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## **498A IPC - A SHIELD TO DEFEND WOMEN OR A WEAPON?**

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### **ABSTRACT**

In modern day society 498A has become a sword for women which was once considered as a shield to protect themselves and it has become very difficult to tackle this sword by married men thus, making it invincible. Through this paper, the authors endeavour to shed light in a gender-neutral way of their perception the legislative wisdom being engrafting section 498A IPC in contradistinction to its widespread abuse with respect to present day Indian society, which once came into existence to help the Indian women to fight the outbreak of cruelty caused against them by the husband and his family member and safeguard the interest of women is now being misused as a tool of exploitation against their husband. To end the scourge of exploiting the legal provision against males, Section 498A of the IPC needs to be amended, and some social reforms also need to be made. By referring to secondary data from publications like journals and other papers, the authors of this paper used doctrinal research as their methodology. A succinct history of this legislation's origins, including how it all began with an analysis of reported and registered crime, police station records, law commission reports, and influential precedents around the country, was also presented. The authors also portray the misuse of Section 498A of IPC and tried to provide strategies and remedies to terminate its misuse.

**Keywords:** 498A, IPC, Cruelty, Harassment, Misuse

## INTRODUCTION

The Indian legislature is powerfully built. The judicial working has stretched its roots & developed various laws over time, providing citizens with protection and safeguarding everyone's well-being. Women's rights are one such area that has grown over time, and there is a global movement to promote women's rights and ensure that they are regarded equally to their male counterparts and as global citizens. The judiciary has aided and assisted the women's rights movement in India as it has made significant progress. Marital strife and, in particular, the improper practise of demanding and distributing dowry<sup>1</sup>, are one such area of concern. Dowry, a pervasive societal ill that puts women's lives in danger, continues to exist. Due to the constant harassment and anguish inflicted by the husband and his kin, many women have to give up their lives, houses, and even the identity as human being. Unfortunately, this cruel practice—which has claimed many lives—is being carried out in the name of a long-standing habit. Section 498A<sup>2</sup> of the IPC, a statute created by the British government in 1860, was added with the objective of combating the threat of dowry among Indian women. Although the Section was created to protect and safeguard the interest of women in dowry-related issues, it has been noted that some have abused the law by bringing vexatious and fake cases to cause problems and dishonour to the husband and his kin. This is an actual legal matter that the judiciary has carefully considered and that could have broad repercussions.

In 1983, Section 498A was added to the Penal Code, 1860, and it describes an offence that results from marital discord. Marriage in India is considered as a spiritual institution, in which husband is responsible to look after his family which also include the wife. Nevertheless, the stigma of "dowry" persists still in the devout institution of marriage. Women's standing is degraded by this evil practise, which turns them into inanimate objects whose worth increases with higher dowries. Due to this social evil, women suffer mistreatment, harassment, murder, and divorce for the simple reason that they did not pay a dowry or did not comply with the husband's or his relatives' ongoing illegal demands.

Sec 498A which seeks to punish the husband/relatives of husband for subjecting the wife to cruelty has given a wide coverage to the term 'cruelty'. It includes-

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<sup>1</sup> Section-2 The Dowry Prohibition Act, 1961 (Act No. 28 of 1961)

<sup>2</sup> Indian Penal Code,1860 (Act No. 45 of 1860)

- Wilful conduct by husband/relative of husband amounting

to physical or mental cruelty.

- Harassment by husband and his family members for the purpose of

meeting dowry demands.

**Objectives: -**

The aim of this paper is to comprehend section 498A and to determine how this legislation is being abused by Indian women and to provide suggestion to avoid its misuse without compromising the rights of women.

**HISTORICAL BACKGROUND BEHIND ENACTING SECTION 498A IPC**

Position of women was at its peak in ancient period – precisely between 1500 B.C and 500 B.C. Women had eminent position in the family and enjoyed high prestige and reverence in the society. With the advent of Mughals in Indian society the concept of polygamy started. Concept of sati, Jauhar and child marriage also came into mainstream. Soon, this position started deteriorating with respect to education, marriage and family life. The status of women was a paradox in modern India. On one hand woman had the power of entire government and on other there were thousands of women suffering from violence from their own family members. In post independent India a massive number of cases were associated at odds with women especially in Hindu joint family which was either related to dowry or other demands raised by the husband or his family members and a majority of cases remained unheard; due to lack of awareness and a valid legal proceeding. Women have been victim of male cruelty, since ancient times. As most of the crimes were conducted within the four walls of the house and there was no prominent law related to such type of cruelty, cases of harassment were filed under general provision of Indian Penal Code which were related to assault, torture, murder, abetment of suicide, hurt or homicide. However, when the rapid growth of incident of violence was reported against the newly married young women; it was felt that a change is needed in the provision of IPC. Serious concern was raised by various social workers, public organization and authorities about the cruelty against women. As a result, an amendment was made in Indian Penal Code and section 498A was added to chapter XVI with the help of article 15(3) of the

Indian constitution to deal with the cruelty done by husband and his family members towards the bride. Laws like these help women to take stand for themselves.

