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Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

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More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

**SECTION 85 OF BHARATIYA SANHITA NYAYA, 2023,
REPLICATES SECTION 498A OF THE INDIAN PENAL
CODE, 1860: MISUSE OF THIS SECTION MYTH OR FACT.**

AUTHORED BY - GAGAN.N.R
School Of Law, Christ (Deemed to be University)

Abstract

This study looks at Section 85 of the Bharatiya Nyaya Sanhita, 2023, which deals with cruelty towards married women by their husbands or relatives and is modeled after Section 498A of the Indian Penal Code, 1860. This clause, which is categorized as cognizable, non-bailable, and non-compoundable, attempts to shield women from abuse on all fronts, including financial, emotional, and physical assault. The article describes the purpose of the law, which is to protect married women, and criticizes its abuse, which has been referred to as "legal terrorism" when it is used for personal gain. The definitions of "husband" and "relative" as interpreted by judges are examined, exposing legal protections that are lacking, particularly in relation to bigamy and unofficial marriages.

The paper examines significant case law that illustrates the judiciary's changing views on the applicability of this Section and the possibility of its abuse. It highlights the necessity of a fair strategy that protects women's rights and respects the rights of both spouses. The conclusion advocates for precise procedural standards to uphold justice and safeguard the integrity of marriage and suggests classifying the offense as non-cognizable and bailable to limit misuse. Ultimately, the report makes the case for reviewing current legislation to improve the effectiveness of legal protections for women and bring it into line with modern cultural dynamics.

Keywords: 1)Bailable, 2)Bigamy, 3)Non-cognizable, 4)Non-compoundable 5)Relative

A step towards social reform

The consequences of dowry deaths are long lasting, not only affecting individuals but also their families and society in general. Dowry deaths are a grim reminder of India's prevalent gender imbalance, which enforces women's subordination and deprivation of basic human rights. The most glaring implication is the loss of innocent lives, as women are physically, emotionally, and psychologically tortured, which frequently results in suicide or homicide. Excluding the victims, the trauma of the event is endured by their families, who experience bereavement, public humiliation, and protracted legal proceedings as they fight for justice.

Legally, dowry deaths indicate the breakdown of the legal and law enforcement system. Although the laws are stringent, they are not applied universally, and this provides an opening for most of the perpetrators to escape punishment due to lack of evidence or complacency in the law. The investigations are also tainted with corruption and social pressure, and hence it is challenging for the victims' families to get justice. The social evil is also fostered by the fact that most of the women are dissuaded from lodging complaints of abuse since they fear violent dowry-related reprisals. Since the majority of families value dowry savings over investing in their daughters' futures, dowry violence dissuades women from pursuing higher education and economic independence. This puts women in a vicious cycle of dependency and subordination. Furthermore, dowry deaths make women unsafe and less secure within the institution of marriage and family. More generally, dowry deaths blemish India's image on the global stage by pointing to the nation's issues with women's safety and gender discrimination. The problem underlines how much more effective law enforcement, social awareness campaigns, and guaranteeing gender equality through women's education and economic empowerment must be. Indian society would still be under the shadow of dowry deaths unless systemic change is implemented.

According to the legislation, any spouse or a husband's relative who abuses a woman may be punished and imprisoned for up to three years¹. This offense is classified as cognizable, where the police can arrest the accused without an arrest warrant². It is non-compoundable. That is, it cannot be settled by the parties among themselves outside the court because it is a criminal offense. It is a non-bailable offense, which means the arrested accused will not get bail.

¹ Bharathiya Nyaya Sanhita, 2023, s 85

² supra note 1

Initially, when Section 498A was inserted in the Indian Penal Code 1860³, it looked beneficial and adequate in repelling hateful offenses like cruelty. In the later half of the 20th century, there were plenty of cases in India related to dowry death and harassment. There are a number of cases of cruelty exercised on newlywed women in very few months after marriage for money or property from newlywed families. This Section plays a significant role in curbing this big threat and trying to bring about changes in an absolute sense. There are various instances where the wife has improperly used this Section, and the judiciary has rescued people in need or the victim. Under Section 85 of Bharatiya Nyaya Sanhita, 2023, the offense was classified as cognizable, non-bailable, and non-compoundable. This gives the police the power to arrest the accused without an arrest warrant and investigation.

