inhumane and barbaric atrocities committed on fellow citizens and stand united when faced with such an outright threat to the Rule of Law that we have strived to achieve. On the other hand, we ought to ask ourselves, whether this outrage in the face of an obvious threat would be equally demonstrated when encountered with an implicit threat to our liberty and equality.

The Indian Legislature has passed various enactments with the intention of protecting the rights of women and to eliminate cruelty against women in all forms. Some of these significant Legislations are The Protection of Women from Domestic Violence Act 2005, The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013, The Commission of Sati (Prevention) Act 1987, the Dowry Prohibition Act 1961, the Immoral Traffic (Prevention) Act 1956, The Indecent Representation of Women (Prohibition) Act 1986, The National Commission for Women Act 1990 and The Indian Penal Code 1860. These issues are not peculiar in the Indian context and such laws are enacted in various countries with similar object. Some of these laws worth mentioning are The Australian Domestic Violence and Protection Orders Act 2001, The Japan Prevention of Spoucal Violence and the Protection of Victims 2001, The Malaysia Domestic Violence , The Mauritius Protection from Domestic Violence Act 1997, The Singapore Women's Chapter 1961, The South Africa Domestic Violence Act 1998, The Sri Lanka Prevention of

Domestic Violence Act 2005, The United Kingdom Domestic Violence, Crime and Victims Act 2004 and the Zimbabwe Domestic Violence Act 2006.

One of the evils which has plagued the Indian society is the crime relating to Dowry. Even though the Dowry Prohibition Act came into force in the year 1961, the crimes relating to it seemed to have been on the increase which has lead to the requirement to bring in more stringent Legislations. One set of amendments in this direction which amended the Indian Penal Code, the Code of Civil Procedure and the Indian Evidence Act have been introduced by the Criminal Law (Amendment) Act 1983 (Act No 43 of 1983) and the Criminal Law (2nd Amendment) Act 1983 (Act No 46 of 1983.

One of the amendments introduced by the 2nd Amendment Act is Section 498A which reads as follows:

> "*Husband or relative of husband of a woman subjecting her to cruelty— Whoever, being the husband or the relative of the husband of a woman, subjects 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.*
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> *Explanation: For the purpose of this section, "cruelty" means*
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> a. *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*
> 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.*

This provision of law has now had a history of three decades and has been the subject matter of various judgments of all Courts in India including the Supreme Court of India. The Courts have gone on expanding and explaining the scope and ambit of this provision of law and Courts have also tried to adapt the provision to various new developments and requirements which have arisen from time to time. From the laudable objective of this provision contained in the Amending Act of 1983,

it has now reached a stage where the Supreme Court in *Arnesh Kumar vs. State of Bihar and Anr* reported in (2014) 8 SCC 273, has held that Section 498A has a "dubious place of pride amongst the provisions that are used as a weapon rather than a shield by disgruntled wives".

Indian Society has come a long way since 1983, when Section 498A was incorporated into the Indian Penal Code by the Criminal Law (Second Amendment) Act, 1983. The same Amendment which also added Section 113 to the Indian Evidence Act that presumed the abetment of suicide of a woman by her husband or a relative of her husband in the event that she committed suicide within 7 years of the date of her marriage and it could be shown that her husband or his relatives had subjected her to cruelty. It is apparent, more than thirty years after the Amendment that what was promulgated as a legislation to criminalize the victimization of helpless women against domestic violence and dowry, has now become the double-edged sword of the very society that rooted for it to begin with. Perhaps a glance at the legislative intent behind the inclusion of Section 498A into the Indian Penal Code, would give us some perspective on the change that it has undergone in terms of its usefulness of implementation.

In the 1980's and before, incidences of "Dowry death" and domestic abuse as a result of dowry or lack thereof, were rampant and surely and steadily rising. Many women suffered and continue to suffer atrocities in silence, out of fear and helplessness with being unable to change their situation in life. Fear of divulging the truth of their domestic situation, lest graver offences be meted out to them and unable to muster up the courage to do anything about it, thousands of women were tortured and killed and their lives destroyed due to nothing other than greed. In order to prevent and make punishable instances of cruelty against women and the subjection of women to brutality and inexplicable exploitation, Sections 498A and Section 304 B (which defines dowry death) were incorporated into the Indian Penal Code by Act No. 46 of 1983 and 43 of 1986. With the intent of protecting women from marital violence and abuse, the practice of Dowry and other related crimes was criminalized in the Dowry Prohibition Act, 1961, the Criminal Procedure Code, the Protection of Women from Domestic Violence Act, the Evidence Act, and of course the Indian Penal Code.

Significant amongst the above legislations was the Dowry Prohibition Act, 1961 which consolidated the anti-dowry laws that were in existence and formed a

uniform code on dowry prohibition that was to be read in consonance with the relevant Sections of the Indian Penal Code.

