

## A CRITICAL APPRAISAL ON DECONSTRUCTION OF EXISTING CRIMINAL LAW WITH REFERENCE TO CRUELTY AGAINST MALE

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### ABSTRACT

Cruelty against any gender, including males, is a serious issue that should not be tolerated. It is essential to recognize that cruelty, violence, and discrimination affect people of all genders and can have severe physical, emotional, and psychological consequences. While discussions about violence and discrimination often focus on specific genders or demographics, it is important to remember that these issues should be addressed holistically to promote a society that values and respects the rights and well-being of all individuals. If you or someone you know is experiencing cruelty or abuse, it's crucial to seek help and support from the appropriate authorities or organizations specializing in addressing such issues. In many countries, there are helplines and support networks available for victims of abuse, regardless of gender. Promoting awareness, education, and open dialogue about gender-based violence and cruelty is key to fostering a more inclusive and compassionate society.<sup>1</sup>

Everyone has a role to play in creating an environment where all individuals can live free from violence and cruelty, regardless of their gender. Cases of cruelty or abuse against any gender, including males, can certainly occur. Just like females, males can also be victims of various forms of cruelty, such as physical abuse, emotional abuse, sexual abuse, and neglect. While the majority of documented cases may involve female victims, it is essential to recognize that abuse can happen to anyone regardless of gender.<sup>2</sup>

However, it's crucial to approach this topic with sensitivity and without perpetuating the idea of a competition between genders regarding who suffers more. The focus should be on supporting all victims and advocating for their rights and safety, regardless of gender. Recognizing that both men and women can be victims of cruelty and violence will help foster an inclusive and supportive environment for all survivors. Deconstruction theory is a philosophical and literary concept that originated in the work of French philosopher Jacques

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<sup>1</sup> Survey of British Commonwealth Affairs, Vol. 1, P5.

<sup>2</sup> The Times, May 14, 1949 and June June 6, 1949

Derrida. It emerged in the 1960s and has since become an influential approach in various fields, including literature, philosophy, linguistics, cultural studies, and literary criticism.

## Deconstruction of Existing Section-498A IPC

At its core, deconstruction challenges traditional binary oppositions and hierarchical structures that underpin Western thought. It seeks to reveal the inherent contradictions and complexities within language, texts, and ideas. Derrida's main contention is that language is inherently unstable and that meanings are never fixed or definitive. Instead, they are continually deferred, evolving, and context-dependent.

Derrida coined the term “differance” to highlight the dual nature of language. On one hand, it signifies the idea that meaning is deferred over time, never fully present or complete. On the other hand, it refers to the process of differentiation, where words acquire meaning in relation to other words, creating a network of references and connections. Deconstruction explores the notion of “play” in language, emphasizing how words and signs can carry multiple meanings and associations, often conflicting with one another. This play disrupts any attempts to establish fixed and stable meanings. Deconstruction challenges traditional binary oppositions, such as good/evil, male/female, presence/absence, and margin. It reveals the interconnectedness and mutual dependence of these opposites, blurring their distinctions.<sup>3</sup>

Deconstruction seeks to subvert hierarchical structures by exposing the hidden power dynamics that shape them. It questions the privileged position of certain ideas or texts over others and critiques dominant ideologies. Deconstruction emphasizes the role of the reader in creating meaning. Instead of viewing the text as an autonomous entity with fixed meanings, deconstruction encourages readers to actively engage with the text and interpret it in diverse ways. It's important to note that deconstruction has been a subject of criticism and debate since its inception. Some critics argue that it can lead to an endless spiral of interpretation and relativism, while others find it liberating and empowering as it challenges rigid systems of thought. Overall, deconstruction remains a significant theoretical approach that has influenced

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<sup>3</sup> Eric Rothchild, *Recognizing Another Face of Hate Crimes: Rape as a Gender-Bias Crime*, 4 MD. J. Contemp. Legal Issues 231, 260-61 (1993)

numerous academic disciplines, leading to new insights and perspectives on language, literature, culture, and philosophy.<sup>4</sup>

Section 498A of the Indian Penal Code (IPC) deals with the offense of cruelty by a husband or his relatives towards a married woman. It is a provision aimed at protecting married women from cruelty and harassment within their matrimonial homes. However, over the years, there have been concerns raised about the misuse of this law to harass innocent individuals, particularly husbands and their families.<sup>5</sup>

Section 498A IPC- Cruelty by husband or relatives of husband, this section reads as follows: “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. The offense under Section 498A is non-bailable, meaning the accused can be arrested without a warrant based on a complaint filed by the victim or her relatives. To establish an offense under Section 498A, the following elements must be present: a) The accused must be the husband or a relative of the husband of the woman. b) The woman must have been subjected to cruelty by the accused. c) The act of cruelty must have occurred in connection with the woman's marriage.

Critics in the view, while the intention behind Section 498A is to protect women from domestic violence, there have been concerns about its misuse. Some of the main criticisms are as follows: There have been instances where Section 498A has been misused to harass innocent parties, including husbands and their families, sometimes leading to their arrest and detention without proper investigation. Section 498A of the Indian Penal Code (IPC) has been a subject of significant controversy due to its alleged misuse. There have been instances where the provision has been misused to harass innocent parties, including husbands and their families. In some cases, false allegations of cruelty and harassment have been filed against husbands and their families, often with the intention of settling personal scores, extracting monetary benefits, or gaining an advantage in divorce proceedings.<sup>6</sup>

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<sup>4</sup> Rodell.” Legal Realists, Legal Fundamentalists, Lawyer Schools and Policy Science or How Not to Teach Law” (1947) 1 Vanderbilt L Rev 5. 6-7.

