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The Silent Tears of Shattered Families

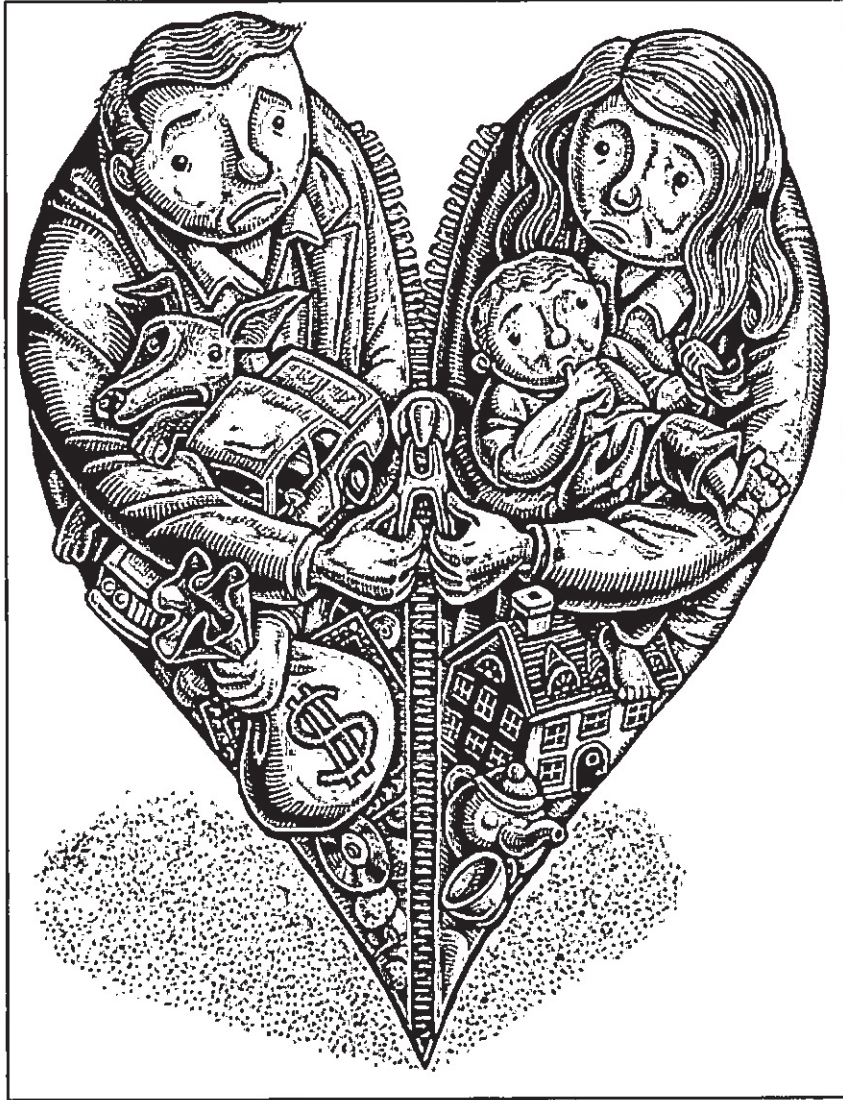
The Ugly Reality of Dowry Law - IPC - 498a

An investigative report created for public awareness

RAKSHAK

Fighting barriers to Justice and Equality

RAKSHAK



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"Some of the falsely accused have committed suicide after being jailed, unable to bear the social consequences"

"Unconstrained, this social evil is threatening the foundation of the Indian family system"

The Supreme Court of India says, **"But by misuse of the provision (IPC 498a - Dowry and Cruelty Law) a new legal terrorism can be unleashed. The provision is intended to be used a shield and not an assassin's weapon"**. Laws originally meant to protect from the dowry menace are being misused by urban ill-intentioned, unscrupulous women and their families as "an assassin's weapon".

There is a rapidly escalating social evil in Indian families, namely the misuse of the Dowry and Cruelty laws (Criminal Laws), which were originally meant to act "as a shield" for the protection of harassed women. Nowadays, the educated urban Indian women have turned the tables. They have discovered several loopholes in the existing Indian judicial system and are using the dowry laws to harass all or most of the husband's family that includes mothers, sisters, sisters-in-law, elderly grandparents, disabled individuals and even very young children.

We are not talking about the dowry deaths or physical injury cases but about dowry harassment cases that require no evidence and can be filed just based on a single-sentence complaint by the wife. With an approximately 65,000 such accusations per year, about 200,000 people are directly affected by these false accusations. The number of such cases has increased by about 100% in the last 10 years and by more than 15% in just the last two years. This poorly formulated law is inviting unscrupulous people to file false cases, and causing the imprisonment of innocent people without investigation. These innocent people undergo stigmatization and hardship even before a trial in the court of law which leads to immense emotional, physical and financial trauma. Unable to bear the harassment, the loss of reputation and the social consequences of being implicated in a false criminal case, some of these falsely accused husbands and their elderly parents are committing suicide.

Despite the recommendations of the Supreme Court of India and Justice Malimath Committee that the legislative arm should modify the laws such that the innocent are protected, the suggested amendments to the law have been largely ignored. Unconstrained, this social evil is threatening the foundation of the Indian Family system.

We are a large group of several thousand families unwilling to succumb to Legal Terrorism, with a belief that **truth shall prevail**.

2. INTRODUCTION

What is Section 498a of the IPC (Indian Penal Code)?

Section 498a of the IPC is a criminal law in which the wife and her family can charge any or all of the husband's family of physical or mental cruelty. This law is unique to India as it not only discriminates based on gender (man Vs. woman), but also discriminates against women based on their relationship with the husband. Typically, the charged family members in these cases include:

- Mostly women of all ages (unmarried, married and pregnant sisters of the husband, his mother and sisters-in-law, elderly grandmothers and aunts)
- Other maternal and paternal relatives and even young children in the family.



“For every complaint filed by a woman, there are generally twice as many or more women who are accused although the married couple may have never lived with any of the people mentioned in the criminal complaint”

For every complaint filed by a woman, there are generally twice as many or more women are accused although the married couple may have never lived with any of the people mentioned in the criminal complaint.

IPC-498a is

- **Cognizable** – The accused can be arrested and jailed without warrant or investigation
- **Non-Compoundable** – The complaint cannot be withdrawn by the petitioner
- **Non-Bailable** – The accused must appear in the court to request bail

The accused are presumed guilty, and for all practical purposes, the burden is on the accused to prove innocence in the courts. The FIR is typically an imaginary story, running into many pages, with absolutely no supporting evidence. It typically takes about 7 to 8 years for the accused to prove their innocence in the courts. Due to the overwhelmingly large number of false cases, the conviction rate in these cases is close to zero. The delay in the provision of justice amounts to the denial of justice.

There is no penalty for the misuse of IPC 498a, and after acquittal of the accused, the courts are reluctant to entertain defamation and perjury cases against the falsely testifying witnesses.

Why do people misuse IPC 498a?

- **Legal Extortion** – Get-rich-quick-scheme to extort large amounts of money
- **Prior Relationship** – Wife has a prior relationship, and cannot get out of it. She marries to satisfy her parents, and then misuses the 498a law in order to obtain a divorce
- **Adultery** – Women who indulge in adultery use 498a as a bargaining tool
- **Domination** – Wife wants the husband to abandon his parents and siblings, and have total control over his finances and social behavior
- **Custody** - Deny the father and his family access to their child(ren).
- **Fraudulent Marriages** - in which the bride (and her

family) hides her education level or mental health; and when is justifiably asked to release the person who has gone into marriage without knowing the full facts; she files a false 498a case

What do the courts, governments and Non-Government Organizations (NGO) say?

- The Supreme Court and High Courts have acknowledged this 'misuse' as a growing menace in the society and have recommended the legislature to amend the law
- Justice Malimath committee recommended that IPC 498a be made bailable and compoundable.
- The US State Department has issued a travel warning regarding the misuse of dowry laws in India, and highlighted the fact that Indian courts require large sums of money to settle such cases
- The Canadian Government has issued a similar warning
- The WHO has explicitly mentioned that 498A is one of biggest reasons for elder abuse in India.
- Many women's organizations, including several State Commissions for Women, have acknowledged the misuse of these laws and have recommended similar protection for men

legal provisions for protection from a daughter-in-law or sister-in-law even in cases where she is abusive

- **Disintegration of families** – Due to fear of being implicated in a false 498A case, parents have now started to legally disown their sons before or immediately after marriage. The terror of this law has resulted in the break up of numerous families.
- **Suicides of innocent people** – Unable to bear the harassment and the humiliation they suffer after being charged in a false criminal case, many people, including aged senior citizens, have been committing suicides.

What does 498a do to society?

- **Abuse of the Criminal Judicial System**
- **Elder Abuse** – Most senior citizens who have never been to the police stations or courts in their lifetime are dragged into jail without investigation and then into court cases that span several years
- **Women Abuse** – Many women in the husband's family are abused by the process
- **Abuse of entire extended family** – Many in the husband's family lose their jobs/earnings
- **Cruelty towards Children** – Separation of parents from children, including infants results in trauma
- **Unequal rights (not only women vs. men but also women vs. women)** – The wife/daughter-in-law can file charges against all the women in the husband's family even if they are innocent but the female relatives of a husband do not have similar

3. "SPARE A THOUGHT FOR DOWRY LAW ABUSE" - CURRENT STATE

Please take a moment to read through what a lot of newspapers, judiciary and media are saying about IPC-498a (commonly known as Indian dowry law).

"Nowadays lots of men are experiencing pre-wedding jitters. The reason: They are terrified of misuse of the anti-dowry law." - Vijay Times, Bangalore, Thursday 07 April, 2005

"The police should realize that it is not a matter between two individuals, not even between two families, but several families, such as in-laws" - The Hindu, September 17th, 2004

"Its time that the law is changed and punishment for these false accusations be made the same as that meted out to those who are really guilty of such acts."

"The anti dowry law has number of loopholes and it is high time that our society wakes up and takes a strong note to amend these one sided laws which are eventually breaking up our Indian marriage system"
- www.hindustan.net, July 27th, 2005

"The abuse of anti-dowry laws has become serious enough that the United States Department of state has published a travel warning about "Dowry/Visa Demands" for travelers to India" - Lisa Tsering, India West, December 30th, 2004

"In urban area, marital problems are sometimes compounded by the confrontationist advice given to distressed women by aggressive NGOs".
"I also feel that the addition of "emotional" to verbal and physical abuse as a ground for seeking legal protection

is liable to rampant misuse." - Chandan Mitra, The Pioneer (http://www.dailypioneer.com/columnist1.asp?main_variable=Columnist&file_name=mitra%2Fmitra132.txt&writer=mitra)

The judicial authorities of India, in number of landmark judgments, have taken a serious view of the growing tendency to falsely implicate innocent members of the husband's family in dowry cases. Describing misuse of IPC-498a law as "legal terrorism", the Supreme Court said no one could be allowed to unleash frivolous proceedings on this count as the provisions of Section 498a "is intended to be used a shield not as an assassin's weapon."

"The stringent dowry laws, meant to deter dowry-seekers, are being increasingly misused by the very people they are meant to protect. The last three years have seen a steep rise in the number of cases of harassment for dowry". (Ref: <http://cities.expressindia.com/fullstory.php?newsid=170603>).



"Nowadays lots of men are experiencing pre-wedding jitters. The reason: They are terrified of misuse of the anti-dowry law"

Ajaib Singh, head of the Women and Child Support Unit, says **70 percent of the 1,000-odd cases that they receive every year pertain to dowry, but only 20 percent of these are genuine.** "It is unfortunate that more and more people are misusing the stringent provisions of the law out of sheer spite."

"People generally use this law to facilitate a divorce. And often, it's the lawyers who advise the women to implicate their in-laws under the provisions of this Act," says Shantosh Singh, chairperson of Women Welfare Counseling Cell. Often, the number of items given in dowry is inflated to claim a high settlement amount. "There are only 10 per cent cases based on truth, and people usually come to us and ask specifically to

mention the element of dowry in their divorce petitions," says Amrikh Singh Kalra, advocate at Punjab and Haryana High Court.

Mahila Thana Station (Lucknow) Officer Vijay Laxmi Pandey says, "in most cases, it begins with an ego problem which finally leads to a threat of dowry complaint. We try our best to solve these cases by providing a non-police station like atmosphere to counsel the couples." "Cases of dowry harassment in love marriages are also on the rise. Growing differences between couples after few years of marriage is the reason in most cases and evidences provided against the husband are often found to be very flimsy during investigation," says Pandey. The Lucknow Mahila Thana gets at least three cases every week and those filing the complaints are the harassed husbands of women who threaten to use the Dowry Protection Act to their convenience. However, there is no provision under the law to convert such a complaint, made by a husband, into FIR and book the wife. According to lawyer Rohit Kant, "The Section 498a (3/4) Dowry Protection Act and 406 of Indian Penal Code are the two Sections which come handy in filing complaints against husbands. The vice-a-versa doesn't work." (Reference: <http://cities.expressindia.com/fullstory.php?newsid=169738>).

While dowry death and dowry related harassment cases have been widely discussed, debated and analyzed, often becoming the headlines of the leading dailies, the gross and growing misuse of anti-dowry laws has been ignored by the media and the government.

The number of innocent families victimized by the misuse of 498a is increasing alarmingly. These innocent families are looked upon as culprits by the neighbours, the society and the law enforcement authorities when police visit their home and arrest them. Some of them, have committed suicide because of the ignominy they had to suffer. "There have been instances where mother or father have died of shock or committed suicide because the humiliation of a false criminal case was too much to bear," writes Kusum, a prolific writer on gender issue, in her thought provoking book "Harassed Husband". "If this trend continues it is not unlikely that women themselves might suffer as they would lose credibility and sympathy of the society. Innocent, simple girls are more likely to suffer because of malicious complaints by clever and unscrupulous women", Kusum warns. Many men

have also committed suicide rather than face humiliation.

A bank employee hanged himself in his flat in Maya Puri, Delhi. The wife often used to stay with her parents. His efforts to persuade his wife to return to his home only resulted in his wife filing a false dowry complaint against him. **Another man immolated himself in New Delhi.** The reason being **complaint of 'dowry demand' by his estranged wife which led him to jail twice.** **A 40 year old ex-Airforce officer, committed suicide in Ahmedabad, Gujrat, after being implicated in a false 498A case during which he was jailed for 10 days.** Unable to cope with the "mental torture" inflicted by his wife, **a 30 year old man committed suicide in Krishnagar, West Bengal, on Jan 3, 2007.** He had been dragged to the police station, on at least a dozen occasions in the past five years, by his wife, complaining of torture, which were confirmed to be false by the additional superintendent of police. Another man committed suicide in Ahmedabad on Nov 19, 2006 after being harassed in a false 498A case. He was the only son of his aged parents. **A 30 year old man from Kolkata committed suicide on Sept 1, 2006, after being implicated and arrested in a 498A case in 1999. Even after 7 years, his case was subjudice when he died.**

Numerous senior citizens are also committing suicide due to harassment faced due to false 498A cases. **A 64 year old man, a retired employee of a multi-national company, committed suicide in Kolkata, explicitly mentioning about 498A** in his suicide note stating further that "I am ending my life unable to bear the torture meted out to me by my daughter-in-law". **Another senior citizen from Ludhiana, Punjab, killed himself by throwing himself before a running train** and left behind a suicide note that read "I am ending my life because the parents-in-law of my son have filed false cases against me and my family".

An old couple from Faridkot, Punjab, killed themselves by consuming pesticides on Jun 20, 2006. It was revealed that the deceased were feeling harassed and terrorised after their daughter-in-law got a criminal case registered against them for bringing insufficient dowry. Humiliated and on the run, they committed suicide clarifying in the suicide note that they never harassed their daughter-in-law for dowry.



"There have been sporadic cases where the woman left her matrimonial house within few days of marriage and filed a long list of 'dowry' in the complaint filed against the husband"

The terror of this law has completely destroyed and annihilated several innocent families. **An entire family consumed poison on Feb 3, 2007 in Alwar, Rajasthan. The husband, an engineer, and his father died**, while his mother was admitted to Hospital. Right from the starting of marriage, the bride's family used to harass the husband by threatening to implicate him and his entire family in the false cases related to Dowry. Another instance of mass suicide involving three members of a family was reported a few years ago in Ballabgarh, Haryana. In this case, **the husband himself, his young sister and their hapless mother consumed poison and ended their lives because of the growing unreasonable demand of the daughter-in-law and the continuous harassment inflicted by her family.**

These few instances illustrate the terror that has been created by anti-dowry laws in the minds of a large number of husbands who feel captive in the hands of their own wives. **While some hapless men, unable to live a harassed and humiliated married life, prefer to die, many others live their married lives under constant fear of being falsely implicated under section 498a.** They are forced to meet unreasonable demands, tolerating unruly behavior of their

wives only for family's *izzat*.

The Dowry Prohibition Act passed in 1961 proscribed giving or taking of any valuable security or property in "consideration of marriage". To plug the loopholes in the law, the definition of dowry was widened by amendments in 1984 and 1986, to include any property or valuable security given or agreed to be given at, or before, or at any time after the marriage. To further check this deep-rooted social evil, sections 113A and 113B were introduced in the Indian Evidence Act and section 406 and 498a in the Indian Penal Code (IPC). The objective was to give legal protection to the married women against victimization by the dowry greedy in-laws. But, **these laws have now become a handy weapon for many women to blackmail, harass, humiliate and falsely implicate the innocent members of the in-laws family in 'dowry-demand cases' and extract money from them before finally settling the marital discord or dispute.** The cause of dispute may be something else like sexual dissatisfaction, drinking or smoking by the husband, lack of privacy, financial constraints, husband's 'extra leaning' towards his parents or brothers and sisters, or even wife's own leaning towards her own family or some other man which may not be liked by the husband. In such cases 'demand of dowry' becomes an easy excuse for many women with two advantages in mind - getting rid of the man and extraction of *Moti Rakam* (hefty amount) by forcing the panicked husband and his family to agree to the terms dictated by her.

According to a newspaper report, **in 90 per cent of the cases coming to the Crime Against Women Cell (CAWC), Nanakpura, Delhi, the lists of dowry, filed by the women are exaggerated.** These contain, among other things such as, items, which either were never given in dowry or were already in possession of the woman. While request for retrieval of stridhan (jewelry) tops the lists submitted by women to CAWC, 'demand of money by in-laws' figures next, the report says. The newspaper report also discloses that **between 20 to 30 per cent of the cases reaching the CAWC are such that although the stridhan was actually in possession of the women, they still lodged complaint against their husbands.**

This tendency to harass the in-laws is more common among those women who do not want to compromise with their husbands or intend to remarry. Their intention is to extract

as much money and material as possible from the marriage. There have been sporadic cases where the woman left her matrimonial house within few days of marriage and filed a long list of 'dowry' in the complaint filed against the husband. Women tend to implicate a large number of members of the husband's family due to the simple reason that the greater the number of accused, the higher the chances of extracting hefty amount of money as settlement. Taking a serious note of this growing tendency, the Supreme Court of India has held that for the fault of the husband, the in-laws or other relatives cannot, in all cases, be held to be involved in dowry death. "In cases where such accusations are made, the overt acts attributed to persons other than the husband are required to be proved beyond reasonable doubt. By mere conjecture and implications such relations cannot be held guilty of the offence relating to dowry deaths," the court observed while allowing an appeal against a verdict of the Punjab & Haryana High Court in a dowry death case. Earlier, the Joint Director of the Crime Branch of Mumbai Police had issued an order on 26 October, 1992 to the effect that the matter should be thoroughly investigated before registering a case under section 498a.

Today every husband is labeled a torturer and the mother-in-law a demon. A fair amount of blame for this rests on the media which, with a view to sensationalize the 'story' blows the news of 'harassment' or 'torture' of married women out of proportions, without properly investigating the veracity of the story. The news of alleged 'torture, harassment, and misappropriation of stridhan' of wife by 'A' was published prominently by a leading city newspaper, accusing several members of his family torturing her. The concerned reporter never bothered to verify the allegations with the husband of 'A'. As the news carried his full name and those of his relatives, designation and the organization where he was working, it caused irreparable damage to the entire family's image and hard-earned reputation in almost every circle they moved. Queries started pouring in following this news. Depressed as he was, 'A' immediately registered his protest with the editor. The newspaper did publish his rejoinder, but after a long time gap and without any apology for publishing an unverified report.

One wonders where this growing tendency of misusing the useful laws by unscrupulous parties is leading the society. Harassing and victimizing women for dowry is condemnable. We all have sisters, and daughters, and undoubtedly they

require legal protection from all forms of harassment and cruelty but what if the legal loopholes of this very law are misused by women to harass their husbands and in-laws?

How long will the sufferings of the husband and his family remain unnoticed and their cries unheard?



"Today every husband is labeled a torturer and the mother-in-law a demon".

"One wonders where this growing tendency of misusing the laws by unscrupulous parties is leading the society"

How many more innocent lives would be lost before sanity and justice would be restored ?

4. WHAT DO INDIAN COURTS SAY ABOUT IPC-498A ?

Is IPC-498a (dowry law) a balanced law?

Right to life and liberty of every citizen is guaranteed under Article 21 of the Constitution of India. But this life and liberty can be curtailed if they hinder others' life and liberty. For that due process of law is necessary. While civil law determines what is right and what is wrong, the criminal law imposes penalty to deter.

Section 498A was inserted in the Indian Penal Code in 1984 with a view to protect women against dowry harassment. From the very beginning of this law there has been reaction from the society including legal luminaries that this law could be misused and its effects on the society would be deleterious.

In their judicial observations and remarks, the courts have expressed deep anguish over this law. Here are some recent judicial observations.

Way back in 1990 Punjab and Haryana High court observed in **Jasbir Kaur vs. State of Haryana, (1990)2 Rec Cri R 243** case as:

"It is known that an estranged wife will go to any extent to rope in as many relatives of the husband as possible in a desperate effort to salvage whatever remains of an estranged marriage."

In **Kanaraj vs. State of Punjab, 2000 CriLJ 2993** the apex court observed as:

"for the fault of the husband the in-laws or other relatives cannot in all cases be held to be involved. The acts attributed to such persons have to be proved beyond reasonable doubt and they cannot be held responsible by mere conjectures and implications. The tendency to rope in relatives of the husband as accused has to be curbed"

Karnataka High Court, in the case of State Vs. Srikanth, 2002 CriLJ 3605 observed as:

"Roping in of the whole of the family including brothers and

sisters-in-law has to be depreciated unless there is a specific material against these persons, it is down right on the part of the police to include the whole of the family as accused"

Supreme Court, In Mohd. Hoshan vs. State of A.P. 2002 CriLJ 4124 case, observed as:

"Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusation or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of the sensitivity, degree of courage and endurance to withstand such cruelty. Each case has to be decided on its own facts whether mental cruelty is made out"

Delhi high Court, in Savitri Devi vs. Ramesh Chand, 2003 CriLJ 2759 case observed as:

"These provisions were though made with good intentions but the implementation has left a very bad taste and the move has been counter productive. There is a growing tendency amongst the women which is further perpetuated by their parents and relatives to rope in each and every relative including minors and even school going kids nearer or distant relatives and in some cases against every person of the family of the husband whether living away or in other town or abroad and married, unmarried sisters, sisters-in-law, unmarried brothers, married uncles and in some cases grand parents or as many as 10 or 15 or even more relatives of the husband."

