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Considering Section 498A: Necessity, Relevance and Misuse

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Section 498A¹ has been a major topic of debate in recent years. All this debate is about its relevance in today's world and about how it has been subjected to misuse. This article brings light on the other side of section 498A, which is about its misuse and the effects of such misuse. There is considerable lacuna due to averment in discussing the other side of laws made for the protection of women and this void is potent to cause grave injustice. This article tries to fill the lacuna to some extent by throwing light on ingenuine ways in which this provision is used as a weapon by certain persons to harass husbands and in-laws. Also, there is an analysis of the misuse of this section on common people and the judicial system. The grave consequences of such misuse destroy the principles of natural justice. Potential solutions are also provided after thorough research to cure this problem of law created by dishonest use of the law itself.

Keywords: *matrimonial cruelty, misuse of provision, dowry.*

INTRODUCTION

Section 498A is one of the most well-known provisions of the criminal law of our country. This section talks about cruelty, torture, and other sorts of humiliation meted out to a married woman by her in-laws about the demand for dowry. This provision was developed in response to the

¹ Indian Penal Code 1860, s 498A

growing menace of demand for dowry and post-marriage mental and physical humiliation unleashed on a woman by her in-laws to get their demand of dowry fulfilled. Now, after the implementation of new criminal laws, the above provision will be present and mentioned in Section 84 of Bharatiya Nyaya Sanhita 2023². This is one of those provisions that were made in favour of women to make up for the disadvantaged position she was subjected to, this provision was intended to prevent women in India from being subjected to cruelty, torture, humiliation, assault, and murder by her in-laws in connection to the demand of dowry. This provision derives its constitutional sanctity from Article 15(3) of The Constitution of India³ which allows for making special laws in favour of women and children.

However, today scenarios have turned to a great extent. The very law that was created as a shield to protect women, is now in quite a high number of instances being used by many women as a weapon to harm and humiliate in-laws. This is right to say that the law is not created for and aimed at taking revenge or seeking vengeance. Still, unfortunately, it can be used for this unethical purpose by clever manipulation of facts and false allegations. This is part of the great debate that given the nature of the 498A, there is great scope for this provision to be used for humiliating and harassing the husband and his family members. Concern regarding the misuse of section 498A has been expressed on various occasions by multiple High Courts in our country and also by the Hon'ble Supreme Court. The Higher judiciary has provided Guidelines and clarifications on this problem, but still, there are great loopholes and scope requiring course correction. Guidelines here refer to those sets of directives given by the Supreme Court in the case of *Arnesh Kumar v State of Bihar*.⁴ These guidelines provide directions to police officers and Judicial Magistrates regarding the arrest of the accused. 'Accused of matrimonial cruelty can be arrested by police without a warrant of the magistrate'. This leaves a scope for arbitrary and unnecessary use of detention power by police and the same prospect was considered by the Hon'ble Supreme Court and resulted in the guidelines laid down in the above case. These guidelines ensure that police do not carry out unnecessary arrests and that the decision of detention of accused by police is cross-checked by the judicial magistrate.

² Bharatiya Nyaya Sanhita 2023, s 84

³ Constitution of India 1950, art 15(3)

⁴ *Arnesh Kumar v State of Bihar* AIR 2014 SC 2756

How this novel law, which was intended to be a shield protecting a woman against torture and subjugation by her in-laws is today used as a weapon of humiliation, victimization and defamation against her husband and his relatives by the very woman who was perceived to be vulnerable and for whose protection the section was incorporated. It is the point on which the main idea of the research delves. This article delves into various dynamics associated with section 498A including its genesis and development, its nature, content, applicability and ground realities. Through rulings of various High Courts and the Hon'ble Supreme Court, the article tries to ascertain and examine the objectives with which this provision was created to what extent it has realized those objectives, and what if any, are the shortcomings in its application.

It is also important to note that within the ambit of section 498A, only such cruelty comes which is done for the demand of dowry or in connection with it. Any cruelty done to the married women which is not connected to the demand for dowry, will not invite the penalty under the said section. It has been a practice in Indian tradition wherein people from the bride and bridegroom side exchange valuables and gifts. This is mostly a mutual exchange and is done in a mood of joy and elation. In this fashion, both the bride and the groom receive many gifts and valuables during the solemnization of their marriage. The gifts received by the bride which are given to her by her parents and by other people are carried by her to the matrimonial home. These valuables received by married women during their marriage are not dowry. This gift and valuables do not qualify as dowry but 'Streedhana'.

