

THE ROLE OF JUDICIARY IN SHAPING 498A JURISPRUDENCE IN SUSTAINING THE BELIEF THAT WOMEN MISUSE LAW

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Abstract: Misuse of Section 498A is judicially acknowledged in a line of cases. In this paper the author tries to analyze the role played by judiciary, especially Constitutional Courts in shaping 498A jurisprudence in sustaining the belief that women misuse law. The author further questions the basis of the premise of Constitutional Courts that Section 498A is being misused in the cases of matrimonial cruelty under Section 498A of the IPC. The purpose of the paper is also to explore some different variables that influence the low conviction rate under Section 498A of the IPC. An extensive study of existing research was made to plot the necessity of this paper. An in-depth case analysis of judgments of the Supreme Court and High court, books, various reports on Section 498A, articles in various journals and newspapers, statements of various activists for and pro to Section 498A is done to understand the available gaps between law and enforcement.

Keywords: Misuse, Section 498A, Judiciary role

Misuse of Section 498A is judicially acknowledged in a line of cases such as *Savitri Devi v. Ramesh Chand*¹, *Sushil Kumar Sharma v. Union of India*², *Smt. Sunita Goyal & Ors. v. State of Punjab*³, *Preeti Gupta v. State of Jharkhand*⁴, *Ramgopal v. State of Madhya Pradesh*⁵, *Lalita Kumari v. State of Uttar Pradesh*⁶, *Geeta Mehrotra & Anr. v. State of UP*⁷, *Vinod Kumar Subbiah v. Saraswathi Palaniappanand*⁸, *K. Srinivas v. K. Sunita*⁹, and *Rajesh Sharma & Ors. v. State of U.P. & Anr.*¹⁰ etc. The judiciary has acknowledged this misuse basically on low conviction rate based on the data provided by the National Crime Records Bureau (NCRB).

Let us first examine the most recent case of *Rajesh Sharma & Ors. v. State of U.P. & Anr.*¹¹ in which the Apex Court held that women misuse Section 498A of Indian Penal Code (hereinafter refereed as "IPC"). The session court in its judgment found Rajesh Sharma guilty under section 498A. But later Sneha Sharma, wife, summoned her parents in law and the brother and sister of the husband. The said petition was accepted by session judge Jaunpur on

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3rd July 2014. The appellant then approached the High Court against the order of summoning. Though the matter was referred to mediation center but it failed. Thereafter, the High Court found no ground to support this petition and rejected it. In para three of Rajesh Sharma Case¹² the Apex court has quoted Order dated 14th July, 2014 of session court which read as follows:

“After perusal of the file and the document brought on record. It is clear that the husband Shri Rajesh Sharma demanded car and three lacs rupees and in not meeting the demand. It appears that he has tortured the complainant.”¹³

If we read the order of session court it clearly says that husband Shri Rajesh Sharma demanded car and three lacs rupees and in not meeting the demand he has tortured the complainant.¹⁴

The Supreme court is the Apex court of the country, but why in this particular judgement which was a clear case of dowry demand and cruelty subjected on the complainant the Apex court mentions about misuse of Section 498A by women. The Court referring to *Sushil Kumar Sharma v. Union of India*¹⁵, *Preeti Gupta v. State of Jharkhand*¹⁶, *Ramgopal v. State of Madhya Pradesh*¹⁷, *Savitri Devi v. Ramesh Chand*¹⁸ gave observation regarding Section 498A that “misuse of the provision is judicially acknowledged and there is need to adopt measures to prevent such misuse.”¹⁹

Based on the low conviction rate it has been argued that section 498A is being misused by the married women. Let us examine few more observations made by the Constitutional Courts regarding women misusing Section 498A of the IPC.

In *Jasbir Kaur v. State of Haryana*²⁰ the Punjab and Haryana High Court observed that “It is known that an estranged wife will go to any extent to rope in as many relatives of the husband as possible in a desperate effort to salvage whatever remains of an estranged marriage.”²¹ Similarly, in *Mukesh Rani v. State of Haryana*²² the Punjab and Haryana High Court observed that “due to roping of even aged relatives of the husband by the wife the law need an amendment to avoid the harassment of age old people by the law”²³.

Also, in the case of *Saritha v. R. Ramachandra*²⁴ the Andhra Pradesh High Court observed that the court left on Law Commission and Parliament “either to continue that provision (Section 498 IPC) in the same form or to make the offence a non cognizable one and a bailable one so that the ill-educated women of this country and their parents do not misuse the provision, to harass innocent people for the sin of contacting marriage with egoistic women.”²⁵ The question here is on what basis the High Court has said that ill educated women and their family misuse the provision of section 498A. Is there any empirical research done that ill educated women and their parents misuse Section 498A?

