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**MISUSE OF SECTION 498A OF INDIAN PENAL CODE, 1860 WITH
REFERENCE TO OTHER COUNTRIES**- Ashutosh Pal¹*"All the strength and succor you want is within you"*

- By Swami Vivekananda

ABSTRACT

It will be very erroneous to state that law didn't work as expected or law didn't work effectively as our Indian legislation have made very effective laws related to women and for their protection. It is well evident that they have insured and satisfied their main target to provide assurance and protection to the women from various physical torture, and also from mental traumas therefore they have made manifold alterations and modifications in the Indian penal code 1860, and in different Acts too, hence they have inserted section 498 A on 26th December 1983 for the protection of women against the cruelty. The researcher through this article wants to enlighten that how section 498 A is being misuse or in other words a legal terrorism to men as women are using this section as a legal intermediation against the men due to which the true crime cases credibility has been decrease. The researcher also wants to enlighten the readers that there is scope for the changes and many other things which are still unturned to be reviled. The main motive of the section 498A has been achieved but somehow it is nothing but a disaster for the men in the society somewhere. There are many other things which can be done to prevent this so-called shield, as it a weapon for the women, used against men. To prevent this terrorism researcher has made some suggestion in this article.

INTRODUCTION

It is well evident from history that women has been subject to the violence and now a days it is called a domestic violence but looking towards the history till the year 1983 the domestic violence in India against wife was not punishable even though husband, family and relatives

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of the husband could be charged in the very general provision of the Indian penal code which are like pertaining to murder causing grievous hurt wrongful confinement or the abetment to suicide but there was no punishment related to domestic violence .

Therefore after looking towards all the charges which is made to the husband and family these all are the charges put against the stranger equally but this situation which are related to the domestic violence against any women were ignored and ignored all the time that was the time when women was very helpless and unable to prove the violence against her which were beyond the reasonable doubt that all she was unable to proof anything related to violence or rather unable to produce the witness for collaborating the story of offence or rather crime against her as it is what the requirement of the law today and then.

That was the time where there were patriarchal attitude prevails among the people and among all the agencies then, like there was no legal action taken against the wrong committed. Sometimes it has been seen that police have refused to register complaints or FIR against the husband and the most disgusting thinking of the society and people is that it is the right of a husband to beat the wife till she urges to die. And if the present scenario is taken into consideration the same thing is happening in different places. The legislation which is placed related to the dowry and the domestic violence would have been incomplete if there is no understanding of the criminal law reform pertaining in India this is very common to understand the history related to the criminal law reform because large number of women have committed suicide in their matrimonial houses due to the harassment and due to the illegitimate dowry demand therefore in the year 1980 or in 1980s there were the pressure made by the organization rather the women rights organization for the amendment in the criminal law and there were amendment and with respect to it a committee formed in 1982 who urges the government to have a better legislation related to the protection of women against the dowry and the violence so that one can get the justice of the wrong done to the her and to all others who were alive.

Therefore, after so many discussions there was an amendment made in the Indian penal code under Indian evidence Act and under dowry prohibition Act, so the main motive after doing the amendment in all these Acts is to protect the women in marriage or to protect the women from the marital violence and also from the other illegitimate demands.

Hence there is an introduction of section 498 A which is to say that it is the most important amendment done under the Indian penal code in the year 1983 which is very much closely

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followed with the section 304 B inserted in the year 1986 and this section 304 B is related to the offence of dowry death of a women. It is to say that section 498 A and section 304 B are complementary to each other and section 304 B which address the single offense related to the dowry death and section 498 A which address two offenses at a very large scale for the violence against the women in the marriage for the offence related to dowry.

As before there was no step taken to protect women against the domestic violence but this was the first time when Indian legislation has taken a very wide step to introduce section 498 A to consider the domestic violence against the women is the criminal offence therefore this section has been specifically made to see the gravity of offence and components which avoiding the opposition of dowry death in India.

Hence the criminal law amendment which was proposed by the women right organization has made a very attractive proposal that single IPC cannot cover this particular offence but it can be mixed with both civil as well as with the criminal it will help to reduce the cases and it will also help to bring all the solution against the violence. Therefore, it will help the court to make an order related to the offence so that one can ask the party to stop the violence and to stay in their respected matrimonial house. This has helped in enacting legislation like Protection of women from Domestic Violence Act 2005, even it has taken almost 2 decades but this law has been enacted and now it is helping women offering the protection against domestic violence.

