

498A IPC- A Shield to Protect Women or a Weapon to Harass Men

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ABSTRACT

“YatraNaryastuPujyante, RamanteTatraDevata” is a very famous saying in Sanskrit. The meaning of which is “God live in places, where women are worshipped and divinity blossoms there”. A woman is considered as “Ardhangini” in the Hindu marriage, which is a sacred institution. Wife is one half and husband is another half. These two halves make an eternal being completed. In ancient times a woman was given significant and equal status as of a man. However, in some period of time the position of woman has been changed. Even history shows that a husband plays a superior role than that of a wife as he is considered as the “Karta” of the house. Gradually the situation has become worse and women is subjected to various atrocities. The demon of Dowry is one of them. Wife is seen as a means to get wealth and in case those unlawful demands are not fulfilled; violence is done with her. Sometimes it reaches to such a brutal level that she finds no way other than committing suicide. It became the need of the hour to make some laws to prevent such kind of inhumanity against woman. Thus, Dowry Prohibition Act and in addition an amendment has been introduced in IPC in the form of section 498A in 1983. The purpose was clearly to prevent the evil of cruelty against women. But a shield which was provided to protect women against the violence done to her by her husband and in-laws, has been converted into a weapon to be used by woman against her husband and in-laws. The issue exists on both sides, one is that the women who are unaware about their rights are unable to use section 498A to safeguard their rights and the other is that the women who are much aware and have mala-fide intentions, they misuse this section to harm the husband and his family to settle her personal scores against them. This paper aims at finding some useful suggestions so that the purpose with which section 498A was inserted can be fulfilled.

INTRODUCTION

Section 498A of the Indian Penal Code deals with any kind of cruelty done on a married woman by her husband or her in-laws regarding unlawful demands of dowry. The violence done can be with woman herself or any person related to her. The consequences of which led to the imprisonment which may extend to 3 years and fine. *Explanation.* —For the purposes 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 demand for any property or valuable

security or is on account of failure by her or any person related to her to meet such demand.]¹

This section was added to The Indian Penal Code, 1860 (IPC) on 26th December 1983 by way of Criminal Law (Second Amendment) Act, in order to safeguard the rights of women and to put a check on the high rising and rampant cases of cruelty done to them to meet the unlawful demands of dowry. The offense under this section is cognizable offense i.e., the police can arrest the alleged person without any warrant. Further, the offense which is registered under this section is non-bailable and non-compoundable, which means the complaint cannot be withdrawn.

Most of the time, men are presumed to be the perpetrators of violence against women. However, the portrayal of a helpless woman regularly getting abused and tortured is not always accurate. There is also an ugly facet of section 498A which is not less than any kind of terrorism in itself. Disgruntled wives can use this section as a weapon against their husband and in-laws. They take it as a tool to get rid of marriage, unnecessarily harass and assault the husband and in-laws both physically as well as mentally. The lawmakers inserted this section to IPC with a view to curb the cruelty against women but now those lawmakers themselves are considering it a terrorism, which is a question mark on its credibility. "By misuse of the provision (498A IPC), a new legal terrorism can be unleashed." -The honorable Supreme Court in *Sushil Kumar Sharma V. UOI*.

OBJECTIVES

The purpose of this study is to find out the flaws in Section 498A and how those can be removed to curb the false allegations, prevent its misuse and to find some remedial measures which can prove to be of some real assistance for the prospective male victims of this curse.

LITERATURE REVIEW

Many studies have focused on the problem of misusing section 498A of IPC. Karan Godara conducted a study on Misuse of section 498A IPC-Judicial trend (2015). The aim of the study was to evaluate the judicial trend with respect to sec 498a. It was concluded that section 498A has become a necessary evil. It must continue to remain in our statute books for the much-needed protection of women but with a caveat. (Panda, 2016) emphasized on the urgent need of section 498A with the help of some cases proving the constitutional validity of this section. A study carried out by Samarthya Pandey and Debashree, Discrimination of men under Sec. 498A IPC: Myth or Reality (2017) revealed that 498A is being misused in reality by women against husband and in-laws. This study was conducted on the cases of district Raipur and research was also done through questionnaires. It was concluded that necessary steps must be taken towards the modifications. (Arya, 2017) also realised the same issue of misuse of this section and throws light on how this section is being misused and what suggestions are given by the Supreme Court of India. A study by (Chatterjee & Dwivedi, 2018) throws light on the concept of dowry, its evolution through ages, kinds of laws which are there in our legislation to curb this evil and how these anti-dowry laws are being misused by women. A. Hashika and M. Kannappan conducted a study, which emphasized that if this