Sometimes people misunderstand this as dowry or knowingly claim it as dowry with ulterior motives and approach the court. But such gifts do not fall within the meaning of dowry. So, if marriage is done without any demand of dowry but with the involvement of Streedhana and after the marriage there is a contradiction in marriage or clash between husband and wife or if any cruelty is done on the married woman by her in-laws the woman approaches the court and claims her Streedhana as dowry and initiates a complaint against her in-laws under section 498A. But this is the wrong use of this provision as this can be invoked only when there is cruelty owing to the demand of dowry and not otherwise. In light of this aspect, it is important to understand and consider the difference between dowry and Streedhana.

DOWRY VS STREEDHANA

There seems to be some misunderstanding over the distinction between 'Dowry' and 'Streedhana'. Hindu law's notion of 'Streedhana' developed from that of 'Varadakshina' which is connected to the recognized Hindu marriage custom known as 'Kanyadaan'. The presents that the father of the bride provides to the father of the groom are called 'Kanyadaan'. 'Varadakshina' refers to the gifts to be offered to the groom in kind or currency. Both varadakshina and kanyadaan were voluntary deeds that were seen as commendable. Gifts presented to the daughter on her wedding day were considered her Streedhana, or personal property. The precise translation of the term 'Streedhana' is 'woman's property'. The Shrutis states that the Streedhana consisted of the presents she got from her relations, which were primarily movable items like clothing, jewellery and decorations. At times, presents could even include real estate, houses or even land. Properties were designated as Streedhana to provide the woman complete control over their alienation or disposal. All varieties of Streedhana passed on to her successors upon her death.⁵

Dowry is the assets, money, or other possessions a married lady gives her husband or his family. Most prevalent in societies that value patriarchy and demand that wives live with or close to their husbands' families. One of the main purposes of a dowry has always been to shield the bride from the very real risk of mistreatment by her husband and his family. When used in this manner, a dowry is essentially a conditional gift, intended to be returned to the wife or her family if the husband abuses, separates from her, or engages in other serious wrongdoings.

BACKDROP AND INCLUSION OF 498A IN IPC

In India in the 20th century, the menace of dowry was enormously prevalent. The extent of its prevalence made it look fair and legitimate. But everything that is prevalent is not necessarily legal, so was the case with dowry practice. The evil of this practice was so deeply rooted in our society that the legislature had to finally step in. The problem of dowry in the institution of marriage and the frequency of incidents of killings of women about dowry demand made a

⁵ 'Distinction between Dowry and Stridhana' (*Law Web*, 16 December 2012)
<<https://www.lawweb.in/2012/12/distinction-between-dowry-and-stridhan.html>> accessed 15 May 2024

compelling appeal to parliament to enact a law to ebb away this social tragedy. The Parliament enacted the Criminal Law Second Amendment Act 1983⁶, which added section 498A with the purpose of penalizing the husband and any other family member who would torture the wife to obtain the dowry and to forbid such behaviour.⁷

This provision was added against the backdrop of rising cases of alleged torture and killings of married women by her in-laws. Before the inclusion of this provision, no specific law or regulation was providing for the protection of married women concerning trauma unleashed on them in demand of dowry. Even while there had previously been a lot of cruelty cases, such as women being stripped and humiliated, especially involving women from lower castes, no studies had been done specifically looking at the relationship between marital cruelty and women. As a result, there is little information available on this aspect. In India, marriage and family have played a significant role in pre-independence and post-independence movements. During the 1970s and 1980s, the women's movement emphasized that domestic abuse of women was a kind of cruelty. It also called attention to and critiqued the methods used by the state to overlook and reject cases regarding cruelty to women about the demand for dowry.⁸

OVERVIEW OF SECTION 498A

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 a fine.

