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Reassessing Section 498A: Exploring Judicial Interpretations and Statistical Data

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ABSTRACT

This article provides an in-depth analysis of section 498A of the Indian Penal Code (IPC), which deals with cases of cruelty against married women. The article examines the contentious issues surrounding the utilisation of this provision by critically analysing the definition, Supreme Court (S.C.) judgments and statistical data. The data highlights the increase in cases filed under section 498A over the years, but the low conviction rate remains a cause for concern. By examining landmark cases related to section 498A, this article seeks to identify the views of the Supreme Court. The article also argues that the use of mediation in cases related to section 498A is detrimental to the effectiveness of this provision. This is because mediation fails to address the underlying issues of power dynamics and patriarchal attitudes that contribute to cruelty in domestic relationships. The article highlights the need for a more comprehensive approach to address the issue of misuse of this provision rather than diluting its deterrent effect and efficacy. It concludes by highlighting the importance of adopting a more nuanced approach to dealing with cases under this provision, which should take into account the specific circumstances of each case rather than just relying on the numerical data provided by the NCRB. Overall, the article provides a critical analysis of Section 498A and emphasises the need to preserve the deterrence effect and efficacy of the law rather than diluting its efficacy.

Keywords: *women, cruelty, statistical analysis, judicial interpretation, mediation, sustainable development goal, battered woman syndrome.*

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I. INTRODUCTION

Globally, the problem of domestic abuse has been identified as a major threat to public health because of its catastrophic effects on the physical, reproductive, sexual, and mental well-being of women.[1] Traditionally, domestic violence against women has been considered a private matter solely concerning the family.[2] Women were often expected to endure such abuse to preserve the reputation and sanctity of the household and family.[3] However, the introduction of section 498A of IPC in 1983 is a significant and noteworthy attempt to criminalise domestic violence against married women by their husbands or family members.[4] The provision is non-bailable, non-compoundable, and cognisable, aimed at ensuring timely and effective redressal for victims.[5] However, within a decade of its introduction, there was growing resistance to section 498A of IPC, with complaints about its alleged misuse by women.[6]

In India, it is customary for women to relocate to their husbands homes and live with their husbands and their families. Therefore, section 498A of IPC was enacted to safeguard women against violence perpetrated by their spouses and family members. The provision recognises the vulnerability of women when they move out of their natal homes to a new family. Section 498A of IPC is a significant deterrent to those contemplating violence against married women, and its efficacy should not be undermined through case laws or legislation. It plays a crucial role in ensuring the safety and security of married women, especially when they are in a new environment with a completely different set of people. Therefore, upholding the efficacy and deterrent effect of section 498A of IPC is imperative.

In India, the situation regarding violence against women is alarming. A total of 4,28,278 cases of "crime against women" were reported in 2021, compared to 371,503 in 2020, showing an increase of 15.3% as per the report of 2021. [7]

1 Meghna Bhat and Sarah E. Ullman, "Examining Marital Violence in India" 15 (1) *Trauma, Violence & Abuse* 57 (2014).

2 Editorials, "Victimised Twice Over" 44 (46) *Economic and Political Weekly* 6 (2009).

3 *Ibid*.

4 Meena Rao, "Ramifications of harassment of women" 43 (3) *Journal of the Indian Law Institute* 315 (2001).

5 The code of Criminal procedure, 1973, Schedule- I.

6 Malini Bhattacharya, "Can Law Help Women to Survive?" 42 *Social Scientist* 11 (2014).

7 National crime records Bureau (NCRB), "Crime in India 2021 Statistical volume-1" page no. xii (Ministry of Home Affairs, 2022).

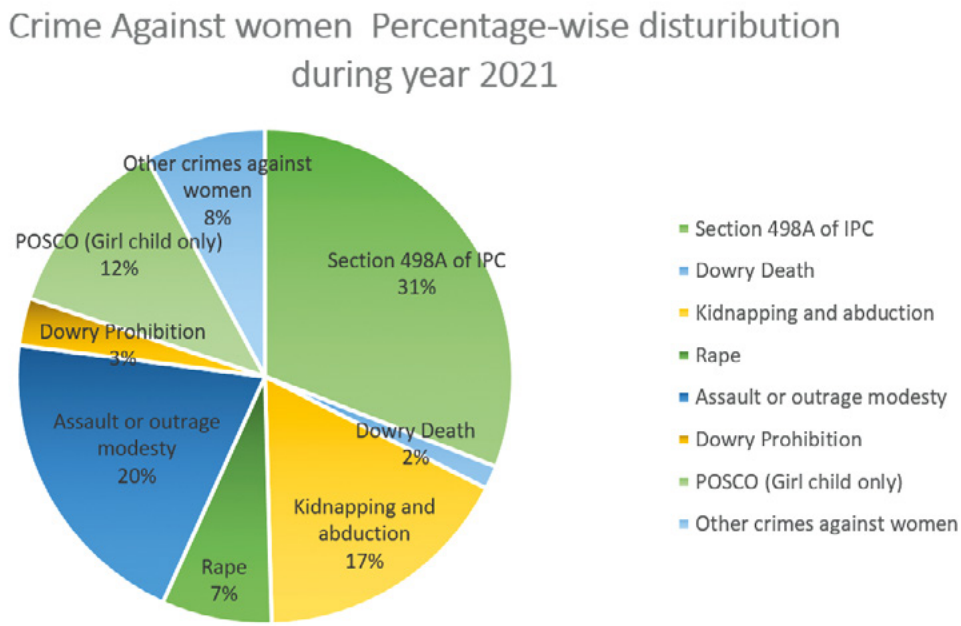


Fig 1. Source: National Crime Records Bureau (NCRB).

