



!pc 498a

**I WAS ALIVE
498A KILLED
ME**

**Personal Story of how the misuse
of section 498A, 406 IPC
destroyed the Author**

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SYSTEMIC FAILURES:

I am a part of the same system:

- Where the culprit of Aruna Shanbaug, was let off with a mere seven-year sentence leaving Aruna to live a life of hell for last 40 years in permanent vegetative state every single day of her life;
- Where a State Cabinet Minister had been arrested on charges of sodomising his domestic help;
- Where a serial killer in New Delhi committed murders to avenge the police harassment that he had faced;
- Where police offered money to a child rape victim's family to stop them from seeking justice;
- Where the female accomplice; in whose presence her boyfriend killed a man, chopped his body parts and burnt them; is let off with a light punishment;
- Where on one hand the Head of the State drained the public exchequer of more than INR 200 Crores (=USD 32,308,000) on foreign visits and on the other hand thousands of our farmers committed suicides for crop failure and indebtedness;
- Where judges have been impeached, involved in land scams, suspended for taking bribes, jailed for corruption, booked for rape and accused of sexual harassment. Further, as per a report on corruption in judiciary, 59% of respondents paid bribes to lawyers, 5% to judges, and 30% to court officials to get justice and a Survey by Transparency International concluded that 77% of Indians believed judiciary was corrupt.

[Sources:

PROBLEMS FACED BY WOMEN IN THE SOCIETY:

I am sure there were, and are, many more families like mine, though we formed/form a minority in a society where a depraved

section of the general public, still takes the pleasure in, and is blemished²⁷ with the stigma²⁸ of:-

- Raping women in shelter homes, hospitals and lock-ups and now the increasing trend is to rape women in moving vehicles;
- Destroying women's lives by subjecting them to acid attacks only because she hurt a male ego;
- Aborting female fetuses for being a burden;
- Using women as objects of pleasure;
- Sexually exploiting women at every available opportunity whether: by making obscene gestures or remarks, by stalking her OR by displaying voyeurism;
- Women still needing reservation to make their presence felt even after 66 years of independence from British Rule;
- Calling 48.5% of it's total human population comprising of females as the 'weaker sex' [Source: Census 2011];
- Living off the money of brides and burning them if demands not met.
- Our society still takes pride in believing that one man's misery is other man's opportunity; prime example of this being the public loot experienced by victims of Uttarakhand floods and landslides.
- AND all this happens right under the nose of the powers that be, those who seek our votes, those who act as our watchdogs and those who judge our conduct! AND despite the presence of multiple laws to tackle this menace!

I hope one day women would be seen with regard and respect and not with lust.

I would not like anyone to deprive me of this hope, as this is the only thing I have.

WHY SECTION 498A IPC IS MORE HATED THAN RESPECTED?

Section 498A IPC based on premise of guilt of every husband

Generally sheep are black, but that does not mean ALL sheep are black. Even if assumed that some sections of our society are

male-dominated and patriarchal where husband is generally the hunter and wife the hunted; it, by no means, implies that EVERY husband needs to go through the acid test of proving his innocence to repudiate his guilt u/s 498A,406 IPC.

Casting “NO FAULT” liability on EVERY HUSBAND and looking at him through the prism of guilt is anathema³² to canons³³ of criminal jurisprudence.

The beastly beauty of s.498A IPC lies in the fact that:-

- It violates Articles 14, 15 and 21 of the Constitution of India;
- It still remains on Statute books as, despite Law Commission of India’s Report No.243 and various advisories issued by Ministry of Home Affairs, Time is not ripe to dilute this legal provision; [Report No. 243 of the Law Commission of India is accessible at <http://lawcommissionofindia.nic.in/reports/report243.pdf>]
- It presumes guilt on the basis of mere allegations without proofs. S.498A IPC is an exception to the basic tenet of criminal law and jurisprudence “Innocent until proven guilty”;
- In real practice, it allows arrest on the basis of mere complaint by complainant-wife, without there being anything more; [emphasis is mine]

