

A Critical Analysis of the BNS, Section 85, Concerning Cruelty

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Abstract- Customs and traditions are vital in India. Marriage is a sacred social institution, yet it has changed dramatically in recent decades. Indian society once valued dowry. However, it became monstrous and cursed society, and women fell prey to its darkest aspect. It eventually led to women's abuse. It is important to preserve marriage as a holy institution, but violence against women is one of the most widespread human rights abuses. Act 46 of 1983 added Section 498A to the Indian Penal Code, 1860 to safeguard women. In recent years, women have abused Section 498A of the Indian Penal Code for personal gain. Section 498A of the IPC should be amended and society should change to end the misery of exploiting the law against males. This research paper examines cruelty against women and the misuse of Section 498A of the Indian Penal Code, 1860.

Index Terms- Cruelty; Misuse; Women's Rights; Indian Penal Code; Dowry.

I. INTRODUCTION

The Indian culture has a rich history of high cultural values, yet it is still in the early stages of material development. Today, in the information era, families face many challenges, and interpersonal bonds are weakening. Discrimination against women is on the rise, but there are also surprisingly few women in positions of power. The dominance of material culture in today's society can even be seen in the institution of marriage. Our culture has transformed dowry into a curse.¹ The number of dowry-related fatalities is rising. The Indian women endured unimaginable pain and brutality at the hands of their male counterparts.

There were numerous dowry-related fatalities in India in the 1980s. The toll from Dowry-related deaths kept climbing. Married women were subjected to pressure from their in-laws to comply with their requests for monetary, material, and/or real estate gifts. She was threatened with physical harm and

perhaps death if she did not comply with their demands.²

Too many women were abused by their husbands and in-laws. Marriage, formerly celebrated as the joining of two people and two families, is today viewed primarily as a professional connection. Marriage has become a commodity. For women to have equal access to justice, it was deemed necessary to pass specific legislation. There have been calls for the government to step in and pass laws to prevent this kind of abuse from continuing, and many groups have echoed those calls. Section 498A of the Indian Penal Code (IPC) was enacted to protect women from abuse by male relatives. The maximum penalty and fine under this clause is 3 years in prison. The term "cruelty" has been given a broader definition in this section. Women's bodies are subjected to both physical and psychological abuse. Harassment with the intent to intimidate her or her family into giving in to an illegal demand for property or security is also covered by this provision. Section 498A of the Indian Penal Code establishes a non-compoundable, non-bailable, and cognizable offence.³

In its 2010 decision in *Preeti Gupta v. State of Jharkhand*,⁴ the Supreme Court noted the urgent need for a legislative review of the clause. It is well known that many complaints contain inflated descriptions of the facts, the Court stated.

Marriage is the socially sanctioned union of a man and a woman for the purpose of procreation. A husband's primary responsibility is to provide for his family, including his wife and any children they may have. On the other side, a wife's responsibilities include raising children and providing them with emotional stability. The dowry system as a whole has caused stress inside the home. With the introduction of the dowry system, a more materialistic culture

entered the home, and the value placed on women's possessions rose to the point where it was occasionally used as a weapon of abuse that led to their deaths. Love, tolerance, selflessness, faith, and compromise are the cornerstones of a healthy marriage.

Reasons why Section 498A was enacted

Medieval Indian women were socially disabled. Vedic women's equality disappeared. Empowering women took effort. Post-Vedic social inequalities against women increased. Women's position began to decline when they were denied schooling. Girls were home-schooled by their male relatives once the "gurukul" system was abolished. Only wealthy girls were educated. The "Mughals" further degraded women's position. This age saw the "Purdha" system. Sati system elevated family status. The invading soldiers jeopardised women's modesty and family standing.

During the time that the British ruled India, there was an effort made to create a standard code that would have been applicable to all religions for the purpose of making administration easier. However, any attempt to change personal rules was received with fierce hostility from the general population of India.⁵ After then, a large number of people who advocated for social change began their crusade against the widespread societal ills that existed during that era.

They were ultimately successful in compelling and persuading the British authorities to pass a number of laws designed to combat these ills. As a direct result of this, the Hindu Widows' Remarriage Act of 1856, the Bengal Sati Regulation Act of 1829, and the Child Marriage Restraint Act of 1929 were all passed into law. The position of women in society continued to deteriorate despite the passage of these laws.