Punjab and Haryana High Court, in Bhupinder Kaur and others vs. State of Punjab and others, 2003 CriLJ 3394 case observed as:

"From the reading of the FIR, it is evident that there is no specific allegation of any act against petitioners Nos.2 and 3, which constitute offence under s.498-A I.P.C. I am satisfied that these two persons have been falsely implicated in the present case, who were minors at the time of marriage and

even at the time of lodging the present FIR. Neither of these two persons was alleged to have been entrusted with any dowry article nor they alleged to have ever demanded any dowry article. No specific allegation of demand of dowry, harassment and beating given to the complainant by the two accused has been made. The allegations made are vague and general. Moreover, it cannot be ignored that every member of the family of the husband has been implicated in the case. The initiation of criminal proceedings against them in the present case is clearly an abuse of the process of law”

Jharkhand High Court in Arjun Ram Vs. State of Jharkhand and another, 2004 CriLJ 2989 case observed as:

“In the instant case, it appears that that the criminal case has been filed, which is manifestly intended with mala fide and ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. In this connection reliance may be placed upon AIR 1992 SC 604: (1992CriLJ 527)”

Supreme Court, in a relatively recent case, Sushil Kumar Sharma vs. Union of India and others, JT 2005(6) 266 observed as:

“The object of the provision is prevention of the dowry menace. But as has been rightly contented by the petitioner that many instances have come to light where the complaints are not bonafide and have been filed with a malicious motive. In such cases acquittal of the accused does not in all cases wipe out the ignomy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not an assassin’s weapon. If cry of “wolf” is made too often as a prank assistance and protection

may not be available when the actual “wolf” appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre-conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumptions are drawn which again are rebuttable. **It is to be noted that the role of the investigating agencies and the courts is that of watch dog 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.** It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.”

Justice Malimath Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs, 2003 observed the following and gave the recommendation to amend the law immediately:

“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.

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

These are only a few observations of their lordships from scores which conclusively prove that:

1. A woman (not necessarily every woman) can be much more cruel than a man (not necessarily every man).
2. While intending to protect the life of a person, s.498A of IPC jeopardizes around a dozen innocent persons whether they are children or old. Hence, the provision is discriminatory and in violation to the Article 14 of the Constitution of India.
3. Instead of restoring equilibrium, the provision aggravates disequilibria. Hence, it is not only imbalanced but also there is a failure of guarantee of right to life under Article 21 of the Constitution of India.
4. For the reasons stated under conclusions 3 and 4 above the provision is not only imbalanced but also ultravires.

Because of these maladies the provision needs to be amended at the earliest to protect the life and liberty of millions of innocent people including children and old. Prior to that the learned and honorable courts may consider imposition of heavy penalty as done in case of vexatious PILs. Such PILs are only vexatious but in the matter of the cases may be false, malafide, malicious and revengeful.

5. WHAT ABOUT OTHER SIDE OF THE 498A REALITY?

"Am I a coward? My knees have circular scars from being scrubbed with footpad. I have a sambar burn on my face. I have two stitches on my thigh. Yet I had to face the threat of being in jail as an aggressor. People either laugh or sympathize but nobody says I should get justice only because I happen to be a male! I care two hoots for laughter, I do not need sympathy but I want justice.

Will I get it?" Says Bhargav, who not only had to face domestic violence but also the threat of a false 498a case by his wife. While such stories of male harassment are becoming very common, the society still finds it hard to empathize with a man's plight. It hardly takes any effort to convince people if the same story were narrated by a woman.

Divesh, another harassed husband says, "I do not defy anyone labeling my narration as 'my side of the story' ... but my question is why this is not asked when a girl goes to register a complaint or even during gossips where they are accompanied by the unlimited stocks of crocodile tears. They are taken on face value. ... Is it that females speak only truth?"

It might be hard to imagine the reasons why a woman might want to harm her husband and his family and ruin her own life by filing a false 498a case.

Nakul, a victim explains: "Why do some unscrupulous wives misuse IPC 498a? Firstly to harass the husband, and maybe for monetary gains..."

It is true that many women are making false accusations of mental cruelty and harassment on their husbands and in-laws either of their own accord or at the behest of their family members. There are many cases where the main issue is incompatibility between the husband and wife. There are other cases where the husband

discovers that the wife and her family misrepresented themselves and took advantage of his trust. In other cases, the domineering influence and greed of a woman and her family results in marital discord. Whatever the case may be, the husband and his family are in for a roller-coaster ride for the next several years if the wife so desires.

Some people might ask, "How can a lot of wives misuse the law when it's a fact that misusing wives will lose cases anyway?"

Nakul says, **"The Indian legal process is a punishment in itself, especially when it lingers on aimlessly for 5-10 years after the harsh period of police investigations (institutionalized blackmail to be frank). Since there are no legal repercussions if the wife is found to be fabricating a false 498a charge, wives use this almost by default even if they want a divorce for reasons other than dowry harassment and cruelty on the part of the husband. Even if they (complainants) lose the case, there's nothing for them to actually lose, as the wife gets a lawyer from the state**

(public prosecutor), she doesn't have to appear other than for her statements during the trial (2-3 court sessions as opposed to the innumerable sessions which the accused husband and family have to attend throughout the duration of the case). This no-lose situation is what makes the law-misusing wife confident of inflicting damages to her husband without any harm to her whatsoever."



"Since there are no legal repercussions if the wife is found to be fabricating a false 498a charge, wives use this almost by default even if they want a divorce for reasons other than dowry harassment and cruelty on the part of the husband"

Nakul also points out that "in this particular criminal section of 498a, the accused is considered guilty right from the start until proven innocent (i.e. the onus of proof is on the accused), while in all other criminal cases (including murder) the accused is considered innocent until proven guilty."

There are many heart-wrenching stories of innocent families being arrested without investigation and put in judicial custody. While IPC 498a is supposed to be a law to protect women, ironically it harms many more women. For every male accused of IPC 498a, there is at least one woman (his mother or sister) who is implicated in a crime that never occurred. If there are more women in the family they too are accused irrespective of their age, health condition, marital status or their physical proximity to the complainant. The entire family is ruthlessly arrested without investigation and there are no words to describe the financial hardship and emotional trauma that they have to endure. Children suffer whether they are jailed along with their mothers or are separated from them during that time. **If this is not harassment, then what is?**

Every innocent person facing a threat or charged with a crime under section 498a is extremely angry (and justifiably so) at how the Indian police and judicial systems operate in these cases. Shishir, a victim, says, **"How would you feel when somebody accuses you of a crime you have never committed, the law asks you to prove your innocence and the police punish you even before you are convicted?"**

Another striking feature of these victim stories is that the complainants, in collaboration with the police make sure that the **arrests are strategically planned to harass and demoralize the accused, to make them succumb to the fear of being imprisoned** and to extract huge amounts of money thereafter. Shivani, a US citizen who had gone to India to attend her mother-in-law's funeral, was arrested under section 498a (filed by her sister-in-law), during a time when lawyers were on strike in Chennai. **Shivani had to spend seven gruesome days in prison away from her two little children (one of whom was sick).** Another female victim, Usha, who had traveled to India to see her dying father, **was arrested along with her brother while their father was still in hospital. They lost their father while they were in police custody.**

Divesh notes that "most of the arrests that have been purposely made are on Friday evening. The reason is that the next two days being weekend off ensures that the husbands and his parents and relatives spend at least that many days in jail till the court opens on Monday. And if that day happens to be a government holiday then the proceedings

are in suspension for a further while. The other popular days are days before holidays especially if the holiday is on Friday, then Thursday is apt for arrest as the proceedings are halted for three days minimum and the husbands and his innocent



"Once a family has been tortured using the 498a weapon, the chances of reconciliation between the husband and wife are nil"

family members are in jail. I would rate these cases from past trends as more than 90%."

What are the social consequences of misuse of 498a?

Once a family has been tortured using the 498a weapon, the chances of reconciliation between the husband and wife is nil. The divorce that ensues is another mode of harassment for the already impoverished husband because he is forced to pay a hefty alimony/maintenance demanded by his wife. As Mihir notes, "An interesting ruling of the Allahabad High Court, where the wife was made to pay maintenance to her husband after divorce seemed to be a light of hope for those

aggrieved and deprived husbands. But all the women had voted against this ruling criticizing the judgment as biased."

Shishir asks, "Why are they calling it as biased? Do they despise providing any kind of financial support to their husband? Or do they feel that providing financial support is only a man's domain and responsibility and not that of women? It is evident from the momentum of these women's rights campaigns that they not only want to assert their own 'rights' in the society but also they want to dictate men's 'duties.'" Many feel that this kind of attitude on the part of women defeats any attempts of achieving gender equality.

Voicing the agony of all victimized men, Nakul says, "We are going to see courts as our 'parks' and litigation as 'small talk', so that we ourselves do not fall into the self-destructive vortex as the wasteful trials and adjournments and other self-defeating legal processes stretch out, without any sign of closure while life is kept in abeyance (can't restart a family, can't relocate easily, can't be free from time spent, etc.)"

Sharat, another victim states, "According to an estimate, there are around 50,000-55,000 false 498a cases filed every year in India. This creates multi-dimensional problems to the families and society:

- 1) Lot of productive time, energy and money of the family are spent in proving themselves innocent.
- 2) Law implementers and judiciary have to spend countless number of hours presiding over a 'civil' matter (false in more than 90% cases) while the judiciary is already overburdened and has a severe backlog of millions of civil and criminal cases.
- 3) Tax-payer money is spent on the government lawyer appointed to the daughter-in-law and letting her fight her vicious lie.
- 4) Families who have never spent a single minute with lawyers, courts and police, are forced to run frantically from pillar to post to defend an alleged crime they never committed and they are bound to get depressed with the judiciary and police system.
- 5) Eventually, the institution of marriage might become more like a business transaction in which a man and wife will have to document every agreement in writing in front of lawyers."

When victims and activists protest against misuse of 498a and other dowry-related laws, they face large-scale denunciation by groups claiming to be women's rights

activists. But is their criticism justified? As one female victim questions, "Why do we need unfair laws which will 'benefit' a woman if she is a daughter-in-law or wife but harm her if she is a sister-in-law or mother-in-law? When it is natural for a woman to simultaneously play all these roles how can a heavily misused law such as IPC 498a be beneficial to women in its current form?"

Shishir notes, "498a law, which was enacted to protect women from any unlawful dowry or related harassment, is now **become a multi-million racket in our society**. The woman who files a false case, the lawyer who guides the woman on how to file a false case and the police who make the arrest, all seek unjust monetary gains from the situation. **Why do we have to keep quiet when it is our right to fight against injustice?** Such draconian laws are not yet criticized by many women's organizations which are campaigning for women's rights and protection. The Government too has not provided any remedial measures to curb such a malicious practice, which was termed "Legal Terrorism" by Supreme Court of India.

The appeals and suggestions of 498a victims to amend section 498a have been grossly misunderstood and misrepresented by some women's organizations (lobbying for strengthening 498a and other dowry related laws) as anti-women strategies. In response, here is what victims who seek nothing but justice and freedom from these unfair laws and long-drawn criminal procedures have to say:

"I do not want 498a to be eradicated. All I want is that the husband and his family are not arrested without proper investigation. In addition, if the law is misused then the wife and her family should be booked and sent to jail." - Rahul

"Do not change 498a. But argue for heavy punishment to women who file false cases and for lie detection and brain-mapping test on the accused (cost being paid by accused). Simple is it not?" - Anamika

Divesh, who has been enduring harassment from his wife and in-laws for two years cries, "Arey kanoon banane wale, aap ke ghar mein baap, bhai ya bete hai ke nahi? (Makers of such laws, don't you have fathers, brothers or sons in your homes?)"

Lawmakers, are you listening?

6. 498A STATISTICS

Perhaps nothing else reveals the extent of the misuse of the section 498A, than the statistics themselves. The statistics compiled from various sources reveal some shocking patterns. The degree of the abuse of this legal tool at the disposal of unscrupulous women is clearly borne out by analyzing the data available.

The details of the cases filed under section 498A in the year 2005, are as under

(Source : Ministry of Home Affairs, RTI ref. no. 24013/20/2006-SC/ST-W)

No. of dowry cases registered	58319
No. of dowry cases not charge-sheeted because of frivolous grounds	10491
No. of dowry cases charge-sheeted	47828
Convicted	5739
Acquitted	24127
No. of undecided cases	17962

In year 2005 alone, 134757 people underwent arrest for 58319 complaints under 498A and Dowry Prohibition Act.

(Source : Ministry of Home Affairs, RTI ref. no. 24013/20/2006-SC/ST-W)

Below 18 years	358	0.2%
Between 18-60 years	129655	96%
Above 60 years	4744	3.5%

Out of 1,34,757 accused, approximately 18% were not chargesheeted, which means 24,256 arrests of innocent people were caused only because these acts are non-bailable and cognizable, which forced the police to arrest the accuse, even though the complaints were frivolous.

On an average 2.3 people were arrested in every complaint by a woman. It is appalling to note that 358 children and 4744 senior citizens were arrested without verification of the veracity of the complaint.

The World Health Organization reports Lebanon and India as first ranking countries for legal abuse of elders in its report and explicitly mentions the dowry law as a tool for rampant abuse of elders in India . (Document no. WHO/NMH/VIP/02.1, WHO/NMH/NPH/02.2 Title Missing Voices. <http://www.498a.org/legalTorture.htm>)

Extract from WHO report

D) Legal and financial abuse

“Legal abuse was named as a particular type of abuse in both India and Lebanon, although each country has its own specific version of this. The Indian expression of legal abuse is through abuse of the dowry laws by daughters-in-law:”

“In India, there is a law that is intended to protect daughters-in-law from abusive in-laws. A daughter-in-law can go to the police station and lay a complaint that she is being abused by her in-laws, and the in-laws are arrested on her word alone. However, the focus group participants reported that some daughters-in-law are using this law as a form of elder abuse, by making false police reports. In general, participants stressed that the lack of a caring attitude by daughters-in-law was a major problem. (India)”

Not only senior citizens, even women and children are abused using this legal process. It is ironic that more than 25,000 innocent women get arrested under section 498A, which has been projected as a law for welfare of women.

The data for the arrests made under section 498A and its analysis is given below (Source : National Crime Records Bureau)

	2003	2004	2005
Persons Arrested	110623	125657	127560
Women Arrested	26465	27832	28745
Seniors Arrested	3786	4324	4512
Children Arrested	297	294	339
Persons Chargesheeted	106980	118367	121653
Persons who completed trial	70167	71192	74496
Persons Convicted	12558	14706	14583
Acquittal Rate (for people who completed trial)	82%	79%	80%
Innocent Persons Arrested daily	249	273	281
Innocent Women Arrested daily	60	61	63
Innocent Seniors Arrested daily	9	9	10
Innocent Children Arrested daily	1	1	1

The analysis above reveals some startling facts. Under a false case of section 498A -

An INNOCENT child is arrested every day.

An INNOCENT senior citizen is arrested every 2.4 hours.

An INNOCENT woman is arrested every 23 minutes.

An INNOCENT person is arrested every 5 minutes.

These statistics clearly demonstrate the legal and systematic

abuse of husbands and their families by vicious and cruel misuse of this law against them. The abuse by wife is often in collusion with her relatives. The laws have grave impact on the life of man and his family, in the event of false allegations, which are acted upon even before considering the genuineness of the complaint.

In India, men do not have legal recourse in the event of abuse. The legal system only adds another dimension of "legal torture" to these families, by making them helpless in the event of abuse. If a family decides to fight back against these false allegations, then besides facing an imminent arrest, they also face tremendous legal hurdles in proving their innocence.

The following data proves that the average length of trial for cases under section 498A is increasing and because more 498A cases are being filed every year than the courts are able to adjudicate. (Source : National Crime Records Bureau)

	2003	2004	2005
Persons under trial (including past years)	500166	537137	573881
Persons for whom cases were withdrawn	11229	13717	13447
Persons who completed trials	70167	71192	74496
Persons pending trial	418770	452228	485938
Average Length of Trial	7.1 years	7.5 years	7.7 years

In a typical illustration of "Justice Delayed is Justice Denied", the lengthy trial forces many innocent families to give in to extortion and blackmail and "compromise" by giving huge amounts of money. The feeble recourses of "Restitution of Conjugal Rights" or "Divorce" make men even more miserable in an actual domestic tiff. In such situation having left no legal recourse to get out of abusive relationships, some innocent men and their families end up taking their own lives.

Men usually commit suicide due to humiliation suffered in the initial stages of dowry complaint as the complaint (true or false) usually means few days of arrest (which, in many cases, results in automatic loss of job, especially Govt. jobs), humiliation in society and anguish for causing arrest to elders and youngsters of husband's family, which usually means loss of life for elders and loss of dignified career for

the implicated children.

Due to stringency of dowry laws, 53 men committed suicide in year 2004. (Source : Ministry of Home Affairs, RTI ref. no. 24013/20/2006-SC/ST-W). **One man commits suicide every week due to this law.**

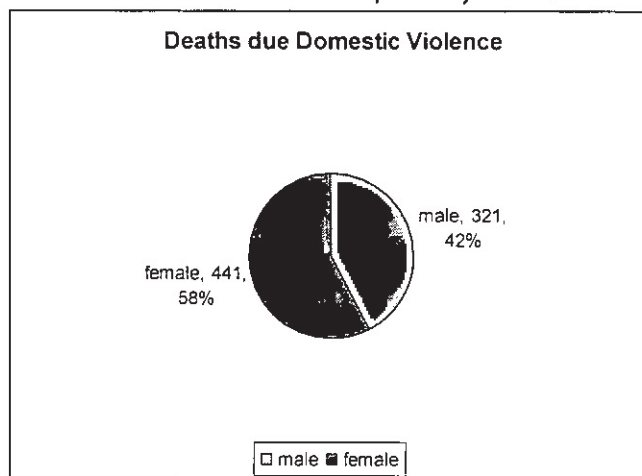
The ratio of Male : Female victims of suicide in India is 63 : 37 and nearly 44.7% of the suicide victims were married males while only 25% were married females.

(Source: National Crime Records Bureau)

A study by Professor K. Nagaraj, senior economist at the Madras Institute of Development Studies (MIDS) shows that the distribution of suicides by marital status reveals some shocking patterns. The rates do not vary much between the sexes for the never married. Among those currently married, while the rate for males is about 17 per 100,000 persons, the rate for females is 11.4 per 100,000. Among those widowed, while the rate for males is 21 per 100,000 persons, the rate for females is also significantly lower, at 6.6 per 100,000. However, among divorced males the suicide rate is 164 per 100,000 persons, but even in this class, among females the rate is only 63 per 100,000. While the suicide rate for separated men is about 167, for females it is 41 per 100,000 persons.

Gender biased laws that discriminate against men, create more injustice in the society. An example is the Domestic Violence Act, which allows only a woman to file a complaint against a man. It is the all the more unjust, given the fact that 42% of the victims that commit suicides in marital disputes are men. (Source : Ministry of Home Affairs)

No. of suicides due to marital dispute in year 2004



The misuse of this law is increasing the load on an already overburdened judiciary. Consider the following data for bail applications in various courts in New Delhi on a random day and a week after.

Bail Applications in Delhi Courts on 13th Feb, 2007

(Source : www.delhidistrictcourts.nic.in)

Court	498A related bail applications	Total bail applications	% of bail applications related to 498A
Tiz Hazari	43	82	52%
Rohini	21	70	30%
Patiala	4	11	36%
Kakkardooma	8	31	26%
Total	76	194	39%

Bail Applications in Delhi Courts on 20th Feb, 2007

(Source : www.delhidistrictcourts.nic.in)

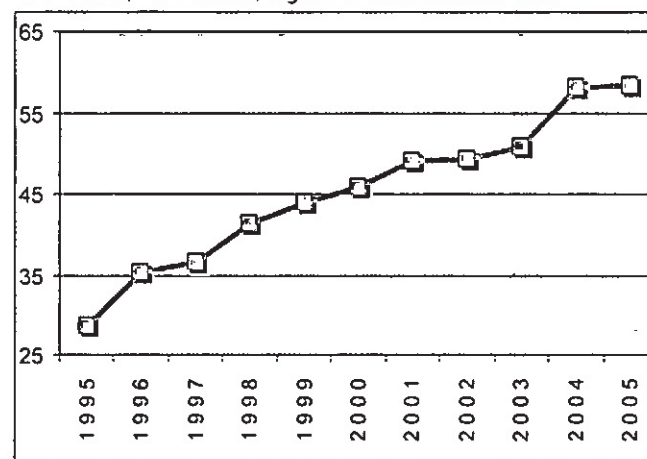
Court	498A related bail applications	Total bail applications	% of bail applications related to 498A
Tiz Hazari	18	51	35%
Rohini	11	63	17%
Patiala	7	33	21%
Kakkardooma	28	55	51%
Total	64	202	32%

As can be observed, **more than 30% of the bail applications in the New Delhi courts are related to 498A cases**. Given that about 80% of the cases that complete trial are found to be without merit, **eliminating the false 498A cases will reduce the load on the New Delhi courts by about 25%**, as far as the number of bail applications are concerned. This would allow the courts to devote more time for addressing the genuine grievances of citizens.

Lastly, one must question the efficacy of such draconian laws in terms of the achievement of the objective for which they were originally enacted. The intention behind section 498A was to curb the social evil of dowry. However, analyzing the number of cases registered in the past 10 years clearly exposes the failure of this law. (Source : National Crime Records Bureau)

Year	People Arrested	% increase over 1995
1995	28579	
1996	35246	23%
1997	36592	28%
1998	41375	45%
1999	43823	53%
2000	45778	60%
2001	49170	72%
2002	49237	72%
2003	50703	77%
2004	58121	103%
2005	58319	104%

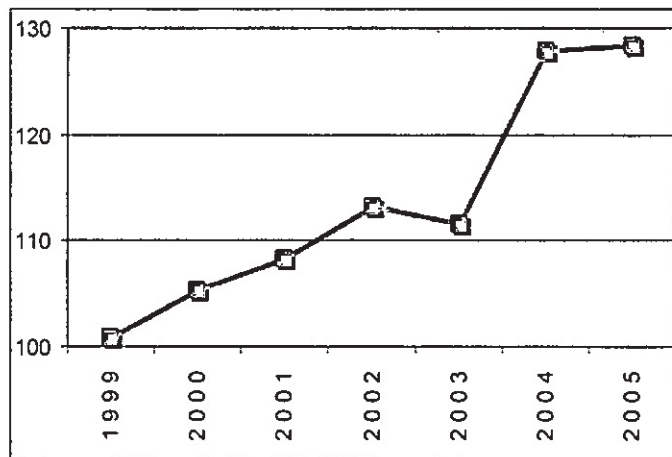
No. of Cases (in thousands) registered under section 498A



As can be observed, the number of cases have doubled in the last 10 years. Since about 80% of the cases that complete trial are found to be without merit, it shows the increasing tendency of urban women to misuse the laws for their own oblique purposes.

It is also interesting to note that the number of people arrested under section 498A has steadily increased over the years.

No. of Persons (in thousands) arrested under section 498A



It is evident from the data presented above that section 498A has miserably failed in its goal to protect genuine victims of dowry abuse. It has, instead, turned into a weapon which is used extensively to harass innocent families and is solely responsible for the breakup of many marriages and for the suicides of numerous hapless victims caught in the net of this law.

Laws like IPC Section 498A and Domestic Violence Act have number of provisions to intimidate men and their families. The effect of these laws is unjustified power in the hands of women for blackmail and extortion in domestic disputes, which irreparably damages the life of husbands and their relatives and sometimes also becomes the reason for their death.

The nature of Indian society has changed drastically over the past few years. The existing social conditions demand that Husband and his family be protected from his wife and her relatives, as well. It is now imperative that legal protection be provided to all citizens, irrespective of gender. The laws must be suitably amended in the interest of our future generations and women themselves. Unjustified attempts to discriminate against men will only cause destruction of the delicate family system, as has been amply demonstrated in the western nations. (<http://www.scotland.gov.uk/Publications/2005/07/28102739/27419>)

7. TYPICAL TRAITS OF COMPLAINANT AND ACCUSED

Note: The following are scenarios in which false IPC 498A (498a) cases have been documented over the last few years. Therefore, if a husband or his family observes any or a combination of the following behaviors, he might want to watch out for a possible 498a case against him.