Ingredients of Section 498A are: <sup>3</sup>

- (a) The woman must be married
- (b) She must be subjected to cruelty or harassment
- (c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.

Ever since its insertion, it has been the subject of deliberations in various forums including the Supreme Court and many dignitaries. One of the pertinent observations was needed to be highlighted to throw light on the issues surrounding the section and their solutions which includes Justice Malimath Committee Report.

#### **Observations in the Justice Malimath Committee report, 2003: -**

In order to propose reforms for the criminal justice system, the home ministry established the Justice Malimath committee in 2000. After carefully reading section 498A, it was determined that the provision had a few flaws and adjustments were consequently suggested.

The committee made the observation that this provision works against the interests of both the partners because:

- It presents a significant obstacle to the restoration of marital life between the spouse because such cases sour relationships for life.
- Despite the parties' reconciliation, the case targeting the groom and his family members is still pending because it is not compoundable.
- The committee recommended making 498A a bailable and compoundable offence.<sup>4</sup>

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<sup>3</sup>Suvetha v. State, (2009) 6 SCC 757

<sup>4</sup>Aug 3, 2022 (8:15PM)

[https://www.worldwidejournals.com/paripex/recent\\_issues\\_pdf/2015/September/September\\_2015\\_1492178619\\_\\_81.pdf](https://www.worldwidejournals.com/paripex/recent_issues_pdf/2015/September/September_2015_1492178619__81.pdf)

In its approx six hundred-page report, the Committee didn't mention the crime targeting women. They didn't think it was mandatory to solicit the thoughts and views of either matrimonial abuse victims or other concerned parties. Additionally, the work contained almost any references to support the claim of misuse of Section 498A. As a result, it is debatable whether or not this report is relevant, particularly in light of 498A.

498A was further strengthened by the introduction of the Protection of Women from Domestic Violence Act 2005. These changes of legislation aimed at reducing crime against woman but majorly it helped the women to take more strategically legal action against the culprit. Despite of several attempts taken by our government to eradicate the cruelty against women by their husband, these measures have been proved to failed miserably as per the data given by National Crime Records Bureau <sup>5</sup>. As per the data published by NCRB in 2015: the crime against cruelty by husband or his relative has amplified from 2011-2015.

But in this rapid changing world there has been a change in human behaviour and mind especially when it comes to make money as the trend of being financially free is in its peak, this makes various adult to do various unlawful activities to achieve their desired goals irrespective of thinking about others sentiments. One such trend being seen in marital life of women is to misuse section 498A: the section which was introduced to safeguard and protect the interest of women is now being misused by them to attain the wealth of their husband. In most cases the false case of 498A is done to grab a large amount of money from the husband and settle the case outside the court. As per NCRB's Crime in India 2020 report, about 5% of the cases under Section 498A were found to be false<sup>6</sup>. There is a need to provide safety measures against the fallacious case of 498A to the innocent and naïve husband of the society and their family members. But as of now there is no law for such strata of society. This side of the picture compels us to look at the fact and data on the cases reported against 498A and the number of convictions in these cases.

### **THE TREMORS OF SECTION 498A IPC IN SOCIAL MILIEU**

No matter how well-intentioned the lawmakers may have been when drafting Section 498A, it

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<sup>5</sup> Aug 3, 2022 (11:20PM)

[https://ncrb.gov.in/sites/default/files/Statistics/Statistics-2015\\_rev1\\_1.pdf](https://ncrb.gov.in/sites/default/files/Statistics/Statistics-2015_rev1_1.pdf)

<sup>6</sup>4<sup>th</sup> Aug, 2022 (2:15PM)

