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**Stories of anonymous identifies enclosed within the four walls (498-A IPC)**

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**ABSTRACT:**

The paper talks about what 'cruelty' or 'marital cruelty' actually is to our society and to the parties actually engaged in the cruel act i.e. the husband and his relatives along with the wife and her relatives. The ingredients as to what constitutes cruelty like harassment have been explained to the core. Also, the constitutional validity of the Section 498-A of the Indian Penal Code has been checked. The limit for the jurisdictional powers of the courts in the matter of deciding cases regarding cruelty has been determined along with other things like their presumption, etc.

**Keywords:**

Section 498-A, Indian Penal Code, Cruelty, Harassment, Marriage, Coercion

**INTRODUCTION:**

The ears may hear rumors but the eyes see the truth and we tend to believe our eyes more than ears. We cannot see or even hear what happens inside a room or inside a house between a husband and his wife as it would infringe on their Right to Privacy. We tend to hear what happens from their mouths covering up the truths that they face. The truth that we see when that wife is killed or has committed suicide or has been thrown out of her house or the marks of violence she bears on her face. We see the stories of these anonymous identities known as wives, enclosed within the four walls, only after such incidents. Section 498-A of the Indian Penal Code was inserted as an independent chapter with effect from the 25<sup>th</sup> of December 1983 by the Criminal Law (Second Amendment) Act of 1983. As said by the Supreme Court of India in the *B.S. Joshi v State of Haryana*<sup>1</sup> the object of introducing the Section was to punish the husband and his relatives who torture the wife in order to satisfy their unlawful demands and even push her to death.<sup>2</sup>

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<sup>1</sup> (2003) 4 SCC 675.

<sup>2</sup> The Indian Penal Code, 1860, Sec 498-A, No. 45, Acts of Parliament, 1860 (India)

**Research Methodology:**

The study used a combination of descriptive and analytical research. The study explains the who, what, and how of the issues raised. The paper has its source mainly engraved in various books of the Indian Penal Code written by many authors both domestic and international.<sup>3</sup> The study has also given case laws to understand the descriptions with real-life examples and understand the issue to its core. The paper has also used some online sites to reach out to such case laws.

**Review of Literature:****What is Section 498-A of the Indian Penal Code:**

Section 498-A of the Indian Penal Code defines the situation when a wife gets subjected to cruelty by her husband and his relatives. The Section says that whosoever be it the husband or the relative of the husband of a woman, shows cruelty to that woman then they are liable to be punished with a simple imprisonment of a particular term which may increase up to 3 years of duration<sup>4</sup>.

**Ingredients of Section 498-A:**

The following are the ingredients necessary for the wife or anyone related to her to file a case under this Section:-

- The woman who is filing the case or for whom the case is being filed by her relative should be a married woman and
- The married woman should have been subjected to cruelty and
- The cruelty that the married woman suffered was caused either by her husband or by any relative of her husband and the cruelty done should fit in the definition of 'cruelty' under Section 498-A of the Indian Penal Code.

**Meaning of Cruelty:**

The Section also defines the meaning of the word 'cruelty' as<sup>5</sup>:-

<sup>3</sup> ccsuniversity, <https://ccsuniversity.ac.in/bridge-library/pdf/MPhil%20Stats%20Research%20Methodology-Part1.pdf>, (last visited Aug. 29, 2023).

<sup>4</sup> Indian Penal Code, 1860, § 498-A, No. 45, Acts of Parliament, 1860 (India).

<sup>5</sup> Indian Penal Code, 1860, § 498-A, No. 45, Acts of Parliament, 1860 (India).

- A. Any conduct that is done willfully and the conduct is of a nature that is likely to cause the wife to commit suicide or to cause some serious danger or injury to her life, limbs, or her health both mental and physical.
- B. Any harassment that is done to the wife with a motive of coercing her or any person who is related to her, for meeting any demands that are unlawful in nature like any property or some valuable security, or the harassment done because the wife or anyone related to her was unable to meet their demands.