FATE OF FEMALE RELATIONS OF HUSBAND ACCUSED IN FALSE 498A, 406 IPC CASES

In this cacophony⁴¹ and hullabaloo⁴², spare a kind thought for the **innocent mothers and sisters of husbands** who are jailed only because the complainant wife wished to do so. This is despite the fact that such female relations had no connection, proximity or opportunity to incur any act that could even distantly qualify as

ingredient for an offence u/s 498A, 406 IPC. This very special law jails medically ill relations, octogenarian grandparents, pregnant sister-in-laws and newly born babies. Unmarried sisters deserve a special mention as their implication in a false s.498A, 406 IPC complaint is only to make her future married life difficult, if not impossible.

Being accused in false s.498A, 406 IPC cases, makes all of them to lose their fundamental rights of:-

- Being treated with dignity and respect;
- Being treated with prompt and adequate medical attention;
- Not being intimidated and threatened with arrests;
- Not being harassed - mentally, physically, sexually;
- Speaking freely against the false complaint and the complainant, for the fear of being arrested;
- Protesting the illegalities committed during the purported investigations,
- Living a life without compromising their livelihood (jobs), society (social circle), personality (interests and avocations) only to save themselves from being arrested;
- Not losing their lives and personal liberty through illegal investigations.

OPINION OF JUDICIARY:

I. Expressing Concern over large number of frivolous complaints u/s 498A IPC, Hon'ble Supreme Court asked Parliament to revisit the provision. As per news article dated 15.08.2010 in The Hindu "Supreme Court asks Parliament to revisit dowry-related legislation" [<http://www.thehindu.com/todays-paper/tp-national/supreme-court-asks-parliament-to-revisit-dowryrelated-legislation/article571690.ece>]

II. A news article in the Indian Express dated 15.10.2009 titled "Cruelty against women; Court concerned over misuse of law". [<http://www.indianexpress.com/news/cruelty-against-women--court-concerned-over-misuse-of-law/529372/>]

III. In an article dated 03.02.2010 titled "Women are misusing Dowry Act, rules court" by the Indian Express, court yet again expressed concern over misuse of Dowry Act. [<http://www.indianexpress.com/news/women-are-misusing-dowry-act-rules-court/574907/>]

IV. In Civil Misc. Case (Civil Order) No.2453 of 2012 titled **Smt. Banani Acharya (Sarkar) vs Sri Bikash Sarkar** on 19 July, 2012, the Hon'ble Justice Soumen Sen of the Calcutta High Court held: "It is unfortunate that in many cases such arrests are made on the basis of false complaint and usually such arrests are made on Saturday in order to ensure custody on Sunday since routine orders of remand are ordinarily passed at times even without requiring the police to produce the case diary. In most of the cases, case diaries are not produced and the Investigating Officer is let off without any stricture⁴⁸ or punitive orders."

WHY DO MARRIED WOMEN FILE FALSE S.498A, 406 IPC COMPLAINTS?

Are we really serving the cause of the genuinely aggrieved 498A, 406 IPC victims? NO. Most of them do not even know that such a law as this exists. Even amongst those who know, they rarely resort to it for sending one's husband and her in-laws to jail as it ultimately leads to severance of the sacred matrimonial bond and rather take comfort in intervention by elders.

Then, **why do some married women file false s.498A cases?**

Most of these women resort to it:-

- Out of ill-will, spite and vengeance with overbearing feeling of 'teaching a lesson'; though this feeling is short-lived, the damage it causes to marital life is permanent;
- To get the most monetarily out of their failed marriage, as if it was a trade-off, a business venture that failed;
- As fear of arrests seems the most effective way of bringing husband and in-laws to negotiating table and extort money from them;
- Under the ill-advice of lawyers, who have their own axe to grind;
- Under the ill-advice of their family members, relatives, friends and neighbours who encourage her to file a case u/s 498A, 406 IPC and then, as time passes, leave her to fend for herself.
- There is a world of difference between simple registration of cases against the accused and the ultimate conviction of the accused. If a married woman was subjected to such domestic violence or harassment for dowry that she was compelled to lodge criminal case against her husband and in-laws seeking prescribed remedies, which includes imprisonment term; **why do**

EXCUSES FOR KEEPING S.498A, 406 IPC IN THEIR PRESENT FORM

Let us take on the excuses for keeping s.498A IPC, in it's form, one-by-one:

1. **Argument** - It is often said that low convictions are the result of marital violence taking place in privacy.