Typical Complainant is a woman:

- Who is suffering from pre-existing mental problems such as Borderline Personality Disorder, Bipolar Disorder, Schizophrenia, etc.,
- Whose family is nouveau riche and likes ostentatious display of wealth, possessions as well as social and political connections
- Who is used to living beyond her means
- Whose father is hen-pecked and whose mother dominates all family situations
- Who listens to and acts in accordance with her parents' wishes at all times, exhibiting a lack of individuality and discretion in dealing with her married life
- Who pushes for quick involvement during the establishment of a marriage alliance, pressing the man and his family for an instantaneous commitment
- Who is excessively possessive and suspicious
- Who is self-centered and feels the need to dominate the relationship and every aspect of decision-making
- Who tries to alienate her husband from his family and friends
- Who is hypersensitive and therefore easily insulted
- Who indulges in verbal abuse and constant criticism of her husband and in-laws
- Who uses blackmail (emotional or otherwise) and threats to get her unreasonable demands fulfilled by her husband and in-laws
- Who walks out on her husband following an argument and stays away from her husband indefinitely without any effort towards reconciliation

Typical Accused is man and his family:

- Who are generally law-abiding citizens with no connection or experience with police and courts
- Who are busy professionals or Non-Resident Indians and do not have the time and ability to fight long-drawn cases in Indian courts and therefore stand out as soft targets for blackmails and threats
- Who are living in a joint family and do not yield to wife's demand to setup a nuclear family
- Who are individualistic and refuse to submit to the controlling nature of the wife and in-laws
- Who are wealthy and have a lot to lose under threat of arrest and extortion
- Who serve the Indian Government, and whose employment would be at stake if they were arrested or imprisoned
- Who are unwilling or unable to meet the monetary demands of the wife and her family

8. THOUGHT PROVOKING QUESTIONS ABOUT 498A

Registration of FIR, arrest and court proceedings: Equality of laws:

- When an FIR under IPC section 498A (498a) is registered, the accused are automatically arrested and jailed without investigation. The Supreme Court of India has ruled several times that arrest should be an exception, and not a compulsory. Why is there no penalty for disobeying the Supreme Court's orders? Is it not mental cruelty to subject a person to arrest without investigation or reasonable cause?
- Why is there no provision in the criminal law that can serve to deter false and exaggerated claims?
- Why does not the judicial system use its power to deter frivolous complaints made by unscrupulous individuals and prosecutions by corrupt law and order personnel for wasting the honorable courts' precious time and imposing the financial burden on the public exchequer?
- Why is there no provision by which the costs relating to false 498a cases can be recorded and recovered from the complainants to compensate the falsely accused?
- Why is there no penalty for the complainant who does not appear to the court proceedings?
- According to established research, the frequency of husbands committing suicide is three times that of wives committing suicide. When a wife commits suicide it is automatically deemed to be dowry death, under IPC section 304B. Why do we have no such protection for husbands? [ref: <http://www.flonnet.com/fl1821/18210960.htm>]
- The existing laws protect a woman from cruelty and harassment by her husband and in-laws. Why does the law not provide protection to a man against cruelty and harassment by his wife and in-laws?
- The Dowry Prohibition Act clearly states that the dowry giver is also punishable under the said Act. Why do the police and judicial authorities not take any action against those who admit that they gave dowry?
- Dowry laws were made to protect women from harassment. What legal protection is available to a woman who is being harassed by a daughter-in-law or sister-in-law? What legal remedies are available to a woman whose daughter-in-law or sister-in-law has booked a false dowry case against her?

IPC section 498a was originally designed to protect married women from being harassed or subjected to cruelty by husbands and/or their relatives. This law was mainly aimed at curbing dowry harassment. Unfortunately, this law has been misused to harass men and their families rather than protect genuine female victims of harassment. The Supreme Court of India itself has labeled the misuse of section 498a as "legal terrorism" and stated that "many instances have come to light where the complaints are not bona fide and have been filed with an oblique motive. In such cases, acquittal of the accused does not wipe out the ignominy suffered during and prior to the trial. Sometimes adverse media coverage adds to the misery." In agreement with the above statement, the findings of a study conducted by The Center for Social Research indicated that 98 percent of the cases filed under IPC section 498a are false. Nevertheless, the law has been always justified based on its intention of protecting women. At this point it would be worthwhile to think about how IPC section 498a has really affected women.

It has been argued by Government officials favoring the law that despite the establishment of legal measures to counter harassment of married women, there is an increase in the number of cases of harassment. The first part of the statement suggests that women who are harassed should be utilizing this law as a means of protection. If harassed women indeed used the law then we should see a decrease in the number of cases of harassment over time. Considering the stringent consequences imposed by the law and the inordinate delays inherent in the legal system, no ordinary citizen, male or female, would be impudent enough to risk being implicated under this law for the sake of satisfying their monetary or even sadistic desires for that matter.

The fact is that many women who are actually beaten up and harassed by their husbands and in-laws rarely file 498a or resort to other dowry related laws. A lot of them live in rural areas, unaware of the law or lack the necessary economic and moral support from their natal families. Going by the conviction rate the proportion of women who have genuine cases is 2%. Most women who file 498a are from urban backgrounds and are either capable of fending for themselves or have enough family support to fall back on. The proportion of women who belong to this category is 98%. In the 98% of false cases, in every instance that 1 daughter-in-law files a false complaint at least 2 women (an innocent mother-in-law and sister-in-law) are arrested and undergo stress, humiliation and harassment in the hands of the exploitative police, lawyers, staff and officials in Indian courts before being acquitted several years later. So, in every 100 cases 2 women genuinely benefit, 98 women get away with perjury and extortion, and at least 196 women

suffer needlessly.

The number of cases that are filed in police stations or courts are the basis for the official statistics of dowry harassment. So, given that the law allows women unlimited scope to fabricate lies (with no penalty of perjury) and given that women are encouraged to keep filing false cases the statistics of "dowry harassment" are bound to rise while the problem of genuine harassment is left unchecked. So, the government has, in the name of protection of women, done grave injustice to two groups of women. The first group constitutes the genuine victims of dowry harassment whose misery remains unmitigated but is constantly alluded to in order to justify the law. The second group consists of innocent mothers and sisters of husbands who are criminalized and harassed by the police and the legal system without any regard to their age, health or marital status. Pregnant women, unmarried sisters, ailing mothers and even aged grandmothers have been sent behind the bars under false allegations but their pain and suffering has not even been acknowledged let alone addressed by the Government. Through IPC section 498a, the Government is actually protecting those women that indulge in perjury, blackmail, extortion and harassment of their husbands and in-laws.

The recently passed Domestic Violence Bill claims that it will protect women from domestic violence which includes physical, verbal, emotional, sexual and economical abuse. According to the law an aggrieved person is defined as "any woman who is, or has been, in a domestic relationship with the respondent..." and a respondent is defined as "an adult male person who is, or has been, in a domestic relationship with the aggrieved person..." Thus, the law only recognizes domestic violence committed by a man on a woman in a household shared in the past or present. While this law is heavily biased against men, many supporters of the law are claiming that this law is good for women. The following are some gross inconsistencies in the law that prove that the DV Act is not good for women either.

There are several instances where a daughter-in-law and/or her blood relatives commit domestic violence (as defined by the law) against her mother-in-law, sister-in-law or any other females related by marriage. In addition, mothers or step-mothers abuse their children (who include daughters or step-daughters) physically, verbally, emotionally and economically and vice versa. In such a situation, the law does not provide any protection to female victims of Domestic Violence. Thus, the law can only be used by a wife or a girlfriend (present or former) and their relatives/friends against a man and his family.

According to Clause 17 of the Act legally divorced women and former separated girlfriends/live-in partners can claim right to residence in the home of their former husband or former partner even though the Act says they may not have any right, title or beneficial interest in the same. The law can thus force a former wife or former girlfriend on a man's household and violate the rights of his present wife or partner. The law does not provide protection to a man's current wife or girlfriend/live-in partner or even dependent mothers and sisters under such circumstances. Here, the law favors divorced women and former girlfriends at the cost of the rights of a legally wedded wife/live-in partner and other female relatives that share a household with a man.

According to clause 19 a man can be removed from his own household and him and his relatives can be restrained from entering any portion of the household in which the aggrieved person resides. Through this clause the law supports the encroachment of property by a girlfriend (former or present) at the expense of the right to residence of a man, his legally wedded wife and any other dependent female members of a family. In the name of protecting a section of women who may be making true or false allegations, the law penalizes innocent women who are related to an accused man.

Despite documented evidence that section 498a of IPC has been heavily misused affecting more and more women (along with men) everyday, no amendments to this law have been proposed so far. As with section 498a of IPC, the Domestic Violence Act is replete with loopholes and is bound to be misused. The DV Act will allow legally wedded women, divorced women and girlfriends (former or present) to subject a man and his relatives (male and female) to domestic violence and legal harassment. This Act, like Section 498a of IPC will result in the harassment of many more innocent women than it claims it will protect. It is important for the Government to acknowledge the fact that IPC 498a and DV Act are bad laws that criminalize ordinary citizens (male and female) and violate their fundamental rights. Unless urgent amendments are made to prevent the misuse of these laws, credibility of women will be lost. In addition to lost credibility, an overload of false cases will worsen the delays in the judicial process and deny timely justice to women who are genuinely aggrieved.

Unreasonable and easily misused laws like IPC 498a and DV Act are already creating a situation of fear and mutual distrust and adversely affecting interpersonal relationships between men and women in the society. This is resulting in more and more broken families and depriving children of a healthy childhood. If the Government and women's organizations were truly interested in improving the living conditions of women in India they would focus on empowering women through education.

Education builds self-confidence and gives a person the ability to stand up for oneself. Educating women can also ensure that the next generation of children are raised to treat each other with respect and be better citizens. The Government and women's organizations can also lend support for rehabilitation of abused women and protect them from further harassment without doing injustice to innocent men. It would behoove the Government and women's organizations to work in collaboration with social scientists and psychologists to understand human behavior in the context of changing social conditions and standards in India and think about workable solutions to deal with Domestic Violence and other forms of abuse instead of criminalizing ordinary citizens. Positive measures that can bring about domestic harmony are the only way to ensure family stability and long-term social stability.

10. STEPS AND SUGGESTIONS TO GOVERNMENT

1. Role of Women NGOs: These organizations should investigate complaint properly without any bias towards the woman keeping in mind that the law is being misused largely to harass more women in husband's family. They should not encourage any woman to file a criminal case against her in-laws for trivial matters.

Foreign Women Organizations should also take responsibility of not allowing false complaint to be registered against NRI's just to harass and extort huge amount of money from them. These organizations should also conduct survey/research on the misuse of the act and should educate people about its consequences.

If these organizations are found to be assisting in filing false complaints, then they should be made liable for prosecution in the country where they are functioning.

2. Family Counseling Centers: Numerous cases of men being harassed by wife or/and in-laws have come to light from different parts of the country. As of now there is no organization, which can really help these harassed men and his family members, to listen their side of the story and put their point of view in front of the government. Need of the hour is to create family counseling centers across the country to help those aggrieved families.

3. Time bound Investigation and Trial : A speedy trial of 498(a) cases will not only ensure justice for the innocents that have been implicated in false charges, it will also lead to prompt redressal of the grievances of real dowry victims. The reduction in false cases will also reduce the burden on judiciary and expedite the processing of real cases.

4. Definition of Mental Cruelty: Mental cruelty has been vaguely defined in the act, which leaves scope of misuse. This should be clearly elaborated to remove loopholes in the law. There should be provision for men also to file a case for mental cruelty by his wife.



"Honourable Supreme Court of India has asked the government to amend IPC-498a to plug the many loopholes it has".

It's high time government acts on these suggestions

5. Investigation by Civil authorities: The investigation into these offences be carried out by civil authorities and only after his/her finding as to the commission of the offence, cognizance should be taken. The government should create awareness among officers about its misuse.

6. Bailable: The main reason of 498a being misused to harass innocent is its non-bailable nature. This section should be made bailable to prevent innocent old parents, pregnant sisters, and school going children from languishing in custody for weeks without any fault of them.

7. Compoundable: Once FIR has been registered it becomes impossible to withdraw the case even if wife realizes that she has done a blunder and wants to come back to her matrimonial home. To save institution of marriage this should be made compoundable.

Moreover, in the scenario where the couple decides to end the marriage by mutual divorce, continuation of criminal proceedings hamper their life.

8. Arrest Warrants: Arrest warrant should be issued only against the main accused and only after cognizance has been taken. Husband family members should not be arrested.

9. Penalty for making false accusation: Whenever any court comes to the conclusion that the allegations made regarding commission of offence under section 498a IPC are unfounded, stringent action should be taken against persons making the allegations. This would discourage persons from coming to courts with unclean hands and ulterior motives. Criminal charges should be brought against all authorities that are collaborating with falsely accusing women and their parental families.

10. Court Proceedings: Physical appearance of the accused on hearing should be waived or kept low to avoid hassles in appearing to the court, especially for NRIs. The court should not ask to surrender passport of the husband and his family which could cost job of the husband and his family members.

11. Registration of Marriage and Gifts Exchanged :
The registration of marriages should be made compulsory along with the requirement that the couple make a joint declaration regarding the gifts exchanged during marriage.

12. Punish Dowry Givers : If the complainant admits giving dowry in the complaint, the courts should take cognizance of the same and initiate proceedings against them under the relevant sections of the Dowry Prohibition Act

13. Penalize corrupt Investigation Officers : If it is apparent to the court that a fair investigation has not been conducted by the investigation officer, and that the husband and his family have been charge-sheeted without proper verification of the complaint, the investigation officer should be penalized for gross negligence of duty.

14. NRI Issues : Unless they are proven to be guilty after the due judicial process, NRIs should be given a fair chance to justice by assuring them of the following -

- a) Permission to return to country of employment
- b) No impoundment/revocation of passport and no Interpol Red Corner Notices.
- c) No unnecessary arrests
- d) Expeditious investigation and trial

15. Gender Neutral : Everyone should have equal rights and responsibilities, irrespective of gender. In the current social context, there should be similar laws to protect harassed husband and his family members from unscrupulous wife.

11. MEDIA REPORTS

"If there is a marital discord, man is considered the culprit. Everybody sympathizes with the woman. The law was made stringent to protect women but instead it has become a tool of blackmail".

"90 percent of dowry harassment complaints are false."

- Arun Murthy, Founder of Sangyabalya quoted in "498a gives men pre-wedding jitters" Vijay Times. Bangalore. Thursday 07 April, 2005.

"Today, most women end up using the anti-dowry law to book husbands for maltreatment even if dowry is not the cause of marital breakdown. Thus anti-dowry law has not curbed the giving and taking of dowry. It has only provided a strong weapon for revenge in the hands of wives against their husbands and in-laws, whether or not their conflict is over dowry. Lawyers and even police routinely advise families to list 'dowry demands' as the primary cause of marital violence, even if in actual fact this is not at all the case, or is only a relatively minor factor in marital conflict"

- Madhu Purnima Kishwar. Manushi, Issue 148. (Published July 2005 in India Together)

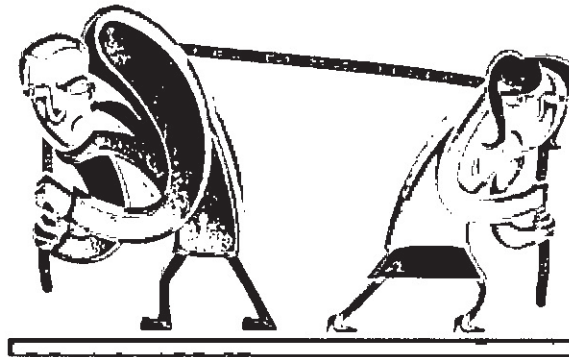
"For women there are many laws to deal with such problems and many bodies like the Women's Commission and the women's grievance cell, while there is no facility for men who face problems from their wives"

- Aruna Mukherjee. Pirito Purush Poti Parishad (Forum of oppressed husbands). "Battered husbands join hands to take on 'better' halves." Express India. Thursday, June 16, 2005.

"Matrimonial offences where a woman is not physically assaulted should be compoundable and bailable."

"There is a growing tendency among women, which is further perpetuated by their parents and relatives, to rope in each and every relative, including minors and even school going children of distant relatives"

- Justice J D Kapoor, Delhi high court. "Check dowry law misuse by women: HC." Times News Network, Thursday, May 22, 2003.



"Anti-dowry law has not curbed the 'giving and taking of dowry. It has only provided a strong weapon for revenge in the hands of wives against their husbands and in-laws, whether or not their conflict is over dowry" - Madhu Purnima Kishwar.

"It is unfortunate that more and more people are misusing the stringent provisions of the law out of sheer spite," says Ajaib Singh, head of the Women and Child Support Unit.

"People generally make use this law to facilitate a divorce. And often, it's the lawyers who advise the women to implicate their in-laws under the provisions of this Act," says Shantosh Singh, chairperson of Women Welfare Counseling Cell at Sector 17.

Lawyers also admit that the stringent laws against the dowry are misused to a great extent," There are only 10 per cent cases based on truth, and people

usually come to us and ask specifically to mention the element of dowry in their divorce petitions," says Amrikh Singh Kalra, advocate at Punjab and Haryana High Court.

"Most of the cases are fabricated and the element of dowry is exaggerated in them. Basically women want to have a quick solution to their problems and the laws against dowry provide the easiest way out," says advocate Amarjit Singh Jattana.

There are many who feel that legal luminaries should find

out ways to prevent the misuse of this Act. "With so many people filing cases under this Act, there may come a time when we begin to suspect even a genuine case," says Ajaib Singh.

- **Nazir Ahmad Rather.** "To do(wry) or not to do(wry), that is the Act." Chandigarh Newline. <http://cities.expressindia.com>. Monday, February 20, 2006.

The chairperson of state woman commission (Orissa) says cases of husbands being tortured and harassed are on the rise, especially in urban areas of the state. Over the last five years 519 cases of torture against husbands have been registered.

"It's high time that there should be forums where these victimized husbands can seek justice and law should also be made to deal specifically such situation," says lawyer and Lok Sabha MP, Brahmananda Panda.

- **Jajati Karan.** CNN-IBN news. "Victimized husbands an ugly reality". Thursday, February 16, 2006.

In several complaints, the husband states that the wife has threatened by saying that all laws are in their favor and they can do anything. Pandey says in most of the cases the husband blames his in-laws accusing the wife of acting at their behest. They complain that the in-laws want to interfere in their life. They want the husband to listen and follow their advice, she added.

- **Manish Sahu.** "Complaining hubbies turn to Mahila thana for solace". Lucknow Newline. <http://cities.expressindia.com>. Tuesday, February 14, 2006.

Counselors at the Maharashtra Commission for Women, setup to help women harassed by men, are having a tough time these days. Besides women, they have men queuing up with complaints against their partners, wives, girlfriends and even mothers-in-law. And of the complaints filed by women, many are turning out to be false.

"In quite a few cases, women are filing complaints which are

not only motivated but quite misleading — just to harass men deliberately," said the MCW Member Secretary Sudha Bhawe.

- **Aditya Ghosh.** "Men seek help. Is women's panel listening?" DNA Mumbai, Monday, February 13, 2006.

The Supreme Court today warned that misuse of anti-dowry laws could unleash a "new legal terrorism". A division bench of Justices Arijit Pasayat and H.K. Sema said provisions in the laws are often being misused to settle personal scores.

"that does not give a license to unscrupulous persons to wreck personal vendetta or unleash harassment," the bench said.

The judges said "it may become necessary for the legislature" to find "appropriate" ways to deal with people behind "frivolous complaints or allegations," as the laws do not give any directions in this regard.

"The object of the provision is prevention of the dowry menace. But many instances have come to light where the complaints are not bonafide and have been filed with an oblique motive. In such cases, acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Some times, adverse media coverage adds to the misery," the judges said.

- **R. Venkataraman.** "Dowry law no licence to settle scores: SC". The Telegraph. Friday, July 22, 2005.

"The fact that we issued a warning should be an indication of how widespread the problem is," says John Peters, the US State department's citizen services specialist for India.

- **Lisa Tsering.** "Indian Husbands from U.S. Fall Victim to Dowry-Immigration Fraud in India". IndiaWest, December 30th, 2004.

Referring to the provision of arrest, the Court said it has been much abused and exploited by the police in offences related to section 498a/406 (cruelty by husband for dowry/criminal breach of trust) of IPC where all relatives including husband and even old or minors are arrested.

Emphasising that unless the allegations are of "very serious nature" and "highest magnitude," the arrest should always be avoided," the Court observed "arrest of a person for less serious or such kinds of offence or offences which can be investigated without arrest by the police cannot be brooked by any civilized society".

"Power to arrest is altogether different than the need for arrest," the Court observed and added "no authority howsoever powerful or mighty can be allowed to deny a person his liberty as it hits at the very foundation of democratic structure"

- **"Arrest should be avoided until very necessary": High Court.** <http://www.dailyexcelsior.com> November 26, 2005

"About 80 percent of total cases of alleged dowry deaths in Vaishali district are lodged by so-called victims' relatives for blackmailing the in-laws," says the Vaishali SP Shobha Ohatker.

Talking to TNN here recently, the SP said that there is a trend of levelling allegations of demand of money as dowry in most of the cases. Married women often do this under the pressure of their "greedy" parents, she added.

- **"Majority of dowry cases are false": SP.** The Times of India. Cities: Patna. Tuesday, August 19, 2003.

In some cases lawyers have been appalled to find elderly relatives of the husband and even visiting relatives of the husband implicated in the case. In some cases the husband and his family are virtually being blackmailed into coughing up money and reach an out-of-court settlement.

Eminent lawyer Bishnu Charan Ghosh says, "As a lawyer I have never come across such gross abuse of any of the provisions of any Act as I am experiencing in 498a IPC cases".

- **Rahul: "Some brides are 'villains', not victims: lawyers".** The Times of India. Cities: Kolkata. Wednesday, May 01, 2002.

Sociologist Bula Bhadra believes that domestic violence against men is yet to become a public issue. "If we go by the numbers, it's still a private issue. I believe anyone can

be abusive. We need to look at the bigger picture. We have to take into account the power relations — whoever is in the dominant position in a family structure, be it a man or a woman, will tend to use his or her power to inflict hurt on the other. But as women are gaining more power today, we can see a 'fear psyche' working among men."

Aruna Mukherjee, a senior advocate at the Calcutta High Court says, "I have been practising law for many years. I have seen innumerable cases where women misuse Section 498 A. I always felt that there should be a forum for men... Women do cause great harm to men and contribute significantly to the breakdown of marriages."

- **Anirban Das Mahapatra.** "Help! My wife beats me". The Telegraph. Tuesday, December 13, 2005.

To know more facts about 498a, search the Internet for:

- "498a"
- "Misuse Dowry laws"
- "Elder abuse India"
- "Misuse of 498a"

12. DOMESTIC VIOLENCE LAW - A SHIELD OR A SWORD?

Feminist organizations have unequivocally and unanimously hailed the implementation of the Domestic Violence (DV) Act in India. They claim that this law will empower victims and protect them from abuse.

Most people in their right state of mind would agree that domestic violence in a relationship is not acceptable. It is only fair that for their own mental and emotional health and for the well-being of the children, that the victims be protected from abusive partners.

On the face of it, the law appears to be a blessing for people in abusive or violent relationships. However, a careful analysis reveals that, under the ploy of "women welfare", this law is yet another misguided attempt to enact legislation to grant women legal supremacy over men and to create a society where men are deprived of their rights.

There are three fundamental problems with this law – a) it is overwhelmingly gender biased in favor of women, b) the potential for misuse is astounding and c) the definition of domestic violence is too expansive.

The DV act singles out men as perpetrators of domestic violence and assumes that only women are victims. As per this law, only a woman can file a complaint against her male partner. A man, who is a victim of domestic violence, has no rights under this law. According to this law, it's permissible for a wife to nag, insult and even physically abuse her husband. The fact is that it has been comprehensively proven in numerous studies [please see references] that women are no less abusive as men in intimate. Giving such sweeping legal powers to women, while withholding protection to male victims, is tantamount to systematic legal victimization of men. In the western world, the domestic violence laws are gender neutral and provide protection to the victims, both men and women. The fact that the Indian version explicitly prohibits any male victim to seek relief under this law defies all logic and is beyond comprehension. The upliftment of deprived and disadvantaged women is a noble goal but empowering women by victimizing men is gross injustice.

