

Section 498A. Husband or relative of husband of a woman subjecting her to cruelty

It is embarrassing to make spelling mistakes. Especially when you are the Editor. Therefore, I have now started reading whatever I write over and over again.

When I read this article written by me, it made me laugh. Somewhere down below is a section where I explain in STAGES how a marriage ends up in a messy Section 498 A case. At the end of each stage I have explained What could have been done done. I believe there is nothing more effective than the husband and wife living separately in their own household and away from the husband's parents. IT IS THE GOLDEN RULE AND THE MOST EFFECTIVE REMEDY. There is no other way out. But since I started What could have been done, I had to complete it. And since I know there is not much to replace my solution, I ended up forcing myself to come up with unique What could have been done's. So if you find them funny, do laugh, but let me assure you that Section 498A is not a laughing matter, it is in fact far from funny.

A TALE FROM CHILDHOOD

Let me begin with a 'childish' story. Bear with me and read through it. For it will reveal the plight of an innocent relative caught in the intricate web of Section 498 A.

In school, I was not known to be the quiet and silent type. But I was far from evil. Naughty, sums it up just right. There was this classmate, from another community/religion, who was constantly targeted by other classmates with stupid jokes designed to humiliate him and his community. This boy was made the butt of all jokes, at all times. I felt bad for him but I was closer to his tormenters, rather than him, for only one reason- they were on

the soccer team with me, and he was not interested much in sports. I did not participate in this ritual against him at all. If anything, I strongly felt for him and his solitude and wished I could stop my classmates.

This continued for some time. One day this boy had an argument with me over a seat in the classroom. Both of us wanted the same seat. I managed to outsmart him. And paid for it dearly. How?

In a week's time the boy had summoned both his parents to school to complain against the ring leaders of the class for harassing him with communal taunts. His parents managed to walk into the classroom with the Principal of the School. The Principal then asked the boy to be fearless and 'point' to his tormentors with his finger. He pointed out about 5 of my classmates before turning to me. I still recall his stupid grin of satisfaction when he pointed me out.

I was bundled with the rest of the miscreants and singled out for punishment, details of which I shall spare you. Suffice it to say, it was terrible. Even my parents found fault for him. After all why will he point me out if I had never, ever, ever, harassed him at all?

This is the story being played out in Police Stations and Court Rooms across the country in the name of Anti-Dowry laws. The wife 'points' and the relatives of the husband are jailed. They may never have asked for dowry, but may have dislodged her elsewhere. So now it is jail for the husband and gang. And no, I am not talking about exceptions here. I am talking about the vast majority.

As seen in the earlier pages, Dowry Death, as defined by Section 304 B of the IPC puts the onus of proving innocence on the accused. Closely connected with this law is another 'harassment' related law Section 498a of Indian Penal Code.

Parliament had inserted Section 498A in IPC with effect from December 25, 1983 with a view to punishing husbands and their

relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry.

At present, anyone found guilty under Section 498A can be punished with a jail term up to three years and also be asked to pay fine. Bail is usually not easy to avail for a dowry-related offence.

SECTION 498A: THE LAW

Let us first examine how this law is defined:

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

For the purpose of this section, “cruelty” means—

(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.

This offence is Cognizable, non-bailable and non-compoundable. Upon conviction the accused can be Punished with Imprisonment for 3 years and fine.

Let's now see this whole thing from layman's point of view, or rather from the point of view of a husband who is actually 'innocent', but trapped in the clutches of this law.

FROM HONEYMOON TO JAILHOUSE ROCK

We will now examine how a marriage ends up in a Section 498 A case. At the end of each stage, I have suggested legal solutions or how things should have been controlled by the husband and his folks.

Stage 1: A newly wed couple starts their life together. As in any other marriage in any other part of the world, there are differences. But unlike other couples around the world, this couple lives together with the husband's parents, and many times with his siblings as well. With time, the romance flies out and the realities fly in.

What could have been done: As suggested earlier, the golden rule is to live separately. The Husband must live with his wife separately from his parents, or her parents. How? You should think this through before marrying.

Stage 2: If the couple is living with the husband's parents, the mother-in-law vs. daughter-in-law crisis may have already started rearing its head no sooner than the honeymoon ends. This adds to the existing tension and differences between the couple. And it may be a constant refrain from the girl that she cannot put up with the husband's non-sense as well as that of his parents. Rightly so.

What could have been done: At least now, the husband should have realized that there are 'other' dimensions to this conflict. And he should have taken charge of the situation and taken up another home.

Stage 3: The husband never really gets it until it is too late. He is too busy with work during day and quickly gets back to his friends circle and routine. He finds solace outside the house

because he can neither control his wife nor his mother.

What could have been done: The husband has a duty towards his wife and parents both. But it is not his duty to be a mother's boy when his wife complains of ill-treatment. He should have made it very clear to his mother that this is a confrontation that will cost them dear. Also, he should have given his wife the choice 'not to take this torment' and to walk away, from his house and/or his life, or both. What else can she do? Especially, since he is unwilling to look for a home for them.