Furthermore, in the cases of matrimonial cruelty the role of implementing authorities is very important. Whether a woman is educated or ill educated,

they do not know about the intricacies involved under Section 498A. Its the police to whom she approaches for her safety and security and who further guide them. In addition, they are guided by advocates²⁶. Therefore, without any evidence its not justified to say or make the belief that educated or ill educated women misuse section 498A or try to ropining all the members of their parent in law. The court should also take into consideration other variables involved in the process of implementing of section 498A.

The court further in the above case observed that "This Court would like to go on record that for nothing the educated women are approaching the Courts for divorce and resorting to proceedings against their in-laws under Section 498-A IPC implicating not only the husbands but also their family members whether they are in India or abroad. This is nothing but abuse of beneficial provisions intended to save the women from unscrupulous husbands. But it has taken a reverse trend now. In some cases this type of action is coming as a formidable hurdle in reconciliation efforts made by either well meaning people or the Courts and the sanctity attached to the mandate that the Courts shall always try to save the marriage through conciliatory efforts till the last, are being buried deep-neck."²⁷ The court here uses the word that "This Court would like to go on record". Again the question is of which record the court is talking about?

Similarly in *Anu Gill v. State & Anr.*,²⁸ the court observed that "It has almost become a practice that whenever a police report is lodged consequent upon a matrimonial discord, there is always a tendency on the part of the complainant to involve practically all the relations of her in-laws' family either out of vengeance or to curl out appropriate settlement. Such a tendency ought to be deprecated."²⁹ Hence, to make section 498A more effective and avoid its misuse, the police need to understand that not every matrimonial cruelty falls under section 498A. May be other provision of IPC or some other law is applicable. Moreover victim does not know the same. Therefore, the role of police as well as advocates are very important. The police need to do proper investigation to check whether the particular case of matrimonial cruelty is a case of 498A of IPC or not?

In the case of *Preeti Gupta v. State of Jharkhand*³⁰, the Supreme Court observed that "serious relook of the entire provision is warranted by the Legislature. It is a matter of

common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over-implication is also reflected in a very large number of cases". Further, in this judgement the court asked to the legislature to take into consideration the pragmatic realities, informed public opinion and review the existing law³¹. It has been very rightly observed in the *Preeti Gupta* judgement that the legislature needs to look into public opinion and find pragmatic solutions.

Besides in *Savitri Devi v. Ramesh Chand*³² a landmark judgement delivered by the Delhi High Court regarding misuse of Section 498A, the Court observed that “These provisions were though made with good intentions but the implementation has left a very bad taste and the move has been counterproductive. There is a growing tendency amongst the women which is further perpetuated by their parents and relatives to rope in each and every relative-including minors and even school going kids nearer or distant relatives and in some cases against every person of the family of the husband whether living away or in other town or abroad and married, unmarried sisters, ‘sister-in-laws, unmarried brothers, married uncles and in some cases grand-parents or as many as 10 to 15 or even more relatives of the husband.”³³ In this case also the court requested the lawmaking authorities to review the laws.

In the above case of *Savitri Devi v. Ramesh Chand*³⁴ as observed by the Delhi High Court that “These provisions were though made with good intentions but the implementation has left a very bad taste and the move has been counterproductive”³⁵. The question here is who is implementing Section 498A? Is its victim of 498A who is implementing than why it is said that woman misuse law?

Besides, the police arresting the husband and relatives of the women without doing their preliminary investigation is not the fault on the side of the women and the fault of the police cannot be shifted on the women by saying that married women misuse the law and it leads to breaking of families. On one side majorly the Constitutional Courts have observed regarding misuse of section 498A by women. On the other hand, the courts have also observed on other variables of misuse. As also observed by the Karnataka High Court in the case of *Assistant Police v. Srikanth*³⁶ that “.... the cases where serious matrimonial offences are alleged that the police have been indiscriminately roping-in the whole of the family including the brothers, sisters, in-laws; we had come across one incident where apart from the parents, the grandfather and great-grandfather were also shown as accused....”. Therefore, again reiterating if the police is rope-in the family members of the respondent how it is the fault of the complainant. As observed in para 23 of *Savitri Devi v. Ramesh Chand & ors.*³⁷ case “Once a complaint is lodged under Sections 498A/406 IPC whether there are vague, unspecific or exaggerated allegations or there is no evidence of any physical or mental harm or injury inflicted upon woman that is likely to cause grave injury or danger to life, limb or health, it comes as an easy tool in the hands of Police and agencies like Crime Against Women Cell to hound them with the threat of arrest making them run here and there and force them to hide at their friends or relatives houses till they get anticipatory bail as the offence has been made cognizable and non-bailable. Thousands of such complaints and cases are pending and are being lodged day in and day out.”³⁸ The court further in para 25 observes that “It was