The second significant flaw in this law is that it lends itself to such easy misuse that many women will find it hard to resist

the temptation to "teach a lesson" to their male relatives and will file frivolous and false cases. A similar trend is already being observed in the case of anti-dowry law (498a), which is being misused to such an extent that the Supreme Court has termed it "Legal Terrorism". To illustrate how easy it is to misuse the DV law, consider the scenarios below. [She means wife/female live-in partner and he means husband/male live-in partner]

- a) If she demands any amount of money from him, for any reason whatsoever, he is legally bound to pay that amount in full, failing which he can be imprisoned. Under the pretext of preventing economic abuse of women, this law legalizes the extortion of money by women. Interestingly, if he asks for money from her, he can be jailed for that as well. Furthermore, he is responsible for paying the rent if the couple resides in a shared rented accommodation.
- b) As per the law, she retains the right to the residence. This is a very convenient means of getting control of the house regardless of whether she has any legal right on the property.
- c) If she decides not to cook and wishes to eat out in a restaurant everyday, he cannot afford not to oblige, lest he invites the DV provision for "not providing food", for which he could be jailed.
- d) If she has an affair and he tries to prevent her from meeting her lover, he could be punished under the DV act, as he is preventing her from meeting someone.
- e) He can be booked under the DV act if she feels that she has been insulted. Insult is a relative term, which is totally left to her discretion. Interestingly, if she insults and abuses him verbally or even physically, he does not have any legal recourse in this law.
- f) Divorced wives and former girl friends can legally claim a right to live in the residence of the man, if she has ever cohabited with him in that house. This

can potentially be done after 5, 10, 20 or even 50 years after the relationship has ended.

These are just some of the ways in which women can exploit men in a legally permitted manner. The fact that the complaint by a woman will be treated, *prima facie*, as "true and genuine" opens up a whole new realm of possibilities where innocent men will be accused and implicated in false cases, just because they refuse to give in to her unreasonable demands. In fact, it's legally possible for the wife's paramour to make a complaint against the husband (of course, with the active support of the wife), get him kicked out of the house and then move in the house, while the innocent husband is forced to pay the rent while he languishes in jail. The likelihood of large scale misuse of this law is phenomenal given the sloppy drafting.

Most people, including the ones that helped draft and push the law in the parliament, readily agree that the law will be misused. Their counter arguments generally are

- a) The number of misuses will be very low OR every law is misused – The objective of any law should be to punish the guilty and protect the innocent. The persecution of innocents cannot be justified in any circumstances. As is the case with 498a, this law will be heavily misused in urban India. Statistics prove that more than 90% of the cases filed under the dowry law (498a) are false [see references]
- b) If she is happy, then why will she file a complaint – Ah ! So, the man exists at the mercy of the woman. If the wife wants to kick out old parents from home or wants to pursue an affair and should the man dare to object, she can get him incarcerated with alacrity. Any law that forcefully subjects a section of a society to conduct as per the pleasure of another section is deemed oppressive and should be vehemently opposed.
- c) There are other provisions to deal with the misuse of this law – The fact is that there are other legal provisions to deal with domestic violence as well. If a strict law is made for a specific purpose, then the provisions for dealing with its misuse should be in the law itself.

The third major flaw in this law is that it provides an all-encompassing definition of domestic violence and some terms (insults, name calling) are extremely subjective. The radical feminists claim that 70% of women in India face domestic violence. While these statistics can not be confirmed [pls see references], however, given that even an insult is considered domestic violence, it is clear that this number has been really blown out of proportion. Interestingly, they are silent on how many Indian men suffer domestic violence using the same criteria. Nagging wives are a well known phenomenon and it would qualify for verbal abuse as per this law, which would mean an equally high number of men are victims of domestic violence. If the criteria for defining domestic violence, as per this law, are to be believed, then practically every man and woman in a relationship is a victim of domestic violence !! The fact is that these statistics are not an accurate reflection of the social conditions. They seem to have been conveniently misrepresented to promote vested interests.

This law strikes at the very foundation of marriage by promoting intolerance and litigation for petty domestic disputes. It is universally recognized that from time to time differences arise in a marriage and sometimes people, both men and women, behave in hurtful ways towards each other. Most people, though, are able to work them out and lead a more or less happy life with their loved one. However, this law makes it very easy to escalate the domestic problems in daily life to such a level that it eventually leads to a breakdown in marriage. Once a man has been accused of domestic violence for a something relatively minor (insult), while he might have been subjected to the same treatment from her, he will perpetually feel threatened by his partner and that is the beginning of the end. This law will lead to more divorces, broken homes and the children will pay the ultimate price by getting robbed of a happy childhood.

There are degrees of domestic violence and not all conflicts in a relationship can be termed as domestic violence. This law trivializes the issue of domestic violence by including minor differences in its realm and by explicitly denying protection to half of the population.

The law in its current form is grossly inadequate to tackle the problem of domestic violence. It imposes a lot of responsibility on men, without giving them rights. On the other hand, it gives lots of rights to women without requiring them to be responsible. At the very minimum, it should be

made gender neutral, offering protection to both men and women. Also, provisions for stringent punishments need to be incorporated into the law to prevent misuse. Moreover, the law needs to be made more practical by differentiating between various degrees of conflicts and by unambiguously defining what constitutes domestic violence.

The fact is domestic violence is a serious problem and a neutral and unprejudiced law is needed to protect the genuine victims of domestic violence, irrespective of gender. The perpetrators of domestic violence need to be appropriately punished and dealt with. At the same time, protection cannot be withheld from real victims for any reason whatsoever, least of all their gender. One can be certain that there is something sinister about a law, when it intimidates and instills fear in innocent people. When a person who has not committed any crime, begins to fear punishment under the provisions of a law, it is not a law anymore – it is state sponsored terrorism.

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2. The US Govt. National family violence surveys of 1975 and 1985 (<http://www.ejfi.org/DV/dv-21.htm>).
3. Various studies on domestic violence conducted by the University of New Hampshire (<http://pubpages.unh.edu/~mas2/ipv-violence-by-women.htm>)
4. Ms. Renuka Chadhary's interview by Mr. Karan Thapar [available on the 498a.org videos section - <http://www.498a.org/video.htm>]
5. Statistics presented by the feminist organizations in India to justify the Domestic Violence Law, are proven false and the United Nations issues a clarification. [<http://www.mediaradar.org/alert20061113.php>] [<http://washingtontimes.com/corrections/20061128-102228-2806r.htm>]

13. A FEW TRUE STORIES OF 498A VICTIMS

See how innocent men and women are victimized by the draconian 498a law. See for yourself how easy it is for a wife to use this case to destroy an innocent man and his complete family. Look at how distressed people are when they contact us (some even considering suicide). Look at failed relationships, failed marriages and how kids just become pawns in the hands of unscrupulous women. Look at all the injustice that has been meted out to these families and see how some of them were betrayed by someone they considered their own. All cases are different but still have one thing in common – They are all victims of the legal system in which they are presumed guilty without even been given a chance to present their side of the story.

WIFE USES NRI HUSBAND FOR IMMIGRATION VISA AND 498A's HIM – HUSBAND'S MOTHER HOSPITALIZED

A Victim from Singapore

I am an NRI. I would like to draw your kind attention to the extreme abuse of anti-dowry Section 498a of IPC with my case. I am among many of the hundreds of thousands person whose whole innocent family is tortured just on a false complain if the wife is unable to adjust with her husband. The sufferers have to go under harassment and extreme stress after being held in police lockup and jail without any ground of proof and these people are assumed guilty by law. Is this justice to innocent senior citizen of India? Please go through my what happened to my innocent parents and brother after 14 months of my separation with my wife. I hope necessary actions are taken to prevent the misuse of any law. These incidents are now very common and many people are suffering because of such blind laws.

I am working as IT professional in Australia since last seven years. I completed my education (MCA) in India and have been in good job since then. I am currently

in Sydney. My parents are living in Faridabad. I got arranged marriage in India Oct 2001 and sponsored my wife, PS, to come over to Australia (on permanent residency visa) to live with me. We stayed together for eight months and during that period I found her to be extremely dishonest, unloyal, unfaithful, a big liar and greedy for money and it was obvious her intention to marry was just to come over to Australia and for the money. She had been asking me to sponsor her brother to Australia as well and to bear all his expenses on his education and living. There was no love, commitment though I tried my best to compromise with the situation and have excused her on all occasions assuming it may take time for her to adjust.

We went to India in Oct 2002 and there she tried a lot of trouble by creating misunderstanding between brothers, their wives and started stealing jewellery and cash from home to take it to her mothers place. Have been talking vulgar about my mother and brother. Then she was involved in a horrifying crime by secretly stealing and then destroying the passports of my younger brother and his wife. They are living in USA and where also on holidays there. My brother is working as software engineer in Chicago. She did it just two days before their departure and my brothers whole career was in danger as he could not go to USA. It is a long process to get the new passport issued and then get visa processing again. It was a mental torture for all of us. It was not known where the passport have gone until three days when the time came for me and my wife to come to back to Sydney. Our luggage was packed it was just five hours before our departure when we were getting ready and I found a trace of torn passport photo inside the toilet. It took me no time to understand by her activities that it was her act. I had to postpone our return to Sydney. I called my father-in-law and sent her back (Nov 2002). I have all the proofs with me that she has damaged the passport. She has tried to torture everyone in the family by her cruel and criminal acts. I then came back alone to Sydney in extreme stress.

I regretted a lot for marrying and loving such a stupid girl. She contacted me many times after that and asked me to call her back to Sydney. But her intentions were still clear. I can not live whole life with her. I am Australian citizen and by the Australian laws (validated by Indian law as well) I applied for divorce at the earliest possible date and had sent her notice on 16 Dec 2003 in Gujarat where she lives. The notice was received by her. Later suddenly on 14th Jan 2004, police and lawyer from Indore came and arrested my aged parents and my youngest brother who lives in Faridabad and within few hours took them to Indore. They have to get me as well but since I am in Australia, they can't arrest me. My mother had filed a false case of torture in dowry case under section 498A in Indore (Though her residence is in Unjha, Gujarat). She put a false allegation that I and my parents and have beaten her many times and even have tried to burn her for demand of dowry. I or my parents or any family member have never ever touched her with any bad intentions. She has accused this allegation after 14 months of separation upon receipt of divorce notice. She didn't even mention the fact, the real reason for what she was sent back to her fathers place. Rather she said that she came back herself. Though I have enough proofs for my claims. When my wife had spend just about initial month or two in whole of our married life with my parents. Also she had been separated and staying away for more than a year.

I was extremely shocked. I do not have nor my parents or brother have even touched her anytime with any intention of beating or burning. We are from respectable family. My father is retired engineer from Dept of Atomic Energy. My brothers are well settled and are earning extremely well.

She did such criminal act, still being decent we sent her back respectfully with her father when we separated. If we would have been strict, we could even have got her arrested for destroying passports. But still we respected her being a woman.

It was a brutal torture to my innocent retired aged parents and my innocent brother. Without any notice they had to travel from Faridabad to Indore in police custody for three days a distance of about 900km in

police vehicle. My mother is heart patient and is under treatment. She was extremely exhausted; it was a big risk for her. How can police just come and arrest and torture anyone just on someone's fraudulent and false allegation. Later my elder brother had to go from Rajasthan to get them released on bail on 16th Jan after spending one night in lockup and three days in police custody.

My parents have lived a very clean and respectful life but now have to see such a days. It is big slap on Indian judiciary that they can just destroy anyone's dignity and can prosecute without trial. There is no respect for senior citizens who have served the country for the whole life. At the same time the legal system have a blind faith on crook, cunning young married women and her parents. I am feeling dismay. My aged parents and brother have to suffer who have nothing to do with my wife. My crook wife and her greedy parents aim is to get me and extract a lot of money from me.

As a figure in India, almost 90% of such cases are dismissed by the court after find the case as malicious, but there is no punishment of making false allegations. Almost all the divorce ends up in 498A, where the reality is that dowry is not practiced and hardly any women are harassed in educated well earning family in urban area. And of 90% cases the police get a good excuse to harass any respectable person and then to discharge them after harassing. Lawyers and police are making a big money by trapping innocent citizens.

She was successful to get the complaint lodged at Indore and the police from other state came and arrested my parents and brother without permission of local police in Faridabad. Also a copy of FIR is still not been handed over to us.

In the ongoing crises my aged mother in India was admitted in hospital with severe cardiac pain and abnormal blood pressure on 22nd Jan'04 while they have to arrange lawyers and plan the visit to attend the next date 29th Jan with a notice of just 7 working days to be attend in Indore 900km far from our place. My mother's health is so severe that she is going to be operated today on 23rd Jan. Not attending will weaken our case. Who is going to look after my mothers and

aged father health?

As I am also the accused in my wife's complaint, I can't go there in India as the police will arrest me. I am just helpless. As such there is no fair judicial or law system in India. It's against the basic right to live with respect.

WIFE KILLED CHILD FOR EXTORTING MONEY

A Victim from Pune

Following has happened with me and my family till date.

1. Married in Feb 2003 according to Hindu rituals. This was arranged marriage.
2. Within the first month itself she ran away from my house AFTER MIDNIGHT FOR NO REASON and came back after 3-4 hours.
3. I tried to enquire the reason, she said, this marriage was against her will and she wanted to marry someone else.
4. When my parents tried to sort the matter out, she kicked my father. Aggrieved by such abusive behaviour, my father (and other family members) disconnected relations from me.
5. My father in law demanded 15 Lakhs, saying that we want to remarry our daughter to someone else. So, give us this much amount OR we will implicate you in false dowry harassment cases.
6. As my wife was pregnant at that time, she threatened to pay her Rs. 15 Lakhs and divorce otherwise she will kill the child.
7. I filed a police complaint regarding this, requesting police to save the unborn child. But Police didn't take any action. So, I tried to put my request in the court, there too a LONG date was given. MEANWHILE, the delivery time came and she was at her parent's house. THEY REALLY KILLED THE CHILD, as I was not ready for divorce and not in a position to pay that much amount.
8. After doing all this things, no department/officer is paying attention to my request. My in-laws are still making their unlawful demands. Case is in the court and 'Date after Date' is going on. Till date I am feeling depressed because of all this. I wonder what was the fault of the new born, who was killed by them at the

time of birth. It was a baby girl.

9. Currently I am running from pillar to post in hope of justice. As they are politically very sound, so no one is paying attention to my case.

10. At last I can conclude that due to this blackmailing tool in the form of 'false dowry harassment complaint + arresting of all accused without enquiry' (as no one in our family history been to police stations or Jail), I have lost my relations with three generations i.e. My Parents (and in-laws) + My brother (and brother in laws) + My daughter (Already killed). In future too I don't think that they will understand the importance of "Family Harmony".

HARRASED HUSBAND TRIES TO COMMIT SUICIDE – WIFE 498A's HIM

A Victim from Hyderabad

I got married in February 1998. I am from Andhra and she is from Maharashtra. Immediately after my marriage I went to Malaysia because of my job. She joined my after few months. We got a child and now he is around 5 yrs old. When she was with me in Malaysia she always used to take lot of money and used to send to her parents without my knowledge. My uncle had taken a loan of around 3 lakhs from me in various occasions when she was with me. But I have only few receipts of around 1.5 lakh as it happened few years back.

My wife always used to suspect me and made several insults in front of my colleagues and friends. Whenever I come to India for few days also she always used to insist to take either separate house or stay outside for staying rather than at my home. She used to insult my parents and my sisters when they met me or I was with them. One time when I came to India and I forcibly brought her my home to stay for few days, her parents came to my house and created lot of fuss, shouted at my parents & me and insulted in front of my relatives & friends. I couldn't bear this and tried to commit suicide. Somehow I got survived and I came to home. As soon I reached home they started shouting again and took her daughter along with them. This

incident happened in October 2003. I tried to mediate with them through some elders of my community but they refused to send their daughter and they insulted the elders whom we sent to them.

got fed up all this and then applied for divorce on mentally cruelty grounds in Oct 2003 itself and left India. As their place is near to Mumbai (not Mumbai, a small town 100 km away from Mumbai) they applied for change of court in Supreme Court. In the mean they filed a petition for maintenance at their place, but I didn't challenge it. The Supreme Court gave the order to change case to Thane, Maharashtra family court. This happened in early 2004. Since the case came to Thane Court nothing progressed. Since I applied for divorce I had been trying through mediators to settle the issue and get the divorce mutually. But they never cooperated and everything went vain of all my efforts.

In Nov 2004, my sister (unmarried) passed away because of some health problem. By seeing this mother went to coma. I then came to India immediately and admitted her in hospital on the same night without attending my sister's funeral. My mother went on coma for 3 days. I was in hospital for 14 days with my mother. While in the hospital none from their side came (my uncle is my mother's own brother and they got to know the news on the same day it happened). I even tried one time for negotiation with the through mediators while I was in hospital. But again I was failed. Immediately after my mother discharged (the next day it self), I left India. In the early 2005 I have got Australian Permanent Resident and I moved to Australia. Since then I kept on sending the maintenance allowance to her from Australia. But they refused to take. In the mean I applied for divorce from Australia itself and I have got divorce from Australian Court in November 2005. By seeing my divorce petition my wife file a false case, 498A against me and my parents in Nov 2005.

The Maharashtra Police came in the mid of the night and arrested my father. They tried to arrest my mother but seeing her health condition (she is quite old and can't even walk properly). My father spent one week in the police station. In the one-week the Police again to my place (from Maharashtra to Andhra) brought my

father to my home one more time for taking their things from my home (They took lots of things even I bought for my home also like TV, fridge, Washing Machine, etc.). The Police even tried to took the money from my NRI account and locker (my wife knows well about my savings in my NRI account and locker). But the bank Manager refused to handover to Police as they didn't have court orders. I engaged one lawyer who resides in Mumbai (took lot of money but did nothing much, as we don't know any body in Mumbai/Maharashtra). After a week my father came out on bail. I engaged one more local lawyer again there it self as my lawyer couldn't show much interest again (I feel he might have joined with them). Since then my father attended one time for hearing. We again started negotiating with them again. This time they sent a mediator to us and told a huge amount for mutual agreement. I spent most of my savings for my family, their family and to Lawyers. Now the amount they asked which I simply can't give as it is impossible for me.

Yester day I heard from my lawyer that they filed a petition in Maharashtra court to Passport Office, Hyderabad to cancel my Passport, so that I can come to India. Now I want to seek help/guide from you all in this matter. Ever since I married and even I got the divorce from Australian Court also I am still mentally getting tortured. So my dear friends pls help me in this regard as I am very frustrated now. I need your advice, suggestions. I can't trust anyone in India except you all as you are like me.

AMERICAN WOMAN MARRIED TO INDIAN DUMFBOUNDED BY INDIAN LAW

Victim from USA

I am writing to you because I have reached a desperate level and I have nowhere else to turn. I am an American married to an NRI. I have only traveled to India once, and that for less than 2 weeks. This trip was a happy occasion, one that allowed me to meet my husband's family and to get to know them and vise-versa. Since my departure from India my life has been a nightmare. My family and I have become victims of the rampant misuse of the 498A laws in India. My brother-in-law's wife and her family have falsely accused my family of

some sort of abuse and are demanding obscene amounts of money to settle this fraudulent case. My 54-year-old mother-in-law has been imprisoned for over two weeks now and I have been told that she will remain there indefinitely. She is a diabetic widow whose health is failing. I must be quite frank with you, she is dying. I have been informed that the only way to get her out of prison is to settle with my brother-in-laws wife and her family. I have been told that if I do not do this, my mother-in-law could spend up to 3 years in prison for a crime she did not commit. She has been arrested and imprisoned based solely on the statements of a deceptive young woman who is looking only for financial gain at my personal expense. There has been no investigation of any kind. No evidence to substantiate her fraudulent claims. It is simply her word. I ask you, what should I do? I have an attorney in New Delhi working on this case but I feel he may not be the best in this area because he seems to be continually blindsided by the other side. In the United States this type of activity is called extortion and I would be able to bail my mother-in-law out of prison while the charges were being investigated. I have been informed that in India people accused of 498A charges are "guilty until proven innocent". Do you have any suggestions on what steps should I take in this unfortunate situation?

HOPE AT LAST – ADULTEROUS WIFE TAKEN TO TASK

- Victim from Jharkhand

I had caught my wife living in adultery with my friends in Dubai on 23rd April, 2005. Have letters and mobile recording of her. My daughter is eye-witness to her unbecoming behaviour. She accepted her fault, and I told her that I shall now seek divorce. Brought whole family from Abu Dhabi on 28th April, 2005. She was left at Her parent's house. I took my children with me. Two days later, she was to meet at Family court to discuss mutual consent divorce to save the face of her family. After 4 days, I was summoned by Police of her area as she has filed CR106/2005 under IPC498a on 4th May\2005. My lawyer told me to proceed to my work. I was arrested like a terrorist at Mumbai airport at Immigration on 7th May, 2005. I surrendered. Was brought at Police Station, and put behind bar along with hard-core criminals. My relatives came, including lawyer. My children/cousins sang bhajans/prayed outside the

jail. It was there I learnt what IPC-498a is, and what devastating blows it can land on one's life!! but I got bail.

Next day, I hired a local lawyer thru the help of same police station, paid hefty amount only to apply for return of passport. Again, God's hand was seen - Judge heard my prayer which I myself narrated, and granted me permission to go back to work abroad with conditions to retain my children in India. I obeyed the order.

I got my children admitted in residential school outside Mumbai. Filed Divorce under cruelty/adultery on 15th June\05. Attended 498a charge-sheet filing on 16th June\2005. My Wife later filed children custody and maintenance petitions in family court. Later, She applied 3 Interim applications. I attended family court on 1st Dec\05. She later went to High Court, and managed thru wrong means a stay order on my NRI-SBI Bonds. I attended 498a trial on 23rd Jan\2006. It was usual drama of attendance with long date after 6 months!

I attended family court on 24th Jan\2006 along with my two children. Again attended family court on 13th Feb. '2006 along with children. I was made to bring children to court on both occasions! Returned her passport, and disclosed whereabouts of children to her before court. I challenged her Stay Order in Appeal Court on 15th feb'06 and exposed her lawyer's fraud of getting Stay-order to frustrate me! HC accepted the appeal and fired/warned her lawyer. HC asked us not to come to HC again, and to rely on family court verdicts. Main trial has yet to begin.

I guess, mentally I am in strong position - for the reasons that I still have my jobs, my children are studying well, healthy, happy and are on my side. Today, my children hate their biological mother, and hardly miss their mother. My daug. Is 13-1/2 yrs and son is 10yrs. Now the ball is in her court. Unless she quashes 498a in HC, no settlement is possible from my side. I am ready to prove her fault.

I suggest all victims not to give up, never think of suicide etc. Truth always wins, though it has to traverse thru troubled waters. Have firm faith in god, and proceed with right action, and 'chaankya neeti'.

