

SECTION 498 A: Women & Procedure

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1. Introduction

Meaning people in India are still not aware of section 489 A of the Indian penal code 1860, or what is to be done when a case related to section 498 A is registered. This section was introduced in the year 1983 and it was brought in order to protect women from being subjected to cruelty. But, on the other hand any such law which is made to protect woman against any cruelty being faced by them becomes a easy tool for woman to misuse it and take revenge from husband on to file a false case. This section is one of the most controversial sections of Indian penal code.

Section 498 A of the Indian penal code, 1860 deals with violence done one women after her marriage. This section covers any violence done violence done by husband on her in-laws or any relative of the husband. The section prescribes punishment for three years and a fine.

2. Rights of a married woman in India

Right to reside in Marital home

According to "The Hindu Adoptions and Maintenance Act, 1956 wives have a basic right to reside in the marital/matrimonial household. Matrimonial household is a house that a woman shares with her husband. Such a house may be owned by the parents of her husband or it can be a rented property or a property which is officially provided to him. Even if such a house is a joint family house or an ancestral one, a daughter-in law has the right to reside in such a house. in addition, she has a right to reside in such a house after the death of her husband.

There have been many reports about such cases where the husband leaves the rented house once his relation with his wife becomes critical. However, doing this does not free the husband from maintaining his wife and children. The husband will still be liable to maintain his wife and children.

Right of woman with regard to streedhan

Streedhan refers to the gifts received by a woman during pre marriage or marriage ceremonies and during childbirth. This may include any jewelry, gifts, money, property of any movable or immovable nature and many more (e.g. god bhara, baraat, moo dikhai).the objective of streedhan is to provide some monetary safeguards to the woman after her marriage.

The apex court has given unchallengeable rights to a married woman over streedhan. This right of a woman is not lost even after her separation from her husband, the wife has complete ownership over all her streedhan, the gifts and money she gets pre or post marriage. And any denial in such context by the husband, any relative or her in-laws makes them liable for criminal charges. If in case the mother-in law

has possession over the streedhan of woman and she dies without giving it to her or dies without any will with regard to the same, the woman has a legal right over it.

Right to be maintained by her husband

A woman has the right to claim honest livelihood standards and basic comforts of life from her husband. And such maintenance will be according to the income and property owned by the husband. In case of souring ties between husband and wife, the husband has to provide basic maintenance to his wife and children if any. The basic maintenance includes food, clothing, shelter education, and medical treatment. This right is recognized by section 125 of The Code of Criminal Procedure, 1973. The Indian legal system provides a provision to women that states that a women can claim up to 25 % of her husband's net income as alimony.

Maintenance of the children

A minor child has the right to required facilities, and the same is the duty of her husband and wife to provide the same. In a situation where the wife is not capable of earning a living, it is the duty of her husband to fulfill the required financial assistance. And in case both of them are not capable enough to take care of the child then they can take help from their parents to take care of the child. Also, the child has the right in the any ancestral property.

3. Rights given to women with regard to her parental home

In Indian society we have observed that people believed that a daughter is a liability to the family but with the passage of time or say due to the influence of education the mindset of the society has changed. Nowadays, daughters have equal status as their brothers have and this situation is even after the daughter is married.

1) Inheritance

According to the Hindu Succession Act, 1956 daughters did not have equal right as the sons had in their father's property. According to the previous Act the daughter had the right over the property of her father only till the time she was unmarried. But this Act has been amended in 2005 and according to this amendment of 2005 it was introduced that every daughter whether she is married or unmarried, has the equal right as her male sibling to inherit the property after the death of her father. Every daughter has the right and liability over the property of her father similar to the right and liability of her brother. Not only this, daughter has a right in the property of her mother. And in case the father does not Sign any will before his death, the daughter has the right to court proceedings regarding the same.

2) Coparceners

A coparcener is formed with four generations of the family, earlier daughters were not a part of it. However, The Hindu Succession Act 2005 gave equal rights to daughters to be coparceners. And also enables the right of a woman over coparcener property. It also implies that the daughter of the family has the equal right to inherit the undivided property since her birth. All daughters have similar rights and liabilities as the son.

Right of a woman to live dignity and respect

Any human being, be it a man, a woman or a child has the right to live his life with dignity. A woman has the legal right to live with dignity and self-respect with her in-laws. A woman has the right to live her life in the same manner as her in-laws live. Independence of a woman is a legal right given to her, also she has the right to shout out against any physical or mental torture faced by her at her matrimonial home.

As stated by the hon'ble Supreme Court of India "A daughter-in-law is to be treated as a member of the family with the warmth and affection and not as a stranger with respect able and ignorable indifference. She should not be treated as a house maid. No impression should be given that she can be thrown out of her matrimonial home t any time. The matter in which sometimes the bride is treated in many a home by husband, in-laws and the relatives create a feeling f emotional numbness in society."

