

Excerpts From Bail Orders And Judgments

In the press and everywhere, there is a constant drum beat about how 498A is the only law to protect women and any attempt to amend it to make it effective is met with resistance and threats of protests by organizations like AIDWA.

In reality this is an ineffective law. There are ample statistics to prove this, but of course, no one wants to look at stats, as this is now a lucrative business for all concerned starting with NGOs down to the corrupt officers of the Indian police force.

I decided to do something different. The courts know the reality of 498A. I decided to compile some relevant lines from a few judgments. I included quotes from judgments that deal with the liberty of a citizen as well.

Here they are:

- The quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of criminal law.
-Supreme Court Of India, Joginder Kumar Vs State Of U.P., 1994
- The National Police Commission in its Third Report referring to the quality of arrests by the police in India mentioned power of arrest as one of the chief sources of corruption in the police.
-Supreme Court Of India, Joginder Kumar Vs State Of U.P., 1994
- No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter.
-Supreme Court Of India, Joginder Kumar Vs State Of U.P., 1994
- It is to be noted that the role of the investigating agencies and the courts is that of watchdog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations.
-Justice Dr Arijit Pasayat and Justice H.K. Sema
- The accused in these cases might have been on bail - but the injustice of pendency of trial for long periods is the uncertainty and the concomitant anxiety suffered by the under-trial. The under-trial is inhibited in making future plans for his life or executing present ones due to the uncertainty which pendency of trial brings. His confidence starts to erode and at the end of the trial, even if he is honorably acquitted, the scars of the long trial remain. He feels condemned despite the acquittal.
-Supreme Court On The Right To A Speedy Trial
- While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.
-Supreme Court, Indian Oil Corporation Vs NEPC India Ltd., & Ors., 20/07/2006
- Once a complaint is lodged under Sections 498A/406 IPC whether there are vague, unspecific or exaggerate allegations or there is no evidence of any physical or mental harm or injury inflicted upon woman that is likely to cause grave injury or danger to life, limb or health, it comes as an easy tool in the hands of Police and agencies like Crime Against Women Cell to hound them with the threat of arrest making them run here and there and force them to hide at their friends or relatives houses till they get anticipatory bail as the offence has been made cognizable and non-bailable. Thousands of such complaints and cases are pending and are being lodged day in and day out.

-Justice JD Kapoor, Delhi High Court

- Liberty of a citizen is a cherished right; it should not be curtailed, ordinarily, except on considerations of public interest.

-Justice Ravinder Bhat, Delhi HC, Thounaojam Shyamkumar Singh Vs State Of Delhi, Feb 2007

- These are not recovery proceedings. There are general allegations of taunt, abuse and beating. No particulars are stated. No data is mentioned. Allegations in the FIR are general.

-Justice Pradeep NandRajog, Delhi HC, 27.07.2005 Bail order

- Now-a-days, exorbitant claims are made about the amount spent on marriage and other ceremonies and on dowry and gifts. In some cases claim is made of spending crores of rupees on dowry without disclosing the source of income and how funds flowed. I consider time has come that courts should insist upon disclosing source of such funds and verification of income from tax returns and police should insist upon the compliance of the Rules under Dowry Prohibition Act and should not entertain any complaint, if the rules have not been complied with.

Justice Shiv Nairain Dhingra, Delhi HC, Neera Singh Vs The State, 23.02.2007

- In the present case the complainant left house after leaving a letter to her husband giving reasons of leaving the matrimonial home. However, she turned colour after she started living at her parental house. She who showered praises on her husband for his understanding, love and affection, without living with him a day further, suddenly made allegations of dowry demand and cruelty and used language, which is not used by the civilized persons.

Justice Shiv Nairain Dhingra, Delhi HC, Crl.M.C. No. 98 of 2006

- There is no reference to the dowry articles in the complaint. No particulars of dowry have been given. The complaint is full of character assassination of the husband and his family.

-Delhi HC, Bail Application No.1638/2005, 26/07/2005

- The criminal case against her in which she was accused was compounded by the petitioner on the basis of compromise. She is living with her husband. She wants to use criminal justice as a tool against the petitioners who are her sister-in-laws and mother-in-law. She wants to enjoy the company of the husband keeping other relatives on tenterhooks.

-Delhi HC, Crl. M.C. No. 8188-90/2006, 28.03.2007

- Police Headquarter framed the procedure to be followed by the C.A.W. Cell with the intention of preventing abuse of the process of law. But in this case police committed abuse of the process established by its Commissioner. No attempt was made to resolve the difference between Manoj Kumar and respondent No.5 nor efforts were made to bring about amicable settlement for which purpose Crime Against Women Cell was created. This cell is meant to safeguard the marriage and not to ruin it by registering case immediately on the asking of the complainant. Once an FIR is registered it becomes difficult to solve matrimonial tangles and things reaches such a pass that it cannot be restored back. –

Delhi HC, Jasbir Kaur Vs State, Delhi HC - 2006.