14. REFERENCES AND RESOURCES

Collection of News Article References:

<http://www.498a.org/newsArticleReference.htm>

Interviews:

Victim Interviews: <http://www.498a.org/video.htm>

Blogs:

<http://presentindia.blogspot.com/>

<http://savemarriages.wordpress.com>

<http://498a.blogspot.com/>

<http://batteredmale.blogspot.com/>

<http://stannoxane.blogspot.com/>

Research Reports

http://www.498a.org/contents/publicity/498a_YehKaisaInsaaf.pdf

Informative Sites:

<http://www.498a.org>

<http://www.mynation.net>

Books:

Who Stole Feminism – Christina Summers

Myth of Male Power – Warren Farrell

Some Key Studies:

- Collection of around 200 news articles: <http://www.498a.org/newsArticleReference.htm>
- Study that shows that in India, women are much more violent than men: <http://pubpages.unh.edu/~mas2/ID41E2.pdf>
- Nearly 200 studies around the world show that men and women are equally likely to engage in partner aggression: <http://www.csulb.edu/~mfiebert/assault.htm>
- The US Govt. National family violence surveys of 1975 and 1985: <http://www.ejfi.org/DV/dv-21.htm>
- Various studies by univ of New Hampshire: <http://pubpages.unh.edu/~mas2/ipv-violence-by-women.htm>
- “When She Was Bad – Violent Women and the Myth of Innocence”, written by Patricia Pearson, a self-described feminist

NRI Harassment:

http://www.498a.org/contents/paperArticles/NRI_binder.pdf

<http://www.498a.org/contents/paperArticles/LettersToGovernment.pdf>

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GOVERNMENT OF INDIA

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LAW

COMMISSION

OF

INDIA

Section 498A IPC

Report No.243

AUGUST 2012

न्यायगूर्ति पी० वी० रेड्डी
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30 August 2012

Dear Minister Sri Salman Khurshid ji,

The 243rd Report of the Law Commission on S.498A of Indian Penal Code is enclosed herewith. The subject has been taken up pursuant to the reference made by the Home Ministry and the observations of Supreme Court in Preeti Gupta Vs. State of Jharkhand (AIR 2010 SC 3363). in the wake of complaints of misuse of the Section. Whether any amendments are needed to this Section and other allied provisions in Cr.PC and in the alternative what possible measures could be taken to check the alleged misuse and the disruption of family have been examined.

2. The Commission has reiterated the recommendation made in the 237th Report that the offence should be made compoundable with the permission of the Court. There is overwhelming view in favour of making it compoundable. Certain precautions to be taken before granting permission are suggested. However, the Commission has recommended that it should remain non-bailable. The misuse (the extent of which is not established by empirical data) by itself shall not be a ground to denude the provision of its efficacy, keeping in view the larger societal interest.

3. The Commission has pointed out that proper observance of the statutory guidelines regarding arrest and initial investigation to verify the genuineness of the allegations and resorting to arrest only in cases of serious magnitude such as violence coupled with the steps taken for effecting conciliation through the media of professional counsellors, trained mediators, local respected persons (professionals and retired officials), etc., would go a long way in improving the situation. The addition of sub-section (3) to Section 41 of Cr. PC (dealing with arrest) prescribing statutory requirement for effecting arrest in S. 498A cases has been recommended to impart clarity. The amendment of S.358 Cr. PC to enhance the compensation amount has also been recommended. It is felt that the introduction of a separate provision for providing punishment for false complaints in S. 498A cases is not required. The protective measures and assistance to be given to the aggrieved women have also been suggested.

With regards and good wishes,

(P.V. Reddi)

Sri Salman Khurshid, M.P.
Hon'ble Union Minister for Law and Justice
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Section 498A IPC

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Section 498A IPC

1. Introduction

1.1 Keeping in view the representations received from various quarters and observations made by the Supreme Court and the High Courts, the Home Secretary, Government of India through his D.O. letter dated 1st September, 2009 requested the Law Commission of India to consider suggesting amendment, if any to s.498A of Indian Penal Code or other measures to check the alleged misuse of the said provision. Thereafter, in the case of *Preeti Gupta vs. State of Jharkhand*, (2010) the Supreme Court observed that “serious re-look of the entire provision is warranted by the Legislature. It is a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over-implication is also reflected in a very large number of cases”. Copy of the Judgment has been directed to be sent to the Law Commission and Union Law Secretary for taking appropriate steps. The Law Commission of India after intense deliberations released a Consultation Paper-cum-Questionnaire which is attached to this report as **Annexure-I.**

1.2 S.498A was introduced in the year 1983 to protect married women from being subjected to cruelty by the husband or his relatives. A punishment extending to 3 years and fine has been prescribed. The expression ‘cruelty’ has been defined in wide terms so as to include inflicting physical or mental harm to the body or health of the woman and indulging in acts of harassment with a view to coerce her or her relations to meet any unlawful demand for any

property or valuable security. Harassment for dowry falls within the sweep of latter limb of the section. Creating a situation driving the woman to commit suicide is also one of the ingredients of 'cruelty'. The offence under s.498A is cognizable, non-compoundable and non-bailable. The section is extracted below:

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 punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.-For the purpose 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 woman; or*
- (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."*

1.3 Several enactments and provisions have been brought on the statute book during the last two or three decades to address the concerns of liberty, dignity and equal respect for women founded on the community perception that women suffer violence or deprived of their constitutional rights owing to several social and cultural factors. Meaningful debates and persuasions have led to these enactments. The insertion of Section 498A IPC is one such move and it penalizes offensive conduct of the husband and his relatives towards the married woman. The provision together with allied provisions in Cr. P.C. are so designed as to impart an element of deterrence. In course of time, a spate of

reports of misuse of the section by means of false / exaggerated allegations and implication of several relatives of the husband have been pouring in. Though there are widespread complaints and even the judiciary has taken cognizance of large scale misuse, there is no reliable data based on empirical study as regards the extent of the alleged misuse. There are different versions about it and the percentage of misuse given by them is based on their experience or *ipse dixit*, rather than ground level study.

2. Judicial decisions

2.1 In the case of *Preeti Gupta Vs. State of Jharkhand*¹ (supra) decided in 2010, the Supreme Court observed that a serious relook of the provision is warranted by the Legislature. The Court said: “It is a matter of common knowledge that exaggerated versions of the incidents are reflected in a large number of complaints”. The Court took note of the common tendency to implicate husband and all his immediate relations. The Supreme Court directed the Registry to send a copy of judgment to the Law Commission and Union Law Secretary so that appropriate steps may be taken in the larger interests of society. In an earlier case also - *Sushil Kumar Sharma Vs. UOI*² (2005), the Supreme Court lamented that in many instances, complaints under s.498A were being filed with an oblique motive to wreck personal vendetta and observed. “It may therefore become necessary for the Legislature to find out ways how the makers of frivolous complaints or allegations can be

¹ AIR 2010 SC 3363

² 2005 6 SCC 281

appropriately dealt with". It was also observed that "by misuse of the provision, a new **legal terrorism** can be unleashed".

2.2 Various High Courts in the country have also noted that in several instances, omnibus allegations are made against the husband and his relations and the complaints are filed without proper justification. The need to exercise caution in the case of arrest of the husband and his relatives has been stressed while observing that by such a step, the possibility of reconciliation becomes remote and problematic. In some of the cases, directions were given by the High Courts for regulating the power of arrest and for taking necessary steps to initiate conciliatory effort at the earliest point of time. Reference may be made in this context to the decision of Delhi High Court in *Chandrabhan Vs. State* (order dated 4.8.2008 in Bail application No.1627/2008) and of the Madras High Court in the case of *Tr. Ramaiah Vs. State* (order dated 7.7.2008 and 4.8.2008 in MP No.1 of 2008 in Crl. O.P. No.10896 of 2008). In the former case, it was observed that "*there is no iota of doubt that most of the complaints are filed in the heat of the moment over trifling fights and ego clashes. It is also a matter of common knowledge that in their tussle and ongoing hostility, the hapless children are the worst victims*". The following directions were given to the police authorities:

- i) "FIR should not be registered in a routine manner.
- ii) Endeavour of the police should be to scrutinize complaints carefully and then register FIR.
- iii) No case under section 498-A/406 IPC should be registered without the prior approval of DCP/Addl. DCP.
- iv) Before the registration of FIR, all possible efforts should be made for reconciliation and in case it is found that there is no possibility of

settlement, then, necessary steps should, in the first instance, be taken to ensure return of sthridhan and dowry articles to the complainant.

- v) Arrest of main accused be made only after thorough investigation has been conducted and with the prior approval of the ACP/DCP.
- vi) In the case of collateral accused such as in-laws, prior approval of DCP should be there on the file.”

The other directions given were :-

The Delhi Legal Services Authority, National Commission for Women, NGOs and social workers working for upliftment of women should set up a desk in Crime Against Women Cell to provide them with conciliation services, so that before the State machinery is set in motion, the matter is amicably settled at that very stage. The need to explore the possibility of reunion and conciliation when the case reaches the Court was also stressed. In conclusion, it was observed that in these matters, the parties themselves can adopt a conciliatory approach without intervention of any outside agency.

2.3 In an earlier judgment of Delhi High Court in the case of “*Court on its own in Motion vs. CBI*”, reported in 109 (2003) Delhi Law Times 494, similar directions were issued to the police and courts regarding arrest, grant of bail, conciliation etc. It appears that these procedural directions issued by the High Court are being followed in Delhi as stated by senior police officers of Delhi, though according to the version of some lawyers, there are many instances of violation at the police station level. It is to be mentioned that after the order in *Chander Bhan’s case*, (*supra*), the Commissioner of Police of Delhi issued

Standing Order No.330 of 2008 compiling the "Guidelines for Arrest" as laid down by the Supreme Court and Delhi High Court. The judgments relevant to Section 498-A and the directions issued therein were referred to in the Standing Order. It is learnt that the practice of obtaining the permission of ACP/DCP level officers before effecting arrest of husband/relatives is being followed in Delhi. In many States, according to information received by the Chairman of this Commission, there are no systemic guidelines and there is no regular monitoring of this type of cases by the higher officials. Ad-hoc practices and procedures are in vogue.

2.4 The directives given by the Madras High Court in the case of *Tr. Ramiah* are as follows:

- i) Except in cases of dowry death/suicide and offences of serious nature, the Station House Officers of the All Women Police Stations are to register F.I.R. only on approval of the Dowry Prohibition Officer concerned.
- ii) Social workers/mediators with experience may be nominated and housed in the same premises of All Women Police Stations along with Dowry Prohibition Officers.
- iii) Arrest in matrimonial disputes, in particular arrest of aged, infirm, sick persons and minors, shall not be made by the Station House Officers of the All Women Police Stations.
- iv) If arrest is necessary during investigation, sanction must be obtained from the Superintendent of Police concerned by forwarding the reasons recorded in writing.
- v) Arrest can be made after filing of the final report before the Magistrate concerned if there is non-cooperation and abscondance of accused persons, and after receipt of appropriate order (Non-Bailable Warrant).
- vi) Charge sheet must be filed within a period of 30 days from the date of registration of the F.I.R. and in case of failure, extension of time shall be sought for from the jurisdiction Magistrate indicating the reasons for the failure.
- vii) No weapon including lathis/physical force be used while handling cases at the All Women Police Stations.

- viii) Complainants/victims should be provided with adequate security/accommodation at Government Home and interest of the children must be taken care of.
- ix) Stridana properties/movables and immovable to be restored at the earliest to the victims/complainants and legal aid may be arranged for them through Legal Services Authority for immediate redressal of their grievances.”

2.5 Pursuant to this order, the Director-General of Police, Tamil Nadu, issued a circular to the effect that the said orders of the Court should be strictly followed. In the further order dated 4.8.2008, the Court observed that when the I.O. seeks remand of the accused, the Magistrate must examine the necessity therefor and the remand should not be ordered mechanically on the mere request of the I.O. The Magistrate should be satisfied that sufficient grounds exist for directing remand. Further, the Court deprecated the practice of conducting lengthy *panchayats* in police stations.

2.6 As regards the decisions of Delhi and Madras High Courts referred to above, there are a few comments which we consider appropriate to make. The decisions make the offence practically bailable by reason of various qualifications and restrictions prescribed. The decision of Madras High court goes to the extent of saying that arrest can be made only after filing of the final report before the Magistrate and on the basis of non-bailable warrant issued by the Magistrate. Whether this judicial law-making based on experience and expediency of restraining the power of arrest in matters arising out of matrimonial problems, is legally sound is one question that arises. Secondly, whether the registration of FIR can be deferred for sometime i.e., till initial investigation and reconciliation process is completed, is another point that

arises. In *Bhajan Lal's case*³, the Supreme Court observed, "It is therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

2.7 However, in a recent case of *Lalita Kumari v. State of Uttar Pradesh*⁴, the question whether a police officer is bound to register the FIR when a cognizable offence is made out or he has the discretion to conduct some kind of preliminary inquiry before registration of FIR, has been referred to a larger bench of Supreme Court in view of the apparent divergence in views. The law on this point is therefore in an uncertain state. In this situation, the police in various States have to follow the law laid down or directives issued by the respective High Courts in regard to registration of FIR till the law is settled by the Supreme Court. Shri Amarjit Singh, Id. Member of the Commission has suggested that except in cases of physical violence, the FIR need not be registered instantaneously without any enquiry being made. Whether there should be a legislative provision in this regard specifically with reference to F.I.Rs under S, 498-A is a matter on which a fresh look could be taken after the Supreme Court interprets the relevant Sections in the above case.

³ State of Haryana v. Bhajan Lal, AIR 1992 SC 604

⁴ AIR 2012 SC 1515

3. Some data regarding Prosecutions u/s 498-A

3.1 The complaint of over-implication noticed by the Courts is borne out by the statistical data of the cases under S,498A. According to informations received from the Hon'ble High Courts (during the year 2011), 3,40,555 cases under Section 498-A IPC were pending trial in various courts towards the end of 2010. There were as many as 9,38,809 accused implicated in these cases. This does not include cases pertaining to Punjab and Haryana (statistics not available). The implication of the relatives of husband was found to be unjustified in a large number of decided cases. While so, it appears that the women especially from the poor strata of the society living in rural areas rarely take resort to the provision, though they are the worst sufferers. However, according to Delhi Police officials, with whom the Commission had interacted, women from poor background living in slums are also coming forward to file complaints.

3.2 According to the statistics published by National Crime Records Bureau for the year 2011 (Table4), 3,39,902 cases under S,498A were pending trial in various courts at the end of the year and 29,669 cases under S,304-B of IPC. The conviction rate in S,498A cases is 21.2% and in S,304-B cases, it is 35.8%. Number of cases reported under S,498A in the year 2011 are 99,135 and during the two previous years, they were 94,041 and 89,546. Thus, there is slight increase (about 5%) in the reported cases every year. As stated earlier, many cases go unreported. The statistics relating to reported incidents may not therefore furnish a reliable comparative indicator of the actual incidence of

crimes in the States. For instance, when compared to other cities, the percentage share of incidents reported under S, 498-A is the 2nd highest in Delhi. It may be because that the percentage of reporting is apparently high. The dowry-death cases (S,304-B) reported during the years 2009-11 are: 8,383, 8,391 and 8,618. There is a view-point that if the offence under S,498A is made bailable or non-cognizable, it will cease to be a deterrent against cruelty inflicted on married women and the dowry-deaths may increase.

3.3 As noticed earlier, the conviction rate in respect of the cases under s.498A is quite low – it is about 20%. It is learnt that on account of subsequent events such as out-of-court settlement, the complainant women do not evince interest in taking the prosecution to its logical conclusion. Further, ineffective investigation is also known to be one of the reasons for low conviction rate.

4. Arguments: Pro & Contra

4.1 The arguments for relieving the rigour of s.498A by suitable amendments (which find support from the observations in Court judgments and Justice Malimath Committee's report on Reforms of Criminal Justice System) are:

The harsh law, far from helping the genuine victimized women, has become a source of blackmail and harassment of husbands and others. Once a complaint (FIR) is lodged with the Police under s.498A/406 IPC, it becomes an easy tool in the hands of the Police to arrest or threaten to arrest the husband and other relatives named in the FIR without even considering the intrinsic worth of the allegations and making a preliminary investigation. When the members of a family are arrested and sent to jail, with no immediate prospect of bail, the chances of amicable re-conciliation or salvaging the marriage, will be lost once and for all. The possibility of reconciliation, it is pointed out, cannot be ruled out and it should be fully explored. The imminent arrest by the Police will thus be counter-productive. The long and protracted criminal trials lead to acrimony and

bitterness in the relationship among the kith and kin of the family. Pragmatic realities have to be taken into consideration while dealing with matrimonial matters with due regard to the fact that it is a sensitive family problem which shall not be allowed to be aggravated by over-zealous/callous actions on the part of the Police by taking advantage of the harsh provisions of s.498A of IPC together with its related provisions in CrPC. It is pointed out that the sting is not in s.498A as such, but in the provisions of CrPC making the offence non-compoundable and non-bailable.

4.2 The arguments, on the other hand, in support of maintaining the *status quo* are briefly:

S.498A and other legislations like Protection of Women from Domestic Violence Act have been specifically enacted to protect a vulnerable section of the society who have been the victims of cruelty and harassment. The social purpose behind it will be lost if the rigour of the provision is diluted. The abuse or misuse of law is not peculiar to this provision. The misuse can however be curtailed within the existing framework of law. For instance, the Ministry of Home Affairs can issue 'advisories' to State Governments to avoid unnecessary arrests and to strictly observe the procedures laid down in the law governing arrests. The power to arrest should only be exercised after a reasonable satisfaction is reached as to the bona fides of a complaint and the complicity of those against whom accusations are made. The "Crime Against Women Cells" should be headed by well trained and senior lady police officers. These steps would go a long way in preventing the so-called misuse. Side by side, steps can be taken to effect conciliation between the spouses in conflict and the recourse to filing of a charge-sheet under s.498A shall be had only in cases where such efforts fail and there appears to be a *prima facie* case.

Counselling of parties should be done by professionally qualified counsellors and not by the Police. These views have been echoed among others by the Ministry of Women and Child Development.

4.3 Further, it is pointed out that a married woman ventures to go to the Police station to make a complaint against her husband and other close relations only out of despair and being left with no other remedy against cruelty and harassment. In such a situation, the existing law should be allowed to take its own course rather than over-reacting to the misuse in some cases. There is also a view expressed that when once the offending family members get the scent of the complaint, there may be further torture of the complainant and her life and liberty may be endangered if the Police do not act swiftly and sternly. It is contended that in the wake of ever increasing crimes leading to unnatural deaths of women in marital homes, any dilution of Section 498-A is not warranted. Secondly, during the process of mediation also, she is vulnerable to threats and harassment. Such situations too need to be taken care of.

5. Thus, the **triple problems** that have cropped up in the course of implementation of the provision are:(a) the police straightaway rushing to arrest the husband and even his other family members (named in the FIR), (b) tendency to implicate, with little or no justification the in-laws and other relations residing in the marital home and even outside the home, overtaken by feelings of emotion and vengeance or on account of wrong advice, and (c) lack

of professional, sensitive and empathetic approach on the part of the police to the problems of woman under distress.

6. View of National Commission for Women

6.1 The view point of National Commission for Women represented by Member-Secretary placed before the Parliamentary Committee on Petitions (Rajya Sabha) (report presented on 07.09.2011) has been summarized in the report of the Committee as follows:

- (i) Section 498A, IPC, provisions of the Dowry Prohibition Act 1961 and the Protection of Women from Domestic Violence Act 2005 have an element of commonality and need to be harmonized and uniformly implemented;
- (ii) Police should in the interest of the protection of the constitutional rights of a citizen ensure that no arrest should be made without a reasonable satisfaction after some investigation as to the genuineness and bonafide of a complaint and the need to effect arrest;
- (iii) Creation of *Mahila Desks* at police station and Crime Against Women (CAW) Cell, at least at the district level which would specifically deal the complaints made by women. When a wife moves to file a complaint to a women cell, a lot of persuasion and conciliation is required. The Legal Service Authorities of the States / UTs, National Commission for Women, NGO and social workers should set up a desk in CAW Cell to provide conciliation services to the women so that before the state machinery is set in motion the matter is amicably settled at that every stage;
- (iv) In case of matrimonial disputes, the first recourse should be effective conciliation and mediation between the warring spouses and their families and recourse of filing charges under Section 498A, IPC may be resorted to in cases where such conciliation fails and there appears a *prima facie* case of Section 498A of IPC and other related laws; and
- (v) Counseling mechanism envisaged under the PWDVA should be implemented by State Governments and counseling of parties should be done only by professionally qualified counselors and not by the police. The police may consider empanelling professional counselors with CAW Cells.

7. The Approach and views of the Commission broadly

7.1 The Commission is of the view that the Section together with its allied Cr.PC provisions shall not act as an instrument of oppression and counter-harassment and become a tool of indiscreet and arbitrary actions on the part of the Police. The fact that s.498A deals with a family problem and a situation of marital discord unlike the other crimes against society at large, cannot be forgotten. It does not however mean that the Police should not appreciate the grievance of the complainant woman with empathy and understanding or that the Police should play a passive role. S.498A has a lofty social purpose and it should remain on the Statute book to intervene whenever the occasion arises. Its object and purpose cannot be stultified by overemphasizing its potentiality for abuse or misuse. Misuse by itself cannot be a ground to repeal it or to take away its teeth wholesale. The re-evaluation of Section 498-A merely on the ground of abuse is not warranted. Besides that, while courts are confronted with abusive dimensions, sometimes very visibly in Section 498A prosecutions, we cannot close our eyes to a large number of cases which go unprosecuted for a variety of reasons.

7.2 Section 498-A has to be seen in the context of violence and impairment of women's liberty and dignity within the matrimonial fold. Mindless and senseless deprivation of life and liberty of women could not have been dealt with effectively through soft sanctions alone. Even though values of equality and non-discrimination may have to gain deeper roots through other social

measures, the need to give valuable protection to vulnerable sections of women cannot be negated.

7.3 While the Commission is appreciative of the need to discourage unjustified and frivolous complaints and the scourge of over-implication, it is not inclined to take a view that dilutes the efficacy of s.498A to the extent of defeating its purpose especially having regard to the fact that atrocities against women are on the increase. A balanced and holistic view has to be taken on weighing the pros and cons. There is no doubt a need to address the misuse situations and arrive at a rational solution – legislative or otherwise, while maintaining the efficacy of law. While we acknowledge diverse points of view, some with extreme emphasis and connotations, the point to be noted is that the value to be attached to the rights of women are no less than the value to be attached to the family as a unit and vice-versa. The challenge before the community is to ensure the promotion of both values. The emphasis should therefore be on wise moderations without overlooking the need and relevance of the retention of penal sanctions necessary to protect and promote women's rights and interests.

7.4 There is also a need to create **awareness** of the provisions especially among the poor and illiterate living in rural areas who face quite often the problems of drunken misbehavior and harassment of wives. More than the women, the men should be apprised of the penal and other provisions of law protecting the women against harassment at home. The easy access of aggrieved women to the Taluka and District level Legal Service Authorities

and/or credible NGOs with professional counsellors should be ensured by appropriate measures. There should be an extensive and well-planned campaign to spread awareness on right lines. Presently, the endeavour in this direction is quite minimal. Visits to few villages once in a way by the representatives of LSAs, law students and social workers is the present scenario.

7.5 There is an all-round view that the lawyers whom the aggrieved women or their relations approach in the first instance should act with a clear sense of responsibility and objectivity and give suitable advice consistent with the real problem diagnosed. Exaggerated and tutored versions and unnecessary implication of husband's relations should be scrupulously avoided. The correct **advice of legal professionals** and the sensitivity of Police officials dealing with the cases are very important, and if these are in place, undoubtedly, the law will not take a devious course. Unfortunately, there is a strong feeling that some lawyers and police personnel have failed to act and approach the problem in a manner ethically and legally expected of them.

8. Compounding the Offence

8.1 There is preponderance of opinion in favour of making the offence under S,498-A compoundable with the permission of the court. Even those (individuals, officials and organizations) who say that it should remain a non-bailable offence, have suggested that the offence should be made compoundable, subject to the permission of court. Some States, for e.g.,

Andhra Pradesh have already made it compoundable. The Supreme Court, in the case of *Ramgopal v. State of M. P. in SLP (Crl.) No. 6494 of 2010* (Order dt. July 30, 2010), observed that the offence under S, 498-A should be made compoundable. However, there is sharp divergence of views on the point whether it should be made a bailable offence. It is pleaded by some that the offence should be made bailable at least with regard to husband's relations and in respect of the cases falling under second part of the Explanation Clause (b) to Section 498-A.