The largest number of cases filed under the "crime against women" category as per the IPC were related to "Cruelty by Husband or His Relatives" under section 498A of IPC.[8] Given the persistently high percentage of violence against women being inflicted by husbands or husbands' relatives, despite the implementation of women-centric civil and criminal laws, it is crucial to analyse the current situation comprehensively.

II. THE NECESSITY OF ADDRESSING SECTION 498A DILUTION

In India, section 498A of IPC has empowered women and prompted them to come out and lodge complaints. Women initially resisted speaking out against harassment out of concern that they wouldn't be heard. Women are now speaking out against their husbands or in-laws rather than remaining silent. There exist multiple justifications for maintaining the integrity of section 498A of IPC, and the most significant among them in the contemporary era are:

Suicide: The Indian legal system acknowledges that women may be compelled to commit suicide due to dowry harassment or cruelty inflicted by their husbands or their husband's relatives. In response, section 304B of IPC, as well as sections 113A and 113B under the Indian Evidence Act, were enacted. These provisions take into account the social realities

8 *Id.,* at 211-228.

of the situation and establish a presumption of abetment of suicide or dowry death against the husband or his relatives. However, it is important to consider the circumstances that drive a woman to commit suicide. It is essential to avoid diluting section 498A of IPC, which serves as a crucial measure in preventing suicides and providing immediate relief to victims of domestic violence. The timely and effective action taken under this section can potentially save the lives of women who may feel driven to take their own lives. Therefore, it is important to maintain a strong and effective implementation of this section to protect the rights and safety of victims of domestic abuse.

Battered woman syndrome: "Battered Woman Syndrome" (BWS) is a notion that describes psychological and behavioural responses displayed by battered women in response to domestic violence.[9] BWS explains why some women cannot leave abusive relationships and may resort to extreme measures, such as killing their abuser, in certain circumstances.[10] The cycle of violence theory used to describe BWS includes three phases: the "tension-building phase," where minor forms of abuse occur, leading to the "acute battering phase," where the abuse becomes more severe, followed by the "contrition phase," in which the abuser apologises and promises to change, but the cycle often repeats itself.[11] Battered women trapped in the cycle of violence often develop "learned helplessness," causing them to become passive and believe that there is no escape from abuse.[12] In some cases, this can lead them to perceive that ending their abuser's life is the only way out of the situation.[13]

The BWS is not legally recognised in India, but some high courts have acknowledged and considered this concept in certain cases.[14] This is a positive step towards acknowledging the harmful effects of domestic violence on women. The BWS has been acknowledged and recognised in numerous nations worldwide, and criminal laws in various countries have been amended to accommodate the unique situation of the BWS.[15] This syndrome illustrates how prolonged and continuous violence can have detrimental effects on women, leading to them becoming passive and, in some cases, even killing their abusive partners. Diluting

9 Regina A. Schuller and Neil Vidmar, "Battered Woman Syndrome Evidence in the Courtroom: A Review of the Literature" 16 (3) Law and Human Behavior 274 (1992).

10 *Ibid.*

11 *Ibid.*

12 *Id.,* at 275.

13 *Ibid.*

14 Keerthana Medrarametla, "Battered women: The gendered notion of defences available" 13 *Socio-Legal Review* 110 (2017).

15 Penal Reform International and Linklaters LLP, "Women who kill in response to domestic violence: How do criminal justice systems respond? A multi-jurisdictional study by Linklaters LLP for Penal Reform International" (2009).

the effectiveness of section 498A of IPC and focusing on family preservation through mediation and reconciliation may make women more vulnerable to repeated abuse. Women who experience prolonged violence may also develop trauma and mental health issues that can impact their ability to leave an abusive relationship and lead to the development of BWS. It is crucial to recognise the effects of domestic violence on women and provide them with the necessary support and resources to break the cycle of violence and appropriately punish the abusers.

Sustainable Development Goal (SGD): SDG-5 aims to promote gender equality, with targets 5.1 and 5.2 specifically focusing on ending all forms of discrimination and violence against women in both the private and public spheres.[16] However, in India, the SDG-5 index score for 2020-21 was only 48, categorising it as an aspirant or underperformer.[17] Achieving a score of 100 will require the effective implementation of laws and a change in societal attitudes towards women. It is essential that section 498A of IPC, a crucial provision that acts as a deterrent and provides immediate relief to prevent further violence against women, is not diluted to achieve the desired results. By effectively enforcing laws that protect women and provide immediate relief, we can work towards achieving the SDG 5 targets and ensuring that all women have a safe environment free from discrimination and violence.

III. COMPREHENSIVE ANALYSIS OF THE EVOLUTION AND DEFINITION

In India, domestic violence is not an unknown phenomenon.[18] In response to the issue of domestic violence, significant amendments were made to our criminal laws in the 1980s, and prior to 1983, there were no specific laws addressing violence or abuse within marriage.[19] However, husbands or relatives of the husband could be tried and punished for their actions under provisions of IPC that dealt with abetment to suicide, murder, hurt, grievous hurt and unlawful detention.[20] In 1983, section 498A was added to the IPC to punish the husband

16 NITI Aayog, "SDG India index & dashboard 2020-21 partnerships in the decade of action" 101 (March, 2021).

17 *Id.,* at 104.