SECTION 498 OF THE INDIAN PENAL CODE

This section gives the punishment to the offender that the person shall be liable for imprisonment of 3 years as well as he will be liable for the fine for the same and this offence is non-compoundable, cognizable and non bailable therefore this section as used against the husband family and the relatives of the husband. This section is passed in the year in 1983 by the Indian parliament and made the criminal law amendment, it has been defining in section 498A IPC with heading husband or the relative of the husband of a women subject her to cruelty.²

This section directly states that whether it is the husband, relative or the family member of a husband if they subject women with the cruelty shall be punished with the imprisonment as mentioned above which are non bailable, non-compoundable and the cognizable offence.

².Section 498A Indian penal code, 1860

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This section also explains the meaning of cruelty therefore the cruelty which is not being define in any section other than the section 498 A of IPC,1860 therefore in this section the cruelty has been divided into two parts which is to states that: First part of the section defines the section 498 A and Another part of section explain the explanation in which the meaning of cruelty has been given section 498 a as follows:

- That this section begins with the word whoever which is to say that either husband, relative or the family of the husband subjected the women for the offense of cruelty shallbe punished with imprisonment for the term which may be extended freedom of 3 years and also liable for the fine or both as mentioned above.
- Second parts of the definition which gives the explanation and for the purpose of cruelty which defines but not actually defining, hence they made an attempt to define the word cruelty:
 - A) Any conduct or willful conduct of a such nature which makes women to commit the suicide for which caused her grave injury or the damage to the limb life or the health irrespective that whether it is mental or physical to the women or;
 - B) Any such harassment that women, which is with the view to coercing her or any other person related to the women, which is to meet any unlawful demand for the valuable security for the property or on any account of failure by her or by any person who is related to her to meet such an Illegitimate demand.³

Section 498 provides the meaning of the word Relative which is to say that it has been define with the help of the case law in the case of *V Seetha v. State of Inspector of Police*⁴The court has held that merely not having any presence of definition related to Word relative in any of the statute therefore the definition of the term relative of the husband, this term should be understood commonly as it has a common meaning. Therefore, in simple words it includes the husband mother father son wife daughter sister nephew grandson grand-daughter brother or any individual or any person who is related to the spouse. This is the simple meaning or the common meaning to be understood for a term 'relative'.

The meaning of this word relative will be depending upon the nature of the any statute. Therefore, it is very principally included any person who is by blood, marriage or by the adoption related to other person there is no other imaginative or illusionary definition which

³.Section 498A IndianPenal Code

⁴. (2009) Cr. L.j. 2974 SC

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would include any friend girlfriend or even concubine will not be term as a relative of a husband therefore cruelty in relation to the wife given under section 498 A of Indian penal code which is defined under section 498 A explanation has no other meaning there too. Therefore, if a person is living with another woman will not termed as a cruelty that can be resolved through the dissolution of marriage under Hindu marriage Act but not be wrap up with section 498 A moreover there is a strict construction of the provision stated in the Indian penal code 1860, as mentioned that the concubine or any girlfriend of the husband will not come under definition of relative under 498A of Indian penal code.⁵

The same section defines the meaning of cruelty which is given under explanation and it has define with the help of case law that is *Kaliyaperumal v. State of Tamil Nadu*⁶ In this very case the word cruelty which has been given a common essence in section 304 B and 498 A of Indian penal code therefore this section 304 B and 498 A are complementary to each other as well as both the section are distinct from each other in terms of offence because under section 304 B the person has been acquitted for the offence related to the dowry death and for the purpose of conviction section 498 A of Indian penal code is complementing. Section 304 B do not contain any explanation related to the world cruelty, and for the word harassment which is given under section 498 A too. But it applies in section 304 B of Indian penal code 1860, as well a small comparison between section 498A and 304 B which is to say that section 498 A consist of offence which is amounting to the cruelty to the women, on the other hand section 304 B related to the offence of dowry death where the death of the women should occur for the application of this very section 304 B and that too within 7 years of the marriage and one of the main point of difference is that there is a time period given for the offence to be came into existence under section 304 B but there is no as such period mentioned in section 498 A.

With an instant of section 304 B in the case of *Virendra Bhatti vs State*⁷ In this case it was held at within the seven years of marriage that women is being dead then this should have been proven and the evidence which is convincing that the women or the wife is being subject to the cruelty by her husband, there is always a presumption that the accused must

⁵. S N Mishra *India Penal Code 915, 1860* (Central Law Publication, Allahabad, edn., Reprint 2017).