Explanation clause is also provided for this section, which defines the term cruelty as follows:

- (a) Any intentional behaviour that puts the woman in danger of serious harm, including suicide, or that poses a threat to her life, limb, or health – whether it be physical or mental;

⁶ The Criminal Law (Second Amendment) Act 1983

⁷ Sanjana Santhosh, 'Section 498A IPC' (*iPleaders*, 13 December 2022) <<https://blog.ipleaders.in/section-498a-ipc/#:~:text=Amendment%20to%20the%20Indian%20Penal,the%20subject%20of%20Section%20498A>> accessed 08 May 2024

⁸ Tushar Singh Samota, 'Section 498A IPC Punishment' (*iPleaders*, 20 December 2022) <<https://blog.ipleaders.in/section-498a-ipc-punishment/>> accessed 08 May 2024

(b) Harassment of the lady in situations where it is intended to force her or anyone connected to her to comply with an illegal demand for any kind of property or valued security or because she or anyone connected to her has failed to comply with said demand.⁹

This section applies to the husband and his relatives including father-mother, brother-sister, and all those who are within the meaning of in-laws to the wife of such husband. This section penalizes any cruelty meted out to a married woman by her husband or any relative thereof. But the application of this section is possible only when such cruelty by the husband or any of his relatives is done upon the married woman in connection to the demand of dowry or any other valuables. As can be concluded from the above-cited explanation clauses, cruelty can be either mental or physical. But both counts same under this provision. Further Hon'ble Supreme Court in its judgment in the case of *Rupali Devi v State of UP*¹⁰ has said that *the adverse effects on the mental health in the parental home though on account of the acts committed in the matrimonial home would, in our considered view, amount to the commission of cruelty within the meaning of Section 498A at the parental home*¹¹. It is important to mention a matter that came before the Karnataka High Court. In the case of *Vivekananda v State of Karnataka*,¹² it was clarified that *Section 498A is composed of two parts. The woman should suffer cruelty at the hands of her spouse or a family member. To be cruel would be to engage in deliberate behaviour that has the potential to push the woman to take her own life, inflict serious harm, or both. Harassment is described as pressuring someone to comply with an unlawful demand for valued property or security and harassing them if the demand is not met.*¹³

NATURE OF OFFENCE & PUNISHMENT UNDER 498A

The punishment provided for the offence done under this section is imprisonment for a term of 3 years and a fine. The offence is cognizable that is to say it is an offence for which a police officer may arrest a suspect without a warrant and begin an inquiry without the court's approval.¹⁴ The

⁹ *Ibid*

¹⁰ *Rupali Devi v State of UP and Ors* (2019) CrI App 71/2012

¹¹ *Ibid*

¹² *Vivekananda v State of Karnataka* (2023) CrI P No 101804/2019

¹³ *Ibid*

¹⁴ 'What is a Cognizable and Non-Cognizable offence in India?' (*Law Rato*, 05 April 2024)

<<https://lawrato.com/indian-kanoon/criminal-law/what-is-a-cognizable-and-non-cognizable-offence-in-india-612>> accessed 12 May 2024

offence is non-bailable and triable by a Magistrate of first class. It is also non-compoundable. That is, it is one of those crimes that is not amenable to compromise. Only quashing or dismissing it will suffice.¹⁵

MISUSE OF SECTION 498A

Any and every provision of law is made with an objective, that is aimed to be achieved by the making of such law. On a broader scale, it is perceived in a democratic setup to have been made in goodwill and for a good cause and not with any ulterior motive. Law-making is largely a theoretical and research exercise and has many stages. However, the application of law is the stage at which its actual results and effects can be accurately ascertained. Section 498A was made to protect the woman who is married, from her in-laws against cruelty about demand of dowry. The very nature of this section and the punishment provided under it are mentioned in the preceding pages. There are many instances where the law is used as a weapon of revenge and vengeance or as a means of squaring off illegal advantages. This amounts to a mockery of the entire judicial system and law-making machinery and also results in fraud to the law itself. But the actual burns of agony and harassment are suffered by those people who are at the receiving end of false allegations of cognizable offences by unethical persons. Unfortunately, this section of IPC has also been used as a weapon against husbands and in-laws by married women, by filing false cases against them or by lodging an F.I.R. with incorrect and made-up facts. Such incidents are not few nowadays and their numbers are rising at an alarming rate. Many times, the higher judiciary has expressed its concern on this aspect. In many instances, various High Courts and honourable Supreme Court have come down very heavily on cases filled under this provision with made-up facts by wives with unethical motives. It will be relevant to mention the position taken by the Delhi High Court in one of its famous cases named *Savitri Devi v Ramesh Chand*,¹⁶ 'While the objectives behind these measures were noble, their execution has produced a very negative impression, making the move counterproductive. The tendency among women to involve all of their relatives – including minors and school-age children – as close or distant family members is becoming more common. In certain cases, this is done against