It has been observed in the Sukumar Mukherjee case<sup>6</sup>, that the word cruelty has not been defined under the Hindu Marriage Act, 1955. The reason for the absence of the definition can be that human behavior is diverse and infinite in nature so it is impossible to come to a particular or singular meaning of 'cruelty' including all the acts that can be done in many ways by different humans. Whether the acts done amount to cruelty or not will depend on the facts of the case. Whether torture is done or not is a matter of fact of the case<sup>7</sup>.

The Supreme Court is of the opinion that cruelty should be understood with respect to Section 498-A and there should be a continuous repetition of the cruelty done to the victim<sup>8</sup>. The cruelty done does not necessarily have to be physical in nature, as mental torture or even abnormal behavior can also amount to cruelty and harassment<sup>9</sup>.

In Mohd. Hoshan case<sup>10</sup> was a continuous taunting and teasing of the deceased by the appellant on various grounds which eventually resulted in the victim taking her own life. In Sushil Kumar Sharma v. Union of India<sup>11</sup>, the Supreme Court differentiated between the meaning of cruelty given under Section 306 and Section 498-A. Section 306 applies when the suicide of the victim is abetted and intended. Section 498-A applies when the husband or his relatives perform cruelty on the wife which drives that wife to commit suicide. Therefore there is a difference in the intention of the culprits.

It has been observed in the Sarla Waghmare case<sup>12</sup> that harassment might take place by the husband or his relatives to the wife but the wife has to prove that the harassment was so harsh

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<sup>6</sup> Sukumar Mukherjee v. Tripti Mukherjee, 1991 SCC OnLine Pat 295, AIR 1992 Pat 32.

<sup>7</sup> Arvind Singh v. State of Bihar, (2001) 6 SCC 407.

<sup>8</sup> (2002) 5 SCC 177.

<sup>9</sup> Gananath Pattnaik v. State of Orissa, (2002) 2 SCC 619.

<sup>10</sup> Mohd. Hoshan v. State of Andhra Pradesh (2002) 7 SCC 414.

<sup>11</sup> (2005) 6 SCC 281.

<sup>12</sup> Sarla Prabhakar Waghmare v. State of Maharashtra, 1989 SCC OnLine Bom 355, 1990 Cri LJ 407.



to compel her to end her life or compel her to fulfill any unlawful demand like property, etc. For example, if a person does two marriages and that person allows his first wife along with her child to enter the second wife's house then such an act of the husband cannot amount to any cruelty done to the second wife<sup>13</sup>.

Cruelty has now been added to a number of other Acts. Cruelty has been added as a ground of divorce under Section 2(xiii) of the Dissolution of Muslim Marriages Act, 1939<sup>14</sup>, Section 27(d) of the Special Marriage Act, 1954<sup>15</sup>, and the Hindu Marriage Act, 1955<sup>16</sup> (after the 1976 Amendment in which Cruelty has been given a wider meaning).

### **Meaning of Harassment:**

It has been held in the Ashok Shukla case<sup>17</sup> that it is not an isolated or a singular act but it is a series of acts constituting cruelty. If the proof for the demand of dowry or any such unlawful demand is absent, then harassment of the wife would not constitute the meaning of 'cruelty' under 498-A<sup>18</sup>.

In *Kailash v. State of Madhya Pradesh*<sup>19</sup>, the death of the wife seemed not to occur under normal circumstances. It was later proved that there were constant demands for dowry from the wife and her family. It was also proved that the wife was harassed and tortured just before her death. The accused was punished by the Trial court under Section 304-B of the Indian Penal Code but no separate punishment was given under Section 498-A. This was affirmed by the High Court. The accused crossed almost eight years of imprisonment, while maintaining his conviction his custodial sentence was reduced to eight years.

In *State of Andhra Pradesh v. M. Madhusudhan Rao*<sup>20</sup>, it was observed by the Supreme Court that to apply Section 498-A of the Indian Penal Code, harassment simply does not constitute the meaning of cruelty under 498-A and only when along with the harassment there will be some coercion or unlawful demand of something either to the wife or to any of her relatives.

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<sup>13</sup> *Kantilal Martaji Pandor v. State of Gujarat*, (2013) 8 SCC 781.

<sup>14</sup> *Asmabai v. Umer Mahomed*, AIR 1941 Sind 23.