Understanding the vital ingredients of Section 85 of Bharatiya Nyaya Sanhita, 2023 is essential. The intent of the legislature to insert this Section was to provide a safe feeling to the woman who gets married. This Section's implication and applicability are only to married women. The vital ingredients of this Section are that the woman must be married, be subjected to cruelty or harassment, and such cruelty must have been shown by her husband or relative⁴. The word cruelty used in Section 85 is interpreted widely by the judiciary, including economic, social, physical⁵, and mental cruelty⁶. There is a widespread belief that a woman is her father's property and her husband's property after marriage. This is illustrated by the traditional dowry system in which a bride's family must provide cash, property, or gifts to her bridegroom's family as part of the wedding⁷. The court has recognized economic cruelty in the case where the woman committed suicide for not paying her husband a certain amount when asked and eventually got harassed⁸. Sex-selective abortion of female fetuses and female infanticide are widely practiced to ensure that a male child is born⁹. If a woman is subjected to cruelty when a male child is not born, then this offense will be covered by this Section¹⁰.

³ Indian Penal Code, 1860, s 498A

⁴ U Suvedha v State by Inspector of Police & Anr (2009) 6 SCC 757

⁵ State of West Bengal v Orilal Jaiswal AIR 1994 SC 1418

⁶ V Bhagat v Mrs D Bhagat AIR 1994 SC 710

⁷ Amy Hornbeck, The Protection of Women from Domestic Violence act: solution or Mere Tiger?, 4 LOY.U.CHI.INT'L L REV, 273-275 (2007).

⁸ State of Karnataka v C Prakash 1998 (1) Hindu L.R. (K.A.R.) (D.B) 185

⁹ Vyas, Reconceptualizing Domestic Violence in India: Economic Abuse and the Need for Broad Statutory Interpretation to Promote Women's Fundamental Rights, 13 MICH.J.GENDER & L, 177-185 (2006)

¹⁰ Safian Rahimsaheb v State of Maharashtra 2001 (1) Hindu L.R. (Bombay) 624

Who is husband under Section 85 of Bharatiya Nyaya Sanhita, 2023?

For the couples to be recognized as husband and wife in the eyes of the law, they must have conducted their marriage according to family laws applicable to them. One of the main questions is when a man marries for the second time without legally getting separated from his first wife and eventually harasses his second wife, then can he be treated as a husband according to Section 85? The court initially viewed that the man in such a situation would not be considered a husband under Section 85 as Sections 5¹¹ and 11¹² of The Hindu Marriage Act, 1955 would be violated¹³. The Supreme Court followed this initially and ruled that Section 498 A would not be attracted¹⁴. The Supreme Court later held that if a man is not treated as a husband for a second marriage, it would be against the legislature's intention to include Section 498 A in the Indian Penal Code, 1860. Therefore, the absence of a definition of 'husband' to expressly include such persons who contract marriages ostensibly and cohabit with such woman in the purported exercise of their role and status as husband is no ground to exclude them from the purview of Section 498 A of Indian penal Code, 1860¹⁵. The Supreme Court has changed its view and has said Section 498 A of the Indian Penal Code, 1860, will not apply to cases where the complaint was filed by the second wife of the accused, who was not legally married to him¹⁶. From this, we can say there is a loophole in the law by not covering marriages that are not legal in the eyes of the law.

The former husband can also be liable under section 498 A of the Indian Penal Code, 1860¹⁷. This is because the phrase used in the act is "the person aggrieved by the offense," meaning a woman subjected to cruelty rather than a wife being subjected to cruelty. Therefore, a wife or a divorced wife will be protected by this Section. Accentuation is given in Section 498A of the Indian Penal Code, 1860, to the marital status of the incriminated at the time of the commission of the offense and not to what at the time of filing the complaints this Section will apply on a person irrespective of whether he was the husband or former husband at the time of filing of the complaint¹⁸.

¹¹ The Hindu Marriage Act, 1955, s 5

¹² The Hindu Marriage Act, 1955, s 11

¹³ Ramnarayan 7 Ors v state of Madhya Pradesh 1990 CRLJ 138

¹⁴ 2002 (2) crimes 177 (SC)

¹⁵ Reema Agarwal v Anupam (2004) 3 SCC 1991

¹⁶ Capt. Rajinder Tiwari v The State (NCT Delhi) (2006) 3 SCC 898

¹⁷ supra note 3

¹⁸ M Abdul Sathar v Aneesa 2006 A.I.R 198 (Ker)

Who is 'Relative' under Section 85 of Bharatiya Nyaya Sanhita, 2023?

The word 'Relative' has neither been defined in this Section nor under this act. Therefore, the judiciary's interpretation of this word through a series of cases is essential to know who is covered under this word 'relative.' The word 'relative' means the one related by blood, adoption, or marriage¹⁹. The word 'relative' has been given a wide scope, including all the people connected through blood relationships. This is done to protect the wife in her husband's home, as marriage is the basic unit in society. For a person to be included in 'relative,' he must come under the class of relative and not a relative's relative²⁰.

