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**GRT** **LEGAL TERRORISM-A PERUSAL OF THE PROBLEM  
WITH SPECIAL REFERENCE TO MISUSE OF  
PROTECTIVE LAWS MADE FOR WOMEN IN INDIA  
ESPECIALLY SEC.498A OF IPC AND DOMESTIC VIOLENCE ACT.**

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**Abstract:-**Dowry, cruelty & domestic violence are the big social evils facing our country, and no civilized society should tolerate these, and every effort should be made to eradicate these evils. People responsible of these evils should be punished severely. Enactments have been made to do so. In recent years the criminal law of the land have undergone radical changes to provide protection to women, more teeth have been provided to existing laws by new enactments. But other side of the coin, often unlooked upon should not be ignored. And this side of the coin – is the misuse of these provisions by some unscrupulous wives to wreak havoc on husband and family and unfortunately the remedy is becoming worse than the ailment. This article will provide and insight into these legal provisions and highlight the draconian nature of those provisions through its anomalies and inherent ambiguities.

**Keywords:** Dowry , cruelty, domestic violence, misuse.

**INTRODUCTION:**

**“An unjust law is itself a species of violence. Arrest for its breach is more so.”- Mahatma Gandhi**

The fact is that it has been comprehensively proven in numerous studies that women are no less abusive as men in intimate relationships. Giving such sweeping legal powers to women while withholding protection to male victims is tantamount to systematic legal victimization of men. In the western world, the domestic violence laws are gender neutral and provide protection to the victims, both men and women. The fact that the Indian version explicitly prohibits any male victim to seek relief under this law defies all logic and is beyond comprehension.

On the face of it, the law appears to be a blessing for people in abusive or violent relationships. However, a careful analysis reveals that, under the ploy of “women and children welfare”, this law is yet another misguided attempt to enact legislation to grant women legal supremacy over men and to create a society where men are deprived of their rights.

There are laws for the protection of women, children, minorities, the disabled and so on. There are special protective statues for animals as well, but most unfortunately there is no law to protect man if he is tortured by his headstrong wife. The attitude of judiciary is over sympathetic to women and innocent man if he knocks at the door of police or Courts for justice, finds himself in the coils of snakes.

Domestic Violence is a serious problem faced by men ,women and children. However ,laws are only are only designed to confer legal protection to female victims of violence ,ignoring violence against men and children. In addition ,these laws often violate the civil rights of men, children and even fellow women.

Section 498A of the Indian Penal Code was passed to protect women against marital cruelty and dowry harassment. This aforesaid law not only badly formulated but also badly implemented. in the year 2011 alone, as many as 1,39,403 men(husbands/ husband's father/ brothers /male relatives) and 41,298 women (husband's mother/ sisters/ female relatives) were arrested under such cruel laws. Understandably, in 2011 itself 62,433 Indian husbands committed suicide (i.e. a suicide every 9 minutes) because of legal pressures and harassment unleashed on them by their wives and in-laws. With thousands of cases (498A) happening per year, this is a social time-bomb!

The latest addition in a women's legal artillery is The Protection of Women from Domestic Violence Act – This law is absolutely pro-women and anti-men, this law assumes every man as a virtual torturer” and considers only women as victims.

This law is highly vague, and speaks of verbal, economical emotional abuse, which are impossible to quantify. Many husbands and their family members, falsely implicated in these cases have committed suicide after being jailed, unable to bear the social trauma. It is rightly said “Common sense often makes good law though the lack of it doesn't”.

#### **Protection of Women from Domestic Violence Act,2005:**

Domestic violence is undoubtedly a human rights issue and serious deterrent to development of a nation. This particular Act has been enacted in keeping with the various guidelines given by several International conventions and declarations. Before the inception of this Act, there was no specific Act for protecting women from undue discrimination and unjustified violence.

Though the Indian Penal Code had provisions, 498A, but this was not adequate and satisfactory in checking the atrocities committed against women. Thus, a desperate need was felt for an Act which could specifically cater to this cause and help women attain a dignified status, and henceforth the bill was passed by the legislature in 2005 and it was brought in application in 2006.