<sup>15</sup> *A.P. Marry v. K.G. Raghavan*, 1978 SCC OnLine MP 32, AIR 1979 MP 40.

<sup>16</sup> Section 13(1)(i-a), Hindu Marriage Act, 1955.

<sup>17</sup> *Ashok Chhotelal Shukla v. State of Maharashtra*, 1987 Cri LR 164 (Guj and Mah).

<sup>18</sup> *Girdhar Shankar Tawade v. State of Maharashtra*, (2002) 5 SCC 177.

<sup>19</sup> (2006) 12 SCC 667.

<sup>20</sup> (2008) 15 SCC 582.

In the Bikshapathi case<sup>21</sup>, the husband had the habit of drinking and coming home late at night. On top of this, he was beating his wife and was constantly demanding dowry. The Court held that all these circumstances taken together amounted to cruelty. It is to be noticed that merely drinking every day and coming home late at night did not amount to cruelty<sup>22</sup>.

In the Wazir Chand case<sup>23</sup>, the husband and the father-in-law repeatedly asked for Dowry from the wife and she was harassed by them. The newly married woman here was burnt to death but it could not be established whether her death was a murder or an abetted suicide. Charges under Section 306 of the Indian Penal Code (abetment of suicide) and Section 498-A are independent of each other and acquittal of one Section does not lead to the acquittal of another Section. But for the justification of a conviction done under the 498-A, there must be some clear and logical evidence<sup>24</sup>.

It should be noted that in order to convict someone under the Section 498-A it is not necessary that demand for the property from the wife should be in direct connection with cruelty. In *Modinsab Kasimsab Kanchagar v. State of Karnataka*<sup>25</sup>, it has been held that cruelty was carried out when the accused were demanding money from the wife's parents for the repayment of their own loan. Hence the case will attract Section 498-A. When there was a demand for money from the wife worth Rs. 1 Lakh to run a pig farm and the demand was not being fulfilled the wife was thoroughly harassed, In such a situation also Section 498-A will come into play<sup>26</sup>.

### **Meaning of Husband:**

The term "husband" is used to represent or signify a particular person who has entered into a matrimonial alliance and under the veil of such alliance subjects the women whom he married to various forms of cruelty misusing his husband's status. Therefore, if the husband marries another woman making her his second wife while the subsistence of his first marriage, then that second wife can take recourse to Section 498-A<sup>27</sup>.

### **Meaning of Relative:**

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<sup>21</sup> P. Bikshapathi v. State of Andhra Pradesh, 1988 SCC OnLine AP 317, 1989 Cri LJ 1186.

<sup>22</sup> Jagdish Chander v. State of Haryana, 1987 SCC OnLine PandH 930.

<sup>23</sup> Wazir Chand v. State of Haryana , (1989) 1 SCC 244.

<sup>24</sup> Girdhar Shankar Tawade v. State of Maharashtra , (2002) 5 SCC 177.

<sup>25</sup> (2013) 4 SCC 551.

<sup>26</sup> Pardeep Kumar v. Union Admn, (2006) 10 SCC 608.

<sup>27</sup> Reema Aggarwal v. Anupam, (2004) 3 SCC 199.

As there is no statutory definition explaining what exactly a relative means, the term “relative” must be assigned a meaning of its own that is commonly understood as to who constitutes a relative. Ordinarily the term “relative” would include mother, father, husband or wife, daughter, son, sister, brother, niece or nephew, grandson or granddaughter of an individual or the spouse of any person. Usually, the definition of as to who a relative is depends on the nature of the statute. It principally means a person related by blood, marriage, or adoption. In no way can a girlfriend or even a concubine of the husband or the boyfriend of the wife can be termed as a relative<sup>28</sup>. Similarly, a foster sister of the accused husband under Section 498-A, who does not belong to his family and does not qualify as a relative in any way possible under Section 498-A cannot be tried for such an offense<sup>29</sup>.

If the husband lives with some other woman other than his wife, it can be an act of cruelty towards his wife or may amount to judicial separation or divorce. But in no way will it attract Section 498-A of the Indian Penal Code. Moreover, Section 498-A being a penal law, should have a rigid construction<sup>30</sup>. But in *Pinakin Mahipatray Rawal v. State of Gujarat*<sup>31</sup>, it was observed by the Supreme Court that if the extra-marital affair is of such a nature it is likely to drive the wife to kill herself then such a case would attract the conviction by Section 498-A. Therefore a certain high level of mental cruelty should be portrayed in the actions of the husband in order to bring him under the ambit of Section 498-A while he is living with some other woman<sup>32</sup>.

