WHAT IS SECTION 498A OF THE INDIAN PENAL CODE?

People don’t know what Section 498A of the IPC is nor do they know what to do when a 498A case is registered against them. For starters, 498A is a criminal offence that came into existence to combat domestic violence and protect women from dowry harassment.

The history of this law runs as follows. In the 1980s, the incidences of 'dowry deaths' were steadily rising in India. A dowry death is the murder of a young woman; committed by the in-laws, when she was unable to fulfill their coercive demands for money, articles or property, categorized as dowry. Organizations across the country pressurized and urged the government to provide legislative protection to women against domestic violence and dowry. The objective was to allow the state to intervene rapidly and prevent the murders of young girls who were unable to meet the dowry demands of their in-laws. As a result of the intense campaigning and lobbying, significant amendments were made in the Indian Penal Code, the Indian Evidence Act and the Dowry Prohibition Act, with the intention of protecting women from marital violence, abuse and dowry demands. The most important amendment came in the form of the introduction of Section 498A in the Indian Penal Code (IPC).

The text of the law is given below:

Indian Penal Code - Section 498A, IPC
Introduced in the Penal Code by Criminal Law (Second Amendment) Act of 1983 (Act No. 46 of 1983)
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.

Explanation: For the purposes of this section, ”cruelty” means
(a) Any willful 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;
(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.

Analysis of the section shows that this law deals with four types of cruelty:
- Any conduct that is likely to drive a woman to suicide,
- Any conduct which is likely to cause grave injury to the life, limb or health of the woman,
- Harassment with the purpose of forcing the woman or her relatives to give some property,
- Harassment because the woman or her relatives are either unable to yield to the demand for more money or do not give some share of the property.

Section 498A of the Indian Penal Code, is a criminal offence. It is a cognizable, non-bailable, and non-compoundable offence.

Unfortunately, the formulation of this law left a host of loopholes for exploitation and abuse. 20+ years later, if a family has an estranged 'Bahu' (daughter in law) in their family, the entire family can be jailed under Section 498A of the IPC, based on a complaint in the police station. The
objective of the ‘Bahu’ and her parents is to subject the family to an ordeal designed to break their will and ensure that they give in to whatever demands put forward.

This law exposes families who belong to the middle and upper middle classes of society and NRIs, as these segments of society are vulnerable to legalized extortion by corrupt agencies of the government. There is no way to avoid a 498A from being filed, unless the family is very well connected or somehow manage to make her realize that it is not in her long term interest to change a domestic dispute into a criminal offence.

A typical case will go on for 3 to 7 years.

From the people you talk to and from the online portals you visit, you will learn that this is a criminal law to combat domestic violence and dowry harassment etc, etc, etc. I’ll ignore this and cut to the chase.

In its present form,

**498A IS AN EXTORTION RACKET**

In legal terms, 498A is an offence, which is:

- **Cognizable**: Offences are divided into cognizable and non-cognizable. By law, the police are duty bound to register and investigate a cognizable offence. 498A is a cognizable offence.

- **Non-Bailable**: There are two kinds of offences, bailable and non-bailable. 498A is non bailable. This means that the magistrate has the power to refuse bail and remand a person to judicial or police custody.

- **Non-Compoundable**: A non-compoundable case, e.g. Rape, 498A etc, cannot be withdrawn by the petitioner. The exception is in the state of Andhra Pradesh, where 498A was made compoundable.

In actual terms, 498A is an offence, which is:

- **Cognizable**: The police will register a 498A case since it is required by law, but they don’t investigate but go on to arrest people because of the money to be made in bribes from both sides in a 498A case.

- **Non-Bailable**: Since bail is at the discretion of the magistrate, all sorts of games will be played to have families locked up while negotiations go on to settle the case. This may happen in cases where the magistrates are allegedly corrupt or, the public prosecutor and the cops are in cahoots.

- **Non-Compoundable**: Though 498A is non compoundable, the courts are allowing the withdrawal of the case when the parties agree to reconcile or settle case. In real terms, if you pay up, the case goes away. If you don’t you’ll get stuck with a criminal case that will go on for years.

The other characteristics of this extortion racket are:

- It is a law that fosters corruption and enables govt agencies like the police to violate Fundamental Rights.
- It plays a role in gender based vote bank politics.
- It denies justice to the real victims of dowry harassment.
- It exposes innocent families to the evils of the corrupt Indian criminal justice system.
- This is a law poisoning the lower judiciary by exposing it to corruption.
- Above all, this is a gamble bound to fail if the accused choose to fight back.

**Motives And Instigators:**

Let’s start with the motives and instigators:

- **Money**: The greatest of motivators. A 498A can lead to great terms for a fat cash settlement, or help her dad or sibling in their ventures, etc, etc.
• **Vengeance**: Hell hath no fury like a woman scorned. She will have her revenge and the family will collectively bear the brunt of it. The 498A Wives have a soft corner for their mothers-in-law and sisters-in-law. They may very well see the inside of a prison.

• **Guilt**: She’s done something wrong, may have committed adultery and got caught in the act. She wants to cover it up with a dowry harassment case to garner sympathy and to provide cover for her guilt. It also puts her in a good position to negotiate a fat settlement and gain custody of kids, if kids are involved. 498A will be filed when paternity is in question. Don’t count on DNA evidence, as the courts do not/ or are reluctant to allow it. Indian law is still ruled by the evidence act from 1872.

• **She Is Just Not Into Her Husband**: She may not like her husband and 498A is a convenient tool to get out of the marriage.

• **She Is A Control Freak**: She wants to control her husband in every possible way. She may also want her husband to not support his parents and siblings in any fashion regardless of his ability to do so. She may want her husband to throw his parents out of their house. Her goal is to gain control of all aspects of his life, including finances and to break the bonds and responsibilities that tie him to his family. Her failure to do so will result in a 498A.

• **To Marry The Boyfriend**: This is a new trend whereby she will file a 498A just to force her husband into settling the divorce with a chunk of cash and then go on to marry her boyfriend. They will use the cash to set up their “Chota Sa Ghar”, or their “Premiyon Ka Mahal” if the settlement is large enough.

498A is the perfect tool for extortion and/or to wreak vengeance on a family. The main ingredients that go into making it an extortion racket are:

• The involvement of the corrupt, untrained, Indian police force in a domestic dispute.

• The involvement of the overburdened and unregulated lower courts and the convoluted and lengthy Indian justice delivery system.

• The non-enforcement of penalties (Section 182) for filing frivolous cases or for perjury.

• Political/police influence from the other side. If this is a factor in your case, I kid you not; you are in for an ordeal that will require extra doses of fortitude, courage and patience to overcome.

All these factors will be used to leverage money out of a family or subject their family to the kind of harassment that can only be defined as torture. It is no wonder that the **Supreme Court** (Sushil Kumar Sharma Vs. Union of India Writ petition(C) no.141 of 2005) has condemned 498A as “Legal Terrorism”, though ruling 498A constitutional.

To understand how to survive this ordeal read the contents of the link below:

http://tinyurl.com/3dm4jc

END