

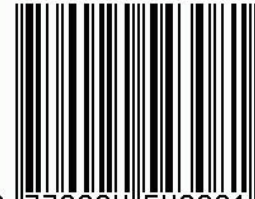


Study of Domestic violence Act and Pros and cons of section 498a and latest Supreme Court directives.

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Introduction : The DV Act provides that the aggrieved person may approach not only the Magistrate but also the Civil court, Family court or any other courts and seek reliefs including protection orders, residence orders, monetary reliefs, custody orders, and/or compensation orders. The D.V. Act has been enacted to provide a remedy in Civil Law for protection of women from being victims of domestic violence and to prevent occurrence of domestic violence in the society.

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The Protection of Women from Domestic Violence Act, 2005 is essentially a civil law, but the legislation has prescribed that courts have to proceed in such cases as per the Criminal Procedure Code (CrPC) for the purpose of effective actions.

Key Words : DV Act, Section 498a, Section 304B, Dowry etc

IPC 498a was made to protect a woman from injury to life or limb, or mental harassment to the extent to drive her to suicide. All problems in marital life do not attract 498a, to the extent made clear in this SC judgment too. 498A IPC is a pure criminal offence in which punishment is awarded to the offenders. 498A is a criminal offence that came into existence to combat domestic violence and protect women from dowry harassment. Section 498A IPC therefore, provided women with the only means for such protection prior to this Act. But the reluctance of women to approach the criminal justice system and the inadequacy of the criminal remedy itself are important realities of our social context.

The Indian government has passed the Dowry Prohibition Act 1961, IPC Section 406, IPC Section 304B, 113B of the Evidence Act and recently the IPC Section 498A.

The most controversial of these laws is the IPC Section 498A which has been under wide scrutiny for a long time. It deals with matrimonial cruelty against women and was introduced into the IPC via an amendment in 1983.

It is defined as: "*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 her to cruelty shall be punished with imprisonment for a term, which may extend to three years and shall also be liable to a fine. For the purpose of this section, "cruelty" means:

- (a) 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
- (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 demands 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 is a non-bailable, non-compoundable (can not be privately resolved between the parties concerned; complaint can not be withdrawn) and cognizable offence.

Importance of the Law

The importance of the law is undeniable in India's patriarchal social structure, but it was especially felt in the 1980s, as a spate of media reports highlighted incidents of 'bride burning'. After sustained advocacy by activists, the law was amended to recognize deaths of women, which occur within seven years' of marriage, as being unnatural. Three decades later, the reality remains no less grim, with a shocking 21 'dowry deaths' reported from across the country every day.

According to the National Crime Records Bureau (NCRB) data, in 2015 as many as 7,634 women died due to dowry harassment, either killed by their in-laws or abetted to commit suicide. Yet, shockingly, for such an endemic problem, the conviction rates remain a dismal 34.7% out of the 93.7% accused chargesheeted that year.

In the meantime, the custom of dowry continues unchecked, practised as such with impunity or under the guise of giving 'gifts'. And this in spite of the fact that the Dowry Prohibition Act of 1961, amended in 1983, defined dowry as the request, payment or acceptance of a gift "as consideration for marriage". The norm is still stubbornly pervasive in 21st century India, resulting in grievous tragedies, many of which go unreported or are neglected for years due to judicial delay, often until it's too late.

Abuse / Misuse of 498a : The flip side of Section 498A, however, is its alleged misuse, where, as the bench of Justices AK Goel and Lalit noted in the current SC order, women invoke it to harass and intimidate their husbands and/or in-laws. The incidents of such frivolous lawsuits, some of which name 2-year-old toddlers as offenders, explain the low conviction rates mentioned earlier and also often takes a serious toll on innocent lives.



Going by recorded testimonies, Section 498A tends to be misused a lot to exact revenge on men or their families for their perceived misdeeds. In some cases, sources say, the offences may be trivial, such as a husband's inability to guarantee a certain lifestyle for his wife or any other sore point in the marriage that may escalate into a legal battle.

It has been observed by high number of acquittals that section 498A of Indian Penal Code (IPC) is continuously misused which is meant to be used as shield by disgruntled wives but is being used as weapon deliberately.

Section 498A of IPC makes harassment of wife by husband or hers relatives a cognisable and punishable offence. Recent study by NCRB shows that there has been widening trend between charge-sheeting and conviction rate in cases related to section 498A. Supreme Court judgment refers to this view of widening trend.

There is this view that lower conviction rate in these case might be result of poor investigation mechanisms and the benefit of doubt is being given to the accused or bias against women accessing law.

Several committee's reports and court judgments are suggesting that higher acquittals in these cases are mixed result of inadequate investigation mechanisms and misuse of this section and thus it becomes imperative to revisit the provisions by doing thorough study and social science research.

Directives of Supreme Court

Recently , Supreme Court has given the order to police that arrest should be done only after certain conditions are fulfilled and not without investigation as it is against the fundamental rights of the person.

Major Conditions for arrest:

- No automatic arrest, conditions should be met against section 41 of cr.pc.All police officers should have check list for sub clauses of section 41.
- Police officers should give detailed reasons to magistrate for arrest and magistrate should pursue them before allowing detention.
- Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case not complying to the above conditions , police officers will be liable to departmental action.
- Apex court has passed this order with the view that no law should be misused but we need to look at it other way as well.
- Our judicial system focus on it from interpersonal violence point of view and overlook the Sub liminal factors governing the everyday lives.



- In many cases, it is caused by economic pressure, lack of assets, low education, and history of family violence were all determinants of domestic violence.
- Basically this issue needs to be analysed and investigated from ground reality point of view in detail.

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