#### **Misuse of the Act:**

The Protection of women from domestic violence Act hereinafter referred as PWDV Act which was incorporated in the year 2005, The main purpose of this act is to prevent woman only woman from domestic violence, from the bare reading of the definition of the act we can see that the term “aggrieved person” includes only women, means only the men can be prosecuted not the woman, In the 21st century we treat women at par with men and there have been many incidences where a women are involved in insult, humiliation, verbal and emotional abuse to men. It is not a rare possibility that women are indulging in domestic violence against men but this is a reality, our constitution guarantees equality, means men and women must be equally treated, then why in PWDV Act there are provisions for women only and not for men, why women are protected and why there is presumption that men is the only gender which can do cruelty, domestic violence on women, why not vice-versa.

The PWDV Act has given an undue advantage to the women and it is the most lethal weapon which women can use against men to extort, exploit, and threaten men community just like terrorism. The PWDV Act has provisions like right to residence regardless of legal right on the property, maintenance. The provision in law makes the law easily vulnerable to misuse, which is a fact statistics have shown that only 2% of all the cases have resulted in conviction and 98% of the cases are deemed to be fake and there is no provision in PWDV Act if a fake case is lodged then there is no provision for punishment for the women. For the name of protection of women the prosecution of innocent men is against the rule of law, A women can misuse the law very easily like for example A man can be booked under the PWDV Act if she feels that she has been insulted. Insult is a relative term, which is totally left to her discretion. Interestingly, if she insults and abuses him verbally or even physically, he does not have any legal recourse in this law, even the minor differences in matrimonial ties could invoke the provisions of PWDV Act, moreover the procedure of law is governed by CRPC that means a man even making a very light insult to a women is treated like a criminal. if the case is false the reputation of man and his family is tainted and there are no steps or legal protection available to men to protect his reputation . In other words this law treats men like sitting ducks.

For taking easy divorce and maintenance the PWDV Act is the first weapon used by the women even if she is not subjected to any such type of domestic violence, even if the matter is sub-judice the men are obliged to pay maintenance to women, this means that punishment for men start as soon as false complaint is lodged, which is against the principles of natural justice where there is presumption of innocence.

The fact is PWDV Act has failed to attend the problems faced by women and men on subject of domestic violence, the law is often misused then to be used. The need of the society is to make more gender neutral laws which treat men and women equally in the cases of domestic violence and not to induce fear in the minds of innocent people like most of the men and give an extortion tool to the other gender. The PWDV Act is gender biased on the face of it, The PWDV Act needs to be amended with more gender neutral provisions to prevent its misuse and to achieve gender equality and fair justice.

#### **Some of the other misuses are as follows :**

- a) If wife/female live in partner demands any amount of money from husband/male live in partner, for any reason whatsoever, he is legally bound to pay that amount in full, failing which he can be imprisoned. Under the pretext of preventing economic abuse of women, this law legalizes the extortion of money by women. Interestingly, if he asks for money from her, he can be jailed for that as well. Furthermore, he is responsible for paying the rent if the couple resides in a shared rented accommodation.
- b) As per the law, wife/female live in partner retains the right to the residence. This is a very convenient means of getting control of the house regardless of whether she has any legal right on the property. Moreover, if husband/male live in partner is booked under PWDV, he is responsible for paying the rent as well, even though he may not be allowed to live in the house or he might even be in jail.
- c) If wife/female live in partner decides not to cook and wishes to eat out in a restaurant every day, he cannot afford not to oblige, lest he invites the PWDV provision for “not providing food”, for which husband/male live in partner could be jailed.

d) If she has an affair and he tries to prevent her from meeting her lover, he could be punished under the PWDV Act, as he is preventing her from meeting someone.  
e) He can be booked under the PWDV act if she feels that she has been insulted. Insult is a relative term, which is totally left to her discretion. Interestingly, if she insults and abuses him verbally or even physically, he does not have any legal recourse in this law.