A perusal of the Statement of Objects and Reasons of the Criminal Law(2nd Amendment) Act of 1983 explains the reasons that led to the Amendment to be that a Joint Committee of the Houses, examined the working of the Dowry Prohibition Act, 1961 and gathered that cases of cruelty by husbands and relatives of the husband which culminated in suicide or murder of helpless women constituted only a small fraction of the cases involving such cruelty which resulted in general amendments which not only tried to address the issue of dowry deaths but also other forms of cruelty and harassment.

India is also party to a host of International Human Rights Agreements, Covenants and Instruments, which contemplate the abolition of dowry related crimes, many of which are albeit on a theoretical level. Among these instruments are the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was ratified by India in 1994. CEDAW is noteworthy as it contains specific reference to the abandonment of "traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles which perpetuate widespread practices involving violence or coercion, such as dowry death."

It would be of relevance to note that many other nations also have laws relating not only to cruelty against women, but cruelty with respect to Dowry in particular, which include Nepal, Bangladesh, Pakistan and Kenya, among others. Nepal has an enactment called the "Social Customs and Practices Act" that criminalizes the practice of dowry. Bangladesh has a "Dowry Prohibition Act, 1980," which criminalizes the taking and giving of dowry with a maximum penalty of 5 years of imprisonment. This Act was amended in 1986, which made the penalty for claiming Dowry a non-bailable and non-cognizable offence,[1] with certain exceptions in the case of persons to whom Sharia Law applies. The equivalent enactment in the case of Pakistan is the "Dowry and Bridal Gift (Restriction) Act, 1976 which restricts the amount of Dowry/Mehr that can be given to PKR 5000/-. However, there is no mention of dowry specifically in the Penal Code of Pakistan.

[1] Ordinance 36 of 1986

Some of the judgments of the Supreme Court which have interpreted the width and ambit of Section 498A are,

a) Vanaka Radhamanohari vs Venaka Venkata Reddy (1993) 3 SCC 4 affirmed in Sarah Mathew vs Institute of Cardiovascular Diseases (2014) 2 SCC 62; The Supreme Court held that the maxim *vigilantibus, et non dormientibus, jura subveniunt* is not applicable to offences relating to cruelty to women in matrimonial cases. The question should be judged in the light of Section 473 of the CrPC and therefore the limitation prescribed in Section 468 of CrPC would not strictly apply.

b) Ramesh Kumar vs State of Chatisgarh (2001) 9 SCC 618; It has been held that Section 498 A and 306 of the IPC are independent provisions and constitute different offenses. Proving of offense under one provision does not depend on the other.

c) Giridhar Shankar Tavade vs State of Maharashtra (2002) 5 SCC 177; Supreme Court has explained as to what constitutes cruelty. Supreme Court has held that the word cruelty as expressed by the Legislature is attributable to two specific instances explained in the explanations. One has an element of physical injury and the other lacks the element of physical injury. One is patent and the other is latent. However, both are equally serious in nature. Court has also held that even under Article 136, Court can take note of mis-appreciation of evidence by the lower Courts if it leads to utter perversity.

d) Reema Aggarwal vs Anupam (2004) 3 SCC 199; The term husband has been defined to mean and specifically include such persons who contract marriages ostensibly and cohabit with such women in the purported exercise and role as a husband. Such person would be amenable to be punished under Section 498A. A person indulging in bigamy comes within the sweep of the said provision and there can be no impediment in law for liberal construction in this regard.

e) Ramesh vs State of TN (2005) 3 SCC 507; The starting point of limitation would be when the woman leaves the matrimonial home or the last act of cruelty.

f) State of A.P vs M Madhusudhan Rao (2008) 15 SCC 582; Harassment simplicitor is not cruelty. Only when such harassment is committed for the purpose of coercing a women or any other person to meet an unlawful demand for property etc. alone would amount to cruelty punishable under Section 498 A.

g) 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 property.

h) 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.

i) Bhaskar Lal Sharma vs Monica (2009) 10 SCC 604; Supreme Court has restated the essential ingredients of the offense and the pleadings necessary.

j) State of UP vs Santosh Kumar (2009) 9 SCC 626; Examining the distinction of Section 304B and 498A, it has been held that the demand for dowry is an essential ingredient to attract Section 304B whereas under Section 498A, the same is not a basic ingredient of the offense.

k) Lakshman Ram Mane vs State of Maharashtra (2010) 13 SCC 125 ; Illicit relationship of a married man with another woman would answer the definition of cruelty under Section 498A.

l) Pinakin Mahipatray Rawal vs State of Gujarat (2013) 10 SCC 48 ; It is held that the burden of proof under Section 113 A is on the prosecution when the offense alleged is under Section 498 A of IPC. Only if the prerequisites under Section 113 A are satisfied, the burden would shift onto the accused to rebut the presumption.

m) S Mehaboob Basha vs State of Karnataka (2014) 10 SCC 244 ; The Court has held that the offense of ill treatment is committed in closed doors and one can hardly expect any witness , much less an independent witness. Therefore, examination of an independent

witness to the acts of ill treatment cannot be insisted upon and other factors and circumstances should be considered.