### **Constitutional Validity of Section 498-A:**

In *Inder Raj Malik and others v. Mrs. Sumita Malik*<sup>33</sup>, it was contended that Section 498-A of the Indian Penal Code is ‘ultra vires’ Article 14 (equality before law) and Article 20 (2) (double jeopardy) of the Indian Constitution. It was observed that the Dowry Prohibition Act, of 1961 also deals with similar types of cases as of Section 498-A, and therefore both statutes together create a situation commonly known as double jeopardy under Article 20(2) of the Indian Constitution. However, the Delhi High Court negated this contention and held that Section 498-A does not create a situation for double jeopardy. Section 498A can be very well

<sup>28</sup> *Sunita Jha v. State of Jharkhand* (2010) 10 SCC 190.

<sup>29</sup> *Vijeta Gajra v. State (NCT of Delhi)*, (2010) 11 618.

<sup>30</sup> *U. Suvetha v. State*, (2009) 6 SCC 757.

<sup>31</sup> (2013) 10 SCC 48.

<sup>32</sup> *Ghusanhai Raisangbhai Chorasiya v. State of Gujarat*, (2015) 11 SCC 753.

<sup>33</sup> 1986 Cri LJ 1510 (Delhi).



differentiated from Section 4 of the Dowry Prohibition Act because in the latter merely some unlawful demand for Dowry or other such property then the accused are punishable where the existence of 'cruelty' is not necessary, whereas Section 498A deals with the more serious form of the offense. Section 498-A prohibits such unlawful demands of property or some valuable security from the wife or her relatives and she is shown cruelty when such demands are not fulfilled. Hence if a situation arises, an accused can be convicted under both the statutes for both the offences that are punishable under Section 4 of the Dowry Prohibition Act and this Section 498-A of the Indian Penal Code. Therefore Section 498-A was held not ultra vires.

In *Giridhar Shankar Tawade v. State of Maharashtra*<sup>34</sup>, it was held that some proper and logical evidence is required for the victim to bring the accused under the charge of Section 498-A. There was no evidence available in that case and hence the accused was required to be acquitted of his charge under Section 498-A.

In *Sushil Kumar v. State of Haryana*<sup>35</sup>, it was held by the Supreme Court of India, as there was no evidence to prove that the victim was made to suffer from cruelty or harassment soon before death and hence no offense under Section 304B of the Indian Penal Code was made. Also as there was no proof regarding any coercion that was done to the victim to get any sort of property from her or from her relatives, conviction under Section 498A of the Indian Penal Code became unwarranted. Hence the Convictions and sentences of appellant were set aside.

Therefore it can be made out that the Court does serve equality before the law while convicting the husband or his relatives under Section 498-A. Cases being dismissed for the lack of proof helps the husband and his relatives to not get abused by the statutory powers of the Section as well as the wife who might intend to misuse the Section for her own benefit and choices. Therefore Section 498-A providing equal protection to the husband and his relatives is not ultra vires with Article 14 of the Indian Constitution. Hence Section 498-A of the Indian Penal Code is constitutionally valid.

### **Question of Jurisdiction:**

In the *Vijay Ratan Sharma* case<sup>36</sup>, criminal- proceedings were initiated by the wife, who was harassed, treated very badly, and was sent to her father's house for not being able to give dowry. Even her 'stridhan' was misappropriated by the husband. Due to such shock and cruel

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<sup>34</sup> 2002 Cri LJ 814 (SC).

<sup>35</sup> Criminal Writ Petition No. 361 of 2010.