8.2 As regards compoundability, the Commission has given a comprehensive report (237th Report) under the title of "Compounding of IPC Offences". The Commission recommended that the offence under Section 498A should be made a compoundable offence with the permission of Court. The Commission has suggested the inclusion of the following sub-section in S,320 Cr.PC:

After the application for compounding an offence under S.498A of Indian Penal Code is filed and on interviewing the aggrieved woman, preferably in the Chamber in the presence of a lady judicial officer or a representative of District Legal Services Authority or a counsellor or a close relation, if the Magistrate is satisfied that there was prima facie a voluntary and genuine settlement between the parties, the Magistrate shall make a record to that effect and the hearing of application shall be adjourned by three months or such other earlier date which the Magistrate may fix in the interests of Justice. On the adjourned date, the Magistrate shall again interview the victim woman in the like manner and then pass the final order permitting or refusing to compound the offence after giving opportunity of hearing to the accused. In the interregnum, it shall be open to the aggrieved woman to file an application revoking her earlier offer to compound the offence on sufficient grounds.

The relevant part of Commission's report is furnished in **Annexure-II**.

8.4 In the 154th Report of the Law Commission also, there was a clear recommendation to make the offence compoundable. Justice Mallimath Committee on Criminal Justice Reform also recommended that it should be made compoundable as well as bailable. The Committee of Petitions (Rajya Sabha) in the report presented on 7.09.2011, observed thus at para 13.2 under the heading “Making the offence under Section 498A IPC compoundable”:

“The Committee notes that the offence under Section 498A IPC is essentially a fallout of strained matrimonial relationship for which there might be various considerations. Since there can be various causes leading to an offence under Section 498A, IPC and parties to the marriage could be responsible for the same in varying degrees, it would be appropriate if the remedy of compromise is kept open to settle a matrimonial dispute. In this context, the Committee feels that in case of any marital discord which has reached the stage of a complaint under Section 498A, IPC, it would be better if the parties have the option of a compromise whereafter they can settle down in their lives appropriately for a better future rather than diverting their energies negatively by pursuing litigation. The Committee recommends to the Government to consider whether the offence under Section 498A, IPC can be made compoundable.”

8.5 These observations and recommendations of the Parliamentary Committee reinforces the view taken by the Law Commission in 237th Report which is annexed herewith (**Annexure II**). In the 111th report of the Department related Standing Committee on Home Affairs on the Criminal Law Amendment Bill, 2003 (report of 2005), the Committee categorically recommended that the offence under Section 498-A should be made compoundable. The Committee of Petitions (Rajya Sabha), recommended that the offence under Section 498A should continue to be cognizable and non-bailable while “strongly recommending” that “*the ill-effects and miseries of the provision should be checked.*” The Committee observed further: “*the Committee*

fears that failure to do so may leave no option except to dilute the law by making the same non-compoundable and bailable.” Certain measures to check misuse were suggested which will be referred to at the appropriate juncture.

9. Domestic Violence Act

9.1 In the context of the issue under consideration, a reference to the provisions of Protection of Women from Domestic Violence Act, 2005 (for short PDV Act) which is an allied and complementary law, is quite apposite. The said Act was enacted with a view to provide for more effective protection of rights of women who are victims of violence of any kind occurring within the family. Those rights are essentially of civil nature with a mix of penal provisions. Section 3 of the Act defines domestic violence in very wide terms. It encompasses the situations set out in the definition of ‘cruelty’ under Section 498A. The Act has devised an elaborate machinery to safeguard the interests of women subjected to domestic violence. The Act enjoins the appointment of Protection Officers who will be under the control and supervision of a Judicial Magistrate of First Class. The said officer shall send a domestic incident report to the Magistrate, the police station and service providers. The Protection Officers are required to effectively assist and guide the complainant victim and provide shelter, medical facilities, legal aid etc. and also act on her behalf to present an application to the Magistrate for one or more reliefs under the Act. The Magistrate is required to hear the application ordinarily within 3 days from the date of its receipt. The Magistrate may at any stage of the proceedings direct the respondent and/or the aggrieved person to undergo counseling with

a service provider. 'Service Providers' are those who conform to the requirements of Section 10 of the Act. The Magistrate can also secure the services of a welfare expert preferably a woman for the purpose of assisting him. Under Section 18, the Magistrate, after giving an opportunity of hearing to the Respondent and on being prima facie satisfied that domestic violence has taken place or is likely to take place, is empowered to pass a protection order prohibiting the Respondent from committing any act of domestic violence and/or aiding or abetting all acts of domestic violence. There are other powers vested in the Magistrate including granting residence orders and monetary reliefs. Section 23 further empowers the Magistrate to pass such interim order as he deems just and proper including an ex-parte order. The breach of protection order by the respondent is regarded as an offence which is cognizable and non-bailable and punishable with imprisonment extending to one year (vide Section 31). By the same Section, the Magistrate is also empowered to frame charges under Section 498A of IPC and/or Dowry Prohibition Act. A Protection Officer who fails or neglects to discharge his duty as per the protection order is liable to be punished with imprisonment (vide Section 33). The provisions of the Act are supplemental to the provisions of any other law in force. The right to file a complaint under Section 498A is specifically preserved under Section 5 of the Act.

9.2 An interplay of the provisions of this Act and the proceedings under s.498A assumes some relevance on two aspects: (1) Seeking Magistrate's expeditious intervention by way of passing a protective interim order to prevent

secondary victimization of a complainant who has lodged FIR under s.498A. (2) Paving the way for counseling process under the supervision of Magistrate at the earliest opportunity.

10. Responses – an overview

10.1 As many as 474 persons, organizations/institutions and officials (listed in **Annexure-III**) have sent their responses to the Consultation Paper-cum-Questionnaire. A broad analysis of these replies are given in **Annexure III-A**. Some of the important and typical responses are compiled in **Annexure III-B**. As many as 244 Judicial Officers from various States including Registrars and Directors of Judicial Academies and Officials (most of them are Police Officers) and members of legal academia have sent their responses. 100 of them suggested that the offence should be made bailable. However, 119 of them have clearly stated that it should remain non-bailable. Among the 24 organizations/institutions, 12 of them pleaded for bailability and 5 have expressed the view that it should remain non-bailable. Among the individuals, a vast majority of them suggested that it should be made bailable. Some have expressed an extreme view that the Section should be repealed or it should be made gender neutral. There are three Non-Resident Indians among the representationists – two of them individuals and the other an organization. They consider it as a harsh law against husbands and it shall be revisited. The tales of woes and harassment caused on account of false complaints have been narrated in many representations while pleading that the complainant woman should be made accountable for such false and frivolous complaints.

Some State Governments and Union Territories also gave their suggestions. Their views are compiled in **Annexure III-C**. Most of the respondents including those who are not in favour of change emphasized the need for verification of facts by way of preliminary/initial investigation and not to rush through the process of arrest. The need to facilitate reconciliation through counseling and mediation at the earliest stage has been stressed by a large number of respondents. The active participation of Legal Service Authorities as a facilitator of conciliation and mediation processes and the need for closer coordination between the police and LSAs in this regard has also been pointed out by many of them. It is also stated that LSAs can play a greater role in spreading awareness in the rural areas.

10.2 The Chairman of the Commission in the company of Vice-Chairman and other Id. Members and officials of the Commission had occasions to interact with Judicial Officers of various ranks (including lady judges). In such Conferences, the general consensus was that the offence under Section 498-A should be made compoundable with the permission of the Court and it should continue to remain non-bailable. At the same time, they expressed some concern over complaints filed with false allegations or over implication and stressed on the duty of Police to act with sensitivity and responsibility in matters of this nature. So also, the plight of the aggrieved women who go to the Police Stations and who in a state of emotion and confusion tend to file complaints with exaggerated versions has been highlighted. Senior Police Officers in Delhi have stated that the percentage of misuse is minimal and

most of the complaints are quite genuine though at times the complaints are instigated to make some exaggerated and untrue allegations. They gave details of the practices that are being followed by Delhi Police especially in regard to conciliation by qualified counselors. They have also highlighted the problem caused by NRI women filing dual complaints i.e., in Delhi under S, 498-A as well as the relevant laws in force governing domestic violence in the country where they last resided with the accused husband. In regard to misuse dimensions, there were different versions from the Police Officers in some other States. There was a divided opinion among the lawyers and judges (who attended the Conferences) at Visakhapatnam (A.P.), Chennai, Aurangabad and Bengaluru on the question whether it should remain non-bailable. However, the lawyers, both men and ladies in one voice stated that it should be made compoundable and reconciliation process should be put in place without loss of time. The same was the opinion expressed at the conferences in Judicial Academies in several States.

11. Diagnosis of the problem and reasonable solution

11.1 That Section 498A has been misused in many instances admits of no doubt. This has been taken judicial notice of in several cases. The Parliamentary Committee has also adverted to this aspect. The inputs received by the Law Commission and the representations made to the Home Ministry. also confirm this fact. However, there is no reliable data to reveal the extent of abuse or misuse. The data/information reveals that urban and educated

women are mostly coming forward to file the complaints under this section. The data also reveals that in most of the cases, apart from the husband, two of his relations (especially in-laws) are being prosecuted. At the same time, the Commission feels that misuse arising from exaggerated versions and over implication should not by itself be a ground to dilute the provision by making itailable. Depriving the police of the power to arrest without warrant in order to have proper investigation would defeat the objective of the provision and may be counter-productive. The element of deterrence will be irretrievably lost, once it is madeailable. It is to be noted that the misuse did not flow from the section itself but the roots of misuse were grounded on the insensitive police responses and irresponsible legal advice. The victim/complainant deprived of her cool and objective thinking, quite often, unwittingly signs a complaint containing such exaggerated or partially false allegations. By the time she realizes the implications thereof, it would be too late.

11.2 In the Commission's view, the misuse could be minimized by taking such measures as would ensure the strict observance of the law governing arrest as evolved in D.K. Basu's case and incorporated in the statute i.e., in Chapter-V of Cr. P.C. The police at present either overact or adopt indifferent attitude in many a case. They are expected to act with due sensitivity and with the realization that they are dealing with an alleged offence arising out of strained matrimonial relations and that nothing should be done to disrupt the chances of reconciliation, or to cause trauma to the children. While launching of investigation – preliminary or otherwise, without delay is desirable, the

arrest and such other drastic measures should not close the doors for reconciliation and amicable settlement. The Law Commission has already recommended that the offence under Section 498-A should be made compoundable. This is the minimum that could be done to promote the restorative, not merely penal goal of the law. It may be noted that even under the Prevention of Domestic Violence Act, a specific provision is enacted providing for conciliation at the earliest on the intervention of Magistrate.

12. Power of Arrest – a balanced approach

12.1 Power of arrest vested with the Police Officer in a cognizable offence is no doubt a potent weapon to enforce the penal provision. However, this weapon should be sparingly drawn out of its sheath and wielded only if necessary. It shall not be used at the whim and fancy of the I.O. or be treated as a panacea for checking such offences. The attitude to arrest first and then proceed with the rest is despicable. Mechanical, casual and hasty application of the power of arrest is counter-productive and negates the fundamental right enshrined in Art. 21. Such attitude is at the root of misuse of S. 498A. The provisions in Cr.PC regulating and channelizing the power of arrest should act as guiding star to the police and their spirit and purpose should be foremost in their minds. Overreach is as bad as inaction. The need for caution in exercising the drastic power of arrest in the context of cases u/s 498-A has been emphasized time and again by the Courts and the parliamentary Committee. Similarly, the need to keep the doors for reconciliation open and to restore the family ties if

possible has also been highlighted in many judgments and even in statutory provisions dealing with matrimonial disputes and domestic violence. Arbitrary and indiscriminate arrests are an anathema to the rule of law and values of criminal justice. In the context of Section 498-A complaints, it tends to become a handy tool to the police officers who lack sensitivity or act with oblique motives. The objective of the provision is not better subserved by viewing arrest as the most effective tool. Arrest pending investigation or thereafter should never be viewed as a well deserved punitive measure and it should be exercised on an objective appraisal of the statutorily laid down conditions and criteria.

12.2 The value of proportionality permeates the newly introduced provisions relating to arrest. If these provisions are scrupulously followed, the potential for arbitrary action on the part of police is minimized. Needless to say that the power of arrest is coupled with the duty to act reasonably. S. 498-A admits of various degrees of cruelty which can be broadly categorized as less serious and more serious. Uniformity of approach in exercising the power of arrest is bound to result in undue hardship and unintended results.

12.3 It is apposite at this juncture to recall the following significant observations made in *Joginder Kumar's case*: *"The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?"* A

realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first the criminal or society, the law violator or the law abider; of meeting the challenge which Mr. Justice Cardozo so forthrightly met when he wrestled with a similar task of balancing individual rights against society's rights".

12.4 The need to balance personal liberty with law enforcement has been stressed in *Nandini Satpathy's case*⁵ by quoting Lewis Mayers: *The paradox has been put sharply by Lewis Mayers: "To strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law-enforcement machinery on the other is a perennial problem of statecraft. The pendulum over the years has swung to the right".*

13. Analysis of the provisions relating to arrest and the duty of police

13.1 Now, let us analyse the provisions relating to arrest in Chapter-V and evolve some guidelines as to how the police is expected to act when a FIR disclosing an offence u/s 498-A is received.

⁵ AIR 1978 SC

13.2 Section 41, Cr. P.C., as recast by Act 5 of 2009, lays down certain conditions and restrictions for arresting a person without an order from the Magistrate and without a warrant. There are **three** situations dealt with by Section 41. Clause (a) speaks of a person committing a cognizable offence in the presence of a police officer. He can be arrested straight away. We are more concerned with clauses (b) and (ba). Clause (ba) relates to power of arresting a person against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years or with death sentence. Thus, the more serious cognizable offences are within the ambit of clause (ba). The conditions for arrest without warrant as set out in clause (ba) are (i) receipt of credible information of cognizable offence; and (2) on the basis of such information, the police officer 'has reason to believe' that the such person has committed the offence. The preceding clause (b) governs cognizable offences punishable with imprisonment for a term extending to seven years⁶. More stringent conditions for arrest have been laid down in Cl.(b). A reasonable complaint' or 'a credible information' or 'a reasonable suspicion' that a person has committed a cognizable offence triggers the application of this part of section 41. In such a case, the power of arrest is subject to two conditions which operate cumulatively. First the police officer should have 'reason to believe' on the basis of such complaint, information, or suspicion that a person has committed the offence. Apart from the condition of formation of reasonable

⁶ The punishment prescribed by S,498A is imprisonment extending to three years and fine.

belief on the basis of the complaint or information, the police officer has to be satisfied further that the arrest is necessary for one or more of the purposes envisaged by sub-clauses (a) to (e) of clause (ii) of section 41(1)(b). For ready reference, the said sub-clause (ii) is extracted hereunder:-

(ii) the police officer is satisfied that such arrest is necessary –

- (a) to prevent such person from committing any further offence; or*
- (b) for proper investigation of the offence; or*
- (c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or*
- (d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or*
- (e) as unless such person is arrested, his presence in the court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing.*

These conditions are in the nature of mandatory prescriptions to be followed by the police officer before resorting to the drastic power of arrest. The conditions in other clauses of Section 41 are not relevant for our purpose and hence not discussed.

13.3 When a suspect is arrested and produced before a Magistrate for extension of police custody, the Magistrate has to address the question whether specific reasons have been recorded for arresting the person and if so, *prima facie*, those reasons are relevant and secondly a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent, there could be judicial scrutiny at that stage. If this scrutiny is there, the wrong committed by the police officer –

intentionally or unwittingly, could be reversed at the earliest. In Section 498-A cases, it is not too easy to reach the satisfaction that one or more of the clauses in Section 41 are attracted. What could be achieved by custodial interrogation could very well be achieved by interrogating the accused in the course of initial or preliminary investigation. The husband and other male relations can be called upon to appear before the I.O. on the specified date as laid down in Section 41-A. The I.O. cannot proceed on the assumption straightaway that arrest is the best way to extract truth, especially in matrimonial offences. He must always bear in mind that arrest is not the rule and it should be resorted to only on the satisfaction of the conditions statutorily prescribed. There are reports that many arrests in S. 498-A cases are made by police on extraneous considerations or without proper application of mind. At the same time, there are also reports that the complaints under section 498-A do not receive serious attention of police and the victim is always viewed with suspicion. Such police inaction too has to be disapproved.

13.4 The Explanation to Section 498-A which defines cruelty is in two parts. Clause (a) of the Explanation deals with aggravated forms of cruelty which cause grave injury. Firstly, wilful conduct of such a grave nature as is likely to drive the woman to commit suicide falls within the ambit of clause (a). The second limb of clause (a) lays down that willful conduct which causes grave injury or danger to life, limb or health (whether mental or physical) of the woman is to be regarded as 'cruelty'. Dowry related harassment is within clause (b) of the Explanation. When the FIR coupled with the statement of the

victim woman discloses cruelty of grave nature falling within clause (a), the police officer has to act swiftly and promptly especially if there is evidence of physical violence. In the first instance, proper medical aid and the assistance of counselors shall be provided to the aggrieved woman and the process of investigation should start without any loss of time. The need for arresting the husband may be more demanding in such a situation in a case of cruelty falling under clause (b). We are adverting to this fact in order to make it clear that our observations earlier do not mean that under no circumstances, the power of arrest shall be initially resorted to or that the I.O. should invariably postpone the arrest/custodial interrogation till the reconciliation process comes to close. We would like to stress that the discretion has to be exercised reasonably having due regard to the facts of each case. Of course, the conditions subject to which the power of arrest has to be exercised should always guide the discretion to be exercised by the police officer. While no hard and fast rule as to the exercise of power of arrest can be laid down, we would like to point out that a balanced and sensitive approach should inform the decision of the I.O. and he shall not be too anxious to exercise that power. There must be good and substantial reasons for arriving at the satisfaction that imminent arrest is necessary having regard to the requirements of clause (ii) of Section 41(1)(b) of Cr. P.C. In this context, the Commission would like to stress that the practice of mechanically reproducing in the case diary all or most of the reasons contained in the said clause for effecting arrest should be discouraged and discontinued. The Head of Police department should issue

necessary instructions in this regard which will serve as a safeguard against arbitrary arrests in S,498-A cases.

13.5 The investigating officers should remind themselves of the pertinent observations made by the Supreme Court in *Joginder Kumar vs. State of U.P.*⁷. After referring to the 3rd report of National Police Commission, the Supreme Court placed the law of arrest in a proper perspective by holding:

"The above guidelines are merely the incidents of personal liberty guaranteed under the Constitution of India. 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. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do. Then, there is the right to have someone informed. That right of the arrested person, upon request, to have someone informed and to consult privately with a lawyer was recognised by Section 56(1) of the Police and Criminal Evidence Act, 1984 in England".

13.6 In *Siddaram Satlingappa vs. State of Maharashtra*⁸, it was observed:

⁷ AIR 1994 SC 1349; (1994) 4 SCC 260

⁸ AIR 2011 SC 312 (Para 123)

"The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case".

14. Certain guidelines / prescriptions to mitigate misuse

14.1 Certain Dos and Don'ts to the police personnel by the Head of the police dept. in order to inculcate the sense of responsibility and sensitivity is the need of the hour. **The abuse of the provision by resorting to the power of arrest indiscriminately should be checked at all cost.** The following prescriptions/guidelines shall be kept in view by the I.Os and be incorporated in the Circular to be issued by the Head of Police Department.

14.2 The FIR has to be registered as per law if it discloses an offence and the Police Officer has reason to suspect the commission of offence (as laid down in Section 157). However, on the point of registration of FIR, the police officials have to necessarily follow the decisions/directives of High Court on the point.

14.3 On receiving the FIR, the police officer should cross-check with the complainant the correctness of the contents and whether she voluntarily made all the allegations. For this purpose, she may be interviewed/questioned preferably in the presence of a lady official or a respectable lady or a Counsellor attached to a reputed NGO.

14.4 Then, without delay, the police officer must initiate the process of initial investigation by visiting the house of the husband and have a first hand account of the version of husband and other relations and take such measures as may be necessary to ensure that the accused do not indulge in acts

calculated to endanger the safety and liberty of the complainant. Both sides should be counseled not to precipitate the situation. Thereafter, steps should be taken to refer the matter to the Mediation Centre if any or District Legal aid Centre or a team of Counselors/conciliators if any attached to the Police District. In the absence of professional counsellors, the SP of the District or the DCP can form a team or panel of mediators/counselors. It may consist of IAS or other Civil Service Officers (preferably lady officers) and lady IPS Officers (unconnected to the case) or respected members of media, legal or other professions. If the parties choose to have specified persons as mediators/conciliators, they must be referred to such persons. The police may obtain the report of mediators or conciliators within a maximum period of thirty days and then, depending on the outcome, they may proceed further in the matter. If the situation demands, investigation shall be completed and at that stage, if custodial interrogation is found necessary for the relevant reasons to be recorded in writing, the husband and others can be arrested on taking the permission of DCP/SP level officer. Then I.O. shall also take such action as is necessary to restore the valuable belongings of the complainant woman.

These rules or guidelines if followed would prevent misuse while fostering a valued based approach.

14.5 In the case of Non-Resident Indians, it is reported that the **passports** are seized when they come to India at the stage of investigation or they are sent to the Passport Officer for passing an order of impounding. During the pendency

of the case in the Court, the prosecutor often requests the Court to direct depositing of the passport as a condition for granting bail. This should not be done in all cases mechanically as it will cause irreversible damage to the husband/accused and he will be exposed to the risk of losing the job and the visa being terminated. Ultimately, there may be amicable settlement and/ or quashing of proceedings or acquittal/discharge but the damage has already been done. The prospect of the accused remaining unemployed would not be in the interests of both as the loss of earnings will have a bearing on the maintenance claims of the wife, apart from depriving him of the means of livelihood. The proper course would be to take bonds and sureties for heavy amounts and the prosecution taking necessary steps to expeditiously complete the trial. This aspect should also be brought to the notice of concerned police officers by means of circulars issued by the DGPs.

15. Home Ministry's advisory and further action to be taken

15.1 In the Commission's view, the approach of Ministry of Home Affairs in the Advisory issued by it in No.3/5/2008-Judl.Cell dt. 20th October, 2009 is the correct approach and the instructions issued therein need to be reiterated after convening a conference of DGPs of every State so that follow up circulars will be issued by them for guidance of police officials within their jurisdiction.

This is what the Home Ministry said in the said Circular:

"To comply with the procedure as laid down In D.K. Basu's case, the Hon'ble Supreme Court in its judgement dated 18.12.96 in CRL CWP No.539/86 – DK Basu vs. State of West Bengal has stated that the power

of arrest without warrant should be exercised only after a reasonable satisfaction is reached, after some investigation as to the genuineness and bonafides of a complaint and a reasonable belief as to both the person's complicity as well as the need to effect arrest. Therefore, in any matrimonial dispute, it may not necessary in all cases to immediately exercise the powers of arrest. Recourse may be initially taken to dispute settlement mechanism such as conciliation, mediation, counseling of the parties etc."

15.2 The views of the National Commission for Women (extracted in 140th Report of the Rajya Sabha Committee on Petitions) substantially accords with the instructions issued by the Ministry of Home Affairs in the advisory issued by it.

15.3 We have indicated earlier what the police is expected to do (vide paras 13 *supra*). These aspects should also form the subject matter of the **Circular/Standing order to be issued by the DGPs/Police Commissioners** for the guidance of the police personnel. A mechanism to monitor the observance of the guidelines/instructions should be put in place. Regular and dedicated supervision by high level officers would go a long way in ensuring enforcement of this provision on right lines.

15.4 In some States, as noticed earlier, there are directives of the High Courts as to how the police should handle the complaints under Section 498-A. Based on these directives, it is noticed that certain instructions have already been issued by the DGPs. It is needless to state that the High Court's directives are binding and a fresh circular cannot be issued by the DGP superseding the instructions based on the High Court's judgment. In such a situation, the proper course would be to apprise the High Court of the decision taken at the

conference of DGPs and to request the High Court to modify the directions appropriately in the light of the decision taken so that there will be uniformity in approach all over the country.