- The court would like to go on record that for nothing the educated women are approaching the courts for divorce and resorting to proceedings against in-laws under section 498A, IPC implicating not only the husbands but also their family members whether in India or Abroad. This is nothing but misuse of the beneficial provision intended to save the women from unscrupulous husbands. It has taken a reverse trend now. In some cases this kind of actions is coming as a formidable hurdle in the reconciliation efforts made by either well meaning people or the court and the sanctity attached to the marriage in Hindu Religion and the statutory mandate that the courts try to save the marriage through conciliatory efforts till last, are being buried neck-deep. It is for the law commission and the parliament either to continue that provision (section 498a IPC) in the same form or to make that offense non cognizable and bailable so that ill-educated women of this country do not misuse the provision to harass innocent people for the sin of contracting marriage with egoistic women.

AP HC, Saritha Vs R.Ramachandra reported in (I) (2003) DMC 37 (DB)

- As regards to the alleged beating of the respondent number 2 by the petitioner no 2 it is submitted by the learned counsel for the petitioners that it is absurd even to think that an old lady of 65 years would beat an independent minded educated young lady who also happens to be a state cricket player. I refrain from expressing any opinion regarding the truthfulness or otherwise of the matter but find that even if such a beating

as alleged had been done for one day that can be termed only as a quarrel between mother in law and daughter in law and by no stretch of imagination it can be brought under the purview of an offense under section 498a of the IPC.

-Karnataka HC, Pandurang Katti case, 2003

- Nowadays more and more girls acquire technical education particularly in technical field. Economic independence achieved by such has changed the place of wife in the family. She may still continue be docile partner in marriage despite her capacity to earn or she may assert her rights. Day by day latter type of females are increasing and that many times starts friction between couple. Every such quarrel cannot be termed as dowry. There may arise quarrel between a husband and equally or more qualified wife and earning wife for many reasons and unless such quarrels, where the wife alleges harassment and relatives is relatable to dowry cannot be termed as dowry harassment

-Karnataka HC, Pandurang Katti case, 2003

- The sole purpose of a novel like story evolved by the informant and recited in her First Information Report is to take a revenge with him by getting him sent to jail and further placing him in sufferings with his eventual suspension. The Courts are to protect the valuable rights of not only a wife if she is victimized and maltreated with dowry demand but also a harassed husband who is also equal in the eyes of law and if a concocted attempt as the one in hand is made to place the husband in an awkward situation, certainly the Court must come to the rescue of such a husband in humiliation.”

-Allahabad/Lucknow HC, Writ Petition MB 528 of 2005, 10/01/2006

- During the course of arguments I find that each of the accused/applicants are ready and willing to settle the matter but it is only the applicant/wife who is adamant. She wants to ensure that each of the accused/applicant must go to jail.”

-The Ashish Marwah Bail Order. Details were illegible to print the name of the Judge and court. 2007

- 6. Complainant's version in the complaint that she was compelled to leave the matrimonial house with the clothes she was wearing is belied from the record of Indian Airlines. It is obvious that the complainant has taken away with her 176 Kgs. of baggage. What that baggage contained is a matter of trial.
- 7. The complainant stands prima-facie falsified.

-Justice Pradeep NandRajog, Delhi HC, 27.07.2005 Bail order

- The sequential manner in which the complaint stands recorded not only reveals the wishy washy manner in which the complainant has narrated her story, but, a closer look reveals that in all probability it is a case of temperamental difference between the husband and wife.

-Justice Pradeep NandRajog, Delhi HC, 26.07.2005 Bail order

- I have perused the FIR. Asha has only implicated her husband as the person demanding dowry. On the particular incident she has also named her Nandoi. Her statement appears to be truthful, as she has not implicated any other family member of her in-laws, a general trend noticed by this Court in most complaints by the aggrieved wives.

-Justice Pradeep NandRajog, Delhi HC, 15.07.2005 Bail order.

- Not only the wife made a false complain and got the husband and other in-laws arrested, she also took money and then resiled from the agreement.

Justice OP Dwivedi, Delhi HC, Pinki Jain vs Sanjay Jain, 31/01/2005

Finally here is what the Radical Indian Feminists say when it suits their needs.

- Torture and police brutality are endemic in India.

-Supreme Court Lawyer Indira Jaising In A London Court, 1999

- I object to this exploitation of the law. It is wrong to misuse the law. The law is for those who need it.

-Union Minister For WCD, Renuka Chaudhary, on the Arjun Singh 498A episode

- On the basis of the interviews conducted, we can conclude that victims find the Section somewhat useful and felt the need for further strengthening it. In the perception of the NGOs, the provision (498A) is the only Section, which acts as an effective redressal mechanism for victims of domestic violence.

-Council For Social Research Study On The Use And Misuse Of Section 498A, 2003