Misuse of Section 85 of the Bharatiya Nyaya Sanhita, 2023

In a country like India, where marriage is considered a union between two spouses, after marriage, the spouse gets social status in society, and the primary purpose is propagation and taking care of the child. No law has been passed that is specially framed for male protection. After critically analyzing this Section, the intention of the legislature to bring in this Section was to protect the brides who were subjected to harassment and cruelty, which includes physical, mental, economic, and societal cruelty. Eventually, certain cases were reported where this Section was misused, and the judiciary, including the Supreme Court, has said that misuse of this provision is a new form of legal terrorism. This provision is intended to be used as a shield and not an assassin's weapon²¹. This Section is like a balked with respect to the feminist point of view as well²². Speedy use of this Section has also failed to achieve the objective of this particular Section because not only men are being affected, but women are also being affected under this Section. For example, when the wife misuses this Section by falsely accusing her mother-in-law and sister-in-law in the name of cruelty. Even though the ladies have dependently been subjected to being tormented and bugged by the spouse and relatives, in actuality, saying this won't be legitimate as instances of torment and provocation against the husband by the wife are expanding step by step.

The Supreme Court has asked to re-look this entire provision. The goal of the substantial law should not be overly restricted in relation to the procedural laws." The fact that the procedural

¹⁹ Syed Hyder Hussain v State of Andhra Pradesh (2002) C.R.L.J 3602(A.P)

²⁰ Ranjana Gopalrao Thorat v State of Maharastra 2007 C.R.L.J 3866

²¹ Shusil Kumar Sharma v Union of India 2005(6) SCC 266

²² Flavia agnes, To whom Do Experts Testify? Ideological Challenges of feminist Jurisprudence Economic and Political Weekly, 1859, 1859-66(2005).

procedures are straightforward will allow for the peaceful resolution of family conflicts, as this offense is closely linked to marriage and family. The institution of the entire family will come to an end if there is no opportunity for reconciliation. However, the fundamental tenet of family law is to strengthen rather than destroy families. The primary goal of this clause was to eliminate family conflicts in society²³. Although the clause is constitutionally sound, the Supreme Court has declared that it does not allow people to use it to harass others or further personal grudges.

It is a general notion that in matrimonial disputes, the perpetrator of cruelty is always the husband is the strongest one, and the subject is always the fair sex, that is, the wife. But it cannot be ruled out that the wife had never perpetuated cruelty towards her husband. Earlier instances of cruelty having been practiced by the wife were not highlighted. It is the only time in the history of the legal system the case of cruelty having been perpetuated by a wife came before the judiciary. All the people will not be aware of their legal rights, and this, in turn, can be used against them and can be subject to police torture when arrested under Section 498A of the India Penal Code, 1860, and has given specific guidelines to the police while arresting them under this Section²⁴.

The misapplication of Section 85 is on the rise, as some women fabricate accusations against their spouses to flee or do harm to their families. The fact that this provision is cognizable and non-bailable is known to many intelligent women, who can swiftly submit complaints that may lead to their husbands' imprisonment. This tendency brings up the possibility of legal abuse, sometimes even females like his mother and sisters, and no age is provided in this Section. Therefore, even kids can be arrested under this Section. In some instances, the court has repeatedly said that this Section can be misused to such an extent that it directly impacts the foundation of marriage itself²⁵. The purpose of this Section was to protect women from unscrupulous husbands, but there are various instances where women have misused it. The judiciary has asked the law commission and the parliament to classify this Section as non-cognizable and bailable to help the accused when the court feels the allegations were made to misguide the court²⁶.

²³ Preeti Gupta v State of Jharkhand AIR 2010 SC 3363

²⁴ Arnesh Kumar V State of Bihar AIR 2014 SUPREME COURT 2756)

²⁵ Savitri Devi v Ramesh Chand & Ors II (2003) DMC 328

²⁶ Saritha v R Ramachandran I (2003) DMC 37 (DB)

The court has given specific guidelines in cases where Section 498A of the Indian Penal Code, 1860, which the Bharatiya Nyaya Sanhita, 2023, now replaces like the First Information Report, should be filed by the police only after there is some sufficient evidence and reason to believe that there is some violence like cruelty which the husband has committed towards the wife²⁷.

Conclusion

The main reason this Section was inserted in The Indian Penal Code 1860 was to protect the women against the greedy in-laws and the husband. Previously, the laws were framed after considering the status of women, but today, women have gained a lot and are in a position to give a lot to society. Though the laws that were framed for the protection of these women are still old, there is an increase in crime that is being repeatedly misused, and the repetition can lead to new legal terrorism. The 243rd report of the law commission mentions various cases the court has been dealing with that are reported fake²⁸. There are guidelines given by the commission on the matters related to this Section so that they can be put to use without any misuse of this Section. Speedy trials must be adopted in cases associated with this Section so that innocent victims get justice.

²⁷ Srinivasalu v State of Andhra Pradesh AIR 2007 SC 3146

²⁸ 243rd Finance Commission Report