Section 498 A

According to the Indian penal code, 1860 section 498 A is "husband or relative of a husband of a women subjecting her to cruelty- whoever, being the husband or the relative of the husband of a women, subjects such women to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. "

Explanation- for the purpose of this section, "cruelty" means-

- A) Any willful conduct which is of such a nature as is likely to drive the women 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 f failure by her or any person related to her to meet such demand"

Evidence act, 1872

Section 113 A- presumption as to abetment of suicide by a married woman-

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation for the purpose of this section, "cruelty" shall have the same meaning as in section 498 A of Indian penal code (45 of 1860).

Section 498 Aof Indian penal code is cognizable offence if the information related to the commission of any such offence is given to the police, by the aggrieved or by any person related to her by blood, marriage or adoption and if no such person is there then by any public servant who belongs to such class or category as may be notified by the state government. Also, such offence is a non-bailable offence.

Section 498A Indian penal code was introduced with the allowed object to combat to menace of dowry deaths and harassment to a woman at the hands of her husband or his relatives. Nevertheless, the provision should not be used as a device to achieve oblique motives as stated in the case of Onkar Nath Mishra v. state (NCT of Delhi),(2008)2 SCC 561.

A complaint may be filed by:

- A) The complaint under section 498 A may be filed by the woman aggrieved by the offence by the offence or by any person related to her by blood, marriage or adaption.

And if there is no such person, then any public servant as notified by the state government in this context.

Period of limitation of complaint under section 498 A:

According to section 468 code of criminal procedure a complaint claiming commission of an offence. Under section 498 A can be filed within 3 years from the commission of the offence.

Section 473 Code of criminal procedure enables the court from taking cognizance in the matter after the period of limitation if the court is satisfied that it is necessary to do so in the interest of justice. Cruelty is the essence of section 498 A it is continuing offence and on each occasion on which the woman was subjected to cruelty, she would have a new starting point of limitation, Arun Vyas V. Anita Vyas.

Meaning of cruelty.

Cruelty as stated in case of Haliyaperumal V. state of Tamil nadu (1) Cruelty is a common essential in offence under both the sections 304 B and 498 A of Indian penal code. The two sections are not mutually inclusive but both are distinct offences and persons acquitted under section 304 B for the offence of dowry death can be convicted for an offence under section 498 A of Indian penal code. The word cruelty is explained under section 498 A.

Section 304 B does not talk about the word cruelty but the meaning of cruelty as stated under section 498 A applies to section 304 B as well.

In case of Inder Raj Malik V. Sunita Malik (2) cruelty is defined in the explanation which inter alia says, harassment of a woman with a view to coerce her or any related persons to meet any unlawful demand for any property or any valuable security is cruelty. Every harassment does not amount to cruelty within the meaning of section 498 A.

Cognizance by court?

Any court may not take cognizance on an offence which is punishable under section 498 A. except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother's brother or sister. The court can also take cognizance if the complaint is made by blood marriage or adaption with courts permission- section 198 A code of criminal procedure.

Essentials of the offence:

For the commission of such offence the following essentials are required to be satisfied.

- 1) The woman must be married.
- 2) She must be subjected to some kind of cruelty or harassment, or
- 3) Such cruelty or harassment must be shown either by husband or relative of the husband of the woman.

Stated under *suvetha v. state (2009) 6 SCC 757.*

But the Act does not state that a woman can blindly make her husband, in-laws and relatives liable for any offence she states against them. Anything stated by the woman must be proved by her and this has been held in the following case:-

Shobha rani v. medhukar reddy

In this case it was held by the hon'ble court that, evidence is required to prove cruelty and if the act is done to harass women or any other person related to her to meet unlawful demands.

Use of section 498 A by Indian courts.

This provision is being used by the Indian courts in order to safeguard the women facing the cruelty at their matrimonial homes. Mostly such cases are related to dowry, wherein the woman is threatened for the want of money and property and in case if it remains unfulfilled, the woman is tortured, threatened, abused both physically and verbally and harassed.

References

- 1) 2004 (9) SCC 157; 2004 SCC (cr) 1417; 2003 AIR (SC) 3828.
- 2) 1986(2) crimes 435; 1986 (92) CRLJ 151; 1986 RLR 220.
- 3) II (200) DMC 628.
- 4) State of Maharashtra v. Jaiprakash Krishna Mangaonkar And ors II (2003) DMC 384.

In case of Ram krishan Jain and ors v. state of Madhya Pradesh (3).

Due to insufficiency of dowry demands demands the woman was administered calmpose tablets and thereafter she even cut the arteries of both her hands. Sometimes, dowry may not be the cause but the woman for several reasons like completion or family status is tortured to death.

Surajmal Banthia and Anr V. State of west Bengal (4).

The deceased was ill-treated and tortured for several days and even not given food several times. Her father in law misbehaved with her quiet often.

And such problems are faced are faced with many young brides once they move out of their parents home into the house of their in-laws.

4. Conclusion

Section 498 A can prove to be a weapon as well as a shield to a woman. It is necessary for the government to ensure that no false cases are filed and rove it to be a balanced act-both for husband and wife.

Women's emancipation is the need if the hour and every measure should be taken to stop harassment and dowry deaths.

Also, helpline number for women- 1091. The number can be called by the woman in case of emergency and there is a need for urgent help.

Therefore this section is much needed for the society through with certain amendments.

"All the strength and succor you what is within you. Do not be afraid."