<https://ncrb.gov.in/en/Crime-in-India-2020>

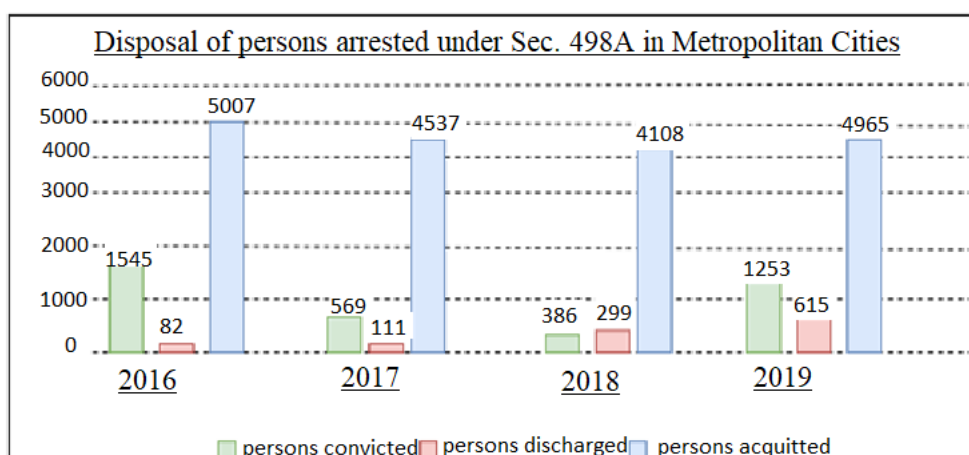
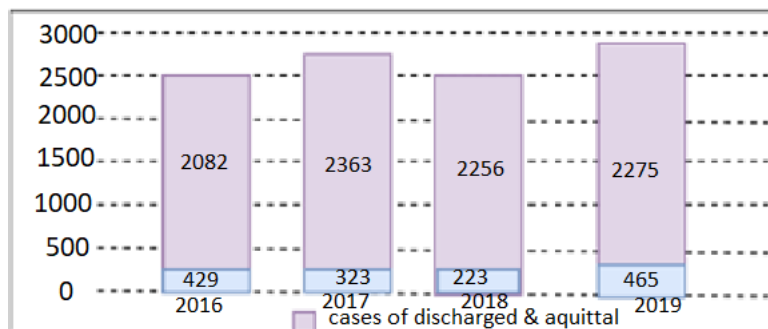
has now been reduced to a tool for harassment and pointless applications. In cases filed under section 498A of the IPC, statistics<sup>7</sup> coming out of National Crime Report Bureau from 2016 to 2019 reports reveal that there were more acquittals than convictions. The depicted disparity is considerable.

**NCRB REPORT**

The vast disparity between numerous convictions and acquittals points out that the disgruntled women frequently abuse section 498A.

The following graphs given below effectively illustrate the facts:-

Court Disposal of Crime under 498A in Metropolitan cities



It clearly demonstrates the shield that the legislation gave to safeguard defenceless women has been turned into a weapon to seek revenge on their husbands and his family. Nevertheless, not all men and not all women are the same. The condition of women, who are actually suffering

<sup>7</sup>“Crime in India 2016-2019 Statistics” published by National Crime Records Bureau

and are the targets of brutality, deteriorates as a result of such trivial complaints. Their agony is made worse when their legitimate complaints are viewed from the same angle as fictitious ones. In this way, when laws intended to prevent crimes are applied improperly, new crimes are created.

## **REGISTRATION OF FIR IN CASES OF MARITAL CRUELTY AND ITS IMPACT**

Recent studies show that registering the FIR remains a difficult procedure in these situations. Frequently, the survivor does not decide to contact the police on her own rather her natal family plays an influential role. In domestic abuse instances, the FIR is typically filed on the first attempt if the victim arrives at the police station in a gravely injured state or with marks and bruises on her body. In other situations, the jurisdictional issue is brought up to prevent registering the FIR. This occurs despite unambiguous laws that provide that the FIR may be filed at either police station (where the crime was committed, or where the woman is currently residing). The survivors made multiple trips to two different police stations because of the jurisdictional issue in some of the incidents. In few cases, FIRs were only filed after senior police officers intervened, while in some other cases, the court's involvement was only necessary to file the FIR. When the FIR was not recorded in one instance after numerous attempts, the complainant made a court motion, and the court treated it as a complaint case and immediately began case proceedings by summoning both parties. It's a prevalent belief that Section 498A is most frequently utilised unfairly against innocent relatives. However, according to an article published in economic and political weekly magazine, it was being witnessed that the relatives being detained in 20% of the cases. In few instances, the complainant's spouse was detained and imprisoned. Before Section 41 CrPC was changed in 2009, the majority of these arrests took place. According to Section 41(1)(b) of the Criminal Procedure Code, a person suspected of a crime that carries a sentence of up to seven years in prison cannot be detained by the police unless it is deemed necessary under specific circumstances. The judgement of the Allahabad High Court (Criminal Misc Writ Petition No 3322 of 2010), which emphasised the need for the police to make attempts at reconciliation between the parties before filling out the charge sheet, was another significant milestone. Many victims perceive it as an effort to cover up the crime before it is looked into.

