

# Misuse of Domestic violence Provisions in India

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**Abstract:** Domestic violence can take many forms. The true extent of domestic violence is impossible to assess. It is possible only to build up a fragmented picture from a number of different sources of information, each of which has its own limitations. However, it is clear from the information which is available that it is a widespread problem which takes up a significant amount of court time. There is also good reason to think that a considerable amount of such violence is never brought to the courts' attention at all. As there is no settled definition of the term "domestic violence", people's interpretations of it differ. It is thought that incidents of domestic violence are infrequently reported to the police.

**Keywords:** Indian Society, Domestic violence

## I. INTRODUCTION

There is a tendency for victims to try to conceal attacks for as long as possible through either a misguided sense of shame, fear of reprisals or distrust of the authorities.<sup>1</sup> Under Indian Justice System section it was in 1983 when section 498A was introduced on statute book under Indian Penal Code in order to protect married women from being subjected to cruelty by the husband or his relatives. A punishment extending to 3 years and fine has been prescribed. The expression 'cruelty' has been defined in wide terms so as to include inflicting physical or mental harm to the body or health of the woman and indulging in acts of harassment with a view to coerce her or her relations to meet any unlawful demand for any property or valuable security. Harassment for dowry falls within the sweep of latter limb of the section. Creating a situation driving the woman to commit suicide is also one of the ingredients of 'cruelty'. The offence under Section 498A is cognizable, non-compoundable and non-bailable. The provisions together with allied provisions in Cr. P.C. are so designed as to impart an element of deterrence. But with the span of time there is rapture reports of misuse of the section by means of false / exaggerated allegations and implication of several relatives of the husband have been pouring in. Though there are widespread complaints and even the judiciary has taken cognizance of large scale misuse, there is no reliable data based on empirical study as regards the extent of the alleged misuse. Most of such complaints are filed in the heat of the moment over trivial issues.

## II. LEGISLATIVE ENACTMENTS ON DOMESTIC VIOLENCE

There are three laws in place in India that deal directly with domestic violence:

1. The Protection of Women from Domestic Violence Act, 2005.
2. The Dowry Prohibition Act, 1961.
3. Section 498A of the Indian Penal Code.

The Protection of Women from Domestic Violence Act, 2005 was enacted with a view to provide for more effective protection of rights of women who are victims of violence of any kind occurring within the family. Those rights are essentially of civil nature with a mix of penal provisions. Section 3 of the Act defines domestic violence in very wide terms. It encompasses the situations set out in the definition of 'cruelty' under Section 498A. The Act has devised an elaborate machinery to safeguard the interests of women subjected to domestic violence. The Act enjoins the appointment of Protection Officers who will be under the control and supervision of a Judicial Magistrate of First Class. The said officer shall send a domestic incident report to the Magistrate, the police station and service providers. The Protection Officers are required to effectively assist and guide the complainant victim and provide shelter, medical facilities, legal aid etc. and also act on her behalf to present an application to the Magistrate for one or more reliefs under the Act. The Magistrate is required to hear the application ordinarily within 3 days from the date of its receipt. The Magistrate may at any stage of the proceedings direct the respondent and/or the aggrieved person to undergo counseling with a service provider. 'Service Providers' are those who conform to the requirements of Section 10 of the Act. The Magistrate can also secure the services of a welfare expert preferably a woman for the purpose of assisting him. Under

<sup>1</sup> The Law Commission of London, Family Law Domestic Violence and occupation of the family home, (House of Common May 1992)

Section 18, the Magistrate, after giving an opportunity of hearing to the Respondent and on being prima facie satisfied that domestic violence has taken place or is likely to take place, is empowered to pass a protection order prohibiting the Respondent from committing any act of domestic violence and/or aiding or abetting all acts of domestic violence. There are other powers vested in the Magistrate including granting residence orders and monetary reliefs. Section 23 further empowers the Magistrate to pass such interim order as he deems just and proper including an ex-parte order. The breach of protection order by the respondent is regarded as an offence which is cognizable and non - bailable and punishable with imprisonment extending to one year<sup>2</sup> By the same Section, the Magistrate is also empowered to frame charges under Section 498A of IPC and/or Dowry Prohibition Act. A Protection Officer who fails or neglects to discharge his duty as per the protection order is liable to be punished with imprisonment.<sup>3</sup> The provisions of the Act are supplemental to the provisions of any other law in force. The right to file a complaint under Section 498A is specifically preserved under Section 5 of the Act.

### III. THE JUDICIAL VIEW UPON MISUSE

Various High Courts in the country have also noted that in several instances, omnibus allegations are made against the husband and his relations and the complaints are filed without proper justification. In some of the cases, directions were given by the High Courts for regulating the power of arrest and for taking necessary steps to initiate conciliatory effort at the earliest point of time. In *Preeti Gupta v. State of Jharkhand*<sup>4</sup> the Supreme Court observed that a serious relook of the provision is warranted by the Legislature. The Court said that it is a matter of common knowledge that exaggerated versions of the incidents are reflected in a large number of complaints". The Court took note of the common tendency to implicate husband and all his immediate relations. The Supreme Court directed the Registry to send a copy of judgment to the Law Commission and Union Law Secretary so that appropriate steps may be taken in the larger interests of society. Also in *Sushil Kumar Sharma v. UOI*<sup>5</sup> the Supreme Court lamented that in many instances, complaints under Section 498A were being filed with an oblique motive to wreck personal vendetta and observed. "It may therefore become necessary for the Legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with". It was also observed that "by misuse of the provision, a new legal terrorism can be unleashed". Delhi High Court in *Chandrabhan v. State*<sup>6</sup> observed that there is no iota of doubt

that most of the complaints are filed in the heat of the moment over trifling fights and ego clashes. It is also a matter of common knowledge that in their tussle and ongoing hostility, the hapless children are the worst victims. The Court has provided following Directions to the police authorities :-