18 Indira Jaisingh, "Domestic violence and law", 1 *Journal of National Human Rights Commission* 73 (2002).

19 Sawmya Ray, "Legal Constructions of Domestic Violence" 55 (3) *Sociological Bulletin* 430 (2006).

20 Madhu Kishwar, "Law against Domestic Violence: Underused or Abused?" 15(2) NWSA Journal 113 (2003); Agnes, "Protecting Women against Violence? Review of a Decade of Legislation 1980-89", 27 (17) Economic and Political Weekly 25 (1992).

or his relatives for cruelty to wives.[21] In this particular section, the act of matrimonial cruelty has been designated as a cognisable and non-bailable offence, which may lead to imprisonment of up to three years and a monetary fine.[22]

The current definition of "cruelty" under section 498A of IPC only refers to violence experienced by married women at the hands of their husbands or their husband's relatives.[23] However, this fails to acknowledge the common violence that unmarried women, children, and married women experience from other male relatives within their households.[24] Further, women encounter different types of violence, such as sexual, physical, psychological or economic. The term "cruelty" under section 498A of IPC encompasses only mental and physical harm, as well as any form of harassment that is linked to a request for dowry; therefore, the definition of "cruelty" is limited and vague, posing a significant concern as it fails to encompass other forms of violence women encounter in domestic settings.[25] It is necessary to broaden the explanation of the term "cruelty", which should include the diverse range of violent acts that women may face in the domestic setting.[26] The "Protection of Women from Domestic Violence Act" of 2005 (PWDVA) addresses significant gaps previously present, primarily through providing civil remedies such as protection orders,[27] residence orders[28] and monetary relief,[29] to name a few. The PWDVA aims to safeguard women and children subjected to violence by their family members.

21 The Indian penal code, 1860, s. 498A, "Husband or relative of husband of a woman subjecting her to cruelty. Whoever, being the husband or the relative of the husband of a woman, subjects such woman 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" mean-

(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 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 of failure by her or any person related to her to meet such demand."

22 *Supra* note 5.

23 Jayna Kothari, "Criminal Law on Domestic Violence: Promises and Limits" 40 (46) *Economic and Political Weekly* 4844 (2005).

24 *Ibid.*

25 Indira Jaising, "Bringing Rights Home: Review of the Campaign for a Law on Domestic Violence" 44 (44) *Economic and Political Weekly* 51 (2009).

26 A comprehensive and all-encompassing definition would prevent subjective evaluations by police officers and courts in determining whether violent acts constitute cruelty. The definition of cruelty needs to be aligned and updated with the definition of domestic violence as outlined in PWDA. *See*, The protection of women from domestic violence Act, 2005, s. 3.

27 *Id.,* at s. 18.

28 *Id.,* at s. 19.

29 *Id.,* at s. 20.

A comprehensive civil law that offers extensive protection and redressal measures and a criminal law that provides remedies in the form of imprisonment and fines are essential for ensuring the complete safety and protection of women subjected to domestic violence. Implementing these laws should be accompanied by effective enforcement mechanisms and awareness campaigns to ensure women are safe and live without fear of violence.

IV. STATISTICAL ANALYSIS: THE BIGGER PICTURE

The potential to raise public awareness and show domestic violence's true scope and prevalence depends on a detailed statistical investigation.[30] The National Crime Records Bureau maintains records on "Crimes against Women."[31]

Table 1: Year-wise data of individuals dealt under section 498A of IPC.[32]

Year	Charge-sheeted	Arrested	Convicted	Discharged	Acquitted
2014	1,96,893	2,25,648	16,360	5,428	94,765
2015	1,71,605	1,87,067	16,857	2,064	88,203
2016	1,68,053	1,98,851	13,511	2,198	82,075
2017	1,82,285	1,35,340	13,929	3,994	84,679
2018	1,69,604	1,10,789	12,665	2,974	70,171
2019	2,07,715	1,42,808	11,689	5,716	74,192
2020	1,98,807	1,20,306	6,487	2,396	35,998
2021	2,53,432	1,43,266	8,537	1,927	48,889

Source: NCRB

30 Renuka Viswanathan, "Development, Empowerment and Domestic Violence: Karnataka Experience" 36 (24) *Economic and Political Weekly* 2177 (2001).

31 Srimati Basu, "Organising Strategies of the Indian Men's Rights Movement" 50 (44) *Economic and Political Weekly* 69 (2015).

32 National crime Record Bureau (NCRB), "Crime in India 2014" Table 5.7 and 5.8, at page 168-172 (Ministry of Home Affair, 2015); NCRB, "Crime in India 2015" table 5.7, 5.8, at page 170-173 (Ministry of Home Affair, 2016); NCRB, "Crime in India 2016 statistics" Table 3A.9. at page no. 156-157 (Ministry of Home Affair, 2017); NCRB, "Crime in India 2017 statistics volume-I" Table 3A.9. at page no. 238-239 (Minsitry of Home Affairs, October, 2019); NCRB, "Crime in India 2018 statistics volume -1" Table 3A.9. at page no. 238-239 (Minsitry of Home Affairs, December, 2019); NCRB, "Crime in India 2019 statistics volume -I" Table 3A.9. at page no. 238-239 (Minsitry of Home Affairs, 2020); NCRB, "Crime in India 2020 statistics volume-I" Table 3A.9. at page no. 242-243 (Minsitry of Home Affairs, 2021); NCRB, "Crime in India 2021 statistics volume-I" Table 3A.9. at page no. 254-256 (Ministry of Home Affairs, 2022).