16. Amendment of Section 41 Cr.PC by the addition of sub-section (3)

16.1 At the same time, in the interest of uniformity and certainty, it is desirable that the essential guidelines are placed within legislative framework, to the extent necessary. We therefore suggest that sub-section (3) may be added to Section 41 of Cr.PC on the following lines:

*(3): Where information of the nature specified in clause(b) of sub-section(1) of Section 41 has been received regarding the commission of offence under section 498-A of Indian Penal Code, before the police officer resorts to the power of arrest, shall set in motion the steps for reconciliation between the parties and await its outcome for a period of 30 days, **unless** the facts disclose that an aggravated form of cruelty falling under clause (a) of Explanation to S, 498-A has been committed and the arrest of the accused in such a case is necessary for one of the reasons specified in clause (b) of Section 41.*

16.2 We would like to add that this proposed sub-section is not something materially different from the existing law and perhaps its utility lies in making explicit what is really implicit in light of the peculiar problems related to enforcement of S, 498-A. It is a procedural amendment which may act against inappropriate use of provision while at the same time not diluting the importance of life and liberty protection to women.

17. S, 358 of Cr.PC – raising the compensation limit

17.1 Another legislative change which the Commission recommends to discourage false and frivolous complaints leading to the arrest and prosecution of the suspect/accused is to amend Section 358 of Cr.PC so as to raise the compensation from rupees one thousand to rupees fifteen thousand. The words “not exceeding one thousand rupees” shall be substituted by the words “not exceeding fifteen thousand rupees”. This amendment is necessary to check to some extent the false and irresponsible FIRs/complaints in general, not merely confined to S, 498A. This is without prejudice to the Provision in IPC (Section 211) under which falsely charging a person of an offence is punishable.

17-A. Punishment for misuse – no specific provision necessary

The suggestion of some respondents (in some Articles also, such a suggestion was made) that there must be a specific provision to punish women who file complaints for extraneous reasons is rather misconceived. There is no reason why only for S,498A cases, such a special provision shall be made. In any case, the existing provisions, viz. S,182, 211 of IPC and S,250 of Cr.PC can take care of malicious accusations etc, apart from Section 358 Cr.PC.

18. State’s obligation to take care of estranged women in distress

One more important aspect on which attention should be bestowed by the states and Union Territories is providing necessary aid and assistance to

the hapless women who having gone to the Police Station with a genuine grievance and in a state of distress do not venture to go back to marital home or even unable to stay with relatives. Either they do not have parents who can take care of or maintain them during the period of trauma or there is reluctance on the part of even close relations to allow her to stay with them without hassles. The process of reconciliation and compromise may take some time and there is no knowing what will be its outcome. Further, the victim woman in distress would need immediate solace in the form of medical assistance and a temporary abode to stay, apart from proper counseling. In the circumstances in which she is placed, only the State or its instrumentalities can take care of her immediate needs. At present, even in cities, there are no Hostels and Shelter Homes worth mentioning which are catering to the welfare of victimized women. Even if there are a few, no proper facilities are in place. There are no Crisis Centres attached to Women Police Stations even in major cities (excepting few) which can immediately provide succour and relief to the women in distress. The Commission would therefore like to emphasize the obvious that every Government should treat it as a paramount obligation on their part to cater to the immediate needs of victimized women leaving the matrimonial home and not in a position to stay with their relatives for various reasons. The women who are worst hit if assistance is not provided are those from the poor and middle class background. The States should consider this problem on a priority basis and

initiate necessary steps to alleviate the suffering of women in need of help as a part of the welfare goal ingrained in our Constitution.

19. Summary of Recommendations

19.1 Misuse of Section 498-A in many cases has been judicially noticed by the apex court as well as various High Courts. This has also been taken note of by Parliamentary Committee on Petitions (Rajya Sabha). However, misuse (the extent of which is not established by any empirical study) by itself is not a ground to abolish S,498-A or to denude the Section of its teeth. The social objective behind the Section and the need for deterrence should be kept in view while at the same time ensuring that the complaints filed with false or exaggerated allegations out of ulterior motives or in a fit of emotion should be curbed.

19.2 The need to spread awareness of the provision and available remedies especially in rural areas both among women and men is necessary and in this regard the District and Taluka Legal Services Authorities, the media, the NGOs and law students can play a meaningful role.

19.3 All endeavours shall be made for effecting reconciliation at the earliest with the help of professional counsellors, mediation and legal aid centres, retired officials/medical and legal professionals or friends and relations in whom the parties have faith. An action plan has to be drawn up for forming the panels in every district as well as extending necessary help to he aggrieved women. The I.O. should refrain from participating in the conciliation process.

19.4 The law on the question whether registration of FIR could be postponed for a reasonable time is in a state of uncertainty. Some High Courts have been directing that FIR shall not be registered under S, 498A (except in cases of visible violence, and the like) till the preliminary investigation is done and reconciliation process is completed. The issue has been referred to a larger Bench of Supreme Court recently. In this regard, the police has to follow the law laid down by the jurisdictional High Court until the Supreme Court decides the matter.

19.5 The offence under S, 498-A shall be made compoundable, with the permission of Court and subject to cooling off period of 3 months, as already recommended by this Commission in 237th Report. The preponderance of view is to make it compoundable.

19.6 The offence should remain non-bailable. However, the safeguard against arbitrary and unwarranted arrests lies in strictly observing the letter and spirit of the conditions laid down in Sections 41 and 41-A of Cr. PC relating to power of arrest and sensitizing the Police on the modalities to be observed in cases of this nature. The need for custodial interrogation should be carefully assessed. Over-reaction and inaction are equally wrong. Police should take necessary steps to ensure safety of the complainant and to prevent further acts of harassment.

19.7 The Home Ministry's Advisory dated 20th October 2009 on the subject of "Misuse of Section 498-A of IPC" as well as the guidelines / additional precautions set out in para 14 of this Report should be compiled **and** at a

conference of DGPs specially convened for this purpose by the Home Secretary, they must be apprised of the need to follow the said principles and guidelines and to issue circulars / standing orders accordingly. There should be a monitoring mechanism in the police Dept. to keep track of S, 498A cases and the observance of guidelines.

19.8 Without prejudice to the above suggestions, it has been recommended that as set out in para 16 above, sub-section (3) shall be added to Section 41 Cr. PC to prevent arbitrary and unnecessary arrests. The legislative mandate which is not materially different from the spirit underlying Sections 41 and 157 Cr. PC should be put in place in the interests of uniformity and clarity.

19.9 The compensation amount in Section 358 of Cr. PC shall be increased from one thousand rupees to fifteen thousand rupees and this proposed change is not merely confined to the Section under consideration.

19.10 The women police stations (under the nomenclature of Crimes Against Women Cell) should be strengthened both quantitatively and qualitatively. Well trained and educated lady police officers of the rank of Inspector or above shall head such police stations. CWCs should be established in every district with adequate trained personnel. Panels of competent professional counsellors and respected elders / professionals who can counsel and conciliate should be maintained by SP/SSP for every district. There shall be separate room in the police stations for women complainants and the accused women in S, 498-A related cases.

19.11 Hostels or shelter homes for the benefit of women who would not like to go back to marital homes should be maintained in cities and District headquarters with necessary facilities. The assistance given to them shall be treated as a part of social welfare measure which is an obligation of the welfare State.

19.12 The passport of non-resident Indians involved in Section 498-A cases should not be impounded mechanically and instead of that, bonds and sureties for heavy amounts can be insisted upon.

19.13 Above all, the need for expeditious disposal of cases under section 498A should be given special attention by the prosecution and Judiciary.

[Justice (Retd.) P. V. Reddi]
Chairman

[Justice (Retd.) Shiv Kumar Sharma]
Member

[Amarjit Singh]
Member

New Delhi
29 August 2012

LAW COMMISSION OF INDIA

**Consultation Paper-cum-Questionnaire regarding Section 498-A
of Indian Penal Code**

1. Keeping in view the representations received from various quarters and observations made by the Supreme Court and the High Courts, the Home Ministry of the Government of India requested the Law Commission of India to consider whether any amendments to s.498A of Indian Penal Code or other measures are necessary to check the alleged misuse of the said provision especially by way of over-implication.

2. S.498A was introduced in the year 1983 to protect married women from being subjected to cruelty by the husband or his relatives. A punishment extending to 3 years and fine has been prescribed. The expression 'cruelty' has been defined in wide terms so as to include inflicting physical or mental harm to the body or health of the woman and indulging in acts of harassment with a view to coerce her or her relations to meet any unlawful demand for any property or valuable security. Harassment for dowry falls within the sweep of latter limb of the section. Creating a situation driving the woman to commit suicide is also one of the ingredients of 'cruelty'. The offence under s.498A is cognizable, non-compoundable and non-bailable.

3. In a recent case of *Preeti Gupta v. State of Jharkhand*, the Supreme Court observed that a serious relook of the provision is warranted by the Legislature. "It is a matter of common knowledge that exaggerated versions of the incidents are reflected in a large number of complaints. The tendency of over-implication is also reflected in a very large number of cases". The Court took note of the common tendency to implicate husband and all his immediate relations. In an earlier case also - *Sushil Kumar Sharma v. UOI* (2005), the Supreme Court lamented that in many instances, complaints under s.498A were being filed with an oblique motive to wreck personal vendetta. "It may therefore become necessary for the Legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with", it was observed. It was also observed that "by misuse of the provision, a new legal terrorism can be unleashed".

4. The factum of over-implication is borne out by the statistical data of the cases under s.498A. Such implication of the relatives of husband was found to be unjustified in a large number of decided cases. While so, it appears that the women especially from the poor strata of the society living in rural areas rarely take resort to the provision.

5. The conviction rate in respect of the cases under s.498A is quite low. It is learnt that on account of subsequent events such as amicable

settlement, the complainant women do not evince interest in taking the prosecution to its logical conclusion.

6. The arguments for relieving the rigour of s.498A by suitable amendments (which find support from the observations in the Court judgments and Justice Malimath Committee's report on Reforms of Criminal Justice System) are: Once a complaint (FIR) is lodged with the Police under s.498A/406 IPC, it becomes an easy tool in the hands of the Police to arrest or threaten to arrest the husband and other relatives named in the FIR without even considering the intrinsic worth of the allegations and making a preliminary investigation. When the members of a family are arrested and sent to jail without even the immediate prospect of bail, the chances of amicable re-conciliation or salvaging the marriage, will be lost once and for all. The possibility of reconciliation, it is pointed out, cannot be ruled out and it should be fully explored. The imminent arrest by the Police will thus be counter-productive. The long and protracted criminal trials lead to acrimony and bitterness in the relationship among the kith and kin of the family. Pragmatic realities have to be taken into consideration while dealing with matrimonial matters with due regard to the fact that it is a sensitive family problem which shall not be allowed to be aggravated by over-zealous/callous actions on the part of the Police by taking advantage of the harsh provisions of s.498A of IPC together with its related provisions in CrPC. It is pointed out that the sting is not in s.498A as such, but in the provisions of CrPC making the offence non-compoundable and non-bailable.

7. The arguments, on the other hand, in support of maintaining the status quo are briefly:

S.498A and other legislations like Protection of Women from Domestic Violence Act have been specifically enacted to protect a vulnerable section of the society who have been the victims of cruelty and harassment. The social purpose behind it will be lost if the rigour of the provision is diluted. The abuse or misuse of law is not peculiar to this provision. The misuse can however be curtailed within the existing framework of law. For instance, the Ministry of Home Affairs can issue 'advisories' to State Governments to avoid unnecessary arrests and to strictly observe the procedures laid down in the law governing arrests. The power to arrest should only be exercised after a reasonable satisfaction is reached as to the bona fides of a complaint and the complicity of those against whom accusations are made. Further, the first recourse should be to effect conciliation and mediation between the warring spouses and the recourse to filing of a chargesheet under s.498A shall be had only in cases where such efforts fail and there appears to be a prima facie case. Counselling of parties should be done by professionally qualified counsellors and not by the Police.

7.1 These views have been echoed among others by the Ministry of Women and Child Development.

7.2 Further, it is pointed out that a married woman ventures to go to the Police station to make a complaint against her husband and other close relations only out of despair and being left with no other remedy against cruelty and harassment. In such a situation, the existing law should be allowed to take its own course rather than over-reacting to the misuse in some cases.

7.3 There is also a view expressed that when once the offending family members get the scent of the complaint, there may be further torture of the complainant and her life and liberty may be endangered if the Police do not act swiftly and sternly. It is contended that in the wake of ever increasing crimes leading to unnatural deaths of women in marital homes, any dilution of Section 498-A is not warranted. Secondly, during the long-drawn process of mediation also, she is vulnerable to threats and torture. Such situations too need to be taken care of.

8. There is preponderance of opinion in favour of making the said offence compoundable with the permission of the court. Some States, for e.g., Andhra Pradesh have already made it compoundable. The Supreme Court, in a recent case of --*---, observed that it should be made compoundable. However, there is sharp divergence of views on the point whether it should be made a bailable offence. It is pleaded by some that the offence under s.498A should be made bailable at least with regard to husband's relations.*Ramgopal v. State of M. P. in SLP (Crl.) No. 6494 of 2010 (Order dt. July 30, 2010).

8.1 Those against compoundability contend that the women especially from the rural areas will be pressurized to enter into an unfair compromise and further the deterrent effect of the provision will be lost.

9. The Commission is of the view that the Section together with its allied CrPC provisions shall not act as an instrument of oppression and counter-harassment and become a tool of indiscreet and arbitrary actions on the part of the Police. The fact that s.498A deals with a family problem and a situation of marital discord unlike the other crimes against society at large, cannot be forgotten. It does not however mean that the Police should not appreciate the grievance of the complainant woman with empathy and understanding or that the Police should play a passive role.

10. S.498A has a lofty social purpose and it should remain on the Statute book to intervene whenever the occasion arises. Its object and purpose cannot be stultified by overemphasizing its potentiality for abuse or misuse. Misuse by itself cannot be a ground to repeal it or to take away its teeth wholesale.

11. While the Commission is appreciative of the need to discourage unjustified and frivolous complaints and the scourge of over-implication, it is not inclined to take a view that dilutes the efficacy of s.498A to the extent of defeating its purpose especially having regard to the fact that

atrocities against women are on the increase. A balanced and holistic view has to be taken on weighing the pros and cons. There is no doubt a need to address the misuse situations and arrive at a rational solution – legislative or otherwise.

12. There is also a need to create awareness of the provisions especially among the poor and illiterate living in rural areas who face quite often the problems of drunken misbehavior and harassment of women folk. More than the women, the men should be apprised of the penal provisions of law protecting the women against harassment at home. The easy access of aggrieved women to the Taluka and District level Legal Service Authorities and/or credible NGOs with professional counsellors should be ensured by appropriate measures. There should be an extensive and well-planned campaign to spread awareness. Presently, the endeavour in this direction is quite minimal. Visits to few villages once in a way by the representatives of LSAs, law students and social workers is the present scenario.

13. There is an all-round view that the lawyers whom the aggrieved women or their relations approach in the first instance should act with a clear sense of responsibility and objectivity and give suitable advice consistent with the real problem diagnosed. Exaggerated and tutored versions and unnecessary implication of husband's relations should be scrupulously avoided. The correct advice of the legal professionals and the sensitivity of the Police officials dealing with the cases are very important, and if these are in place, undoubtedly, the law will not take a devious course. Unfortunately, there is a strong feeling that some lawyers and police personnel have failed to act and approach the problem in a manner morally and legally expected of them.

14. Thus, the triple problems that have cropped up in the course of implementation of the provision are: (a) the police straightaway rushing to arrest the husband and even his other family members (named in the FIR), (b) tendency to implicate, with little or no justification, the in-laws and other relations residing in the marital home and even outside the home, overtaken by feelings of emotion and vengeance or on account of wrong advice, and (c) lack of professional, sensitive and empathetic approach on the part of the police to the problem of woman under distress.

15. In the context of the issue under consideration, a reference to the provisions of Protection of Women from Domestic Violence Act, 2005 (for short PDV Act) which is an allied and complementary law, is quite apposite. The said Act was enacted with a view to provide for more effective protection of rights of women who are victims of violence of any kind occurring within the family. Those rights are essentially of civil nature with a mix of penal provisions. Section 3 of the Act defines domestic violence in very wide terms. It encompasses the situations set out in the definition of 'cruelty' under Section 498A. The Act has devised an elaborate machinery to safeguard the interests of women subjected to

domestic violence. The Act enjoins the appointment of Protection Officers who will be under the control and supervision of a Judicial Magistrate of First Class. The said officer shall send a domestic incident report to the Magistrate, the police station and service providers. The Protection Officers are required to effectively assist and guide the complainant victim and provide shelter, medical facilities, legal aid etc. and also act on her behalf to present an application to the Magistrate for one or more reliefs under the Act. The Magistrate is required to hear the application ordinarily within 3 days from the date of its receipt. The Magistrate may at any stage of the proceedings direct the respondent and/or the aggrieved person to undergo counseling with a service provider. 'Service Providers' are those who conform to the requirements of Section 10 of the Act. The Magistrate can also secure the services of a welfare expert preferably a woman for the purpose of assisting him. Under Section 18, the Magistrate, after giving an opportunity of hearing to the Respondent and on being prima facie satisfied that domestic violence has taken place or is likely to take place, is empowered to pass a protection order prohibiting the Respondent from committing any act of domestic violence and/or aiding or abetting all acts of domestic violence. There are other powers vested in the Magistrate including granting residence orders and monetary reliefs. Section 23 further empowers the Magistrate to pass such interim order as he deems just and proper including an ex-parte order. The breach of protection order by the respondent is regarded as an offence which is cognizable and non-bailable and punishable with imprisonment extending to one year (vide Section 31). By the same Section, the Magistrate is also empowered to frame charges under Section 498A of IPC and/or Dowry Prohibition Act. A Protection Officer who fails or neglects to discharge his duty as per the protection order is liable to be punished with imprisonment (vide Section 33). The provisions of the Act are supplemental to the provisions of any other law in force. A right to file a complaint under Section 498A is specifically preserved under Section 5 of the Act.

15.1 An interplay of the provisions of this Act and the proceedings under s.498A assumes some relevance on two aspects: (1) Seeking Magistrate's expeditious intervention by way of passing a protective interim order to prevent secondary victimization of a complainant who has lodged FIR under s.498A. (2) Paving the way for the process of counselling under the supervision of Magistrate at the earliest opportunity.

16. With the above analysis and the broad outline of the approach indicated supra, the Commission invites the views of the public/NGOs/institutions/Bar Associations etc. on the following points, before preparing and forwarding to the Government the final report:

Questionnaire

- 1) a) What according to you is ideally expected of Police, on receiving the FIR alleging an offence u/s 498A of IPC? What should be their approach and plan of action?
b) Do you think that justice will be better meted out to the aggrieved woman by the immediate arrest and custodial interrogation of the husband and his relations named in the FIR? Would the objective of s.498A be better served thereby?
- 2) a) The Supreme Court laid down in D.K. Basu (1996) and other cases that the power of arrest without warrant ought not to be resorted to in a routine manner and that the Police officer should be reasonably satisfied about a person's complicity as well as the need to effect arrest. Don't you agree that this rule applies with greater force in a situation of matrimonial discord and the police are expected to act more discreetly and cautiously before taking the drastic step of arrest?
b) What steps should be taken to check indiscriminate and unwarranted arrests?
- 3) Do you think that making the offence bailable is the proper solution to the problem? Will it be counter-productive?
- 4) There is a view point supported by certain observations in the courts' judgments that before effecting arrest in cases of this nature, the proper course would be to try the process of reconciliation by counselling both sides. In other words, the possibility of exploring reconciliation at the outset should precede punitive measures. Do you agree that the conciliation should be the first step, having regard to the nature and dimension of the problem? If so, how best the conciliation process could be completed with utmost expedition? Should there be a time-limit beyond which the police shall be free to act without waiting for the outcome of conciliation process?
- 5) Though the Police may tender appropriate advice initially and facilitate reconciliation process, the preponderance of view is that the Police should not get involved in the actual process and their role should be that of observer at that stage? Do you have a different view?
- 6) a) In the absence of consensus as to mediators, who will be ideally suited to act as mediators/conciliators – the friends or elders known to both the parties or professional counsellors (who may be part of NGOs), lady and men lawyers who volunteer to act in such matters, a Committee of respected/retired persons of the locality or the Legal Services Authority of the District?
b) How to ensure that the officers in charge of police stations can easily identify and contact those who are well suited to conciliate or mediate, especially having regard to the fact that professional and competent counsellors may not be available at all places and any delay in initiating the process will lead to further complications?

- 7) a) Do you think that on receipt of complaint under S.498A, immediate steps should be taken by the Police to facilitate an application being filed before the Judicial Magistrate under the PDV Act so that the Magistrate can set in motion the process of counselling/conciliation, apart from according interim protection?
- b) Should the Police in the meanwhile be left free to arrest the accused without the permission of the Magistrate?
- c) Should the investigation be kept in abeyance till the conciliation process initiated by the Magistrate is completed?
- 8) Do you think that the offence should be made compoundable (with the permission of court)?
Are there any particular reasons not to make it compoundable?
- 9) Do you consider it just and proper to differentiate the husband from the other accused in providing for bail?
- 10) a) Do you envisage a better and more extensive role to be played by Legal Services Authorities (LSAs) at Taluka and District levels in relation to s.498A cases and for facilitating amicable settlement? Is there a need for better coordination between LSAs and police stations?
- b) Do you think that aggrieved women have easy access to LSAs at the grassroot level and get proper guidance and help from them at the pre-complaint and subsequent stages?
- c) Are the Mediation Centres in some States well equipped and better suited to attend to the cases related to S,498-A?
- 11) What measures do you suggest to spread awareness of the protective penal provisions and civil rights available to women in rural areas especially among the poorer sections of people?
- 12) Do you have any informations about the number of and conditions in shelter homes which are required to be set up under PDV Act to help the aggrieved women who after lodging the complaint do not wish to stay at marital home or there is none to look after them?
- 13) What according to you is the main reason for low conviction rate in the prosecutions u/s 498A?
- 14) (a) Is it desirable to have a Crime Against Women Cell (CWC) in every district to deal exclusively with the crimes such as S.498A? If so, what should be its composition and the qualifications of women police deployed in such a cell?
- (b) As the present experience shows, it is likely that wherever a CWC is set up, there may be substantial number of unfilled vacancies and the personnel may not have undergone the requisite training. In this situation, whether it would be advisable to entrust the investigation etc. to CWC to the exclusion of the jurisdictional Police Station?

**Extracts from the 237th Report of the Law Commission of India on
'Compounding of (IPC) Offences'**

5. Compoundability of Certain Offences

5.1 Now, we shall consider the question of compoundability of certain **specific offences**.

Section 498A, IPC

5.2 Whether the offence specified in Section 498A should be made compoundable, and, if yes, whether it should be compoundable without or with the permission of the Court, is the two-fold question.

5.3 Section 498A penalizes the husband or the relatives of the husband for subjecting a woman to cruelty. The definition of cruelty as given in the Section is in two parts: 1) Willful conduct of such a nature that is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (mental or physical), 2) Harassment of the woman with a view to coercing her or her relatives to meet an unlawful demand for any property or valuable security. Thus the dowry related harassment as well as violent conduct on the part of the husband or his relations by causing injury or danger to her life, limb or health, are comprehended within the scope of Section 498A. Quite often, the prosecution under Section 498A IPC is coupled with prosecution under Sections 3 and 4 of Dowry Prohibition Act, 1961 as well.