¹⁵ 'Compoundable and Non-Compoundable Offences' (*Law Bhoomi*, 24 August 2023)

<<https://lawbhoomi.com/compoundable-and-non-compoundable-offences/>> accessed 12 May 2024

¹⁶ *Savitri Devi v Ramesh Chand* (2003) CriLJ 2759

all members of the husband's family, whether they reside nearby or abroad, are married, have sisters or brothers who are single, are married uncles, are married grandparents, or have as many as ten to fifteen or more relatives – is also being encouraged by the wives' parents and relatives. Whether there are ambiguous, nonspecific, or overly dramatic claims in a complaint filed under Sections 498A/406 IPC.¹⁷

In the case of *Sushil Kumar Sharma v Union of India and Ors*,¹⁸ the Supreme Court marked that Preventing dowry menace is the aim of this provision. However, as the petitioner has correctly pointed out, there have been several cases when complaints have been lodged with oblique motives and are not genuine. In these situations, the suffering endured both before and during the trial does not always end with the accused's acquittal. Occasionally, negative media attention exacerbates the suffering. Therefore, the question is: What corrective actions can be taken to stop misuse of the well-meaning clause? The fact that the provision is intra-vires and constitutional does not, by itself, allow dishonest people the right to inflict personal harm or engage in harassment. Therefore, it could be necessary for the legislature to figure out how to deal with people who correctly make baseless complaints or claims. Up to that point, the case must be handled by the courts under the current framework. However, if the clause is abused, new legal terrorism may be allowed to flourish. The clause is meant to be used as a shield for innocents rather than a weapon by assassins. When the real 'wolf' shows around, help and protection might not be accessible if the cry of 'wolf' is made too frequently as a practical joke.¹⁹

It cannot be denied that 498A was made as an urgently required law to protect the married woman from cruelty, The stringent nature of this law is also justified, given the severity of the problem it targeted which is of dowry death. Application of law is universal to its targeted audience, but all among them, to whom the law applies are not actually, in need of protection provided under it. Laws related to the protection of women are essential as a matter of fact. But protection may not be practically required by all the women in our society. For the woman who is harassed by her in-laws, 498A is a remedy and a shield against ill-treatment, but for a woman

¹⁷ *Ibid*

¹⁸ *Sushil Kumar Sharma v Union of India & Ors* (2005) WP (C) 141/2005

¹⁹ *Ibid*

who is not so harassed and is cared for enough by her in-laws, 498A is a weapon and a means available for her to blackmail, torture, and humiliate her innocent in-laws.

Owing to the misuse of 498A by persons with unscrupulous minds and unethical motives, the Top Court was required to come to the rescue of husbands and their family members. This intervention was required to protect the innocents from being subjected to stringent prosecution including immediate arrest even when false accusations were made by the wife to humiliate the husband and his relatives, as the truthfulness of the accusations could be ascertained only at the stage of trial. However, the arrest was required to be made immediately, as soon as a complaint was lodged u/s 498A. This provision appeared from data regarding case filing and acquittal under this section to be no less than a dreadful weapon in the guise of protection in the hands of a married woman which she could use with great ease and comfort to destroy the life and fame of her husband and in-laws. Owing to above above-described unfortunate and wrongful implementation and application of this provision Supreme Court in the case of *Arnesh Kumar v State of Bihar*²⁰ Issued guidelines regarding procedures of arrest, by police or upon the orders of the Judicial Magistrate. These guidelines were provided by appreciating the fundamental rights available under Article 22(2)²¹.

The guidelines are as follows:

- When a case under Section 498A is registered, all State Governments should direct their police personnel to determine if an arrest under Section 41 CrPC²² is necessary before making an automatic arrest.
- Under Section 41(1)(b)(ii) of CrPC²³, a checklist with specific subclauses should be given to every police officer.
- While forwarding or producing the accused before the magistrate for additional detention, the police officer must also provide the properly filed checklist and the reasons and materials that led to the arrest.

