

Malimath Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs

16.4 CRUELTY BY HUSBAND OR RELATIVE OF HUSBAND – SECTION 498 OF IPC

16.4.1 This provision is intended to protect the wife from being subjected by the husband or his relatives to cruelty. Cruelty for the purpose of this Section means willful conduct that is likely to drive the woman to commit suicide or cause grave injury or damage to life, limb or health, mental or physical. It also includes harassment by coercing to meet unlawful demands. This is a very welcome measure. But what has bothered the Committee are the provisions which make this offence non-bailable and non-compoundable.

16.4.2 The woman who lives with the husband and his family after marriage is expected to receive affection and caring and not cruelty and harassment. True to the Indian tradition the woman quietly suffers without complaining, many inconveniences, hardships and even insults with the sole object of making the marriage a success. She even tolerates a husband with bad habits. But then, when her suffering crosses the limit of tolerance she may even commit suicide. For the Indian woman marriage is a sacred bond and she tries her best not to break it. As this offence is made non-bailable and not compoundable it makes reconciliation and returning to marital home almost impossible.

16.4.3 If the woman victim lodges an F.I.R alleging commission of offence under Section 498A, her husband, in-laws and other relatives of the husband would be arrested immediately. If she has no independent source of income she has to return to her natal family where also support may not be forthcoming. Her claim for maintenance would be honoured more in default than in payment especially if the husband has lost his job or suspended from his job due to the arrest. Where maintenance is given, it is often a paltry sum. (Thus the woman is neither here nor there. She has just fallen from the frying pan into the fire.) Even when there is a divorce, or reconciliation, the criminal case continues as Section 498A is non-compoundable.

16.4.4 In less tolerant impulsive woman may lodge an FIR even on a trivial act. The result is that the husband and his family may be immediately arrested and there may be a suspension or loss of job. The offence alleged being non-bailable, innocent persons languish in custody. There may be a claim for maintenance adding fuel to fire, if the husband cannot pay. She may change her mind and get into the mood to forget and forgive. The husband may realize the mistakes committed and come forward to turn a new leaf for a loving and cordial relationship. The woman may like to seek reconciliation. But this may not be possible due to the legal obstacles. Even if she wishes to make amends by withdrawing the complaint, she can not do so as the offence is non-compoundable. The doors for returning to family life stand closed. She is thus left at the mercy of her natal family.

16.4.5 This section, therefore, helps neither the wife nor the husband. The offence being non-bailable and non-compoundable makes an innocent person undergo stigmatization and hardship. Heartless provisions that make the offence non-bailable and non-compoundable operate against reconciliations. It is therefore necessary to make this offence (a) bailable and (b) compoundable to give a chance to the spouses to come together.

There is a general complaint that section 498A of the IPC regarding cruelty by the husband or his relatives is subjected to gross misuse and many times operates against the interest of the wife herself. This offence is non-bailable and non-compoundable. Hence husband and other members of the family are arrested and can be behind the bars which may result in husband losing his job. Even if the wife is willing to condone and forgive the lapse of the husband and live in matrimony, this provision comes in the way of spouses returning to the matrimonial home. This hardship can be avoided by making the offence bailable and compoundable.

Recommendation

(118) The Code may be suitably amended to make the offence under Section 498 A of the I.P.Code, bailable and compoundable.