⁶. 2003 Cr.L.j 4321 SC

⁷. 1989 Cr.L.j. (N.O.C) 196 (Delhi).

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have abated the commission of suicide which is punishable under Indian penal code 1860, and the offence is being charge under section 306 and 498 A of the Indian penal code.

PROTECTION ONLY FOR THE WOMEN

Section 498 has been inserted in the year 1983 where the purpose of inserting the section was to protect women from any harassment or cruelty faced by her from husband, relative and family of the husband. This section is wholly and solely for the women in other words only women can invoke this section for the protection against family and the husband.

- This section is beautifully drafted as offence under this section is non bailable therefore if one need to get a bail has to appear in the court in person and get the bail from the honorable court.
- The offence under in the section is non-compoundable therefore the complaint which is made under this section cannot be withdrawn
- Offence under this section is cognizable meaning thereby one can be arrested without having any investigation or without having any warrant.

MISUSE OF THE SECTION 498 A

As beautifully drafted section 498 A is wholly and solely for the women that no other person other than the women who is been subject to cruelty or harassment by the husband, family and relative of husband can invoke this section. Our Indian judiciary specifically our apex court is being facing difficulties related to the issues on the matter of the misuse of this section 498 A Indian penal code 1860, where the judiciary has observed and given their remark on this very law of Indian penal code 1860, however there are no proper research no data for the matters related to the misuse of section 498 A as constitution of India has declared this section 498A valid.

But in some of the cases where women, using this section as a weapon against the husband as the idea of this section is to protect the women supreme court of India has considered that women are using this section as a legal intermediation against the men therefore the true crime cases credibility has been decrease therefore supreme court has said that this law is the anti men law because it is being used against the husband and the relatives falsely

.In the very case of *Savitri Devi v. Ramesh Chand and others*⁸In this case honorable court has specifically mentioned that there is a abuse of section 498 A therefore there is a total

⁸ 2003 Cr.L.j 2759, 104

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deceive and also there is a misuse of the law in the that stretch which has completely effect the marriage it was made with the purpose to provide the better community for women but the court has the opinion that the power in the hand of the law makers, and should review all the cases related to the section 498 A and all the legal provisions related to it and also prevent the misfortunate event.

This was contended by the parliament of India to turn back the tendency and also they have made a request related to the offence which are non cognizable, non bailable and non compoundable to turned as non compoundable and bailable offence because this section makes the women as a victim but there is no time when the victim is reverse and become a abuser so it is happening as victim is becoming the abuser. There is nothing but women got divorce and she gets the dissolution of the marriage under Hindu marriage Act 1955, and proceed in her life further but it will affect the life of the husband who is being convicted falsely this was said in the case of *Saritha vs R Ramachandran*⁹

*Chandra Bhan and Ors v. State*¹⁰ This case was very much useful as the honorable court has provide some guidelines for the steps to prevent the misuse of section 498 A therefore steps are as follows:

1. Regularly reported of FIR should not be there
2. Police officer should take caution while registering the complaint and screen the complain carefully before registering the FRI
3. There should have prior consideration or check on registering the complaint in section 498A and 406 of Indian penal code and that should authorized by the deputy commissioner of police or additional deputy commissioner of police.
4. All possible bending efforts or attempts should be made by police officer before registering the FIR and if it is appear to the police officer that there is no other way or there is no possibility of the compromise or settlement between the women and the husband then he should havetake a necessary step and at a first glance or at initial stage he should ensure that all the articles given in the marriage and the street of a women should be returned at first.

⁹2002 (6) ALD 319.

¹⁰ AIR 1954 All 39

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5. After taking due consideration from the assistant commissioner of police or by the deputy commissioner of police, and after having a proper investigation on the matter then the arrest of the accused will be made.
6. There is a requirement of prior approval by the deputy commissioner of police in the matter related to the collateral accused.

RECUPERATION OF THE CASES BASED ON FALSE ALLEGATION MADE ON ACCUSATION

Now a days there are so many allegations rather the false accusation, allegations made on men by their wives therefore the burden of proving the innocents in the eye of law is on the husband, the husband can file a case as a misuse of section 498 A under Indian penal code 1860, but even after having such cases in the old perception or the jurisprudence which will always presume that the women is been subject to the cruelty by the husband hence they will protect women and the man will be ignored either way therefore the justice delayed is justice denied concept is some where applicable here as well as justice will take or justice will proceed over the injustice sometimes the wrong cases very much defamatory as well as define the image of a man by the false allegation which now required a legal recovery therefore men also seeks the protection from the section of 498 A IPC there are some of the recuperation of the cases which are based on the false allegation made on the accused whereas the man can file case under section 500 of Indian penal code as and defamatory suit against the women.

