
SOCIO-LEGAL DIMENSIONS OF MARITAL CRUELTY IN INDIA: FROM SECTION 498A IPC TO THE BHARATIYA NYAYA SANHITA

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ABSTRACT

The introduction of the criminalisation of matrimonial cruelty in India was a move towards a progressive approach in order to combat the rising threat of dowry deaths and domestic violence faced by women. Historically the provision was in the Indian Penal Code, 1860, under Section 498A¹ which was then replaced by Section 85², Bharatiya Nyaya Sanhita, 2023 and has acted as a potent protection. At the same time, however, it has provoked systemic tensions with the proliferation of complaints about procedural abuse, kidnapping of relatives of those arrested, and “unnecessary” involvement of relatives in the case. Over the past 40 years, the judicial system in India, headed by the Supreme Court, has actively engaged in a delicate equilibrium between the structural protection of vulnerable spouses and the constitutional rights to personal liberty enshrined in Article 21³. This paper examines some of the key features of the judicial evolution of the matrimonial cruelty regime, including the development of anti-arrest guidelines, the judicial elimination of frivolous complaints and the shift to the contemporary statutory framework.

¹ Indian Penal Code 1860, s 498A

² Bharatiya Nyaya Sanhita 2023, s 85

³ The Constitution of India 1950, art. 21

1. INTRODUCTION

Criminal law is a double-edged sword and should be used in a way that is both assertive in bringing to book social evils and should ensure that the procedural rights of the accused is not put to a road block by the State. Section 498A of the Indian Penal Code, 1860 (IPC) was introduced in the IPC by the Criminal Law (Second Amendment) Act, 1983 with a grim socio-legal reality that married women are vulnerable and being extorted for dowry amounts and domestic violence is commonly institutionalised. The socio-legal purpose has survived the current legal framework through the provisions of Section 85 and Section 86⁴ of Bharatiya Nyaya Sanhita, 2023 (BNS).

In force, the directive has been met with strong judicial criticism and the intent is commendable but the system of enforcement has been faulted. In the course of time, the courts observed a pattern that an application for a matrimonial complaint was followed immediately by the mechanical arrest of the husband as well as his aged parents, unmarried siblings and distant non-resident relatives, without any preliminary verification. This absolute dependence on ipse dixit of the complainant was threatening to the very essence of Article 21 of the Constitution of India, which is a remedy giving provision, was what the judiciary termed as an "instrument of legal tyranny."

The Supreme Court of India and various High Courts have thus created a wide net of procedural safeguards to prevent automatic arrest, ensure preliminary investigations and set standards for the quashing of such vague accusations. This paper examines this vast judiciary landscape and charts its efforts to reconcile the competing interests of marital protection and constitutional freedom of the individual.

2. THE STATUTORY CONTEXT AND THE CRITERIA OF CRUELTY

A baseline definition of "cruelty" under the statute needs to be analyzed to understand how the judiciary has evolved. In the old law of Section 498A IPC, and also the law of Section 85 and Section 86 of the BNS, cruelty does not just mean physical torture; it takes the form of systematic emotional and mental agony.

Early jurisprudence gave the idea that the benchmark of cruelty is objective in nature with reference to the social background of the parties. The Supreme Court in *Shobha Rani v Madhukar Reddi*⁵ has held that "cruelty" under criminal law is a series of acts resulting in an

⁴ Bharatiya Nyaya Sanhita 2023, s 86

⁵ *Shobha Rani v Madhukar Reddi* (1988) 1 SCC 105

apprehension in the mind of the wife that it would be harmful or injurious to live with the husband. The Court specifically set out that the demand for dowry is a strong mental cruelty.

A similar reasoning was followed in *State of Karnataka v L Muniswamy*⁶ in holding that 'systematic harassment' for forcing the woman to perform immoral and illegal property demands constituted the elements of the offence. Early in the case of *B S Joshi v State of Haryana*⁷ the Court had stressed that the offence is non-compoundable, the High Courts have inherent powers under Section 482⁸ of the Code of Criminal Procedure, 1973 (CrPC) to quash matrimonial disputes where the parties are found to have reached a genuine and voluntary settlement and criminal processes should not be allowed to thwart matrimonial rehabilitation.