The data provided shows the number of persons charge-sheeted, arrested, convicted, discharged, and acquitted under section 498A of IPC over 2014-2021. The data shows a fluctuation in the number of persons charge-sheeted and arrested over the years. The highest number of persons charge-sheeted were in 2021, followed by 2019. The highest number of arrests was made in 2014, followed by 2016. However, the number of arrests has steadily decreased over the years, whereas the person charge-sheeted increased over the period. The number of convictions has been consistently low compared to the number of persons charge-sheeted and arrests made. The number of persons charge-sheeted has been increasing over the years, and the number of persons discharged and acquitted has shown a notable reduction. Based on the data, it appears that while a large number of cases are being filed and arrests are being made under section 498A of IPC, the number of convictions is relatively low. This discrepancy points to a severe issue that requires urgent attention and resolution. There can be several factors possibly contributing to this trend, such as compromise, pressure from relatives, and false charges. Therefore, to understand the underlying issue, it is essential to conduct comprehensive research rather than relying solely on numerical data, which may only highlight the area of concern without providing a complete picture. [33] In the *Social Action Forum for Manav Adhikar & Another v. Union of India,*[34] it was contended that no concrete data is available to support the claim that section 498A is being misused. Therefore, reducing the stringency only on the basis of unproven data and claims is not the correct approach.

The 2019-21, National Family Health Survey (NFHS-V) indicates that attitudes towards wife beating have shifted since NFHS-IV.[35] For women, there has been a significant decrease in agreeing with justifications for wife beating, dropping by seven percentage points from 52% in NFHS-IV to 45% in NFHS-V. However, there has been a two percentage point

33 According to a report, only 2% of the accused are convicted among 100 cases investigated under Section 498A. Convictions have been reported when Section 498A is invoked in conjunction with Sections 304B and 302 after the victim's death. However, no convictions have been reported in cases filed solely under Section 498A. In five cases, the parties resolved the matter through mutual agreement. In instances where the defendants were acquitted, the complainants had suffered physical and psychological abuse, but evidence was insufficient to prove the alleged abuse. In many cases, the victims endured abuse for three or more years before invoking Section 498A. Victims of domestic violence seeking assistance from various agencies are often advised to reconcile with their abuser or tolerate the situation before filing a formal complaint. Individuals who have experienced violence consider Section 498A as primary criminal provision to safeguard them from abusers mainly in private sphere. *For more detailed information See*, Centre for Social Research, A Research study on the use and misuse of Section 498A of the Indian Penal Code (2005), available at: https://awomaninindia.files.wordpress.com/2010/07/csr-report-summary.pdf (last visited on Jan. 15, 2022).

34 (2018) 10 SCC 443.

35 International Institute for Population Sciences (IIPS) and ICF, "National Family Health Survey (NFHS-5), 2019-21" (Ministry of Health and Family Welfare, 2022).

increase in men agreeing with justifications for wife battering, rising from 42% in NFHS-4 to 44% in NFHS-V.[36]The survey also reveals that out of the 14,410 married women surveyed, a significant majority of 88.7% never sought help from anyone in cases of violence committed by their husbands. Only 11.3% of women sought help from any source. The sources of help sought by women who experienced violence were primarily from their own families, friends, husbands' families, or neighbours. In contrast, help from the police constituted only 6.3%.[37] It should be acknowledged that numerous women are hesitant to seek assistance from law enforcement or the judicial system to ensure their protection.[38] This is because they are aware that once their husbands are incarcerated, they will have to endure an arduous battle, and many women are mostly unprepared to handle such a situation.[39] Instead, they often seek support from their families, who can act as mediators and assist them in achieving a more favourable resolution.[40]

The increase in the percentage of men justifying wife beating is a major concern in a patriarchal country like India, which needs to be addressed through targeted interventions and education programs. It is essential to identify the underlying concerns depicted by NCRB and NFHS data and develop effective measures to address them, such as strengthening legal provisions, improving law enforcement, conducting more research and enhancing awareness and education about women's rights and gender-based violence.

V. SUPREME COURT JUDGEMENTS: INSIGHTS

The Supreme Court's ruling, along with the recommendations of the Justice Malimath Committee and the Law Commission of India, indicates that section 498A of IPC is often misused as a tool for revenge rather than being used for its intended purpose of protection.[41] The Justice Malimath Committee suggested that, in order to address this issue, section 498A of IPC should be made both compoundable and bailable.[42] Similarly, the Law Commission of India recommended that it should be made compoundable, which would allow the parties involved to reach a settlement and avoid prolonged legal battles.[43]

36 *Id.,* at. 579, 586.

37 *Id.,* at 674-675; *see generally,* Flavia Agnes, "Section 498A, Marital Rape and Adverse Propaganda," 50 (23) *Economic and Political Weekly* 14 (2015). In this article it is explained why less women are motivated to file police complaints.

38 *Supra note* 20, at 120.

39 *Ibid.*

40 *Id.,* at 121.

41 Prashant k Trivedi and Smriti Singh, "Fallacies of a Supreme Court Judgment: Section 498A and the Dynamics of Acquittals" 49 (52) *Economic and Political Weekly* 90 (2014).