After India gained its freedom, it began expanding into other areas. We're a democratic nation now. Individualism and liberalism, two prominent Western ideals, were also widely adopted. Rapid urbanisation and industrialization increased the need for trained workers and access to educational opportunities. It was believed that moving from the city to the country was important to provide for one's fundamental requirements and raise one's standard of living. The

subsequent rise of the nuclear family was a natural consequence of this trend. As a result, dowry cases rose sharply in the 1980s, and many women committed themselves as a result of the unrelenting brutality shown to them by their husbands' families.

In response to a growing number of bride-burning incidents, in 1983 Parliament passed The Criminal Law (Second Amendment) Act. The Amendment Act of 1983 added Section 498 A to the Indian Penal Code, which is captioned "Husband or relative of husband of a woman subjecting her to cruelty," and it specifically addresses cruelty towards women at the hands of husbands and their families. Similar changes were made to the Code of Criminal Procedure (1973) and the Indian Evidence Act (1872) to ensure that the new laws would have a real impact. It appears that the introduction of section 498A, together with the linked provisions under the other statutes, is intended to serve as a deterrent to those who commit acts of cruelty towards married women.

II. THE CONCEPT OF SECTION 498A, IPC

As Section 498A of the Indian Penal Code does not include a definition for the word "cruelty," it can be challenging to determine what it means. No other piece of legislation defines the phrase, thus complicating the task.⁶ Section 498A of the Indian Penal Code, however, defines cruelty as follows:

- (1) Behaviour on the part of an individual, either voluntary or deliberate, that encourages or forces a woman to end her own life by committing suicide or to cause a serious injury to either her life or any portion of her body or her mental well-being. Therefore, it protects against both physical and mental harm.
- (2) When a woman is tortured, harassed, or otherwise mistreated in order to coerce her into complying with a demand that she acquire some form of property or another important security, this is considered to be a cruel form of behaviour. The scope of the phrase "cruelty" is broad enough to encompass the harassment of the wife by her own husband, as well as the harassment of the wife by any other person or relative in order to satisfy the demand of obtaining any property or any other valuable security.

Because of the Amendment Act of 1983, treating married women cruelly is now a crime that can result in a prison sentence of up to three years and a fine. Additionally, the offender may be subject to civil liability for the amount of the fine. Information relating to the commission of this offence must be provided to an officer in charge of a police station by or on behalf of (a person related by blood, marriage, or adoption, NGOs, or public official belonging to notified class or category) in order for the officer to be able to take cognizance of the offence. The provision that is being discussed stipulates that the offence must be punishable by imprisonment without the possibility of bail and must be tried by a Magistrate of the First Class.

In the case of *Shobha Rani v. Madhukar Reddy*,⁷ which involved the interpretation of Section 498A of the Indian Penal Code, the Supreme Court of India made the observation that the word "cruelty" cannot be defined; rather, it should be judged in accordance with the kind of relation the concerned person has with each other. This was said in the context of the case. The court went on to say that while it is simple to determine whether or not there was physical cruelty based on the circumstances and the extent of the bodily injury that was sustained, it is extremely challenging to identify or prove that there was mental cruelty. In the case of *Samar Ghosh v. Jaya Ghosh*,⁸ the Supreme Court offered its opinion that, in order to determine whether or not mental cruelty occurred, it is necessary to take into account a great number of other aspects of the situation, including the degree of sensitivity of the person being evaluated, their degree of education, their family background, their cultural and religious beliefs, their financial status, and the traditions that they are accustomed to. This ruling is credited with shedding some light on the concept of mental cruelty.⁹

Other legislations dealing with 'Cruelty'

The meaning of the phrase "cruelty" is discussed in a number of different legislative sections, some of which do so explicitly while others discuss it in a more roundabout way. The following pieces of legislation have been discussed in greater detail below.

Sections 304B and 306 of the IPC, 1860

Section 304B of the Indian Penal Code deals, albeit obliquely, with the concept of cruelty. The concept of a woman's dowry being her cause of death is explained here. Within the first seven years of marriage, it is punishable by law to intentionally burn or otherwise injure a lady to death. The woman's in-laws, which can include the husband or any relative of the spouse, shall treat her cruelly or torment her up until her death. As a result, when a woman dies as a result of a dowry, it is because she was exposed to extreme cruelty. Indian law addresses the crime of assisting a suicide in Section 306. This subsection states that it is a crime to aid someone in committing suicide. Note that while the term "abetment" is addressed in Section 306 of the Indian Penal Code, the term "cruelty" is not.