3. THE CRUSADE AGAINST AUTOMATIC ARRESTS

The culture of "immediate, mechanical arrest" was the key systemic vice observed in the implementation of the matrimonial cruelty regime. The "power to arrest" was once characterized by investigating agencies as a "power to arrest" without the requirement of necessity and rationale.

The principle against arbitrary arrests was established in a general way in *Joginder Kumar v State of UP*⁹ where the Supreme Court held that there cannot be an arbitrary arrest on mere suspicion. This was complemented by the landmark judgement in *D K Basu v State of West Bengal*¹⁰ which set out the guidelines for police custody to ensure that human rights were not violated in a covert manner.

The specific intervention in the framework of matrimony was very strong in the case of *Preeti Gupta v State of Jharkhand*¹¹. The Supreme Court also pointed out that most complaints filed under Section 498A were fabricated and the relatives who were found guilty of the offence played no direct part in the domestic relation of the couple. The Court urged the Legislature to revisit the provision "to keep up with the evolving social reality."

This constant worry led to the institutional order passed by *Arnesh Kumar v. State of Bihar*¹². The Supreme Court had barred mechanical arrest for crimes punishable by less than seven years, and had emphasized the importance of strictly complying with the provisions of Section

⁶ *State of Karnataka v L Muniswamy* (1977) 2 SCC 699

⁷ *B S Joshi v State of Haryana* (2003) 4 SCC 675

⁸ Code of Criminal Procedure 1973, s 482

⁹ *Joginder Kumar v State of UP* (1994) 4 SCC 260

¹⁰ *D K Basu v State of West Bengal* (1997) 1 SCC 416

¹¹ *Preeti Gupta v State of Jharkhand* (2010) 7 SCC 667

¹² *Arnesh Kumar v State of Bihar* (2014) 8 SCC 273

41A¹³ of the CrPC (now incorporated in the procedural regime of the Bharatiya Nagarik Suraksha Sanhita, 2023). The Court decided that:

An investigating officer is required to make a detailed record of the grounds of arrest in a checklist setting out the officer's reasons for making the arrest.

A Magistrate may only order further detention when he or she is satisfied with the police report after making an independent assessment.

If the police officer or the Magistrate did not follow these directions, he would be subject to disciplinary action by the department and to contempt of court.

The tone of Arnesh Kumar has been continually reinforced. In *Satender Kumar Antil v Central Bureau of Investigation*¹⁴ the Supreme Court reiterated this anti-arrest principle by re-categorizing offenses and ruling that where compliance with Section 41A is achieved, bail should be granted as a matter of course without requiring for a custodial period.

4. EXCLUSION OF GENERAL AND OMNIBUS ALLEGATIONS

One common difficulty in matrimonial litigation is the ability to include in an “omnibus complaint” an assertion against the entire extended family network, without specifying particular overt acts in time to each.

This amounted to a form of systemic scrutiny in *Geeta Mehrotra v State of UP*¹⁵ where the Supreme Court pointed out that if the prosecution does not allege that the named family members were actively involved in the physical or mental torture, then they are not the appropriate persons to be prosecuted merely on the basis of casual mentions in a matrimonial dispute. The Court said that it is evident that roping in distant in-laws in separate cities is nothing but a sheer misuse of the judicial machinery.

This principle was once again reiterated in the case of *Rashmi Chopra v State of Uttar Pradesh*¹⁶ where the Court struck down the proceedings instituted against the maternal uncle and the married sisters of the husband, as there were no specific identifiable elements of harassment.

*Kahkashan Kausar v State of Bihar*¹⁷ is the authoritative modern case that discusses omnibus allegations. In this case, the Supreme Court held that if there is no clear, specific and distinct allegation against the in-laws, criminal proceedings will not be allowed to continue. The Court

¹³ Code of Criminal Procedure 1973, s 41A

¹⁴ *Satender Kumar Antil v Central Bureau of Investigation* (2022) 10 SCC 51

¹⁵ *Geeta Mehrotra v State of UP* (2012) 10 SCC 503.

¹⁶ *Rashmi Chopra v State of Uttar Pradesh* (2019) 15 SCC 311

¹⁷ *Kahkashan Kausar v State of Bihar* (2022) 6 SCC 599

noted that permitting vague complaints to be heard is nothing more than an instrument of coercion whereby extended members of the family are compelled to go through the tedious process of a trial simply because they are extended family members of the husband.