²⁰ *Arnesh Kumar v State of Bihar* AIR 2014 SC 2756

²¹ Constitution of India 1950, art 22(2)

²² Criminal Procedure Code 1973, s 41

²³ *Ibid*

- When approving the accused's detention, the magistrate shall review the police report provided, per the observation in this judgment, and will only grant detention once they have noted their satisfaction with it.
- A copy of the decision not to arrest an accused person should be sent to the magistrate within two weeks of the institution of the case. The district superintendent of police may prolong this period for reasons that must be documented in writing.
- The accused shall receive a notice of appearance by Section 41A of the CrPC²⁴ within two weeks of the date the case was instituted; the Superintendent of Police of the District may extend this time for reasons that must be documented in writing.

Failure to comply with these guidelines can make police officers not only fit for departmental inquiry but also in contempt of court. If a judicial magistrate grants detention without providing written justification, the relevant High Court may take departmental action against that magistrate.²⁵

EFFECTS OF MISUSE ON INNOCENTS

The design of 498A and its related provisions such as section 113B of the Indian Evidence Act²⁶ which talks about the presumption of dowry death as such that once roped in the cobweb of false allegations under these provisions, a series of agony triggers the husband and his relatives. Complaints are often deliberately made against all the members of the family at the whims and fancies of the complainant woman who may intend to unnecessarily harm and humiliate her husband and his family. While making the false allegations the so-called victim woman portrays enough disregard for the law to seek justice by narrating false facts of cruelty to the police during the registration of F.I.R. or before the judicial magistrate while filing a case. Whenever allegations are levelled based on untrue events and are made up the police or the courts can't determine whether such allegations are true or baseless at the pre-trial stage. This leads to the detention of accused(s), who may be innocent but are intended to be harassed by women with dishonest claims.

²⁴ Criminal Procedure Code 1973, s 41A

²⁵ *Arnesh Kumar v State of Bihar & Anr* AIR SC 2756

²⁶ Indian Evidence Act 1872, s 113B

Senior citizens and children are also many times included in the complaints, further severing the agony of the husband and his relatives who haven't done any cruelty or demanded dowry. Once alleged of an offence under 498A accused(s) are required to take bail, which is not so easily granted in such cases. It makes them hide in the homes of their relatives or in any other place to protect themselves against police arrest.

Also, police investigations and frequent police visits to the house and arrests if done, all create a bad impression in the society. It leads to tarnishing of the image and repute a family, commands in the society. Often, respectful families are dragged to police stations with their members being reputed persons getting arrested due to false allegations. It destroys their fame and honour in the eyes of society, it leads to great dishonour and defamation for them.

The harm of repute also transcends into the loss of one's credibility. Once arrested, a person stands having lost the trust of the society and is viewed as a wrongdoer and untrustworthy. It hampers business and means of livelihood. Such a person is confronted with a professionally non-cooperative environment and unwelcoming colleagues at the workplace.

Deliberately near and distant relatives are named in the complaint to increase the agony and create pressure, also naming senior citizens with poor health is also a tactic often used by people playing victim cards under 498A. This weakens the position of resistance on the part of the husband and his relatives.

EFFECTS OF MISUSE ON THE JUDICIARY

Overloaded, overburdened, heavy backlog, etc, all these terms are not required to be defined about the judiciary, Incidents of false allegation under 498A do add to the overburdened judiciary and lead to unnecessary wastage of precious judicial time.

People fear courts because lengthy trials sprouting out of false cases turn prosecution into persecution when people who are falsely implicated under 498A face stringent court proceedings which are required under the law, they feel betrayed by the law and system. This weakens their trust and respect for the judiciary. As they suffer injustice by misuse of novel

provisions of law but are denied any remedy or recognition of the wrong done to them, this puts a question mark on judicial credibility and leads to a loss of acceptance of the judiciary.