42 *Ibid.*

43 *Ibid.*

In *Sushil Kumar Sharma v. Union Of India And Ors*,[44] S.C. upheld the constitutional validity of section 498A of IPC and emphasised that the provision was introduced to combat the menace of dowry deaths and cruelty to married women. The court also acknowledges the possibility of the provision being misused for personal vendettas and harassment. The court suggests that the legislature may need to resolve the issue of alleged misuse of this section.

The fundamental goal should be to find the truth, punish the wrongdoers, and protect those who are not guilty. The truth must be sought, and the innocent must be protected. The court, in this case cautioned against making false accusations frequently, as it may result in a lack of aid and protection when a genuine case arises ('cry wolf' metaphor). The provision was designed to serve as a protective measure rather than a tool for misuse. Overall, the court believes that while the prohibition of harassment and cruelty is essential, it should be used carefully to avoid potential misuse.

In *Arnesh Kumar v. state of Bihar,*[45] the court referred to statistical data and noted that the percentage of charge-sheeting in cases related to section 498A of IPC is notably high at 93.6%, whereas the rate of conviction is significantly low at only 15%. This observation implies that a noteworthy portion of the cases initiated by females may lack sufficient evidence or justification. The court stated that enforcing mandatory arrests in such cases is extremely capricious. The court delivered a resolute verdict in regard to section 498A, stating that:

> *"The fact that Section 498-A is a cognisable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested."*[46]

44 (2014) 8 SCC 273. In this case, the court while referring to Mafatlal Industries Ltd. and Ors. v. Union of India and Ors., [1997] 5 SCC 536, and Collector of Customs v. Nathella Sampathu Chetty, [1962] 3 SCR 786, observed that the mere possibility of abuse of a statute, which is otherwise deemed valid, does not render it invalid. It is not justifiable to consider a provision as procedurally or substantively unreasonable solely based on the potential for abuse by those responsible for its administration.

45 (2014) 8 SCC 273.

46 *Ibid.*

In this case, S.C. laid down a certain guideline to be followed and, as per guidelines, an arrest under section 498A IPC to be made after proper investigation and satisfaction regarding the geniuses of the complaint and further held that magistrates should not order detention in a mechanical and causal manner. To reduce automatic and arbitrary arrests under section 498A of IPC, State Governments were instructed to provide police officers with a checklist of parameters to consider before making an arrest. When presenting the accused to the Magistrate for extended custody, the officer must provide a completed checklist and evidence for the arrest. The Magistrate must carefully review the report and authorise detention only after being satisfied with its contents. The accused must be served a Notice of Appearance within two weeks of case initiation, which the Superintendent of Police can extend with written reasons. Non-compliance with the instructions may result in judicial and police officers being held accountable for their actions and facing serious repercussions.

In *Rajesh Sharma v. State of U.P,*[47] S.C was faced with the question of whether guidelines were necessary to prevent the abuse of section 498A of IPC. The court, in this case, upheld the conviction of those found guilty under section 498A of IPC. The court also made references to NCRB reports and law commission reports.

The following guidelines were then laid out.[48]

a) To form a "family welfare committee" in every district, consisting of at least three members, to review complaints under section 498A of IPC. The committee will be made up of volunteers, social workers, retirees, and citizens who are willing to serve. The committee report must be submitted to the appropriate authority within one month of receiving the complaint. Until the committee submits its report, no arrests should be made.

b) Designate an Investigating Officer to investigate complaints under section 498A, and such an officer must undergo training for at least one week.

c) Bail applications must be decided as soon as possible.

d) Impounding of passports or issuing of Red Corner Notices should not be done routinely for individuals residing outside India.

e) All related cases arising from matrimonial disputes may be combined and reviewed appropriately.

47 2017 SCC OnLine SC 821.

48 *Id.,* at Para 19.

f) Personal appearances of family members, particularly out-of-state members, may be exempted or allowed via video conferencing.

g) These directions are not to be applied in cases involving physical injuries or death.

This ruling by S.C. is one of several rulings to limit the scope of section 498A of IPC.[49] There are several concerns regarding the validity of the directions provided in this ruling. The composition of Family Welfare Committees is characterised by a notable lack of seriousness, as evidenced by the composition of said committees. The guidelines also come with a caveat that makes them ineffective in cases where the victim has suffered from mental abuse, raising serious doubts about their practical utility. Despite the enactment of section 498A, instances of matrimonial cruelty resulting in severe mental trauma or suicide due to such mental trauma are still prevalent. It is, therefore, unacceptable to trivialise the impact of mental cruelty and suggest that it can be resolved through ordinary civil procedures by Family Welfare Committees, given that psychological violence can have devastating effects on victims.[50]

In *Kahkashan Kausar @ Sonam v. The State Of Bihar*,[51] The supreme court held that legal professionals must uphold noble traditions and approach section 498A of IPC cases as fundamental human issues, assisting parties in reaching a mutually agreeable resolution.[52] It is important to fulfil responsibilities to preserve the social fabric and promote peace within the community, and multiple cases should not arise from a single complaint.[53] The goal of the justice system is to ascertain the truth, hold the guilty accountable, and protect the innocent.[54] In matrimonial cases, courts must exercise caution and consider practical realities when addressing complaints, especially when accusations of harassment involve acquaintances residing in different cities or infrequent visitors, and scrutiny of allegations must be meticulous and cautious.[55]

The Supreme Court's efforts to address the perceived misuse of section 498A of IPC may have been well-intentioned. Still, the unintended consequences of their actions have created

49 Suman Dash Bhattamishra, "Courts, police and criminal justice in cases of section 498-a: an assessment", available at: http://www.dehradunlawreview.com/wp-content/uploads/2023/02/Paper-5-Courts-Police-and-Criminal-Justice-in-Cases-of-Section-498-A-An-Assessment.pdf (last visited on Jan. 12, 2023).