Likewise, in *Abhishek v State of Madhya Pradesh*¹⁸ the Court dismissed a complaint filed against a brother-in-law and sister-in-law living separately, stating that Courts need to be mindful of a general criminal vendetta against an entire lineage in the guise of a complaint of an interpersonal breakdown of a marriage.

5. TERRITORIAL JURISDICTION AND THE CONTINUING OFFENSE

Another key procedural conflict with high citation density is territorial jurisdiction. Wives, when forced out of the matrimonial home, typically file complaints from their homes; cause confusion on the proper jurisdiction of the local police station and court by their husbands.

In *Y Abraham Ajith v Inspector of Police*¹⁹ the Supreme Court had taken a narrow approach and ruled that if any part of the cruelty was not committed at the parents' house, the court at the parents' house would be without jurisdiction under Section 177²⁰ of the CrPC. This made the lives of displaced women extremely distressful.

In order to alleviate this hardship, the Supreme Court in *Sujata Mukherjee v Prashant Kumar Mukherjee*²¹ adopted a new notion of 'continuing offence'. Responding to it the Court said that if the harassment occurs when the wife lives in her parental home or if the effect of the cruelty is felt in both places, the courts at both the places have concurrent jurisdiction as per Section 178²² of the CrPC.

The controversy was finally put to rest by a three-judge bench in *Rupali Devi v State of Uttar Pradesh*²³. The mental trauma caused to a husband's wife at her parental home from the acts of cruelty done at the matrimonial home is a continuing harm. Thus, the Courts at the venue where the wife rests, have the lawful jurisdiction to entertain a complaint under Section 498A and not the technicalities of geographical limitations, giving primacy to human dignity.

The next 6 steps will focus on transitioning to the BHARATIYA NYAYA SANHITA (BNS), 2023.

Matrimonial cruelty regime has been structurally modified in section 85 and 86 of the BNS,

¹⁸ *Abhishek v State of Madhya Pradesh* 2023 SCC OnLine SC 1083

¹⁹ *Y Abraham Ajith v Inspector of Police* (2004) 8 SCC 100

²⁰ Code of Criminal Procedure 1973, s 177

²¹ *Sujata Mukherjee v Prashant Kumar Mukherjee* (1997) 5 SCC 30

²² Code of Criminal Procedure 1973, s 178

²³ *Rupali Devi v State of Uttar Pradesh* (2019) 5 SCC 384

2023 with the enforcement of the new criminal codes. It is not only a cosmetic change but an attempt at clarifying definitions and at maintaining the judicial security established in the preceding four decades.

The BNS Section 85 BNS retains the original punishment which is a fine and imprisonment up to 3 years for the husband or his relative, who inflicts cruelty on a woman. The definition of “cruelty” is clear and explicit in Section 86 BNS and it is divided in two:

Any deliberate act that may cause serious harm to the woman’s life, health or limb or lead her to attempt suicide.

Harassment with intent to cause her or her family members to comply with any unlawful request for property or valuable security.

The BNS adopts the qualitative baseline that was outlined in *Shobha Rani and Anju Jindal v State of NCT of Delhi*²⁴. Moreover, the *Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)* expressly provides for the need of a preliminary inquiry in the case of offenses punishable for less than 7 years, thus incorporating the ideology of *Arnesh Kumar* in the statutory provisions.

7. CONCLUSION

The meshes of these two are clearly illustrated in the legal battle over matrimonial cruelty in India. The case of matrimonial cruelty in India provides a good example of how progressive social engineering and judicial constitutional checks interact. Section 498A IPC (now Section 85 BNS) is still a much needed tool to fight the entrenched patriarchy and dowry extortion system. But its use must be moral for it to work.

The broad range of opinions in *Anvar P.V. and Preeti Gupta v. State of Karnataka* and *Kahkashan Kausar v. State of Chhattisgarh* indicates that the Supreme Court has achieved what it has set out to do and has created a multi-layered protection against over-proceduralization. The judiciary has established a fair and just balance through requiring a specific cause for arrest, a specific overt act, and by adding territorial provisions to cover displaced women. In the background of India’s acceptance of BNS-BNSS, it is important that the courts uphold the hard-won protections that will ensure that the path of ‘matrimonial justice’ does not endanger basic constitutional due process.

²⁴ *Anju Jindal v State of NCT of Delhi* 2024 SCC OnLine Del 3412