<sup>5</sup> Indian Penal Code 1860

<sup>6</sup> Minocha, Y.P. & Sandeep, 2017. Matrimonial Relief in Favour of Husband. Solapur: Klay Legals.

Due to the immediate nature of the provision, there have been instances where the accused, especially the husband and his family members, are arrested without a thorough investigation being conducted to verify the veracity of the complaint. The provision tends to operate on the presumption that the accused is guilty until proven innocent, which can lead to the violation of the fundamental principle of “innocent until proven guilty.” Section 498A includes not only the husband but also his relatives, even distant ones, within its ambit. This has led to situations where innocent relatives, who may not have had any direct involvement in the alleged cruelty, also face legal actions. Social and financial implications: The arrest and public shaming of the accused can have severe social and financial consequences for the individuals and their families, irrespective of the final outcome of the case.<sup>7</sup>

In response to the concerns regarding the misuse of Section 498A, the Supreme Court of India, in 2018, issued guidelines to prevent the automatic arrest of the accused under this provision. The court directed the formation of Family Welfare Committees at the district level to scrutinize complaints before any arrest is made. The idea behind these guidelines was to introduce a level of checks and balances to ensure that false and frivolous cases are filtered out and genuine cases are given proper consideration. Despite these measures, the issue of misuse remains a subject of debate, and there continue to be calls for further reforms to strike a balance between protecting genuine victims of domestic violence and preventing the misuse of the law to harass innocent parties. The law does not provide adequate safeguards against false allegations, leading to the possibility of misuse for personal vendettas or monetary gains. The provision has been criticized for the provision of immediate arrest of the accused without adequate evidence or investigation. d) Pressure on families: The arrest and public humiliation of the accused can lead to the breakdown of family relationships, even if the accused is later found innocent.<sup>8</sup>

Over the years, there have been calls for legal reforms to address the concerns related to the misuse of Section 498A. Some of the steps taken to curb misuse include-Issuance of guidelines by the Supreme Court: The Supreme Court of India, in 2018, issued guidelines to prevent the automatic arrest of the accused under Section 498A and directed the formation of Family Welfare Committees to scrutinize complaints before any arrest is made. Mediation and

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<sup>7</sup> Reddy, G.B. Women & the Law. Hyderabad: Gogia Law Agency, 2010.

<sup>8</sup> Social Action Forum for Manav Adhikar and another v. Union of India Ministry of Law and Justice and others Writ Petition (Criminal) No. 156 Of 2017.

counselling have been promoted as an alternative dispute resolution mechanism to resolve marital conflicts and disputes without resorting to legal action. It's essential to note that laws and legal interpretations may change over time, and it's crucial to consult the most recent legal sources and updates to understand the current status of Section 498A IPC in India.

## Gender Neutral Criminal Law in Modern India

In recent years, the concept of gender neutrality has gained significant attention in legal systems around the world. Gender-neutral laws aim to eliminate discrimination based on gender and promote equality among all individuals. One of the primary reasons for implementing gender-neutral laws is to ensure equal treatment under the law. Historically, legal systems have been biased towards one gender, often favouring men over women. By adopting a gender-neutral approach, these biases can be eliminated, allowing both genders to receive fair treatment. Moreover, gender-neutral laws challenge traditional stereotypes and societal norms that limit opportunities for individuals based on their gender. These laws encourage a more inclusive society where everyone has equal access to education, employment, and other opportunities regardless of their gender identity. Furthermore, implementing gender-neutral laws can help address issues such as domestic violence and sexual harassment more effectively.<sup>9</sup>

By recognizing that both men and women can be victims or perpetrators in such cases, these laws ensure that justice is served without any prejudice. However, it is important to acknowledge that implementing gender-neutral laws alone cannot eradicate all forms of discrimination overnight. It requires a comprehensive approach involving education and awareness campaigns to challenge deep-rooted biases within society. Embracing a gender-neutral legal system is an essential step towards achieving true equality in society. By eliminating discriminatory practices based on gender identity or expression, these laws promote fairness and inclusivity for all individuals. It is crucial for governments worldwide to adopt such legislation as part of their commitment to building a more just and equitable future for everyone. Therefore, gender equality is a fundamental principle that should be upheld in all aspects of society, including the criminal justice system. In modern India, the gender-neutral criminal law of Section 498A aims to address the issue of domestic violence and protect both men and women from abuse within marriage. Section 498A of the Indian Penal Code was introduced in 1983 to combat dowry-related harassment and cruelty against women. However,

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<sup>9</sup> Ramanuj, Understanding Section 498A of Indian Penal Code, on Domestic Violence

over time, it became evident that men were also victims of domestic violence and false accusations under this section. To rectify this imbalance, the law was amended in 2017 to make it gender-neutral.

This change has been crucial in ensuring fairness and justice for all individuals involved in cases related to domestic violence. It acknowledges that both men and women can be perpetrators or victims of such crimes, eliminating any bias based on gender. The gender-neutral approach to Section 498A not only protects male victims but also discourages false accusations by either party. By treating all individuals equally under the law, it promotes trust and confidence in the legal system. However, some argue that this amendment dilutes the original intent behind Section 498A – protecting women from dowry-related abuse. While this concern is valid, it is essential to recognize that gender equality should prevail over any specific agenda or cause. The primary goal should be to ensure justice for all individuals affected by domestic violence. The gender-neutral criminal law of Section 498A represents a significant step towards achieving true gender equality within India's legal framework. By recognizing that both men and women can be victims or perpetrators of domestic violence, this law ensures fairness and justice for all parties involved. While concerns about diluting its original intent exist, prioritizing equal treatment under the law is paramount for a just society.<sup>10</sup>

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<sup>10</sup> Divyansh Hanu Rathi, Cruelty in Marriage: Analysis of Supreme Court Cases on Section 498A, IPC.

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