n) Preeti Gupta and Anr vs State of Jharkhand and Anr (2010) 7 SCC 667: It has been held that members of the bar have an enormous social responsibility and an obligation to ensure that social fiber of family life is not ruined or demolished by filing complaints by exaggerating small incidents and the provision itself needs a relook in the light of public opinion.

o) Arnesh Kumar vs State of Bihar (2014) 8 SCC 273; Supreme Court has termed Section 498A as a provision having dubious place of pride and a weapon rather than a shield of a disgruntled wife. Various directions are issued to the State Government, Police and Magistrates in dealing with complaints under Section 498A. This judgment also considers the statistics of complaints in great detail

There has been a considerable shift in social circumstances and norms since the implementation of anti dowry laws in 1983, when Section 498A was incorporated into the Indian Penal Code. The term cruelty, which was already wide enough as per Section 498A, included vague descriptions such as "infliction of physical or mental harm" to the "body or health of the woman," started to acquire a new meaning. The ambit of the term cruelty under the Section started to expand exponentially as time passed and began to include frivolous claims and accusations that started being used by womenfolk merely to fulfill vindictive ulterior motives directed at unsuspecting husbands. In the course of time, a spate of reports of misuse of the Section due to exaggerated allegations and sometimes-baseless implications on relatives of husbands surfaced.

The Statistics of the Law Commission of India Report No. 243 of 2012 show that in the year 2011, 3,40,555 cases under Section 498A were pending in various Courts and there were as many as 9,38,809 accused. The conviction rate in these cases, according to the National Crime Records Bureau is 21.2%, which is a low average in comparison with the number of cases filed. The Report also indicates that Complainant women do not usually evince an interest to pursue such Complaints to their logical end, and instead chose to enter into out of Court settlements. There have

been hundreds of circumstances of cases being filed under these Sections and on investigation being found baseless and hollow. All these facts and the array of statistics on the subject, evidence the misuse that Section 498A is capable of and is being put to, which ought to be stopped at once.

The Supreme Court of India in *Sushil Kumar Sharma vs. Union of India* reported in JT 2005 (6) SC 266 has acknowledged the fact that Section 498A has in many instances been used with an oblique motive and that merely because a provision is intra vires, it does not give license to an unscrupulous person to use it as a tool to make good a personal vendetta. The Court has gone so far as to recognize the "legal terrorism" that can arise out of such misuse. While referring to the judgment in *State of Rajasthan v. Union of India*, reported in [1977] 3 SCC 592 in which it was held that, "it must be remembered that merely because power may sometimes be abused, it is no ground for denying the existence of power," the Court, in Sushil Kumar Sharma also held that the role of investigating agencies must be that of a "watchdog" as opposed to a "bloodhound," and that it must be their effort to see that innocent people are not made to suffer on account of unfounded, baseless and malicious allegations and instead that the truth should prevail and the guilty, as opposed to the innocent must be punished.

Various High Courts across the Country have noted several instances of omnibus allegations being made against the husband and his relatives to such an extent that the crime allegedly committed often exceeds the scope of grant of anticipatory bail under Section 438 of the Criminal Procedure Code, 1973. The allegation of cruelty under Section 498A, is often coupled with a host of other allegations. Many times Judges are unwilling to grant anticipatory bail due to the severity of the accusations or the possibility of public censure in sensitive cases such as these. Since the grant of anticipatory bail remains discretionary, hapless accused are left languishing in Jails on the strength of mere accusations, having to bear the brunt of the trauma that incarceration comes with, in terms of the persons own psyche, as well as society's ostracism. There is a pressing need to exercise caution in cases of arrest of husbands or relatives under Section 498A, which has been observed by High Courts across the country as well as by the Supreme Court.[2]

[2] Reference may be made in this context to the decision of Delhi High Court in *Chandrabhan Vs. State* (order dated 4.8.2008 in Bail application No.1627/2008) and of the Madras High Court in the case of

It is high time that the host of judgments of the Supreme Court that have elucidated a series of guidelines to be followed in cases under Section 498A such as *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.

It is suffice to say, that while Section 498A may have been legislated upon with very high ideals, its implementation in a modern context has severely failed to

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Tr. Ramaiah Vs. State (order dated 7.7.2008 and 4.8.2008 in MP No.1 of 2008 in Crl. O.P. No.10896 of 2008).

live up to its object. The judgment of the Supreme Court in *Preeti Gupta and Anr vs. State of Jharkhand and Anr.*, reported in (2010) 7 SCC 667, sums up the needs of the hour perfectly. It has been observed by the Supreme Court that, "The learned members of the Bar have an enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints." It was also observed that a "serious relook of the entire provision is warranted by the legislation," and that "It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law." The judgment in Preeti Gupta was directed to be sent to the Law Commission and the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society. While we still await those changes, the judgment is an important reminder to us of our role and responsibility as lawyers to advise our Clients soundly, and prevent gross injustice from uprooting the very fabric of our society.