Indian Evidence Act, 1872

The Indian Evidence Act is a procedural law that lays out the rules for how evidence is to be gathered and presented in court. According to Section 113A of the Indian Evidence Act, if a woman commits suicide as a result of harassment or cruelty, the court may infer that her suicide was the direct cause of her death. For there to be a presumption of abetment to commit suicide, there must have been cruelty or harassment, and the lady must have committed suicide shortly after or within a reasonable amount of time afterward. According to the section's explanatory notes, "cruelty" used here has the same meaning as when applied to that word in Section 498A of the Indian Penal Code. The Indian Supreme Court has ruled that proof of the deceased woman's suicide by means of cruelty or harassment is necessary under Section 113A of the Indian Evidence Act.¹⁰

The Indian Evidence Act has a provision referred to as "shall presume," which is considered to be an obligatory provision in accordance with the principles that govern the interpretation of statutes. It is possible that the accused did not have any direct involvement in the death of the victim, but even so, it is presumed that they were responsible for the dowry death.

Hindu Marriage Act, 1955

At the outset, it is important to point out that the context in which the term "cruelty" is used in

accordance with this regulation is restricted to the context of the dissolution of the marital connection. According to subsection (i-a) of section 13 of the Hindu Marriage Act, cruelty can be a valid reason to file for a divorce.

III. ROLE OF JUDICIARY IN SHAPING THE SECTION

The purpose of including this clause was to shield women from domestic violence in the form of demands for expensive items. Section 498A of the Indian Penal Code has often been construed by Indian courts in a way that favours women seeking justice. In 1987, the Supreme Court ruled that a spouse could file for divorce due to the demand for dowry, which was considered cruel behaviour. However, the court distinguished between the concept of cruelty in matrimonial and criminal proceedings, holding that the latter needed evidence of intent to harass through demand for dowry.¹¹

Importance of Evidence

In a case heard by the Supreme Court in 1998, three deathbed declarations were upheld as admissible evidence.¹² The accused not only murdered his wife, but also his daughter. On the basis of three dying declarations, he was executed for murder, dowry death, and cruelty. Sections 304B and 498A of the Indian Penal Code are used without question by the court when the evidence is conclusive and there are eyewitnesses.

Many instances were filed between 2000 and 2010, and in one of them, the Court affirmed the validity of a dying declaration in 2001.¹³ In addition, the Court ruled that a statement made by a dying person cannot be disproven as long as it can demonstrate the speaker's mental and physical fitness. Due to the dead person's mental health care, it is still unclear whether or not they committed suicide.

Between 2010 and 2018, there were several shifts in how people viewed cruelty and how section 498A of the Indian Penal Code was applied. The number of baseless lawsuits brought in an effort to ensnare unsuspecting family members increased, prompting the Supreme Court to give recommendations and cautionary statements in various cases. Cases such as

Arnesh Kumar v. State of Bihar (2014)¹⁴ and *Rajesh Sharma v. State of U.P. and Others* (2017)¹⁵ provided extensive precedents and rules of law.

Evidence is crucial to proving the accusation under section 498A of the Indian Penal Code, as the Supreme Court has stressed on numerous occasions.¹⁶ The courts have often made the point that direct evidence is more reliable than indirect evidence. Circumstantial evidence must be very solid and convincing for a conviction to be reached only on that basis.

For the Constitutional Validity

The fact that only the husband's family can be penalised for cruelty in a married context rather than the wife's family is one of the key justifications for attacking section 498A. However, the constitutionality of this section was challenged before the Delhi High Court in *Inder Raj Mallik v. Mrs. Sunita Mallik*¹⁷ on the grounds that it granted capricious power to Courts and the police in light of the ambiguity surrounding the definition of the term "cruelty" appended to the section and the fact that a similar penalising provision was available under the Dowry Prohibition Act. As the court ruled, this provision does not exceed its authority under the Constitution.

In *Krishna Lal v. Union of India*,¹⁸ the Court said that section 498A of the Indian Penal Code is in line with the Constitution. The Court also said that only unfair discrimination would go against equality, and that the section's provision is a reasonable way to divide people because the crime is only committed at home, which makes it impossible or very hard to find evidence. So, the Court decided that the rule did not go against what Article 14 of the Constitution said.