Rebuttal - Going by this logic, blind cases of several offences under the IPC could never have been solved by the police, but it is not so. Many other offences may, and do, take place in privacy, but they are still tracked down to the

culprit. More importantly, the ingredients of offences u/s 498A, 406, 34 IPC are determinate in character and capable of being generated, gathered and produced. If this were not the case, the Legislature, in its wisdom, would not have classified them as offences under the Indian Penal Code, in the first place.

2. **Argument:** Weak investigation by police is also at the forefront of lesser convictions.

Rebuttal: It runs contrary to police filing chargesheet, after completion of investigation, against the accused in more than 90 percent of the cases.

3. **Argument:** It is also suggested that the attitude of courts is to condone and accept marital violence.

Rebuttal: If that were the case, petitions alleging marital violence would not even have been accepted by the Court registry. If that were so, the laws against marital violence, be it:-

- u/s 3 and 4 of Dowry Prohibition Act, 1961;
- u/s 304-B, 498A, 406, 34 of IPC, 1860;

CASE FOR THOROUGH REVISION OF SECTIONS 498A AND 406 IPC:

It is nobody's case that s.498A needs to be abolished, as I am well-aware of its crying need for the women who are actually treated with cruelty to the extent of being burnt to death to meet unlawful demands, by their husbands or in-laws. But such women are far and few in the midst of huge litany of false s.498A, 406 IPC complaints. Such women are too weak to assert their rights, are illiterate, reside in backward regions and to whom the govt. machinery, despite all its propaganda, has been unable to reach out.

I am paying the price for:

- The sacrifices of those married women who were harassed to death without even a whisper to the society;
- That led to as tyrannical a legislative provision as s.498A IPC often clubbed with s.406 IPC;
- With gaping loopholes exploited to the hilt⁵⁷ by the Policing Machinery and act as a gold mine for Legal fraternity;
- And a judiciary that became duty-bound to invariably play hardball⁵⁸ when debating husband's or in-laws' bail.

The recent report no.243 of the Law Commission of India that, hid the agony of harassed husbands more than it revealed and, downplayed the devastation caused by misuse of s.498A, 406 IPC in lakhs of families in India is more to be politically correct instead of being legally correct. Only the wearer of the shoe knows where it pinches. The Commission's own recommendation of making the offence compoundable has not been implemented; this is despite the fact that the offences u/s 498A, 406 IPC can presently be quashed by filing of a mutual quashing petition before the Hon'ble High Court or the Hon'ble Supreme Court, as applicable. It is one thing to have one's house burnt, another for Others to see your house burning and Yet another thing to accommodate those of us whose houses got burnt. We are yet to clear the second hurdle, it is too much to expect the report to have crossed the third hurdle.

What can, and should, the Legislature, Executive and Judiciary DO?

1. The legislative loopholes need to be plugged in.
2. The implementation needs to be diligent, without fear or favour, without vengeance, ill-will and spite.

3. The judiciary must separate the grain from the chaff so that innocent citizens are not sacrificed at the altar of s.498A, 406 IPC.

It is high time we came out of our glass-houses and did a reality check. It is high time we saw things the way they were, acknowledged them, remedied them and if unable to do so, Scrap them to **Replace with a revised legislative provision:-**

- THAT Respects the cardinal principle of criminal jurisprudence and did not presume husbands and in-laws to be guilty until proven innocent;
- THAT is truly gender and not role-based (protecting all women and not just wives);
- THAT heavily penalizes false s.498A complainants to act as a strong deterrent against it's misuse;
- THAT lays emphasis on preserving the institution of marriage rather than breaking it by putting s.498A accused husbands behind bars, at the first instance;