These are just some of the ways in which women can exploit men in a legally permitted manner. The fact that the complaint by a woman will be treated, prima facie, as “true and genuine” opens up a whole new realm of possibilities where innocent men will be accused and implicated in false cases, just because they refuse to give in to her unreasonable demands.

#### **Sec. 498A of Indian Penal Code,1860 :**

This section was introduced in 1983 to protect married women from being harassed or subjected to cruelty by husbands and/or their relatives. As per this section, cruelty means:

- 1.Any willful conduct which is of nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to her life ,limb or health (whether physical or mental )of the woman or
- 2.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 of failure by her or any person related to her to meet such demand .

The offence under this section is non bailable (The accused must appear in the court to request bail), non compoundable (The complaint cannot be withdrawn by the petitioner) and cognizable (The accused can be arrested and jailed without warrant or investigation) and the offenders are liable for imprisonment up to 3 years as well as fine.

#### **EXTENT OF MISUSE:**

The 498A law is based on the assumption that women have equal rights as the man to live a life of dignity. This fact has to be understood by the men and the women not only in its letter but also in its spirit. the law needs to be evoked when all other strategies fail to stop the violence and the harassment that makes the life of the woman miserable for normal functioning. Actually, in the case of a marriage that breaks down beyond repair the best solution is separation and then divorce. It is the aggrieved party that would want the divorce and it may happen that the other party declines to agree for divorce for reasons that are emotional and irrational. If this solution also fails to be acceptable to one member the law could be evoked to seek justice. But wrong/ perverse/abnormal attitudes of woman who think that she can nag/rag him on issues, that it is the sole duty of the man to take care of her, who take the husband for granted to fulfill all her unjust needs and to provide her with all luxuries of life, will take recourse to the law not for justice but to take revenge and to 'teach him a lesson' if he goes wrong in some way.

#### **Following are the demerits of the Sec. 498A :**

- 1.Husband & their family members arrested on a simple compliant filed by the wife & their family members without any investigation as easy as ordering a Pizza on the phone. Once a Husband / family members are put behind bars, no marriage can then survive. Isn't then this provision is ONLY FOR VENGEANCE and not for Family Harmony?
2. Arrest of husband family including their mother & sister even married sister who is not residing with brother but wife knowingly mentions her name in FIR. So conclusion is that female members are also harassing by the wife by misusing the sec. 498-A of IPC.
- 3.In every false case, at least two women, a mother-in-law and a sister-in-law are accused. Minor girls, pregnant women, married and unmarried sisters, ailing mothers and even aged grandmothers have been sent behind the bars based on mere allegations and subjected to long-drawn trials before being declared innocent. Even children are not being spared from the suffering.
- 4.When husband & their family arrested by the police immediately they lost their credibility in the social filed but when they prove that they are innocent then who is responsible for their arrest at the initial stage.
5. If after trail it is proved by the husband that he is innocent then no suo -moto action can be taken against wife by the court. The compliant for defamation can be filed by the husband....but appeal procedure again starts. So it delays the matter and there is no chance for justice for the husband & their respective families.
- 6.The life of the husband family is completely destroyed till the final decision of the complaint.
- 7.Our Indian police officer also plays very disgusting role. The investigating officer demands bribe for removing the name of husband's family members from the FIR. They also misuse this section 498-A.
- 8.With blatant misuse of this provision, more than twice the number of Husbands (as compared to wives) in India are forced to commit suicides which no one, NO ONE is ready to look at and a Blind Eye and Deaf Ear is turned towards it.
- 9.Some complaints are made in anger. The rampant corruption in our system has led to misuse of women protection laws. When



an angry wife approaches the police, she is received by lower rank officers. Depending on her husband's financial condition, these officers advise the woman on further course of action. Mostly, women from lower income groups don't file such complaints. It's usually the financially well-off women who register complaints under Section 498A.