primarily a social problem and social evil but has been allowed to be dealt with iron and heavy hands of the police. These provisions have tendency to destroy whole social fabric as power to arrest anybody by extending or determining the definition of harassment or cruelty vests with the lower police functionaries and not with officers of higher rank who have intellectual capacity to deal with the subject."³⁹ It's very clear from the judgements of the Constitutional Courts that the law is being misused by the police. It's the police whose role is very important. Therefore, instead of saying that women are misusing law the Courts should say the police is misusing the power vested in them. Also steps should be taken to check the powers of the police with respect to Section 498A specially.

In addition the Apex court also in the case of *Mohd. Hoshan v. State of A.P.*⁴⁰ stated that to see whether the mental cruelty has been subjected on women, each case should be "decided on its own facts". The court observed "Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not."⁴¹

Its not that only the protective laws against women are being misused, there are many other laws. especially social legislations which are also being misused. The Census of India, National Family Health Survey or National Crime Records Bureau all recognize violence against women. Therefore, no doubt we need protective laws and procedure to curb violence against women. Also, these laws will have the potential of being misused, therefore, steps are required to curb the misuse of these protective laws. Further, when it comes to cases under 498A of IPC the role of the police and judiciary is very important. They need to balance as on one hand, they need to protect the women from matrimonial cruelty, including dowry harassment on the other hand it is equally important to protect the dignity of a man and his family from false accusations on the name of dowry and harassment. It's very easy to talk about balancing the interests of women subject to cruelty and protecting the husband and his relatives from false accusation but it's tough to balance. Further, there is no straight jacket formula for it.

The Judgements of Constitutional Courts on Section 498A provides that section 498A is being misused. The basis of coming to the conclusion of misuse of the Section 498A is data of NCRB but there is no research on the profile of the victims using Section 498A or profile of the accused. Thus, there is need of research behind finding reasons for the low conviction rate under the

section 498A with the intent to critically analyze the observations being made by the courts regarding the misuse of the section. Moreover, instead of focusing on few cases being misused under Section 498A it is also required to see the larger reality of matrimonial cruelty and its prevalence. In addition, there also need of studying various stakeholders involved in the implementation of Section 498A of IPC and law followed in other countries in regulating intimate partner violence and suggesting socio legal reforms in section 498A of the IPC.

Footnotes

¹ILR (2003) I Delhi 484.

²(2005) 6 SCC 281.

³CRM No.M-18643 of 2008.

⁴(2010) 7 SCC 667.

⁵(2010) 13 SCC 540.

⁶AIR 2012 SC 1515.

⁷(2012) 10 SCC 741.

⁸AIR 2015 SC 2504.

⁹(2014) 16 SCC 34.

¹⁰AIR 2017 SC 3869.

¹¹AIR 2017 SC 3869.

¹²Ibid.

¹³Ibid.

¹⁴Ibid.

¹⁵(2005) 6 SCC 281.

¹⁶(2010) 7 SCC 667.

¹⁷(2010) 13 SCC 540.

¹⁸Savitri Devi v. Ramesh Chand and Ors. 104 (2003) DLT 824.

¹⁹Rajesh Sharma & Ors. v. State of U.P. & Anr. AIR 2017 SC 3869.

²⁰(1990) 2 Rec Cri R 243.

²¹Ibid.

²²2002 (1) RCR (Criminal) 163.

²³Ibid.

²⁴I (2003) DMC 37.

²⁵Ibid.

²⁶Also observed in Savitri Devi v. Ramesh Chand ILR (2003) I Delhi 484.

²⁷Supranote 26.

²⁸92 (2001) DLT 179

²⁹Ibid

³⁰Preeti Gupta & others v. State of Jharkhand & others (2010) 7 SCC 667

³¹Supranote 30, Para 35.

³²2003 CriLJ 2759.

³³Ibid.

³⁴2003 CriLJ 2759.

³⁵Ibid.

³⁶2002 CriLJ 3605.

³⁷2003 CriLJ 2759.

³⁸Ibid.

³⁹Ibid.

⁴⁰2002 CriLJ 4124.

⁴¹Ibid.