The plaintiffs in *Sushil Kumar Sharma v. Union of India and Ors*¹⁹ argued that section 498A of the Indian Penal Code should be declared unconstitutional because it could be used to harass innocent people with false accusations and punish those responsible for making them. While upholding the provision, the court noted that the Supreme Court's mandate in such cases has always been clear: the mere possibility of misuse of a legal provision does not immediately call for declaring such

provision to be unconstitutional. The Court readily accepted the petitioner's dispute, but it also noted that the legislature has the authority to ensure that those who use the provision for malicious reasons are penalised.

IV. CRITICAL EVALUATION OF THE SECTION

This provision provides a definition for the term "cruelty" that is absent from other laws. The portion came into being due to the husband's and his family's insatiable avarice. Before this law was passed, "cruelty" was used to describe how inmates and animals were treated. Cruelty was defined as the inhumane treatment of animals by their human caretakers. One of the reasons under marriage law for a divorce was cruel treatment. The treatment of women was horrible everywhere you looked. Domestic abuse against women is extremely common in India. There was evidence of violence against women across all socioeconomic groups, not only the poorer classes. Particularly in Indian culture, violence against women has become all too widespread. Before the passage of the current Act in 1983, there were no laws in place to protect women from domestic violence. As the number of women being killed for their dowries rose dramatically, groups dedicated to protecting women from such violence began calling for new laws to be passed. The Indian Penal Code, the Indian Evidence Act, and the Dowry Prohibition Act have all undergone significant revisions and updates recently. All of these changes were made to better protect women from abuse, and they all work together to do so. Section 304 of the Indian Penal Code was enacted to work in tandem with section 498A, which was added to the code in 1983.²⁰

The arrangement under section 498A, which was originally implemented to protect women from torture and harassment by spouses or relatives, has sadly been mishandled to cause problems for the husband and his family, as any elementary research of the law would disclose. More and more women are breaking this law and its purposes by making up accusations against their spouses in order to get rid of them or cause their family emotional distress. Abuse of this provision is on the rise, and educated women

know that it is both cognoscible and non-bailable, and that it swiftly addresses the woman's complaint and jails the offender without due process. In some cases, like *Savitri Devi v. Ramesh Chand & Ors*,²¹ the court rules unequivocally that the provisions have been abused to the point where they threaten the institution of marriage and are therefore bad for society as a whole. The court ruled that a review of the case and the relevant legal rules was necessary to prevent such an outcome.

In *Saritha v. R. Ramachandran*,²² the court did notice that the change trend and asked the law Commission and Parliament to make the offence a non-cognizable and bailable one. This section was created with the intention of protecting married people from unscrupulous husbands. However, it is clear that some women are abusing it, which the court strongly condemned in that case. It has always been an obligation of the court to condemn wrongdoing and protect the victim, but what occurs when the victim becomes the abuser? What kind of relief may the husband expect from this situation? Under these circumstances, the woman has the right to file for divorce from her current husband and either start a new life with someone else or get monetary recompense.

Creating the crime as a non-cognizable and bailable one is opposed by many women's rights groups because they believe it gives the suspect an opportunity to evade conviction. The potential upside is that this gives the individual a fair shot and makes it easier to achieve the goals of justice. The purpose of justice is to protect the helpless and ensure that the aggrieved can seek redress. A person who is falsely accused by his wife under section 498A of the Indian Penal Code (IPC) does not have the chance to promptly urge justice if he is innocent, and "justice" delayed is justice denied. Legislators should propose a neutral method of drafting this provision to ensure that the wrongdoer receives redress and that the guilty are brought to justice. Women still face perilous circumstances in Bharat. As long as their own rights are protected, they don't seem to care if the rights of others are violated in the process. Educated women in today's society ought to adhere to the credo of equality and demand change, but instead the trend is progressively getting reversed. Women

exploit their status as the "weaker sex" to violate the rights of others in order to get attention for themselves and advance their own causes.

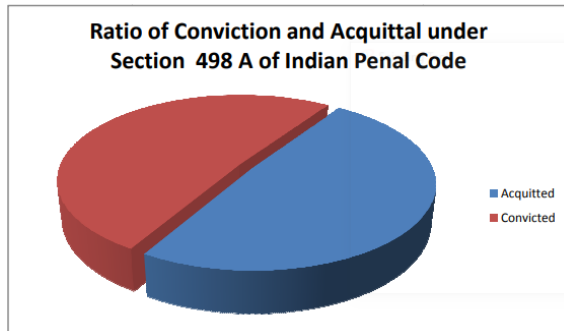


Figure 1: Data of NCRB in 2020

The fact that there was a high rate of acquittal during the decade of 2006, as shown by the information acquired from the National Crime Record Bureau, Ministry of India, led the scholars to believe that the section was being abused by women. The information was obtained from the Ministry of India. The information that was provided by the Bureau was derived from data that was gathered from all of India's courts.²³