**Judicial Approach:**

Indian Courts in their recent judgments have looked into the matter of misuse of Sec.-498A I.P.C. As this Section provides that when an F.I.R. is lodged all the family members of the husband can be roped in. In their judicial observations and remarks, the courts have expressed deep anguish over this law. Here are some recent judicial observations.

**1990 Punjab and Haryana High court observed in Jasbir Kaur vs. State of Haryana , (1990)2 Rec Cri R 243 case as:**

“It is known that an estranged wife will go to any extent to rope in as many relatives of the husband as possible in a desperate effort to salvage whatever remains of an estranged marriage.”

**In Kanaraj vs. State of Punjab 2000 CriLJ 2993 , the apex court observed as:**

“for the fault of the husband the in-laws or other relatives cannot in all cases be held to be involved. The acts attributed to such persons have to be proved beyond reasonable doubt and they cannot be held responsible by mere conjectures and implications. The tendency to rope in relatives of the husband as accused has to be curbed”

**Karnataka High Court, in the case of State Vs. Srikanth 2002 CriLJ 3605 , observed as:**

“Roping in of the whole of the family including brothers and sisters-in-law has to be depreciated unless there is a specific material against these persons, it is down right on the part of the police to include the whole of the family as accused”

The Hon'ble Supreme Court, in a relatively recent case, Sushil Kumar Sharma vs. Union of India and others JT 2005(6) 266

“The object of the provision is prevention of the dowry menace. But as has been rightly contented by the petitioner that many instances have come to light where the complaints are not bonafide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work.

**Malimath Committee Report on Reforms of Criminal Justice System :**

**CRUELTY BY HUSBAND OR RELATIVE OF HUSBAND – SECTION 498 OF IPC:**

There is a general complaint that section 498A of the IPC regarding cruelty by the husband or his relatives is subjected to gross misuse and many times operates against the interest of the wife herself. This offence is non-bailable and non-compoundable. Hence husband and other members of the family are arrested and can be behind the bars which may result in husband losing his job. Even if the wife is willing to condone and forgive the lapse of the husband and live in matrimony, this provision comes in the way of spouses returning to the matrimonial home. This hardship can be avoided by making the offence bailable and compoundable.

**CONCLUSION & SUGGESTIONS:**

The fact is domestic violence is a serious problem and a neutral and unprejudiced law is needed to protect the genuine victims of domestic violence, irrespective of gender. The perpetrators of domestic violence need to be appropriately punished and dealt with. At the same time, protection cannot be withheld from real victims for any reason whatsoever, least of all their gender. One can be certain that there is something sinister about a law, when it intimidates and instills fear in innocent people. When a person who has not committed any crime, begins to fear punishment under the provisions of a law, it is not a law anymore – it is state sponsored terrorism.

The PWV Act and Sec. 498A are important laws but the practice of arresting people without investigation needs to be changed. These laws don't follow the fundamental legal premise that a person is innocent until he is proven guilty. Unreasonable and easily misused laws like IPC 498-A and PWDV Act are creating a situation of fear and mutual distrust, and adversely affecting inter-personal relationships between men and women in the society. There is fear psychosis among men,

who find it difficult to repose faith in women or marriage.

It is high time for law makers/law enforcing agencies/judges to pay heed and review these laws in public interest to check the growing misuse of these laws to ensure impartial justice and to protect the pious and sacred institution of marriage. There's need to revise the stringent Section 498A of the Indian Penal Code. The offence committed under this section should be made bailable, compoundable & non cognizable. Since the nature of charges is very serious, the matter should be investigated by an officer of superior rank, a senior officer should listen to wife or live in partner grievances and give her sound advice.. Most of the case registered under sec. 498a are frivolous and based on false accusation the person who misuses laws should be arrested and put behind bars.

Thus, any enactment, which forcefully subjects a section of society to conduct and “serve” the other section at its willful pleasure, would only enhance the level of oppression in the society and leave incurable marks on the face of the most democratic society.

Like animals ! protect human rights & dignity of tortured husbands

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