50 *Rupali Devi Vs. State of Uttar Pradesh and Ors.,* (2019) 5 SCC 384, at para 14.

51 2022 SCC OnLine SC 162.

52 *Id.,* at para 6.

53 *Ibid.*

54 *Id.,* at para 35.

55 *Ibid.*

an additional barrier for women seeking legal recourse. However, it is important to note that the challenges faced in delivering justice to female victims of violence are not limited to inadequacies in legal frameworks but rather stem from deeper issues within the criminal justice system and patriarchy.

VI. MEDIATION: OVERLOOKING THE REALITIES

The efficacy of mediation in achieving mutual agreement appears problematic from the complainant's standpoint.[56] Although section 498A of IPC is a non-compoundable provision, legal strategies have developed to circumvent it.[57] Prioritising the preservation of family structures over dispensing justice for the victims may prove detrimental to survivors of violence.[58] It may result in delaying the case, dissuading survivors from pursuing legal action, and minimising the gravity of the violence perpetrated against them. Additionally, it may promote the idea of forgiving the offender and reconciling with them, putting the survivor at risk of future harm. Requiring mediation in cases where a victim of domestic violence has sought court intervention could expose the victim to further psychological abuse due to potential interactions with the abuse. Additionally, this requirement may send a message that the victim's traumatic experiences are not being taken seriously, potentially leading to feelings of further isolation and disempowerment.

In *Jitendra Raghuvanshi & Ors v. Babita Raghuvanshi & Anr,*[59] it was held that courts have a legal responsibility to ensure that marital conflicts are resolved fairly and justly, especially considering their growing prevalence. In instances where the offences are non-compoundable and relate to matrimonial disputes, the possibility of quashing the FIR, complaint, or any ongoing criminal proceedings is not precluded by section 320 of the Code of Criminal Procedure, provided that the parties have voluntarily and without coercion resolved the matter amicably to the satisfaction of the court.[60]

56 Prashant K Trivedi and Smriti Singh, "Fallacies of a Supreme Court Judgment: Section 498A and the Dynamics of Acquittals" 49 (52) *Economic and Political Weekly* 95 (2014).

57 *Ibid.*; In case of Section 498A of IPC, parties can be referred to mediation by the Magistrate or any other court trying the offense. *See generally* guidelines issued by the Delhi Mediation Centre, available at: https://delhicourts.nic.in/dmc/guidelines.htm (last visited on Jan. 12, 2023); *also see* K. Srinivas Rao v. D.A. Deepa, civil appeal no. 1794 of 2013; However, only the High Court can quash a FIR or proceedings under Section 482 of CrPC, provided that the complainant files an affidavit affirming that the dispute with the accused has been resolved amicably. *See,* B.S. Joshi & Ors. v. State of Haryana & Anr, Appeal (Crl.) 383 of 2003, *also see*, Ajay Kumar And Others v. State of Punjab And Others, CRM M-8705 of 2012.

58 *Id.,* at 97.

59 (2013) 4 SCC 58.

60 *Id.,* at para 12; *also see,* Gurudath K v. State of Karnataka, criminal petition no. 7258/2014, at para 11; Gian Singh v. State of Punjab & Anr, special leave petition (Crl.) no. 8989 of 2012, at para 5.

In *K. Srinivas Rao v. D.A Deepa,*[61] It was held that the offence under section 498A of IPC is non-compoundable. Nonetheless, the criminal court may recommend mediation as a resolution in certain circumstances, provided that the parties are agreeable and the court deems that grounds for settlement exist. This approach does not undermine the strictness, effectiveness, or intention of this section but rather seeks to identify opportunities for marital conflicts to be resolved fairly and expediently. It is incumbent upon judges, who possess specialised knowledge of the matter, to take measures to prevent the offending party from exploiting the mediation process to evade legal consequences. If a settlement cannot be reached, the person may proceed with lodging a formal complaint without prejudice to either party. Settlement of criminal cases may save the parties involved from the burdensome legal process and associated difficulties and could also alleviate the burden on the court system, thereby serving the greater good of the public.[62]

The court's decision to permit mediation in cases under section 498A of the IPC may be perceived as a deviation from legislative intent, as the statute limits the use of mediation mechanisms mainly in civil cases.[63] It could be argued that the court exceeded its judicial mandate by sanctioning mediation in criminal cases, which is not explicitly authorised by the statute.[64] Nevertheless, the court's decision may have been prompted by the goal of promoting efficient and equitable dispute resolution, easing the burden on the court system, and the directives as to mediation be considered in cases where there is a possibility of resolving the dispute without causing further harm or injustice to the victim has demonstrated a balanced approach in judgments by the supreme court, ensuring that the victim's and accused's rights and interests are protected through this neutral approach and directives. However, it can contend that allowing mediation in section 498A cases diminishes the section's deterrent effect and could contribute to the normalisation of domestic violence and patriarchy, as women may be dissuaded from reporting violence for fear of retaliation or other negative repercussions.

61 AIR 2013 SC 2176.

62 *Id.,* at para 35; *also see* para 36, the court, has issued a directive to criminal courts handling complaints under Section 498-A of IPC, stating that they should refer the parties to a mediation center if potential grounds for settlement exist, and both parties are agreeable. This referral may occur at any stage, particularly before the complaint is taken up for hearing, but it is essential to ensure that the rigor, purpose, and effectiveness of Section 498-A of IPC are not compromised during this process.