¹ IPC (Second Amendment) Act of 1983

downside is not resolved by legislation it is going to become an infirmity for the society. People's trust over the judiciary can be sustained if adequate modifications in this law are done. Thus, it is time that this Section be amended and a few changes must be made in this law. Another study conducted by Allaraham Ali, Misuse of anti-dowry laws: A dark side of marriage (2019) shows, the laws are extremely stringent, as they are non-bailable and non-compoundable. Women take advantage of the laws made to protect women in the wrong way to fulfil their mala-fide intentions. Thus, they harass their husband and his relatives. Men as a result go through massive intellectual ache. The fundamental nature of fundamental right to equality that no citizen should be discriminated against on the idea of intercourse, absolutely gets violated each time a spouse files a grievance against husband on false grounds of cruelty of demand for dowry. The law needs to be amended which can put an end to the ravage that women have done to the innocent men of the society and additionally men must be compensated to deal with any consequences that takes place in a person's life due to frivolous charges of cruelty and demand of dowry by their husband and in-laws. There should be a provision that if any woman falsely accuses her husband or his own family members of cruelty done to her or demand for dowry to fulfil her own mala-fide intentions, then she ought to be sentenced to imprisonment for a length so long as the actual sentence i.e., not less than seven years and fine. The Police branch must also introduce a separate department to address such kind of fake and frivolous cases and additionally offer counselling if and while required. A study published by My Nation Foundation² reveals that everyone knows that there are loopholes in 498A, whether we see media reports, judgements related to false cases and even politicians also admit this fact. The laws which presume guilt of a person even before the trial begins, are bound to be misused. Despite the recommendations of the Supreme Court of India and Justice Malimath Committee that the laws should be modified to protect the innocent, the suggested amendment has been largely ignored. This social evil is endangering the foundation of the Indian family system. A study carried out by legallyindia.com³ (2011) Section 498A I.P.C.- Its use and misuse, finds out that the Court and Legislature have to make changes in the laws to protect women from matrimonial cruelty. Looking into the recent observations and the increase in the misuse of this Section, certain amendments need to [be brought up in this law. Varsha in her study, 498A Use and Misuse (2019) also felt the need of thorough investigation and exercising the power in such a righteous manner so that this section doesn't lose its credibility and not come up as anti-men law. A study pursued by AyushVerma, Misuse of Section 498A under IPC (2020) also throws light on the fact of humiliation by women against their husband and in-laws by using section 498A in a false manner.

RESEARCH METHODOLOGY

The research conducted here is both quantitative as well as qualitative in nature. It is a combination of both. The research design used here is Descriptive research design. The data used to support the study is secondary data and review of other research is also used.

LIST OF CASES SHOWING MISUSE

² <https://mynation.net/study-report-498a-1.htm>

³ <https://www.legallyindia.com/views/entry/section-498a-of-ipc-its-use-misuse-html>

Sushil Kumar Sharma Vs. Union of India & others⁴

The aim of the clause, according to the Supreme Court, is to prevent the dowry threat. However, as the petitioner correctly points out, there have been several cases where charges have been filed that are not genuine and have been filed with an ulterior motive. In such circumstances, the accused's acquittal does not always erase the humiliation he or she endured during and before the courtroom. In certain cases, negative media is used.

While noting this, the Court also clarified the corrective actions that can be taken to discourage misuse of the well-intentioned clause. The Court stated that just because a clause is lawful and *intra vires* does not grant unscrupulous people the right to carry out personal vendettas or threaten anyone. Although acknowledging this, the Court also explained the steps that can be taken to prevent the well-intentioned provision from being abused. The Court noted that just because a clause is legal and *intra vires* should not lead to unleash the legal terrorism.

Arnesh Kumar Vs. State of Bihar⁵

The key cause of their troubled relationship was not dowry, but suspicions about the wife's bad character, and this suspicion turned into resentment, leading to their divorce. The trial court correctly noted the accusers' not guilty verdict. As a result, the accused's acquittal was proper.