<sup>36</sup> *Vijay Ratan Sharma v. State of Uttar Pradesh*, 1988 Cri LJ 1581 (All).



treatment, the wife became ill. Seeing that the proceedings are being done by the wife from her parent's place, the husband wanted to get rid of the proceedings on the technical ground of jurisdiction of the court. His argument stated that the place where the accused cruel offenses were said to have been committed fell outside the jurisdiction of the court. However, the court taking the practical view rather than a theoretical view did away with the technicalities of the argued matter.<sup>37</sup> The court observed that from the beginning there was a demand for Dowry and the cruel behavior of the husband was in effect to that. It was therefore felt necessary by the court to try all the offenses together under Section 220 of the Criminal Procedure Code, 1973.

### **Presumption:**

Section 113-A of the Evidence Act, 1872 empowers the Court to presume that the suicide committed by the woman was abetted by her husband and his relatives, provided that the two conditions are fulfilled<sup>38</sup>:-

- The wife should have committed suicide within the duration of 7 years from the date of her marriage, and
- The husband or his relatives or both must have subjected her to cruelty, the meaning of which falls within the ambit of Section 498-A.

Though it has been held<sup>39</sup> that the Section 113-A of the Evidence Act does not alter the fundamental principle of Criminal Law which says that the prosecution on behalf of the victim is in charge of proving beyond the reasonable doubt of the Court that the acts towards the victim have been committed by the people accused.

### **Burden of Proof:**

The initial burden of proof that cruelty, fulfilling the meaning of cruelty under 498-A, shown to the woman is on the side of the prosecution. However certain interferences can be drawn out of the facts and circumstances of the given case. The court may also invoke Section 113-A of the Evidence Act, of 1872. The test of proof should be of a reasonable man. The standard of proof must be of a prudent man<sup>40</sup>.

<sup>37</sup> nap.nationalacademies, <https://nap.nationalacademies.org/read/9747/chapter/7>, (last visited Aug. 29, 2023).

<sup>38</sup> State of West Bengal v. Orilal Jaiswal, (1994) 1 SCC 73.

<sup>39</sup> State of West Bengal v. Orilal Jaiswal, (1994) 1 SCC 73.

<sup>40</sup> State of Punjab v. Iqbal Singh (1991) 3 SCC 1.

**Dying Declaration:**

The dying declaration of the woman can also be considered as proof under Section 32 of the Evidence Act, 1872 provided that it is otherwise trustworthy and reliable<sup>41</sup>. But a statement that is otherwise covered by the hearsay rule and does not fall within any of the exceptions of Section 32 of the Evidence Act, cannot be relied upon for recording the conviction of the accused<sup>42</sup>.

**Punishment:**

The punishment for offenses under Section 498-A is imprisonment which can extend up to three years and the accused shall also be fined depending on the facts and circumstances of the case. The offender must realize that he cannot get away merely by paying some amount of fine or by remaining in jail for a few years<sup>43</sup>.

**Suggestions:**

As we know every small crime and its intentions starts at home through the education and upbringing of the child. The Court should focus on the crimes that happen inside the four walls which mainly go unheard. Deterrent sentences should be given to the accused people on the approval of the accusations that should discourage other offenders or potential offenders to refrain themselves from performing cruelty. Introducing harsher punishments gives the Court a chance to set examples for the offenders. We should take the first step by stopping the crimes happening in our house, then we can stop many more crimes happening outside the house.

**CONCLUSION:**

Wife beating has increased to higher proportions in many parts of India over the years. Moreover, the lockdown has proved to be a curse to the violated wives and a blessing to such offenders as the stories can go unheard. Many times the parents and other relatives of the wife stop the victim from registering cases with a view that the violence or the abuse of the ill-treatment caused by her husband is a mere 'domestic dispute'. The wife is usually suggested by her family to go back to her husband and settle this between them within 'the four walls of

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<sup>41</sup> Shanti v. State of Haryana (2005) 12 SCC 287.

<sup>42</sup> Gananath Pattnaik v. State of Orissa, (2002) 2 SCC 619.

<sup>43</sup> Kailash Kaur v. State of Punjab, (1897) 2 SCC 631.

the house' giving the dispute the name of a 'private matter' between the wife and her husband. Our society especially the wife's parents and her relatives should support their daughter to file cases against such inhuman behavior which is not tolerable at all. It is the 21<sup>st</sup> century and the time to break the walls come out stronger and fight for their rights. Women should be given support and priority in such cases to end the patriarchy and to make the homes safer for women.