63 Kritika Vohra, "Matrimonial Disputes in India: Trends from the Bangalore Mediation Centre" 52 (45) *Economic and Political Weekly* 62 (2017).

64 *Ibid.*

VII. MEDIATION AND COMPOUNDING: AN ANALYSIS OF DATA

In the context of mediation, it is important to highlight that a significant number of legal disputes are resolved through court-annexed mediation facilities. Compared to a court trial, the mediation process is characterised by its shorter duration, reduced burden, and avoidance of unnecessary delays.[65] In the case of *K. Srinivas Rao*, the Apex court determined that its experience indicates that approximately 10 to 15% of matrimonial disputes are resolved within the court by utilising the services of various mediation centres. In this case, the apex court also stated that the disputes should be promptly directed to mediation centres at the earliest stage.[66] There is a dearth of comprehensive data and research pertaining to the cases referred to and the success rates observed in mediation centres under section 498A of IPC. Despite this constraint, accessible data is used to gain an overview of the cases referred to and the success rate of mediation in section 498A of IPC proceedings.

The total number of cases referred to mediation in Delhi as per the report from 2005 to 2023 were 399,254, and the total number of cases settled were 199,551, with a success rate of 49.99%.[67] A comprehensive study was conducted to perform an in-depth analysis of cases from 2005 to 2008 at various mediation centres in Delhi. In particular, the 'Karkardooma' mediation centre received a total of eight cases pertaining to section 498A/406 of IPC. Out of these cases, five were successfully settled, showcasing an impressive success rate of 71.43%.[68] At the 'Tis Hazari' mediation centre, there were 1164 cases referred, primarily concerning matrimonial disputes without specifying section 498A/406 of IPC. Among these cases, 426 were settled, leading to a success rate of 49.80%.[69] In a study conducted at the Bangalore mediation centre, it was found that during the period from 2011 to 2016, there were 1,875 matrimonial cases (domestic violence cases) referred for mediation. Out of these, 1,046 cases were successfully settled, resulting in a settlement rate of 44.21%.[70] During the conference proceedings held at the National Judicial Academy in Bhopal, Justice Sudhir Kumar Jain provided statistical data demonstrating that a total of 11,439

65 Neelam Tyagi, *Women, Matrimonial Litigation and Alternative Dispute Resolution (ADR)* 159 (Springer, 2021).

66 *Supra* note 61, at Para 32.

67 Delhi Mediations Center, statistical report, available at: https://delhicourts.nic.in/dmc/statistical.htm (last visited Aug. 5, 2023).

68 K. N. Chandrasekharan Pillai, Jaya V. S and Vishnu Konoorayar. K, "ADR: status/ Effectiveness study" 87 (2014), available at: https://www.ssoar.info/ssoar/handle/document/41034 (last visited on Aug. 5, 2023).

69 *Id.*, at 86.

70 Kritika Vohra, "Mediating Matrimonial Disputes in India: Trends from the Bangalore Mediation Centre" 52 (45) *Economic and Political Weekly* 62 (2017).

cases were referred for mediation under section 498A/406 of IPC. Out of the cases, 4,328 were effectively resolved, yielding a success rate of 37.77%.[71] The data analysis reveals an approximate 50% success rate in cases referred to mediation centres, encompassing section 498A/406 of IPC and other matrimonial disputes. This underscores the effectiveness of mediation. However, it is essential to carefully consider the mediation's effectiveness while ensuring that only suitable cases are referred to avoid injustice, particularly to women facing grave danger due to violence.

The Law Commission of India, in its 154th report (1996) and its 24th report on section 498A of IPC, recommended making the offence under section 498A of IPC compoundable with the court's permission.[72] When examining the data provided by NCRB, it becomes evident that in cases under section 498A of IPC, instances of compounding or compromise of the offence by the court were present. Therefore, it is essential to analyse the data to understand the number of cases that went to trial and how many cases were resolved through compounding or compromise.

71 Justice Sudhir Kumar Jain, *Optimal approaches for adjudicating family disputes' encouraging mediation in family disputes: role of referral judges,* Conference for district judiciary on matrimonial laws (P-1317), Held on (National Judicial Academy, Bhopal, 20th November, 2022), available at: https://nja.gov.in/Concluded_Programmes/2022-23/P-1317_PPTs/3.Matrimonial%20mediation.pdf (last visited on Aug. 06, 2023).

72 Law Commission of India, "243rd Report on Section 498A of IPC", Report No. 243, 17-18 (2012).

Table 2: Year-wise data of cases compounded or compromised by the court under section 498A of IPC.[73]

Year	Cases sent for trial	Cases compounded or compromised	Percentage of cases compounded or compromised
2014	97081	8922	9.19
2015	90971	10318	11.34
2016	91810	8437	9.19
2017	91048	9925	10.91
2018	82837	9693	11.68
2019	96512	8397	8.70
2020	96513	5640	5.84
2021	114304	9126	7.98

Source: NCRB

The data indicates that a significant number of cases are not resolved through compounding or compromise compared to cases sent for trial. In light of the fact that approximately 9% of total cases are compounded or compromised, it is evident that such actions are not taken recklessly. Compounding offences with the court's permission seems to be a viable option in appropriate and selected cases. However, a thorough examination of the cases and the reasons for compounding is crucial for gaining a comprehensive understanding. Conducting further analysis can offer valuable insights into the effectiveness and suitability of compounding in these situations.