Husband can also file a case for the recovery of all the damages which he and his family has suffered during the trial for the false allegation cases of cruelty and harassment or abuse under section 9 of civil procedure code.

Section 182 of the Indian penal code also give the safeguard against the provision of 498 A cases which has made falsely and if the authority approves the false allegation then there is the sentence of 6 months of imprisonment and fine imposed upon the party who has made a wrong allegation under section 182 of Indian penal code 1860, hence that person who has made wrong allegation or accusation for misleading and making a false allegation the judiciary will take action against that person.

INTERNATIONAL PERSPECTIVE ON 498 A OF INDIA PENAL CODE

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All social analyzers, and legal prominence, have find out that the whole and sole clause fosters the possibilities for the enormous Cultural Revolution on a very large scale. Therefore there is ambiguity and the inadequacy had taken his place and due to which it has invaded or influxes the private individual. Hence there are so many personal evils which are increasing in Indian people or in their household where a protective shield has been given for a protection under section 498 A of the Indian Penal code 1860.

This section was basically inserted for the protection of women against the husband and relative of the husband and also to get the protection from the abuse by the men in this respected culture but that is not the basis to misuse the section where are women all female has the opportunity today to have a good use of the section 498 A but instead of doing that women nowadays abandoned their house and leave their in laws and have a false accusation of cruelty in the very section women has been given a better place as well as the respected place in the moment of different civilization which is Indus valley civilization as well as in the Vedic era. The women had their own choice in all the aspects and they have provided a very significant place and she holds a good position in a society as well as their own culture but with the passage of time, time changes so as the position and status of women changes when she was called as independent women then become the women who is totally dependent on the male. Even for the fundamental living or the fundamental requirement she is dependent upon the husband.

After having good development or the India self government there is the growth of different sectors as well as the growth in the several laws and where there is a growth in the Indian laws there is equality and with that status of the women in the nation is developed. This was done to attend the equality in the nation and also so the safety and protection for the women against the abuse suffered by the women therefore the Indian constitution has also framed the fundamental rights and the duties where it has been specifically mentioned that to renounce the practices derogatory to the dignity of the women¹¹ The Indian constitution has played a very important role in providing the protection of the women in the society as well as provide the dignity and freedom to the women in the society.

¹¹ Article 51A, Constitution of India, 1950

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Meaning of dowry given **UNDER THE OXFORD DICTIONARY** which define that an amount of corpus (property) or the money which the bride brought to her husband at the time of their marriage¹²

ACCORDING TO THE TERM LINES LAW DICTIONARY dowry something which the wife gives to the husband on the account of marriage and is a sort of donation made with the view that their future maintenance and support¹³

ACCORDING TO THE WEBSTER DICTIONARY it means money goods or the other state that a woman brings to her husband after marriage¹⁴

Cases related to the dowry and the cruelty is not only the main plot of story in India but also it is the issue which is all around the world at a large scale. The offence of the dowry is the main issue after the wedding take place and it is not only the nightmare but also faced by every day, by women in her day to day lives there are some countries which are discussed related to the dowry offences.

- In the **Europe** state or in the Roman civilization in Europe there was the very important and the classical teaching as well as knowledge related the dowry which helps to improve the women desire as well as the eagerness for the sacrament and this is a common thing which is in the one's mind that they will become rich and having a very good and sufficient household even though they have been determined by the boundaries but in the passive of centuries, during the 19th and 20th centuries, the offences related to dowry has been diagnosed but at the very beginning of the 20th century it was totally dejected and bashed by the government. They have completely blaze it as an illegal and there has been seen that father, in a different cases there is a proper request for the dowry after giving the information related to the sons qualification and earnings.
- In **Nepal** dowry has been named as Daijo this is also the main issue which prevails in this country and this is a form of abuse which is at a very large level. They called it as a way of connecting and adjoining the families and enhancement of the cultural status of independent person particularly therefore in Nepal in the year 2009 it was found that there are more cases related to dowry and for that purpose boundary of fences and

¹² Available at <http://en.oxforddictionary.com/defination/dowry>

¹³ Available at http://archive.org/detail/lawdictionary_toml_1835_01

¹⁴ Available at <http://www.merriam-webster.com/dictionary/dowry>

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the Government of Nepal in their parliament has made particular amendment related to the dowry in the social custom and practice act but there is no as such record for the implementation of the same legislation.

