

To,

Dated: 23.06.2021

The Hon'ble Chief Justice of India,

Supreme Court of India,

New Delhi

Subject Request for Revisiting Section 498A of the Indian Penal Code. 1860

Respected Sir,

From its very inception, the Supreme Court of India has successfully acted as the 'sentinel on the qui vive' vis-à-vis fundamental rights, especially with respect to the fundamental right of equality. It has kept pace with the developments of the society and has time and again reiterated that the Constitution is committed to an idea of substantive equality, i.e. it had to take the actual circumstances of people into account when determining what constituted 'equal treatment'. Even so, in the current scenario, Section 498A of the Indian Penal Code, 1860 fails to provide such substantive equality, depriving the person aggrieved of his legal remedy.

Section 498A was brought into the Indian Penal Code, 1860 in the year 1983 with the avowed object to combat the peril of cruelty to a married woman for want of dowry, which often led to their death, and to curb the menace of harassment to a woman at the hands of her husband or his relative. The object for introducing this Section is reflected in the Statement of Objects and Reasons while enacting Criminal Law (Second Amendment) Act No. 46 of 1983, which states "the increase in number of dowry deaths is a matter of 'Serious concern'.

However, the alarming statistics of present times depict a whole new state of affairs. Over the two decades of the 21st Century of India, women's suicide is reduced by 2 per cent, while male's suicide is increased by 48 per cent. Male suicides in India are much more than double that of women's suicide, as per the ADSI 2019 report of the National Crime Records Bureau (NCRB). This means that India loses a son to Suicide every 5.38 Minutes or that more than 11 Sons are forced to commit suicide every hour, as against about 4 female suicides every hour. Concentrating precisely on the suicides of Married Men, the ADSI 2019 Report has shown an unprecedented increase in the Husband Suicide Index by almost 61 per cent rise in the past 20 years (21st Century).

The Indian judiciary has also taken into consideration the existence of cruelty against the married men at the behest of his wife. Few instances on the same can be witnessed in the case of Anita Gaur vs. Rajesh Gaur [First Appeal No. 115/2016], and Joydeep Majumdar vs. Biurti Jaiswal Majumdar [Civil Appeal No. 3786/2020].

However, these cases only recognize cruelty against men in case of matrimonial disputes, it doesn't create any deterrent effect neither does this provide an alternative resort to the Husband in case he doesn't wish to seek divorce.

In an instant case, a tribal man was tied to a tree and beaten up with sticks by two members of girl's family for allegedly failing to pay them 'deja' (reverse dowry) for wedding, in Barwani district. Not only physical, but many men are victim of mental cruelty also from their spouse. Such cases of cruelty among men are not uncommon in the present times.

Adding to the anguish of married men, a recent trend is noticed regarding misuse of Section 498A, by filing false and frivolous charges against the husband. The Supreme Court of India along with Hon'ble High Courts have time and again acknowledged the misuse of the Section in numerous cases, including Rajesh Sharma vs. State of Uttar Pradesh [S.LP No. 2013/2017]. Anju vs. Govt. of NCT of Delhi [CRL. REV.P. 730/2016], and Preeti Gupta vs. State of Jharkand [CRL.A. I512/2010]. While referring to this situation as Legal Terrorism, the Supreme Court in the case of Sushil Kumar Sharma vs. Union of India [W.P. 141/2005] made the following observation:

"Just because the provision [S. 498.A] is constitutional and intra 17res. it does not allow unscrupulous people to wreck personal Indetta or unleash harassment. Thus. it may become necessary or the legislature to find ways to deal appropriately with the makers of frivolous complaints or allegations. Until then, under the current system function, the Courts have to take care of the situation."

The Law Commission also addressed this issue concerning abuse of the provision extensively in its 243rd report on IPC and opined that the Section shall not act as an instrument of oppression and counter harassment. The Commission laid certain guidelines to mitigate the issue, but even after 9 years, the issue stands unresolved.

The main point of concern here is the fact that Crime has no gender, and everyone should be deterred from committing it. It's time that the laws in India recognize that Men too have mental burnout, that men too are subjected to Cruelty. The only difference here is that women have legal recourse against cruelty, but men don't.

One of the greatest American Judges of all times- Benjamin N Cardozo, stressed the necessity of judicial alertness to social realities. Not only this a large number of judges of the Hon'ble Supreme Court, such as Justice VR Krishna Iyer, Justice P.N. Bhagwati, Justice Y.V Chandrachud etc vigorously pleaded for the adoption of sociological approach for the interpretation of law, in the light of needs and necessities of the people of India.

Going by the principle that the law must change with the changing needs of the society and taking into account the aforementioned facts and circumstances with respect to the changing condition of men being prone to cruelty, we, the undersigned urge and implore the Supreme Court of India, to take Suo moto cognizance of the matter, and direct the Law Ministry to formulate law governing cruelty against men, in order to eradicate their helplessness and to fill in the lacuna in the law.

Looking forward to take prompt action

Yours Sincerely

Mohit Kaushik, Advocate



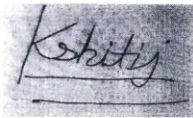
Muskan Malhotra, CPJ College of Law, New Delhi



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Kshitij Pandey, Dr. Ram Maohar Lohiya National Law University,
Lucknow



Swati Mishra, Shri Vaishnav Institute of Law, Indore



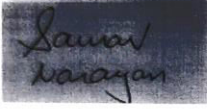
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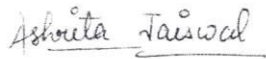
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