An argument can be made that the gravity of the offence should not be diminished by allowing it to be compoundable. The potential for compounding the situation, even with the court's permission, could potentially place additional pressure on the woman to reach a compromise. The non-bailable nature of the offence should be maintained, but it may be

73 National crime Record Bureau (NCRB), "Crime in India 2014" Table 4.5, at page 128 (Ministry of Home Affair, 2015); NCRB, "Crime in India 2015" table 4.5, at page 129 (Ministry of Home Affair, 2016); NCRB, "Crime in India 2016 statistics" Table 3A.7. at page no. 152 (Ministry of Home Affair, 2017); NCRB, "Crime in India 2017 statistics volume-I" Table 3A.7. at page no. 226-227 (Minsitry of Home Affairs, October, 2019); NCRB, "Crime in India 2018 statistics volume -1" Table 3A.7. at page no. 226-227 (Minsitry of Home Affairs, December, 2019); NCRB, "Crime in India 2019 statistics volume -I" Table 3A.7. at page no. 230-231 (Minsitry of Home Affairs, 2020); NCRB, "Crime in India 2020 statistics volume-I" Table 3A.7. at page no. 242-243 (Minsitry of Home Affairs, 2021); NCRB, "Crime in India 2021 statistics volume-I" Table 3A.9. at page no. 254-256 (Ministry of Home Affairs, 2022).

allowed to be compounded with the court's permission in suitable instances. Furthermore, immediate arrest should only be executed if the offence is severe and directly impacts the victim's life.

VIII. CONCLUSION AND SUGGESTIONS

The proverb, "Prevention is always better than cure", underscores the need to proactively address concerns to prevent escalation into more significant problems. Likewise, marriage relationships entail the union of distinct individuals possessing unique personalities, thereby occasionally giving rise to disagreements and conflicts as the relationship progresses. If left unresolved, these conflicts can escalate into acts of violence or lead to legal consequences, such as the filing of criminal cases or divorce proceedings. In such circumstances, the utilisation of expert assistance in the form of marriage counselling can prove advantageous. Marriage counselling offers a secure environment wherein couples can resolve their issues and gain insight into the underlying factors contributing to their disagreements, disputes, or inclinations towards aggression. Through marriage counselling, couples can proactively address conflicts at an early stage, which enhances their ability to effectively settle their disputes and diminishes the probability of divorce or instances of domestic violence.

In legal proceedings, mediation offers a highly beneficial approach to resolving disputes. In cases falling under section 498A of IPC, both spouses, along with their families and children, often endure a challenging journey. Unfortunately, even a short term of imprisonment can significantly hinder the possibility of reaching a compromise, despite the potential for mediation to resolve the matter amicably. Therefore, seeking amicable resolutions through mediation becomes crucial in appropriate cases, as it can create a more conducive environment for the overall welfare of the parties involved.

To ensure a fair and effective mediation process, it is critical to establish a well-structured procedure and ensure that all officials involved are adequately qualified and trained. The victim should not face harassment or threats during the process, and measures must be in place to prevent the accused from tampering with evidence or misusing the process. However, it is also essential to acknowledge that mediation may not be safe or suitable for women facing severe violence. In such cases of severe violence, even if mediation is recommended, it must be accompanied by appropriate protection orders to ensure the safety and well-being of the women involved.

To strike a balance between safeguarding the interests of all parties and upholding the efficacy of section 498A of IPC, alternative options may also be considered, such as the

court imposing stringent penalties on individuals making false claims under this provision. This alternative option may prevent misuse and encourage the filing of only genuine cases. By imposing stringent penalties on those who make baseless assertions, it will deter attempts to exploit the provision for personal gain or harm others unjustly.

In conclusion, although there are civil and criminal laws to safeguard and provide relief to women, still a significant number of them continue to suffer from humiliation, physical abuse, and even death. Additionally, there is a growing belief that some law enforcement officials and legal practitioners use these laws to help unscrupulous daughters-in-law extort and harass their husbands and in-laws. The discourse concerning the alleged "misuse" of section 498A is a subject of considerable controversy. Some even contend that the prevalence of fabricated accusations is a substantial concern, whereas others maintain that such assertions are an endeavour to diminish the law's importance. The focus should be on improving the implementation of section 498A of IPC, ensuring that genuine cases are dealt with expeditiously and abusers are punished. The efficacy of this section mustn't be diluted by relying solely on numerical data that presents only numbers instead of real situations or facts. Similarly, the fact that certain individuals may misuse the law shouldn't be a reason for diluting its efficacy since unscrupulous people can misuse every law, and it's unjust to shift the burden of their actions onto others. Instead of relying on personal perceptions and a few instances of misuse, factual data and studies are needed to establish whether section 498A of IPC is being misused, which is currently lacking.

The imprisonment serves as a means to communicate to husbands or relatives of husbands that wives will not tolerate violence passively. The deterrent effect of this punishment may dissuade individuals from committing acts of violence. The mediation process can potentially diminish the efficacy and deterrent impact of this particular provision; however, it is also essential to acknowledge that, in appropriate cases, mediation can effectively resolve disputes in a fair and amicable manner. Reclaiming the effectiveness of section 498A of IPC and dispelling any negative perceptions of its misuse is crucial. This provision serves as a vital safeguard for victims of domestic violence and needs to be implemented efficiently.