



**ORIGINAL RESEARCH PAPER**

**Political Science**

**DOMESTIC VIOLENCE AND FUNCTION OF SECTION 498-A OF THE INDIAN PENAL CODE**

**KEY WORDS:** Domestic violence, women, crime, Section 498-A, Indian Penal Code,

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**ABSTRACT**

Domestic violence against women has become a global problem due to predominance of masculinity, ignorance of the law and death threats. The first international recognition of domestic violence was adopted in 1993 by the U.N. Declaration on Violence against Women. This declaration defines violence as physical, emotional and sexual abuse in social and personal life. 'Domestic violence' has not been properly defined in Indian law. Section 498-A of the Indian Penal Code is the first law in India to emphasize the right of Indian women to a life free from domestic violence. Some educated, financially well-off brides abuse the law with the help of patriarchy or friends. It is not fair to convict the accused just by making a complaint. The rate at which abuse is likely to decrease is much higher than that of daughters losing legal aid. The police and the judges are affected by their own thinking in different ways. Section 498-A of the Indian Penal Code was intended to prevent physical and mental abuse of the bride, and it should be made more stringent. At the same time, it is imperative to ensure that there is no scope for abuse.

**INTRODUCTION**

Most of the married women victims of domestic violence do not want to report in the police because they want to keep it a secret. Domestic violence against women has become a global problem due to the predominance of masculinity, ignorance of the law, death threats, shame and fear of not being able to show one's face in the society. The first international recognition of domestic violence was adopted in 1993 by the United Nations Declaration on Violence against Women. The declaration defines violence as physical, emotional and sexual abuse in social and personal life. This announcement was unprecedented. It first outlines women's rights. At the Beijing Conference in New York on June 10, 2000, delegates from 180 countries agreed and called on treaty states to prosecute all forms of domestic violence, including marital rape [1].

The term 'domestic violence' has not been properly defined in Indian law. The term 'cruelty to wife' is being used in Indian law to address this growing danger. The UN law on 'domestic violence' defines domestic violence as: Gender-based physical and psychological abuse by family members against women in the family, ranging from general assault to severe physical assault, abduction, threat, intimidation, coercion, verbal abuse, verbal abuse. Forced or unlawful entry, destruction of property, sexual violence, marital rape, dowry-based violence, exploitation-related violence through prostitution, violence against domestic workers, and attempts to do so have been termed as 'domestic violence' [1-2].

In view of the growing incidence of domestic violence against women, the government took steps to amend the Indian Penal Code in 1983 and inserted Section 498-A to take action against a new offense, namely, "cruelty to wife by husband" The crime was punishable by up to three years in prison and a fine.

**Definition of Cruelty under Section 498-A of the Indian Penal Code:**

- “(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 damage to the life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of a woman with a view to coercing her or her relatives to meet any unlawful demand for property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

Under existing legal provisions and judicial interpretations, there are the following laws that may be considered domestic

violence under section 498-A of the Indian Penal Code:

Disrespectful or abusive behavior; adversely affects or is likely to affect, including psychological or emotional states;

Insults, ridicule or calling by name; or forced sex determination or abortion;

Repeated false accusations of adultery; Dowry claim; or

Repeated threats to cause mental or physical pain; or

Suicide threats; etc.

Domestic violence is a global problem, and there needs to be a global response to it. Domestic violence takes many forms, such as physical abuse, emotional abuse, or economic deprivation.

Section 498-A of the Indian Penal Code is the first law in India to emphasize the right of Indian women to a life free from domestic violence. At the heart of the law's rise was the influence of the feminist movement of the 1970s and 1980s, which shed light on rape as well as death for the dowry system and called for the law to be upheld. In response, the report of the 91<sup>st</sup> Law Commission recommended the introduction of legal reform as a preventive measure and strengthening of existing laws. This led to the insertion of Section 498-A in the IPC and some changes were made in other laws, such as the Hindu Marriage Act and the Evidence Act, 1972, as well as the Criminal Procedure Code [1, 3].