- In the country like **Bangladesh** the offence of dowry is being called as pawn and the joutak similar to India it is the same problem rather the same growing problem in the Bangladesh and in the South Asian countries there are the same Act that is dowry prohibition Act 1980¹⁵ even there is a amendment ordinance which is passed in the year 1982 and in the year 1986 therefore it has been done for preparing all the issues and to prevent the women to suffer all the abuses from the family due to dowry and therefore this legislation has been implemented in Bangladesh. Even after implementing this legislation, there are the most reported cases related to the dowry in the year 2014 and mostly these cases are related to the harassment as well as women who has committed suicide where women report their dowry related case and police reject there allegation made on their families as well as they do not report them to.
- Country like **China** which is the most developed country in the world and which is the most fascinated and popular country they have no legal privileges and legal rights to the women related to the inheritance of the estate of husband, women who work even not gets the respect and they merely get the salary in the form of donation. Therefore it is very much obvious after reading that the women in China do not have any privacy and even did not have any value in the market therefore the China has very much discriminating the position of the women .
- Country like **Pakistan** the crime of domestic violence is very much high in this country there are many cases which have been recorded that the women has been burnt alive, even women has been attacked by acid, there are sexual abuse, and torture women. There are 80% of the Pakistani women who has faced the domestic violence as well as they have been physically beaten by the husband which causes the women mental as well as a physical torture by the husband and that is all related to the dowry in short the cases related to domestic violence in Pakistan are not less than other country.

CONCLUSION

¹⁵Act 35 of 1980

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This is very much well evident throughout this article that women is being subject to the cruelty and the domestic violence but due to all the false cases and false allegation on men by the husband and the so-called terrorism or a legal terrorism to men has made section 498 A is a shield for a protection against no wrong because of the guise of this section women, who has not even actually faced the offence of cruelty or domestic violence in their matrimonial houses they alleged that they had been ask for the illegitimate demand of dowry and being subject to the cruelty. It is the need of the hour to look upon the matter which are ought to be variable, and Section 498A which is being misused and abuse at a very unnerve outlay. Even our judicial system is very raspy under the circumstances or the matter which is related to the section 498A and presumes that offence has being committed by the person against whom the allegation has been made and straightaway punished offender so that there are improvement of the women in the community.

Even in the different countries the law related to the offence of cruelty against the women is the same as there are demand related to dowry and there are cruelty and domestic violence against women which is the problem in worldwide therefore the main problem is this that even having the buttered legislation related to the betterment of the women in our and in other countries that they have given the basic rights to the women but implementation is nowhere as well as these rights are taken away. Setting suggestions are made for the betterment of the women as well as to stop the legal terrorism of 498A,

- That there should have the NGOs who help the women related to the complaints for the offence of cruelty as well as for the domestic violence they have suffered and provide the helping hands to the women for the betterment of their life in their married house. Also helps to find out the false cases related to the offence mentioned
- Family counseling centers to be situated and establish within the court premises so that if the married couple has any problem or any understanding in between them shall be taken into consideration by the counselor so that there are less number of cases related to the offence under the section.
- They should have a time check and restraint on the investigation so that the long process of trial should be cut-off and there should not have any delay in any cases related to the torture harassment or cruelty.

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- They should have proper investigation by the civil authorities as well as they should have proper recording of the statement given by the witnesses , accused and from the victim, so that they should have better understanding between the parties and which helps to understand that the case is not frivolous or false against the accused.
- The very big suggestion is to be made that the offence which is non Bailable under Indian Penal code 1860 should be Bailable so that if there are any possibility that the accused has not committed any offence should not suffer, but to make that person, to stay within the jurisdiction of the court.
- This section states that the offence is non compoundable, but instead of making it non compoundable rather it should be compoundable so that if there is an indifference and any communication gap between the couple they should have resolve the it by communicating to each other problems.
- They should have a gender equality or neutrality it will help each and everyone in a society to have a equal point of view and then there will be no point of indifference related to the law, and the common understanding will take it place that the law is not only for the women but to for all and that will help to make our society a heaven for both men and women.

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