EFFECTS OF MISUSE ON MARRIAGE

The institution of marriage has suffered a heavy blow. Contradictions and quarrels are a natural part of life for any married couple. But these minor fights must be resolved between the husband and wife. It has been observed to be a practice amongst wives to lodge exaggerated complaints against husbands and in-laws under 498A, simply because of these minor homely quarrels. In many cases before courts as soon as contradictions appear in a wedlock the wife enjoys the upper hand, provided by 498A, first blackmailing the husband and in-laws in the name of filing frivolous complaint under 498A and then actually doing so to satisfy her angst. In such cases, minor conflicts being bereft of any cruelty or dowry demand are exaggerated and then false and frivolous complaints are lodged to harass the husband and in-laws in all aspects.

This tendency has led to the development of the concept known as the irretrievable breakdown of marriage. This means if a married couple has been living apart for a long time and is unable to continue a happy and satisfied married life together, then the court may grant them a decree of divorce. When allegations of 498A remain unproved in trial then it may be treated as cruelty to the husband. The concerned husband can ask for divorce on grounds of such cruelty which originates from unproved allegations of 498A. Therefore, it can be said that this section has led to the weakening of the institution of marriage and has made young and happy couples vulnerable to separation as even a minor fight between them may escalate into ugly courtroom drama only to end up in the breakdown of their marriage which otherwise could have been saved. The Supreme Court in the case of *K. Srinivas v K. Sunita*²⁷ held that matrimonial cruelty can be established by just one false allegation by a wife on a husband or in-laws.

²⁷ *K. Srinivas v K. Sunita* AIR 2014 SC 147

POTENTIAL SOLUTIONS - PREVENTING MISUSE

- To investigate issues related to matrimonial disputes or cruelty, family welfare committees should be constituted at the district level.²⁸ They must be formal in the investigation but lesser in strictness than the police.
- Speedy trials should be conducted and unrequired abstention should strictly be disallowed. Generally long dates are taken and proceedings are made to be conducted slowly by the prosecution. This is done deliberately to prolong the sufferings of the accused(s). To stop this abuse of law and wastage of judicial time, frequent adjournments must be discouraged by judicial magistrates.
- Special courts to entertain matters exclusively related to matrimonial cruelty can be established as a viable solution for checking the misuse because routine district courts are already burdened with a plethora of cases of all kinds and varieties.
- Non-judicial mediation must be promoted between the parties before the case is filed in the court to exploit the possibility of compromise and cohabitation between the warring husband and wife.
- Courts must encourage the practice of imposing costs on parties approaching the courts with wrong and dishonest intentions and made-up cases. This will reduce the inflow of false cases to the courts.
- Penalty provisions should also be created for legal practitioners who indulge in the filing of false and frivolous cases as this is gross misconduct and amounts to a breach of professional ethics as per the Advocates Act 1961.²⁹

CONCLUSION

When used as a shield, the law is an absolute defence, but when used as a weapon, it becomes more pernicious than everything else taken together. Law is not an object of playing with, but when an attempt is made by mendacious men to manipulate it, what begins then is the tyranny

²⁸ Vansh Singla, 'Misuse of section 498A and possible solutions' (*Legal Utility*) <<https://legalutility.com/misuse-of-section-498a-and-possible-solutions-by-vansh-singla/>> accessed 12 May 2024

²⁹ The Advocates Act 1961

of law. Section 498A³⁰ is a well-meaning provision. There is nothing wrong or anti-constitutional in its structure and wording. Its stringent nature is also justified given the seriousness of the problem that it aims to tackle, that is dowry demand and matrimonial cruelty. There can be no denying the fact that this provision of law is even today required in our country. But at the same time, we also cannot deny or ignore the fact that this provision is prone to misuse by many. Prevention of cruelty against a married woman is an essential need of society, but if this protection is provided by unleashing miseries on the husband and his relatives and by compromising their constitutional rights, then such a setting is not flawless. If justice is to be done to a particular class, in this case, a married woman, it cannot be done by letting the floodgates of injustice be left open upon another class, in this case, the husband and his relatives.

At this Juncture it will be unwise to conclude that 498A should be scrapped altogether as many have said. The correct analysis shows that though thousands of people have suffered the burnt from misuse of this provision, doing away with this provision altogether will be even worse. Thus, steps should be taken to prevent its misuse by incorporating relevant changes in the procedural aspects of law. And this is required to be done urgently. Until we have any counter for misuse of this provision, we will be letting innocents get unlawfully persecuted in the guise of lawful prosecution.

³⁰ Indian Penal Code 1860, s 498A