Manju Ram Kalita v. State of Assam⁶

The Court determined that "cruelty" for the purposes of Section 498-A IPC must be defined in the sense of Section 498-A IPC because it may vary from other statutory provisions. It should be decided by looking at the man's behaviour, measuring the gravity or significance of his actions, and determining whether or not it is likely to drive the woman to commit suicide, and so on. It must be shown that the woman has been exposed to cruelty on a regular basis, or at the very least in the months leading up to the filing of the lawsuit. Petty quarrels, according to the Court, cannot be considered "cruelty" under Section 498-A of the IPC.

Bibi ParwanaKhatoon V. State of Bihar⁷

The details of this case are similar to past cases in that the woman was killed by her husband and family setting her on fire. The deceased wife's sister-in-law and brother-in-law appealed the conviction to the Supreme Court. The Court noted that the appellants in the case did not even live in the area where the accident occurred. There was no proof that their claim was true beyond a reasonable doubt. As a result, the Court acquitted them and stated that the Court would avoid falsely implicating relatives.

Rajesh Kumar &Ors v. State of U.P.⁸

⁴ AIR 2005 SC 3100

⁵ Arnesh Kumar V. State of Bihar, (2014) 8 SCC 273

⁶ Manju Ram Kalita v. State of Assam (2009) 13 SCC 330

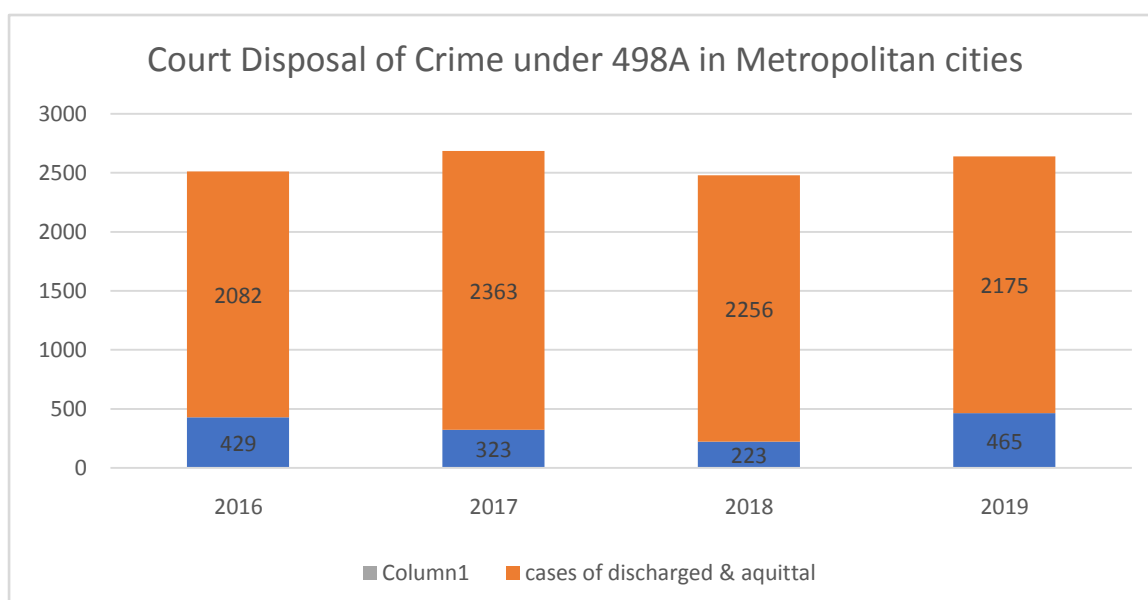
⁷ Bibi ParwanaKhatoon V. State of Bihar (2017) 6 SCC 792

⁸ Rajesh Kumar &Ors v. State of U.P. (2017 SCC Online SC 821)