Stage 4: An actual demand for dowry may or may not happen. There is very little evidence other than the oral accusation of the wife. After all there is no question ever of a written demand of dowry. Now, here is something interesting. The mother-in-law, who gets to spend all the time with the daughter-in-law (unless she is working, which is still a rarity) may enter into a kind of 'banter' with the lady. I know of an instance where the mother-in-law would often tell the wife how much one of her relatives got in 'dowry' even though the groom was not even half as qualified as her son. This can be easily interpreted as Dowry demand, which in fact it is. If the wife records this conversation, the mother-in-law will find it very difficult to extricate herself. If there is another eye-witness, it makes it worse.

What could have been done: Nothing. Seriously. It is already too late.

Stage 5: The husband is blissful in his self-acquired oblivion. Somehow hoping that things will all quite down at home with time. He does not want to take sides with either of the ladies, and is therefore further vilified by both. He quickly returns to the fold of his work, and friends. The only aim being to avoid home or to come as less and as late as possible.

What could have been done: This may sound funny. And a lot of you may end up laughing, But all I can think of now is an 'affidavit'. Whereby at least he affirms wherever he can that he anticipates trouble at home. On a serious note, perhaps this

would have been a good time to alert the wife's parent, the local Police Station and the Government appointed counsellor to such problems.

Stage 6: The wife starts confiding in her parents, friends, and relatives. Many of them are quick to tell her about her rights, including divorce, alimony, custody of children etc. The wife demurs for a while.

What could have been done: Explain your point of view to them. Engage them in a dialogue. But how will the husband control his own mother who may again end up comparing 'her son's value'? Or in the most of innocent of cases, may complain about a poorly cooked food by the daughter by calling a spade a spade. I don't have an answer.

Stage 7: The Mother-in-law's onslaught continues. It may be something completely unrelated to dowry. It may just be general hatred for her daughter-in-law, which in itself is not a crime. But since she makes the mistake of talking about how 'valuable' her son is, she invites trouble.

What could have been done: Perhaps encourage the wife to be gainfully employed by giving shape to a career.

Stage 8: The Father-in-law, in most cases, is as helpless as his son. In some cases, he unwittingly or unwillingly joins the mother-in-law in 'comparing' his son and his daughter-in-law with one or the other of his acquaintances.

What could have been done: The father-in-law may not be guilty of demanding dowry, but he cannot explain away the actions of his wife if she is indeed guilty. And if he is convinced she is innocent, he should ask the son and his daughter-in-law to find another house and leave amicably.

Stage 9: When the wife can take it no more, she leaves the house, returns to her parents or takes shelter somewhere and pays a visit to the Police Station. What is her complaint? No

prize for guessing....

What could have been done: Are you kidding me? You should have had an inkling, an iota of idea, a hint, if not a giant sized warning written on the wall.

The Drama Begins.

The Police Officer is empowered to arrest the husband, and his mother, and his father, and his sisters, and brothers and anyone else the wife may point a finger at. Really, she just has to name them and they face arrest. In many cases, the husband's parents are too old to stand the reality of our criminal justice system. Many of them have ailments and need medical care. But jail now becomes a reality.

Solution: Since dowry cases are rampant (From 2005 till 2010, more than 550,000 men and 163,000 women and hundreds of minor children were arrested or jailed under this law. More than 90% of the accused people under this law are eventually acquitted.), it makes sense to have an entirely separate stream of adjudication. To begin with, this is not the type of case Police Department should handle at all. This is a 'social' problem and evil, not a criminal one. It is like treating a drug-addict or an alcoholic. It is an evil alright, but not criminal. Yes, I dare say that the acts of the mother-in-law are due to the evil already present in the society. She does not conjure up a 'harassment plan' for his son's wife. It just happens because our system encourages the couple to live with the husband's family.

Back to the drama now. The Police Officer, even the best of them, have little choice but to arrest the 'accused'. If he does not, he himself becomes an accused and gets a truckload of insinuations to defend himself from and against. Once arrested, the ordeal only begins.

Bail is out of question, and for the same reason as why the Police Officer makes the arrest. Secondly, and most importantly, the onus is now on the 'accused' to prove they are innocent. And

if you are really innocent, how on earth do you prove that you are innocent?

Bail is almost always denied. Again and again, until the prosecution story begins to crumble. Or worse still, a demand is raised by the wife and her 'well-wishers', it is met by the husband's side, and the wife stops baying for blood. The whole thing gets resolved after the wife does an act that she first is aggrieved by herself, ask for money.

Is there a statistics on how many dowry related complaints are actually true? Or lead to conviction? Or are found to be blatantly false? I am not sure.

But I am sure of this.

That no matter how bad the very crime or social evil of dowry is, that no matter how many women suffer, it is not an excuse to send even one innocent man to jail. It is far worse to send his relatives to jail that had nothing to do with the wife or her grievance.

Law cannot be a pendulum that first swings to one extreme and then out of sheer momentum and change in direction goes to the very end of the other extreme. To rectify a wrong, with another wrong is hardly the objective our lawmakers must aim for. It reflects poorly on their skills. A wrong must be analyzed, observed and studied. In this case, the issue is really not the demand for dowry, but rather our society's penchant to have the husband stay with his parents long after he has attained manhood. This one point will save everyone other than the husband from the accusation of a demand for dowry. Just live separately.

It is easier said than done. As long as the husband continues to live with his parents, Section 498 A, 304 B and many other with newer nomenclature will continue to haunt our society. The girl may or may not be right in her accusations, but the 'grounds' for

her accusation are set by none other than the husband and his 'joint family'. And more often than not-unwittingly.