## **REPERCUSSIONS**

A person and his family go through a great deal of anguish and suffering, both psychologically

and physically, when they are accused of such an allegation that is false in its origin. Even after his acquittal, life hasn't returned to normal. The husband's entire family must deal with the after effects as well, the agony's end is not guaranteed.

The impacts of erroneous cases under Section 498A IPC that have been seen in male victims and his family members are: -

- A. Negative impact on health: A male is subjected to innumerable forms of harassment throughout this time. In some instances, he must endure both physical and mental abuse. It has a negative impact on a man's health as well as the mental health of his entire family.
- B. Suicide: In certain instances, it has been seen that the stress brought on by these erroneous accusations affects a man's mind so severely that he views suicide as the only option to put an end to his suffering.
- C. Defamation in society: It is a natural inclination for people to turn away from one another when they are accused of something, whether the accusations are genuine or false. People have a tendency to become so judgmental that they already have an opinion about someone and declare them to be guilty. That person's reputation abruptly changes for the worst in the eyes of society.
- D. Setback in career: When these kinds of claims are made against someone, they lose their credibility. His career suffers as a result. He stops being trusted by his superiors and peers, which causes him to lose all of the opportunities necessary for his professional advancement.

### **SECTION 498A IPC- AN EPICENTER OF ABUSE AND VINDICTIVE VENDETTA**

498A was fuelled with good intent and has been proved a blessing for simple souls who have been wounded by their husband. This section was an attempt to safeguard the interest of woman and help them to take their stand in patriarchal society. Unprejudiced laws render equitable justice while prejudice laws induce contravention of basic rights and principle of justice. Likewise, even if laws are impartial and just but execution of same is carried in unjustified way it would cause hindrance to achieve coveted end; same is the case with 498A. Despite of its several benefits and primary objectives of providing help and support to women, section 498A has become epicentre of abuse for some innocent husband and his family members. There is no denying of the fact that the number of female victims of 498A are more as compared to



male who have been accused in the false allegations. Many cases have gathered the attention of masses in which husband have committed suicide because of the false allegations as innocent men do not get the chance to prove themselves irreproachable; since this section is both non-bailable and cognizable. Sometimes the entire family gets convicted in the false case of 498A which results in damaging the reputation of the family and they are often put behind the bars. This is solely done with the motive of going away with husband or plainly blemishing husband's family.

### **THE JUDICIAL TREND EMPHASIZING THE WIDESPREAD ABUSE OF SECTION 498A IPC**

Many cases are being filed on this section and it becomes very difficult to distinguish between the real and fake cases. The apex court is continuously giving judgement on the misuse of 498A and have been asking the authorities to bring some changes in the same. Some of the recent judicial observations are as follows:

#### **-Arnesh Kumar v. State of Bihar<sup>8</sup>**

Instead of dowry, the main source of their marital problems was mistrust of the wife, which eventually grew into resentment and resulted in their divorce. The trial court noted the accusers not guilty verdict. Thus, the accused's acquittal was appropriate.

#### **-Onkar Nath Mishra v. State (NCT of Delhi)<sup>9</sup>**

The court observed that the clause should not be employed as a tool to further covert goals.

#### **-State v. Srikanth<sup>10</sup>**

The hon'ble Karnataka High Court in this case observed that "The entire family, must be excluded from the investigation unless there is particular evidence against them. It is outrageous of the police to name the entire family as an accused party."

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<sup>8</sup>Arnesh Kumar V. State of Bihar, (2014) 8 SCC 273

<sup>9</sup>Onkar Nath Mishra v state (NCT of Delhi),(2008) 2 SCC 561

<sup>10</sup>State V Srikanth 2002 CriLJ 3605

**-Savitri Devi v. Ramesh Chand and Ors<sup>11</sup>**

The misuse of this section has increased and undermines the strength of marriage and is detrimental for the society as a whole. In this case the court also suggested that the aforesaid law need to be reviewed by the law makers and authorities. Recent trends shows that the victim has now become the committer.

