

Misuse of the law: why only Sec. 498-A?

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A couple of weeks ago, an organisation purportedly working for 'responsive legal action and speedy justice', headed by a lawyer, organised a seminar on the 'misuse of Sec 498-A of the Indian Penal Code'. A sitting judge of the High Court was the Chief Guest and the Registrar of the High Court was to preside over the gathering. Sec.498-A, in case you did not know, makes domestic cruelty (including mental harassment) of a woman at the hands of her husband and his relations a penal offence. Making it clear that the gathering was not meant to discuss the both the good and bad aspects of the law and its use, but was exclusively meant for discussing its misuse, the organisers put up a notice in the City's Courts declaring that (apart from lawyers and social activists) only husbands and in-laws were invited. In other words, harassed wives were explicitly barred from the meeting.

Outraged at the idea that a sitting judge of the High Court, who would be called upon day in and day out to adjudicate complaints of domestic cruelty impartially if not dispassionately, should agree to address such a tendentious gathering, a group of determined women all but disrupted the meeting that evening. But unwittingly, the organisers of that evening's gathering had let out a secret that few people other than lawyers know: that in our Courts it is now very commonly and casually said that Sec 498-A is routinely misused by women. What began as a cynical comment made by lawyers in the course of argument in defence of husbands, soon turned into a frequent off the cuff comment made by Judges hearing cases, and has now entered written judgements. It achieved some kind of sanctity by the Supreme Court's observations in a case where it felt that the entire family of the husband was wantonly dragged into the offence by the wife. Such observations of the Supreme Court arising from the facts of a particular case (whether justified or not) are not supposed to lay down any quotable law, but not if you like what the Supreme Court has said.

The lawyer-judge fraternity, which is 95% male, likes it.

Not to be left behind, a judge of our High Court, known otherwise for his concern for the downtrodden, made an identical comment in the course of adjudicating a case, and his prejudice, which is no more law than that of the Supreme Court, is now being relied upon by judges of lower Courts to dismiss complaints filed by harassed wives.

I am not arguing that Sec 498-A of the Indian Penal Code is not misused at all. Every law is misused. But when lawyers and judges go around saying this, one is entitled to ask a few questions. One, no law can be misused unless lawyers teach people to misuse it. True complaints may be given by the victims on their own, but every false complaint is drafted by a lawyer. If any law is being misused that is because lawyers have taught people to misuse it. When lawyers,

as a profession, find it impossible to take the decision that they will not twist the law to serve the dubious purposes of their clients (and of course make money for themselves), and will not tolerate their colleagues who do so, they have the least right, as a profession, to talk about misuse of any law in the abstract, as if some mysterious creatures are responsible for the misuse. And a judiciary which habitually winks at abuse of the process of law by lawyers should not be heard echoing the complaint.

Two, lawyers and judges of all people should not forget that laws are made to serve some purpose, to prevent some harm, to repair some unacceptable damage, and the first thing one should ask about a law is whether it is serving the intended purpose. Anything else, including its misuse, is a subsequent consideration. Section 498-A of the Penal Code has had very little effect on the evil it was intended to remedy: namely the harassment women are subjected to in the marital home. There is no evidence that the enactment of the legislation has proved a deterrent to wife-beating or any other form of harassment, physical or mental. And the Courts have not exactly covered themselves with glory in interpreting the provision to give effect to its purpose. On the contrary, another judge of our High Court has recently put it down in a judgement that it is not harassment if a husband exerts pressure upon his wife to transfer in his name the property given to her by her father. The view is plainly unlawful, but it is now the view of our High Court, and will continue to be so until some hapless woman gets it modified by a larger Bench.

With increasing commercialisation and de-humanisation of human relations, the trend of harassment is on the other hand on the increase. A focused discussion on the law would begin with its ineffectiveness in attaining its legislative purpose. To begin the discussion with its misuse would only serve to delegitimise the law, and stall what little help it could give to women.

Three, why talk of only Sec 498-A, or the S.C & S.T (Prevention of Atrocities) Act – the other law whose misuse is a frequent topic of discussion in Bar associations and Court halls? Is it entirely a coincidence that the only statutory provisions whose misuse agitates the legal profession and the judiciary are provisions meant to give some protection to the largest disadvantaged sections of our population: women, dalits and adivasis? Why not hold seminars on the misuse of Tax laws? Or Building regulations? Or Company law and ‘sickness’ law? These are routinely misused, and about Tax laws one may fairly say that they are meant only for being misused. Many eminent lawyers have built much-envied careers around the misuse of these laws, but nobody is seen complaining. Why get angry only about misuse of the law concerning domestic harassment, and the law of atrocities on dalits and adivasis?

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