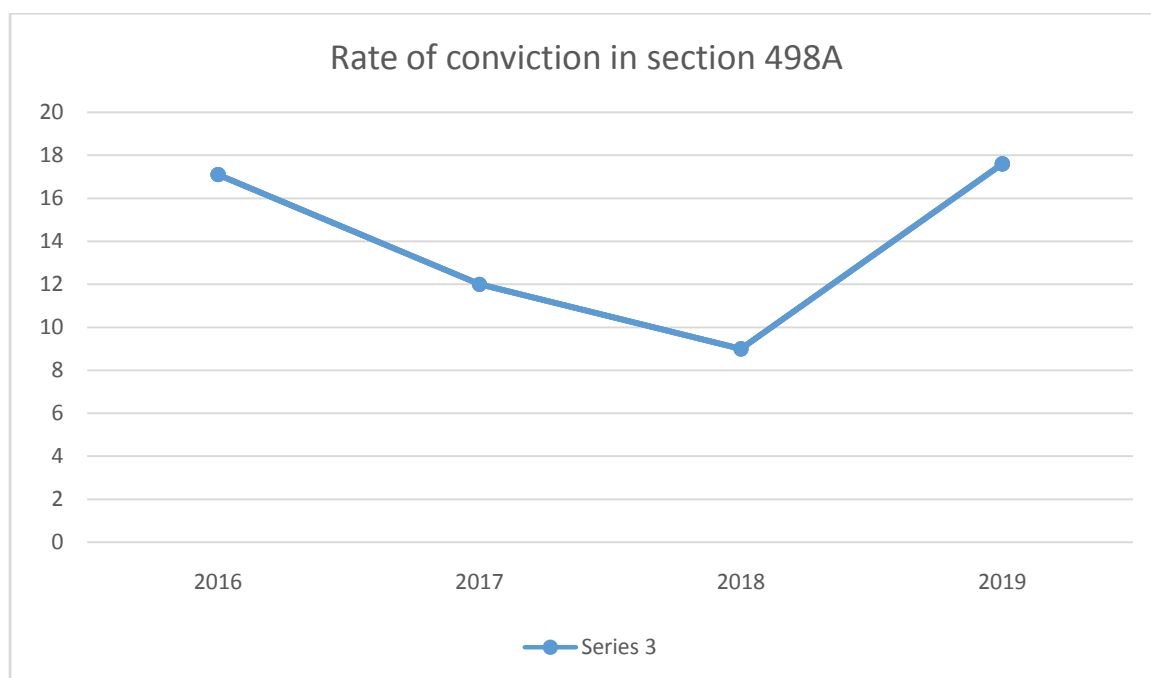
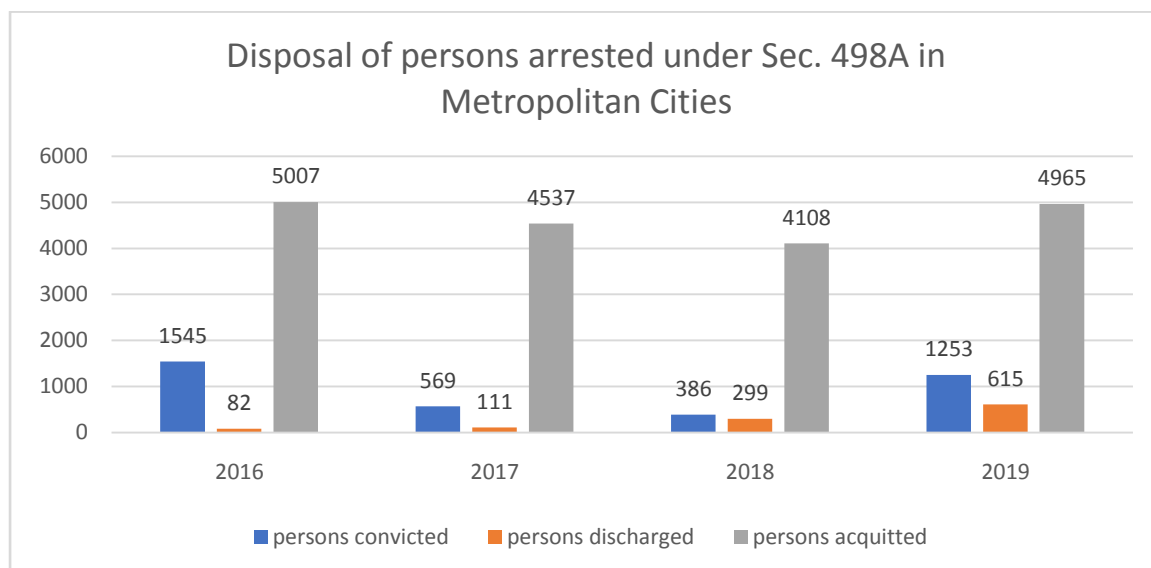
In lieu of a dowry demand, the husband and other relatives were accused of torturing the woman. The other families, on the other hand, requested that there be certain rules in place to avoid over-involvement. As a result, in the majority of cases involving Section 498A, the husband's family are also dragged into court. Maybe, however, that they were involved in the crime. As a result, the appeal posed a concern about the need for directions to avoid the abuse of Section 498A of the IPC. In this case, the Court gave instructions to the Centre that may help deter the abuse of the law and prevent unjustified arrests. The Supreme Court issued broad guidelines to avoid the abuse of Section 498A of the Indian Penal Code.