**-Bibi Parwana Khatoon v. State of Bihar<sup>12</sup>**

The most iconic case on the misuse of 498A is of Bibi Parwana Khatoon vs State of Bihar. This case suggest that the misuse of this section has increased to such an extent that charges are being filled just to harass the husband and his family.

**-Saritha v. R. Ramachandra<sup>13</sup>**

In the case the wife's request for a divorce had been denied by the family court since the accusations made against the husband could not be proved. During the high court hearing, it was brought to their attention by that a criminal complaint u/s 498A of the IPC had been submitted by the wife against the husband.

Many women help group and NGOs are against the fact of making this law non-cognizable and bailable as the ration of false cases are very low and it would make the law less effective. Further it is believed that this will provide a chance for the culprit to escape the conviction. Harassment against men has never been a concern for any authorities in India; this is the reason why there is no prominent law related to this issue. Right to equality is the basic principle of our constitution but when it comes to women and children Article 15(3) act as an upper hand. This often deprived the men from what they need and what the get. It is the high time for law enforcing agencies to look after this matter and make such law to protect the interest of innocent.

**REASONS**

There are certain specific reasons why this law is being misused: -

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<sup>11</sup>Savitri Devi v Ramesh Chand And Ors. On 19 My, 2003

<sup>12</sup>Bibi Parwana Khatoon v State of Bihar, (2017) 6 SCC 792

<sup>13</sup>Saritha V R. Ramachandra On 9 July, 2002

-Blackmailing

The wife occasionally has issues with the union. She wants to escape from this situation unscathed. She starts using the 498A weapon for blackmail. In this case, the husband and his family must carry out the woman's negative requests because they are aware that the law is lenient towards women.

-Fraudulent Marriages

When petitioned to detain a man that got married unknowing of all the adequate knowledge, the bride (and her family) falsely files a 498A complaint by concealing her education level or mental state.

-Domination

The wife desires complete control over the husband's finances and social interactions, as well as his abandonment of his parents and siblings.

- Prior Relationship

Wife is stuck in a relationship from the past. She gets married to appease her parents, then abuses the 498A statute to get a divorce.

## **THE CLAMOUR CALL FOR CHANGE AND JUDICIAL ROLE-PLAYING**

### **LAW COMMISSION REPORTS**

The Law Commission had earlier recommended making 498A compoundable in its 237th and 154th reports. The 243rd report<sup>14</sup> reaffirmed the same. Nevertheless, after weighing the benefits and drawbacks, the commission decided against making 498A a bailable and non-cognizable offence because the main motivation behind the section was to combat the social evil of dowry and mistreatment of women, and no amount of abuse could justifiably justify its re-evaluation.

The Law Commission stated that the police must use their authority to make arrests in "cognizable cases" sparingly, acting only within the bounds of sections 41 and 41-A of the

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<sup>14</sup>Justice P.V. Reddi, Former Judge, Supreme Court of India, Chairman, Law Commission of India, Section 498A I.P.C., Report No. 243, August 2012

Criminal Procedure Code, rather than making arbitrary, unjustified arrests. The Law Commission's findings show that the best course of action is to strictly abide by sections 41 and 41A of the Crpc rather than repealing Section 498A altogether.

Senior Supreme Court attorney, Kamini Jaiswal claims that ineffective police investigations at the trial beginning retarded the judicial undertaking. She further stated that there's a need for the quick convictions as judicial procedure has become very slow.

As claimed in interviews with judges and police officers, the criminal justice system places a high priority on defending the institution of marriage and the family, even at the sacrifice of a woman's physical and mental security and dignity. Women's interests and welfare are solely taken into consideration within the family. Family violence against women is typically viewed as a societal problem rather than a crime. In order to rehabilitate women inside the family that has tormented them for years, this understanding place a strong emphasis on counselling and mediation. This leads to two conclusions that are related to one another: first, that most cases were not wholly fictitious; and second, that the investigating officers saw bodily involvement in violence as a prerequisite to taking legal action. One of the attorneys' points of view was that women were taking use of this legal authority to demand money from the relatives of their spouse. Meanwhile, female lawyers expressed the opinion that because women are expected to do numerous roles including earning a living and caring for their families, this ongoing strain leads to fights and everyday conflicts.