**The main features of section 498-A are:**

- It is a criminal law that deals with a matter which is mostly organized within the four walls of a closed room.
- This law relates to the cruelty meted out to a married woman by her husband or her husband's relatives.
- Cruelty or harassment is identified as an "intentional" use to meet unlawful demands.
- The offense is enforceable, bailable and punishable by a first class judicial magistrate.
- It has been defined as a simple law. However, only in exceptional circumstances can the High Court allow the case to be compounded.

It is a landmark law in the history of Indian law because it is unique in that it deals with criminal and marital matters simultaneously. This law relates to two main institutions of society, one is marriage and the other is family. This law gives a new dimension to the concept of cruelty. The law challenges

the balance of power in marital relations and empowers women to fight legal battles against their husbands or their relatives. With the introduction of this law, a new era has begun in Indian society. This law empowers the state to interfere in the personal and family relations of its citizens [4].

There is no denying that some educated, financially well-off brides in urban areas abuse the law with the help of patriarchy or friends. Although they were not tortured, they resorted to retaliation for various reasons, and even without any reason, the bride filed a complaint under section 498A. The accused were arrested on a non-bailable charge. The next thing to judge is the veracity of the allegations. Due to the fact that there is an opportunity to arrest the people of the father-in-law's house in the non-bailable section without investigating the veracity of the allegation, various questions are raised about the application of section 498-A. It is not fair to convict the accused just by making a complaint.

This is the main reason why the Supreme Court in 2014 passed an amendment to Section 498-A. According to the ruling, no one can be arrested immediately after filing a complaint. The arrest and trial of the accused can proceed only with the permission of the magistrate after ascertaining whether the accused persons are in fact guilty as per the list of nine subjects mentioned in Section 41 of the Criminal Code. The accused can be arrested only if the accused is found guilty within 30 days of the investigation. If convicted, he could face up to seven years in prison instead of the previous three. Apparently, this ruling would reduce the abuse of section 498-A. But the fact of the matter is that the rate at which abuse is likely to decrease is much higher than the rate at which daughters will lose legal aid. Within the 30-day period given to prove the veracity of the allegations, the accused resorted to various dishonest means, i.e. bribery, intimidation and the opportunity to turn the investigation process in the opposite direction. And the bride's suffering will increase and she will be more oppressed [5].

If we look at a statistic, we can understand the horrors of domestic violence. On September 15, 2021, the National Crime Records Bureau (NCRB) released a report. The report found that the highest number of 1,11,549 cases of "cruelty by husband or husband's relatives" were recorded in total crimes against women in 2020, with 6966 cases of death due to dowry being recorded in India [6-7].

Almost everyone knows that the police and the judges are always affected in different ways. The judge's own thinking often influences them. An example might be given in this case, when a police husband went to take out jewelry and money from his wife's cupboard, his wife obstructed him and severely beat his wife. No action was taken against the police member. However, his wife had lodged a complaint with the Chief Minister's Office, the Director General of State Police, the Commissioner of Police in Kolkata, the District Superintendent of Police and the Commissioner of Police of CID and the female complaint cell of CID [8].

### Recommendations

1. Researchers believe that domestic violence is a serious problem and that the law is only a step in the right direction. Cruelty is seen outside of marital relations and for reasons other than dowry. Therefore, this research paper recommends the introduction of a comprehensive law, which would go beyond marital relations and cover all aspects of domestic violence.
2. It was realized that the word 'cruelty' needed to be defined more precisely so that any kind of cruelty could be included.
3. A separate family court system is needed to deal with domestic violence.
4. This procedure should include the provision of counseling for both parties before filing a case in court.

The sensitivity of the implementing system, the police and the judiciary is essential for enhancing the effectiveness of any law and it applies equally to this department [4].

### CONCLUSION

Section 498-A must have been, still is, to prevent physical and mental abuse of the bride, and it should be made more stringent. At the same time, it is imperative to ensure that there is no scope for abuse of this law. It is the responsibility of the judiciary to stop abuse. Strict punishment is required for those who abuse the law, just as there should be for those responsible for the torture and death of brides.

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