1. "FIR should not be registered in a routine manner.
2. Endeavour of the police should be to scrutinize complaints carefully and then register FIR
3. No case under section 498-A/406 IPC should be registered without the prior approval of DCP/Addl. DCP.
4. Before the registration of FIR, all possible efforts should be made for reconciliation and in case it is found that there is no possibility of settlement, then, necessary steps should, in the first instance, be taken to ensure return of sthridhan and dowry articles to the complainant.
5. Arrest of main accused be made only after thorough investigation has been conducted and with the prior approval of the ACP/DCP.
6. In the case of collateral accused such as in-laws, prior approval of DCP should be there on the file."

In *S.R. Batra vs. Smt. Taruna Batra*<sup>7</sup> the Supreme Court with reference to definition of shared household under section 2 (s) of the Domestic Violence Act stated that the definition of 'shared household' in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting requires to be interpreted in a sensible manner. Also in *D. Veluswamy v. D. Patchaiammal*<sup>8</sup> the Supreme Court, enumerated five ingredients of a live in relationship as –

1. Both the parties must behave as husband and wife and are recognized as husband and wife in front of society
2. They must be of a valid legal age of marriage
3. They should qualify to enter into marriage eg. None of the partner should have a souse living at the time of entering into relationship.
4. They must have voluntarily cohabited for a significant period of time
5. They must have lived together in a shared household

The Court further observed that not all live-in-relationships will amount to a relationship in the nature of marriage to get the benefit of Domestic Violence Act. To get such benefit the conditions mentioned above shall be fulfilled and this has to be proved by evidence. Also the National Commission for Women in 2011 has summarized that Police should in the interest of the protection of the constitutional rights of a citizen ensure that no arrest should be made without a reasonable satisfaction after some

<sup>2</sup> Section 31. The Protection of Women from Domestic Violence Act, 2005.

<sup>3</sup> Section 31. The Protection of Women from Domestic Violence Act, 2005

<sup>4</sup> AIR 2010 SC 3363

<sup>5</sup> 2005 6 SCC 281

<sup>6</sup> order dated 4.8.2008 in Bail application No.1627/2008

<sup>7</sup> (2007) 3SCC 169

<sup>8</sup> (2010) 10SCC 469

investigation as to the genuineness and bonafide of a complaint and the need to effect arrest; In case of matrimonial disputes, the first recourse should be effective conciliation and mediation between the warring spouses and their families and recourse of filing charges under Section 498A, IPC may be resorted to in cases where such conciliation fails and there appears a *prima facie* case of Section 498A of IPC and other related laws.

The Law Commission of India<sup>9</sup> revealing the rigour of section 498A from the observation of Court Judgments and Justice Malimath Committee's report on Reforms of Criminal Justice System has stated that the harsh law, far from helping the genuine victimized women, has become a source of blackmail and harassment of husbands and others. Once a complaint (FIR) is lodged with the Police under Section.498A/406 IPC, it becomes an easy tool in the hands of the Police to arrest or threaten to arrest the husband and other relatives named in the FIR without even considering the intrinsic worth of the allegations and making a preliminary investigation. When the members of a family are arrested and sent to jail, with no immediate prospect of bail, the chances of amicable reconciliation or salvaging the marriage will be lost once and for all. The possibility of reconciliation, it is pointed out, cannot be ruled out and it should be fully explored. The imminent arrest by the Police will thus be counterproductive. The long and protracted criminal trials lead to acrimony and bitterness in the relationship among the kith and kin of the family. Pragmatic realities have to be taken into consideration while dealing with matrimonial matters with due regard to the fact that it is a sensitive family problem which shall not be allowed to be aggravated by overzealous/ callous actions on the part of the Police by taking advantage of the harsh provisions of s.498A of IPC together with its related provisions in CrPC. It is pointed out that the sting is not in s.498A as such, but in the provisions of CrPC making the offence non-compoundable and nonbailable.

The misuse could be minimized by taking such measures as would ensure the strict observance of the law governing arrest.

#### IV. CONCLUSION

Provisions of Domestic Violence Act and Indian Penal Code specially the Section 498A has been misused in many instances admits of no doubt. This has been taken judicial notice of in several cases. The Parliamentary Committee has also adverted to this aspect. The inputs received by the Law Commission and the representations made to the Home Ministry. also confirm this fact. However, there is no reliable data to reveal the extent of abuse or misuse. The data/information reveals that urban and educated women are mostly coming forward to file the complaints under this section. It is to be noted that the misuse did not flow from the section itself but the roots of misuse were grounded on the insensitive police responses and irresponsible legal advice.

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