RESULTS

Statistics obtained from NCRB (National Crime Report Bureau) shows that the number of acquittals is more than the number of convictions in cases charged under section 498A of IPC. The difference depicted is enormous. The huge difference between number of cases of convictions and number of cases of acquittal reveal the fact that the section 498A is being rampantly misused by the disgruntled wives. The following charts given below demonstrate



the fact clearly: -



DISCUSSION

The data presented above in the form of charts is gathered from the National Crime Records Bureau. It significantly shows that the shield which was provided by legislature to protect the helpless women has turned out to be a weapon in the hands of women who take it as a means to fulfil their vengeance towards husband and his relatives. However, all the women are not alike and all the men are not alike. Due to such frivolous complaints the condition of women, who are really suffering and are victims of cruelty, gets worse. It adds to their misery when their true complaints are also seen with the same point of view as of fake complaints. In this way, the laws formulated by legislature to prevent the crime gives birth to another crime when those are misused. *There are some reasons why this law is being misused. These are: -*

- **Domination-** Nowadays, the woman has become modern and in some of them moral values have gradually been diminishing. She wants to dominate the family. When the husband and in-laws don't dance on her tunes, the consequences become worse to such an extent, that the laws are used in the wrong way. However, all fingers are not same.
- **Marriages based on fraud-** Sometimes, it happens that before the marriage some facts are kept hidden from the would-be husband and his family, in order to make the marriage happen. When those facts are known to the husband and his family members and they ask for divorce on the basis of fraud, they are threatened by the wife and this section 498A is misused.
- **Blackmailing-** Sometimes, the wife is not happy with the marriage. She wants to get out of this without losing anything. She starts to blackmail with the weapon of 498A. In this situation, the husband and his family members know that the law is liberal towards women and they have to fulfil her ill wishes.
- **Affair-** This is also one of the reasons for use of section 498A with malefic intentions. When the husband comes to know about the illicit relations of his wife with another man, he demands her to give him divorce. But the woman wants to misuse the wealth of her husband being in an illicit relationship with another man. The woman takes advantage of this pro woman law to harass her husband and his family.

When a person is charged with such an allegation which is fake in its origin, he and his family have to undergo a lot of pain and suffering both mentally as well as physically. Even after his acquittal the life does not come to normal platform. The whole family of the husband has to face the afterward effects too, the certainty of the end of that agony is not sure. *The effects of false cases under section 498A of IPC which have been observed in male victims and his family are as follows:*

- **Adverse effect on health-** There are countless number of harassments done to a man during such a period of time. He has to go through mental as well as physical assault too in some of the cases. It adversely affects the health of a man and the whole family related to him.
- **Suicide-** In some cases it has been seen that harsh situation caused by such false and fake allegations lead to effect the mind of a man in such worse way that he considers committing suicide as the end of misery.
- **Defamation in society-** It is a human tendency that when a person is charged with any allegations whether are true or not, the society in which that person is living, diverts from him and his family. People become so judgemental that they already make a perception in their mind and announce that person as guilty. The character of that person suddenly becomes bad in the eyes of society.
- **Set back in career-** A person loses his credibility when there are such kind of allegations on him. It proves fatal for his career. As his superiors and colleagues stop trusting on him, he loses all the opportunities needed for his career upliftment.

Directions by Supreme Court of India

The Supreme Court gave some directions in *Rajesh Kumar &ors. V. State of U.P.*, to stop the misuse of 498A. Which are: -

- **Family Welfare Committee:** - SC recommended the formation of family welfare committees at district level. Its work is to look deep into the complaints filed under section 498A and submit the reports to the magistrate.
- **Investigating officer:** - The officer who would be investigating the case must be well trained within four months of delivery of judgement issued to investigate the case.
- **Issuance of red corner notice:** - Impounding of passports of those relatives of man, who reside outside India, should not be a regular practice.
- **Personal appearance:** - The requirement of personal appearance of family members before the court is not necessary, especially when they live out of India.⁹

Recommendations by Malimath Committee in 2003

Malimath Committee suggested a few recommendations in 2003 in regard to 498A IPC. These are as follows:

- **Knowledge of rights-** The committee emphasised on the point that there must be a schedule to the Code in all regional languages. So that the accused can be familiar with his rights, where to use them and how to use them.
- **Presumption of innocence-** In the criminal cases the accused is presumed to be innocent until proven guilty. The proof against the accused must be beyond reasonable doubt to prove him convicted.
- **Bailable and compoundable-** The committee suggested to make section 498A of IPC as *Bailable and Compoundable*.¹⁰

SUGGESTIONS

The inherent purpose of law is always to prevent crime from occurring. If a crime happens, law is here to bring justice to humanity. But when the law itself becomes the idea for incriminating someone by misusing that law, here urgent need for some reformation arises. Keeping in mind the scenario, here are some suggestions: -

- **Need of change in mindset:** - Before implementing any reforms, it is the need of the present time that the mindset of every authority which help delivering the justice to humankind, should be changed. Not all the men are alike and not all the women are alike. It should not be concluded that man is the wrongdoer in every case and his wife is helpless victim.
- **Thorough investigation by competent authority:** - The holistic view of the concerned matter must be seen. There must be proper and thorough investigation of the matters before filing of the charge sheet by the competent authority. Police should not make up its mind that the man is guilty and woman is innocent.

⁹ *Rajesh Kumar &Ors v. State of U.P.* (2017 SCC online SC 821)

¹⁰ <https://www.thehindu.com/news/national/the-malimath-committees-recommendations-on-reforms-in-the-criminal-justice-system-in-20-points/article22457589.ece>

- **Not to drag the innocent family members:** - It has been seen in some cases that in order to harass the family of husband and husband himself unnecessarily, the whole family including the members who has nothing to do with the married life of that couple, are dragged into the case and are tortured. Even the older members and children are not spared. This is death of justice.
- **Role of women welfare committees:** - We see the committees created for welfare of women fighting for their rights, not even after going in depth. The whole picture is projected as if it is only the man who is responsible for the miseries of woman. The question here arises that are the ladies of the house of in-laws of the woman complaining, don't come into the purview of women welfare committee. Where would they go? Aren't they women? This biasness should not have any place in our society. The committees which are meant for welfare of a particular category or sex must be altered as human welfare committees.
- **Set up of neutral committee:** - A neutral committee should be set up, which investigate the whole issue without any previous perception and biasness. That should also be prompt but not in haste. Whatever is the report must be submitted to the concerned authorities within a stipulated time.
- **Compensation to the acquitted person:** - As per the reports of NCRB, there is a lot of difference between the number of cases registered under section 498A and the number of acquittals. It undoubtedly shows that most of the cases are only to harass the man and his family. Due to which, he has to face so many problems in his life whether they are mental or physical. Society starts seeing him like he is a criminal. He loses all his fame in a very short time period, which was earned by him and his family in a long period of time. His time and those opportunities he has lost due to frivolous allegations, cannot be returned to him. However, it can be compensated.
- **Penalty for false allegation:** - As section 498A is being rampantly misused, it becomes very necessary to put a check on such kinds of allegations. It can possibly be done when a penalty is set for such kinds of acts. The penalty can be imprisonment or fine or both. If it is not done, it will be very tough to curb the misuse.
- **Flexibility to law:** - The law can be made a little bit flexible, not for providing benefits to the culprits but to help the innocents. It should be made compoundable but only with the approval of the court, so that in case of the matters filed under the fit of rage by the woman and she realises the gravity of wrong done by her, it becomes possible to withdraw the complaint. It should be made non-cognizable, so that the person accused is arrested only after having sufficient and reasonable grounds. If it is made boailable, it will not serve the purpose for which it is made.

“Whenever a law is made very stringent under the pressure of emotionally surcharged social reaction, there is the danger of its misuse.” Justice K.T Thomas in article “Women and Law”¹¹

CONCLUSION

In conclusion, it would be correct to say that section 498A has become an evil and is being proved a nightmare for those who are innocent but have been victimised of vendetta by wife.

¹¹ <http://www.thehindu.com/2004/02/19/stories/2004021902311000.htm>

The purpose behind its insertion in law was to provide justice to real victims of cruelty by husband and his family. But after looking into the statistics, it seems that section 498A is being used as a weapon to harass men rather than a shield to protect the women victimised of cruelty. The misuse is more than use. Therefore, it is must to take some necessary strict steps to put a check on this illegal practice, otherwise the misuse of this section would suppress the real and genuine call for help by the real victims of domestic violence and cruelty.

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