## **DIRECTIONS BY THE APEX COURT**

In **Rajesh Kumar & Ors. V. State of U.P.**, the SC suggestions are as follows-

-The SC recommended the establishment of district-level family welfare committees. Its role is to thoroughly investigate the complaints made under section 498A and provide the magistrate with reports.

-Investigating Officer: Within four months following the judgment's delivery, the officer who will be conducting the investigation must complete a thorough training programme.

-Red corner notice: It should not be common practise to seize the passports of a person's relatives who live outside of India.

-Personal appearance: It is not necessary for family members to appear in person before the court, especially if they reside outside of India.

## **RECOMMENDATIONS**

Marriage was considered as a holy union of two souls, tied in a relationship which last not only in this life but also in afterlife. But with the change in time the meaning of marriage has changed to just living together and raising of children to continue their generation. With this research paper authors attempt to suggest some of changes for the better working of 498A of IPC which are as follows:

- 1. Compoundable:** It means that the complainant can take back the charges of accused. Making this section compoundable will give the wife a second change to file for the divorce on mutual consent without hampering the life of the husband and his family.
- 2. Bailable:** One of the most important reasons behind the filling of 498A cases is that it is non-bailable. Being a non-bailable offense increases the chances of its misuse. Innocent family members are put under custody for weeks without having any fault.
- 3. Penalty:** A hefty amount of penalty should be imposed for those who are found to fill a false case of 498A. Strong action should be taken against the complainant. A fine of rupees ten lakh or imprisonment of seven years or both should be given. This will reduce the number of fallacious cases, as for majority of people it is a very large amount of money.
- 4. Need for Mentality Change:** Prior to enacting any reforms, it is necessary in the current climate for all authorities that assist in bringing justice to humanity to modify their mindsets. Both men and women are different from one another. It should not be assumed that every time a man does anything wrong, his wife is the defenceless victim.
- 5. Distinction between dowry and gifts:** A clear distinction between the dowry and gifts should be made by authorities, to reduce the chances of misunderstanding of gifts as dowry. Further punishment should be imposed for both the one who give dowry and who accepts it.

- 6. Function of women welfare committees:** The committees established for the welfare of women defending their rights without even getting into detail. The entire scenario is presented as though only men are to blame for the suffering of women. This raises the question of why the women in the woman's in-laws' home who are complaining don't fall under the jurisdiction of the women's welfare committee. They would travel where? Are they not females? There should be no place for this bigotry in our culture. The committees established for the wellbeing of a specific group or sex must be transformed into committees for the benefit of all people.
- 7. Investigation before arrest:** A proper investigation should be made before the arrest of the husband and his family member, meanwhile the complainant should be separated from the husband and his family by sending her to the parents' house or put in family welfare centre. Also, the Passport of the husband should be seized so that he may not travel out of the country.
- 8. Speedy Trial:** A speed trial of 498A should be done in order to provide justice. This will not only help the victim to safeguard themselves from violence but also to those innocent men who have been implicated in false case.
- 9. Family Welfare Centres:** In every district a family welfare centres should be established whose work should be to spread awareness about the law. It should be made compulsory to fill a complaint in Family Welfare Centres before filling of FIR. Further consulting sessions should be arranged to solve the disputes of the partners, in order to protect the marriage.
- 10. Not to drag the defenceless family members:** It has been observed in certain cases that the entire family, including the relatives who have nothing to do with the married life of that pair, are dragged into the case and are tormented in order to unduly harass the family of the husband and the husband himself. Even the elderly and young family members are not exempt. Justice is dead as a result.
- 11. Registration of marriage:** Registration of marriage should be made compulsory for all

the people and a proper documentation of all the gifts exchanged between the parties should be submitted in the form of affidavit. Further this affidavit should be updated for the next four years for future references.

## **CONCLUSION**

Given the facts provided above and the rulings of various courts, it is evident in this paper that these provisions are mandatorily required to safeguard the interest of women but on the other hand few female are picking due advantages of the legislation. Earlier the data were insufficient as most of the cases didn't get proper legal action and left unreported but are now being recognized. Since many innocent spouses and their families have been impacted, it is important to include the male family members in the protection of women as well. And generally speaking, neither society nor the law value the voice of injured men. It is fair to say that 498A of the IPC has strayed from its goal of protecting women because of the law's partiality, which causes hardship for the entire family. Henceforth authorities should take some legal steps to cut down the growing misuse of section 498A.