However, the low conviction rate cannot be explained away simply by the fact that women are more likely to file fraudulent allegations. Another possible interpretation is that women are denied access to justice. The number of women who appeal their convictions is significantly lower than the number of men who do so.²⁴ This disparity can be ascribed to educational and economic inequality. Due to the nature of the crime, there may not be sufficient evidence to support the prosecution's case, which may also be contributing to the declining conviction rate. Due to the protracted and drawn-out nature of court proceedings as well as the patriarchal makeup of society, women are subjected to additional pressure to drop the lawsuit.

V. CONCLUSION AND SUGGESTIONS

This section addresses a highly contentious problem by limiting relief under this provision to female victims. If this problem isn't fixed through legislation, it will grow into a terrifying social menace. People's

faith in the Judicial Branch depends on updating this Section. Unfortunately, not all women who need safety from domestic violence will learn about this resource, and even fewer will really make use of it.²⁴ Unscrupulous women will utilise this rule as another tool in their arsenal. Everyone who relies on a man will suffer if he is expelled from his own home due to charges of domestic violence or cruelty, whether or not those allegations are accurate.²⁵ Penalising an entire family is wrong even if the accused individual is guilty of abuse. To say that the ordeal of an innocent man and his loved ones at the hands of a corrupt legal system is unfair would be an understatement.

Few suggestions to prevent the misuse would include:

1. Role of Women NGOs

Remembering that the law is being used, for the most part, to harass extra women in the husband's family, these organisations need to make sure that their investigations of complaints are conducted in a fair and objective manner, without showing any favouritism towards the woman being accused. They must not encourage any young woman to bring a criminal complaint against her in-laws over anything that can be resolved amicably. It is also the responsibility of foreign women's organisations to ensure that NRIs are not falsely accused of wrongdoing and that they are not subjected to harassment for the purpose of coercing them into paying large sums of money.

2. More family counselling centres

There have been several reports of males being harassed by their spouses or/and their in-laws, and these stories have come to light from different parts of the country. As of the now, there is no organisation that can significantly help these overworked men and his members of his family by paying attention to their side of the story and putting their purpose of reading ahead of the government's. It is of the utmost importance at this time to establish family substance centres all across the country in order to provide assistance to those families who have been wronged.

3. Better investigation by civil authorities

Civil officials should be in charge of looking into these crimes, and only when they find that a crime was committed should anyone pay attention. The

government should make police aware of how it could be used wrongly.

4. Bringing Penalty for making false accusations
When a judge decides that the allegations made about breaking section 498A of the Indian Penal Code are true, the people who made the allegations should be punished harshly. This can make people less likely to go back to court with dirty hands and hidden goals. All law enforcement officials who work with wrongly exonerated girls and their families should be charged with a crime. Since this section doesn't have anything to stop people from making false claims, which is why dowry cases are growing at such an alarming rate, the court should start giving fines and taking harsh actions against those who do.
5. Following Supreme Court's guidelines which are briefed as follows:

In the event that a charge of cruelty is brought, the police should not immediately arrest the spouse or any of the family. They are required to provide reasons that are sufficient for the arrest that was made without a warrant. It is imperative that each and every law enforcement officer be given a checklist that details the particular processes that must be adhered to. During the process of presenting the accused for further custody, the police should provide the Magistrate with a check list that has been properly filled out and contains the reasons and materials that caused the arrest. The decision of the police to not arrest a person who is suspected of cruelty shall be communicated to the Magistrate within a period of two weeks from the day when the case against the individual was initially filed. In the event that police officers refuse to comply with these directives, they will not only be subject to disciplinary punishment from the department, but they will also be brought before the High Court for contempt of court.

Despite the fact that section 498-A of the Indian Penal Code, 1860 was created to safeguard women from the brutal treatment of their husbands and the family of their husbands, it is currently being applied in an inappropriate manner. They are breaching the law by being cruel to their husbands and his family members, and then taking them to court under

Section 498A of the Indian Penal Code of 1860, which specifically addresses "cruelty by husband or relatives of husband." These women are dragging their husbands and his family members to court. From this point forward, it is imperative that specific legal actions be taken as quickly as possible in order to put a halt to the expansion of "legal terrorism," which occurs when individuals violate the law in order to obtain what they desire.

FOOTNOTES

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