5.4 Normally, if the wife is prepared to condone the ill-treatment and harassment meted out to her either by reason of change in the attitude or repentance on the part of the husband or reparation for the injury caused to her, the law should not stand in the way of terminating the criminal proceedings. However, the argument that is mainly advanced against the compoundability is that the dowry is a social evil and the law designed to punish those who harass the wives with demand of dowry should be allowed to take its full course instead of putting its seal of approval on the private compromises. The social consciousness and the societal interest demands that such offences should be kept outside the domain of out-of-court settlement, it is argued. There can be no doubt that in dealing with this aspect, the impact of the crime on the society and the degree of social harm that might result, should be duly considered. At the same time, undesirable consequences that follow if compounding is not allowed, ought to be kept in view because the social harm or societal interest cannot be considered in vacuum. A holistic and rational view has to be taken. While no impediments shall be placed against

the effective operation of law enacted to curb a social evil, it should not be forgotten that the society is equally interested in promoting marital harmony and the welfare of the aggrieved women. A rational and balanced approach is all the more necessary for the reason that other avenues are open to the reconciled couple to put an end to the criminal proceedings. One such course is to file a 'quash' petition under Section 482 of CrPC in the High Court. Whether it is necessary to drive them to go through this time consuming and costly process is one pertinent question. If a wife who suffered in the hands of the husband is prepared to forget the past and agreeable to live amicably with the husband or separate honourably without rancor or revenge, the society would seldom condemn such move nor can it be said that the legal recognition of amicable settlement in such cases would encourage the forbidden evil i.e. the dowry. Section 498A should not be allowed to become counter-productive. In matters relating to family life and marital relationship, the advantages and beneficent results that follow from allowing the discontinuance of legal proceedings to give effect to a compromise or reconciliation would outweigh the degree of social harm that may be caused by non-prosecution. If the proceedings are allowed to go on despite the compromise arrived at by both sides, either there will be little scope for conviction or the life of the victim would become more miserable. In what way the social good is achieved thereby? We repeat that a doctrinaire and isolated approach cannot be adopted in dealing with this issue. The sensitivity of a family dispute and the individual facts and circumstances cannot be ignored. Hence, the Commission is not inclined to countenance the view that dowry being a social evil, compounding should not be allowed under any circumstances. Incidentally, it may be mentioned that many offences having the potentiality of social harm, not merely individual harm, are classified as compoundable offences. Further, the gravamen of the charge under Section 498-A need not necessarily be dowry-related harassment. It may be 'cruelty' falling only within clause (a) of the Explanation and the demand of dowry is not an integral part of that clause.

5.5 Another argument against compoundability is that the permission to compound would amount to legal recognition of violence against women and that the factum of reconciliation cannot be a justifiable ground to legally condone the violence. The acceptance of such an argument would imply that the priority of law should be to take the criminal proceedings to their logical end and to inflict punishment on the husband irrespective of the mutual desire to patch up the differences. It means – reconciliation or no reconciliation, the husband should not be spared of the impending prosecution and the punishment if any; then only Section 498A would achieve its objective. We do not think that the objective of Section 498A will be better achieved by allowing the prosecution to take its own course without regard to the rapprochement that has taken place between the couple in conflict. As observed earlier, a balanced and holistic approach is called for in handling a sensitive issue affecting the family and social relations. Reconciliation without compounding will not be practically possible and the law should not ignore the important

event of reconciliation. The emphasis should not be merely on the punitive aspect of the law. In matters of this nature, the law should not come in the way of genuine reconciliation or revival of harmonious relations between the husband and estranged wife. Wisdom behind all prosecutions and punishments is to explore a judicious mix of deterrence, deprivation of liberty and repentance and reformation. Any emphasis on one aspect alone, as has been found in the working of harsh and cruel punishment regimes, may become a pigeonhole model.

5.6 The other argument which is put forward against compounding is that hapless women especially those who are not much educated and who do not have independent means of livelihood, may be pressurized and coerced to withdraw the proceeding and the victim woman will be left with no option but to purchase peace though her grievance remains unsolved. However, this argument may not be very substantial. The same argument can be put forward in respect of compoundable offences wherever the victims are women. The safeguard of Court's permission would, by and large, be a sufficient check against the possible tactics that may be adopted by the husband and his relations/friends. The function of the Court in this matter is not a mere formality. The Judicial Magistrate or Family Court Judge is expected to be extra-cautious and play an active role. In this regard, the judge can take the assistance of a woman lawyer or a professional counselor or a representative of Legal Services Authority and the woman concerned can be examined in his/her chambers in the presence of one of them. Alternatively, the assistance of a lady colleague can also be sought for examining a woman victim in the chambers. Normally the trial Magistrates/Judges are sensitized in gender-related issues in the course of training at the Judicial Academies. In cities like Delhi, Bangalore, Chennai etc. competent and trained mediators are involved in the process of bringing about an amicable settlement in marital disputes. Though the Court is expected to act with due care and caution in dealing with the application for compounding the offence under Section 498A, we are of the view that it is desirable to introduce an additional safeguard as follows:-

After the application for compounding an offence under S.498A of Indian Penal Code is filed and on interviewing the aggrieved woman, preferably in the Chamber in the presence of a lady judicial officer or a representative of District Legal Services Authority or a counselor or a close relation, if the Magistrate is satisfied that there was prima facie a voluntary and genuine settlement between the parties, the Magistrate shall make a record to that effect and the hearing of application shall be adjourned by three months or such other earlier date which the Magistrate may fix in the interests of Justice. On the adjourned date, the Magistrate shall again interview the victim woman in the like manner and then pass the final order permitting or refusing to compound the offence after giving opportunity of hearing to the accused. In the interregnum, it

shall be open to the aggrieved woman to file an application revoking her earlier offer to compound the offence on sufficient grounds.

5.7 Accordingly, it is proposed to add sub-section (2A) to Section 320 CrPC. The proposed provision will ensure that the offer to compound the offence is voluntary and free from pressures and the wife has not been subjected to ill-treatment subsequent to the offer of compounding. Incidentally, it underscores the need for the Court playing an active role while dealing with the application for compounding the offence under Section 498-A.

5.8 The other points which deserve notice in answering the issue whether the offence under Section 498A should be made compoundable, are the following:-

5.8.1 The Law Commission of India in its 154th report (1996) recommended inclusion of S. 498A in the Table appended to Section 320(2) so that it can be compounded with the permission of the Court. The related extracts from the Report are as follows: *"Of late, various High Courts have quashed criminal proceedings in respect of non-cognizable offences because of settlement between the parties to achieve harmony and peace in the society. For instance, criminal proceedings in respect of offences under Section 406, IPC, relating to criminal breach of trust of dowry articles or Istridhan and offences under section 498A, IPC relating to cruelty on woman by husband or relatives of husband were quashed in Arun Kumar Vohra v. Ritu Vohra, Nirlap Singh v. State of Punjab."*

5.8.2 In continuation of what was said in the 154th Report, we may point out that the apex court, in the case of *B.S. Joshi vs. State of Haryana*¹¹, has firmly laid down the proposition that in order to subserve the ends of justice, the inherent power under Section 482 CrPC can be exercised by the High Court to quash the criminal proceedings at the instance of husband and wife who have amicably settled the matter and are desirous of putting end to the acrimony. The principle laid down in this case was cited with approval in *Nikhil Merchant vs. CBI*¹². However, a coordinate Bench¹³ doubted the correctness of these decisions and referred the matter for consideration by a larger Bench. According to the referring Bench, the Court cannot indirectly permit compounding of non-compoundable offences.

5.8.3 The recommendation of the Law Commission in the 154th Report regarding Section 498A was reiterated in the 177th Report (2001). The Commission noted that over the last several years, a number of representations had been received by the Law Commission from individuals and organizations to make the said offence compoundable.

5.8.4 Further, Justice Malimath Committee's Report on Reforms of Criminal Justice System strongly supported the plea to make Section 498 A a compoundable offence. The Committee observed:

"A less tolerant and 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, especially if the husband cannot pay. Now the woman may change her mind and get into the mood to forget and forgive. The husband may also realize the mistakes committed and come forward to turn over 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 cannot 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..."

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."

Though this Commission is not inclined to endorse the entirety of observations made in the above passage, some of them reinforce our conclusion to make it compoundable.

5.8.5 The views of Malimath Committee as well as the recommendations in the 154th Report of Law commission were referred to with approval by the Department-Related Parliamentary Standing Committee on Home Affairs in its 111th Report on the Criminal Law (Amendment) Bill 2003 (August 2005). The Standing Committee observed thus: *"It is desirable to provide a chance to the estranged spouses to come together and therefore it is proposed to make the offence u/s 498A IPC, a compoundable one by inserting this Section in the Table under sub-section(2) of Section 320 of CrPC"*. 5.8.6 The 128th Report of the said Standing Committee (2008) on the Code of Criminal Procedure (Amendment) Bill, 2006 reiterated the recommendation made in the 111th Report. 5.8.7 The views of Supreme Court and High Courts provide yet another justification to treat the offence under Section 498A compoundable.

The Supreme Court in a brief order passed in *Ramgopal vs. State of M.P.* observed that the offences under Section 498A, among others, can be made compoundable by introducing suitable amendment to law. The Bombay High Court¹⁴, as long back as in 1992, made a strong suggestion to amend Section 320 of CrPC in order to include Section 498A within that Section.

In the case of *Preeti Gupta vs. State of Jharkhand*¹⁵, the Supreme Court, speaking through Dalvir Bhandari, J. exhorted the members of the Bar to treat every complaint under Section 498A as a basic human problem and to make a

serious endeavour to help the parties in arriving at amicable resolution of that human problem. The Supreme Court then observed that the Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration. Further, it was observed: *"Before parting with the case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases"*. The Supreme Court then made these observations: *"It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society"*.

5.9 Yet another factor that should be taken note of is the policy of law in laying stress on effecting conciliation between the warring couples. The provisions in Section 9 of the Family Courts Act, 1984 Section 23 (2) of the Hindu Marriage Act, 1955 and Section 34(2) of the Special Marriage Act, 1954 impose an obligation on the court to take necessary steps to facilitate re-conciliation or amicable settlement.

5.10 It is worthy of note that in Andhra Pradesh, the State Legislature made an amendment to Section 320(2) of CrPC by inserting the following in the 2nd Table.

Husband or relative of husband of a woman subjecting her to cruelty	498A	The woman subjected to cruelty: Provided that a minimum period of three months shall elapse from the date of request or application for compromise before a Court and the Court can accept a request for compounding an offence under Section 498A of the Indian Penal Code provided none of the parties withdraw the case in the intervening period.
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The observations made by the High Court in various cases were taken into account while making this amendment. The amendment came into force on 1.8.2003. Our recommendation is substantially on the same lines.

5.11 The overwhelming views reflected in the responses received by the Law Commission and the inputs the Commission has got in the course of

deliberations with the members of District and Subordinate Judiciary, the members of the Bar and the law students is yet another reason persuading us to recommend the amendment of law to make the offence under 498A compoundable with the permission of Court. The list of respondents from whom views have been received by the Commission is at Annexure 1-B. An analysis of such views touching on the point of compoundability is furnished at Annexure 1-A. The Consultation Paper-cum-Questionnaire on various aspects of Section 498-A published by the Commission is attached hereto as Annexure-2

5.12 At the Conference with judicial officers including lady officers, there was almost unanimous opinion in favour of making the offence compoundable. The lady lawyers who were present at the Conferences held in Visakhapatnam, Chennai and Aurangabad did not oppose the move. At a recent Conference held with about 35 Judicial Officers of various ranks at Delhi Judicial Academy, there was unanimity on the point of compoundability. However, some Judges expressed reservation about allowing 3 months gestation period for passing a final order of compounding under Section 320(2) Cr PC. It was suggested that there should be some flexibility in this regard and the 3 months' period need not be strictly adhered to especially where there is a package of settlement concerning civil disputes as well. Keeping this suggestion in view, the Commission has provided that in the interests of justice, the Magistrate can pass orders within a lesser time.

5.13 The Law Commission is therefore of the considered view that the offence under Section 498A IPC should be made compoundable with the permission of the Court. Accordingly, in Table-2 forming part of Section 320(2) of the Code of Criminal Procedure, the following shall be inserted after the entry referring to Section 494 and before the entry relating to Section 500:

Husband or relative of husband of a woman subjecting her to cruelty	498A	The woman subjected to cruelty.
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Sub-section (2A) shall be added to Section 320 CrPC, as set out in paragraph 5.6, page 17 *supra*.

**List of persons, organizations and officials who responded
to the questionnaire**

**A LIST OF INDIVIDUALS - RESPONDED TO THE QUESTIONNAIRE ON
SECTION 498A IPC**

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1. Ms.Swati Goyal, Ahmedabad
 2. Neeraj Gupta, Delhi
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 4. Sateesh K. Mishra, Delhi
 5. Kalpak shah, Ahmedabad
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 7. Kharak Mehra, Nainital
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 9. Komal Singh, New Delhi
 10. Kaushalraj Bhatt, Ahmedabad
 11. Alka Shah, Ahmedabad
 12. Saumil Shah, Ahmedabad
 13. Trilok Shah, Ahmedabad
 14. Alpak Shah, Ahmedabad
 15. Bhavna Shah Ahmedabad
 16. Kaushal Kishor & 27 other residents of Visakhapatnam.
 17. iamamit, iamamitb1976@rediffmail.com
 18. Vishnuvardhana Velagala, vvrvelagala@gmail.com
 19. Hari Om Sondhi, New Delhi
 20. Kharak Singh Mehra, Nainital
 21. Virag R. Dhulia, Bangalore
 22. Ms Kumkum Vikas Sirpurkar, New Delhi
 23. Gaurav Bandi, Indore.
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 25. Ashish Mishra, Lucknow
 26. Umang Gupta, Rampur, Balia
 27. Avadesh Kumar Yadav, Nagpur
 28. T.R. Padmaja, Secunderabad
 29. T.C. Raghwan, Secunderabad
 30. C. Shyam Sunder, Hyderabad
 31. Ms. Shobha Devi, R. R Dt, Hyderabad
 32. A Nageshwar Rao, Hyderabad
 33. Praveen Chand, Hyderabad
 34. R.B. Timma Ready, Hyderabad
 35. A. Venu Gopal, kadapa, Hyderabad
 36. Aditya, Hyderabad

37. B. Y Lal, Hyderabad
38. Subramaniam Catari, Hyderabad
39. A Sai Kiran, Hyderabad
40. S. Jagannath, Bangalore
41. Prasad Chuilal, Pune
42. Biswadeep Paul, Pune
43. Avinash D. Gune, Pune
44. Damodar Varde, Indore
45. Kedar Ambedakar, Pune
46. Sandesh V. Chopdekar, Pune
47. Devkant Varde, Pune
48. Sanjeet Gupta, Pune
49. Cedric D'Souza, Pune
50. Amandeep Bhatia, Pune
51. Arjun Singh Rawat, Pune
52. N.K. Jain, Ujjain
53. Raj Kumar Jain, Ujjain
54. Shashidhar Rao, Hyderabad
55. Mohammed Hidayatullah, Hyderabad
56. Chandra Shekhar, Hyderabad.
57. P. Sugunavathi, Hyderabad
58. V. David, Hyderabad
59. Reddy Vidyadhar, R.R. District, Hyderabad.
60. Eshwar Lal, R.R. District, Hyderabad.
61. A. Satyanarayana, Hyderabad
62. M.V. Rama Mohan, Hyderabad
63. K.V. Indira, Kerala
64. P. Raju, Bangalore
65. G.R. Reddy, Hyderabad
66. D.S. Nathaniel, Hyderabad
67. K. Sriram, Hyderabad
68. Rajneesh K.V. Hyderabad
69. M. V. Aditya, Hyderabad
70. P. Ranga Rao, Hyderabad
71. T.V. S. Ram Reddy, R.R. District, Hyderabad.
72. R. Rahul, Nizamabad
73. J.P. Sahu, Damoh
74. B. Vinod Kumar, Nizamabad
75. Ponviah Catari, Hyderabad
76. P.K. Acharya, Hyderabad
77. B. Yamuna, Chennai
78. J.Sarat Chandra, Anantpur
79. P.N. Rao, Amalapuram
80. K. Narasaiah, Hyderabad
81. K. Ramakrishna Rao, Rajamundry
82. D.N. Samuel Raj, Hyderabad

83. D.N. Lavaney, Hyderabad
84. V. Madhani, Secunderabad
85. R. Rajashekhar Reddy, Hyderabad
86. P. Srirama Murthy, Hyderabad
87. K.L. Swapana, Rajamundry
88. Gauri Sankar, Hyderabad
89. L. Narsinga Rao, Hyderabad
90. Sushil Kumara Acharya, Hyderabad
91. D.N. Kerupavasam, Hyderabad
92. T. Ramesh, Hyderabad
93. P. Satish Kumar, Hyderabad
94. T. Srinivas, Nalgouda
95. M. Satish Kiran, R.R. District, Hyderabad
96. Parthasarathi, Secunderabad
97. Saraswati Devi, Hyderabad
98. A. Rangabyha, Hyderabad
99. T. Annapurna, R.R. District, Hyderabad
100. Saah Ali Ahmed, Secunderabad
101. A.Sai Nath, Hyderabad
102. S. Manasa, Hyderabad
103. Sameer Baksi, Kharagpur, West Bengal
104. Rumi Dey, West Bengal
105. Bhanu Dey, Kharagpur, West Bengal
106. Suman Kr. Dey, Kharagpur, West Bengal
107. Tinni Gaur, Jabalpur
108. Arun Yadav, Jabalpur
109. T. Salgu, Ujjain
110. Ashish Gupta, Ujjain
111. T. M. Kamran, Pune
112. Pushpal Swarnkar, Durg
113. Col. H. Sharma, Noida
114. Rana Mukherjee, Advocate, Hony. Secy, Bar Association, High Court, Kolkata.
115. Nagarathna A., Asstt. Professor Law, NLSIU, Bangalore, Nagarbhavi,
116. Raj Ghosal, Thane (W), Maharashtra
117. Pankaj R. Sontakke, Kandivali (E), Maharashtra
118. Ashish Agarwal, Vikhroli (W), Maharashtra
119. Savio Fernandez, Thane (W), Maharashtra
120. Anand M. Jha, Kalyan (W), Maharashtra
121. Sachchidanand Singh Patel, Navi Mumbai, Maharashtra
122. Arghya Dutta, Nerul, Maharashtra
123. Debabrata Bhadra, Jamsedpur, Jharkhand
124. Vikas Jhunjhunwala, Worli, Maharashtra
125. Mukund Jhala, Singh Darwaza, Burdwan, West Bengal.
126. Sandip De, Dombivalli (E), Maharashtra

127. Anurag Joshi, Thane (W), Maharashtra
128. Gayatri Devi, Sagar Road, Hyderabad
129. Ramesh Lal, Shalimar Bagh, Delhi.
130. Priyank Prakh, Manchester, USA
131. Katri Ram Venkatesh, Ranga Reddy, Distt.Andhra Pradesh
132. Sarath Chandra P., Panjagutta, Hyderabad
133. Subba Rao P., Panjagutta Hyderabad
134. V. Kamalamma, Chandanagar, Hyderabad
135. Dr. P. Sudhir, Kakinada, Andhra Pradesh
136. S.N. Kumar, Hyderabad
137. K.V.N.S. Laxmi, Rajamundry
138. Manoj Kumar Sahu, Kanchanbagh, Hyderabad
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141. Ram Prakash Sharma, Rohini, New Delhi
142. Manju Yadav, Jabalpur
143. Teeja Yadav, Adhartal, Jabalpur
144. Chandra Yadav,Adhartal, Jabalpur
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155. Sibi Thomas, Baruch, Gujarat
156. R.S. Sharma, Amity University, Uttar Pradesh
157. T. Gopala Krishna, Chichmagular
158. N.S. Mahesh, Bangalore, Karnataka
159. Shailaja G. Harinath, Bangalore
160. V.V. Lakshmanan, Ambattur, Chennai
161. Jayesh M. Poria
162. P. Rukma Chary, Bangalore
163. Deepak Kesari, Bangalore
164. Rajshekhar C.R., Bangalore.
165. N.H. Shiggaon, Vignan Nagar, Bangalore
166. Ajay M.U. Electronic City, Bangalore.
167. Vardhaman Nair, Bangalore.
168. Krishna Murthy, Bangalore
169. Sashidhar CM, Vinayaka Extn. Bangalore,
170. Narayan Kumar, Bangalore

171. Amjad F. Jamador, Belgam, Karnataka
172. Mohd. Arshad, Ranganath Colony, Bangalore.
173. B.A. Pathan, Hubli, Karnatka
174. Pronoy Kumar Ghosh, Cachar, Assam
175. N. N. Suiggaon, Vignan Nagar, Bangalore
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187. Mrs. Manisha C. Shinkar
188. Dr. Chandrakant K Shinkar
189. Shri Nagi Reddy Maddigapu (Senior Citizen), Retired A.P. State Agro Ind Dev. Corpn Emp., Macherla, Dist Guntur
190. Shri Harish Dewan, New Delhi
191. Ms. Sudha Gouranga Chakrabarti, Khirkee Lane, Chinsurah, Hoogly, West Bengal
192. Dr. Mohan Singh Sath, 33, Westholme Gardens, Ruislip, Middlesex, UK (NRI)
193. Shri Hemant Kumar Verma, Sr. Lecturer Civil Engg Govt. Polytechnic College, Ajmer Rajasthan

*Names not mentioned.

B. LIST OF ORGANIZATIONS / INSTITUTIONS - RESPONDED TO THE QUESTIONNAIRE ON SECTION 498A IPC

1. Save India Harmony, (Shri B.K. Aggarwal, President), Vishakhapatnam.
2. SIFFMWB, (Shri S. Bhattacharjee) Kolkata
3. Vigilant Women Munch, (Secretary, Ms Suman Jain), Delhi.
4. National Family Harmony Society President, (Shri P. Suresh), Karnataka. & 41 others
5. Mothers and Sisters Initiative –MASI, (Mrs. Shalini Sharma), General Secretary
6. Bharat Bachao Sangthan, (Shri Vineet Ruia), President, Kolkata
7. Piritto Purush Porishad, NGO, Kolkata
8. INSAAF, New Delhi.
9. All India Forgotten Women's Association, Hyderabad.
10. Members of Million Women Arrested Campaign (org), FBD, Haryana
11. The Kerala Federation of Women Lawyers, Secretary, (Ms.Aneetha AG), Kerala High Court Bldg, Kochi.
12. Lawyers Collective, (Ms. Indira Jaising), Jangpura Extn., New Delhi.
13. Rakshak Foundation, Shri Sachin Bansal, USA.
14. AWAG, Ila Pathak, Ahmedabad.
15. AIDWA, (Ms Kirti Singh), Legal Convenor, Advocate, Delhi
16. PLD (Partners for Law in Development), Madhu Mehra, Ex. Director, New Delhi.
17. Bharat Vikas Parishad (Shri Raj Pal Singla, President), Chandigarh, Punjab.
18. Shri S.K. Dulara, All India Muslim Front, "Rahman Plaza" YMCA Lane, Abids, Hyderabad
19. Md. Abdul Raoof, (retired Distict Judge, Hyderabad), All India Muslim Front, "Rahman Plaza" YMCA Lane, Abids, Hyderabad
20. Bimal N. Patel, Director, GLNU, Gandhinagar, Gujarat.
21. Prof. Ranbir Singh, Vice-Chancellor, National Law University, Delhi.
22. PMS Narayanan, National Commission for Minority, Khan Mkt, New Delhi
23. Janamithram Janakeeya Needi Vedi, Kerala State Committee, East Kottaparamba, Kozhikode
24. Justice Amarbir Singh Gill, Chairman, Punjab State Law Commission, Chandigarh.

C. LIST OF GOVERNMENT OFFICIALS - RESPONDED TO THE QUESTIONNAIRE ON SECTION 498A IPC

1. Prabhat Kumar Adhikari, Secretary (Law), A&N Admn., Port Blair.
2. *Pr. Secretary(Law-Legislation), Govt. of Himachal Pradesh.
3. L.M. Sangma, Secretary to Govt. of Meghalaya, Law Deptt.
4. B.K. Srivastava, Secretary in charge, Law Deptt., Govt. of West Bengal
5. Thejegu-U-Kire, Dy. Legal Remembrancer to Govt of Nagaland, Kohima.
6. Arindham Paul, DLR & Dy. Secretary, Law, Tripura.
7. *Home Secreatry, Chandigarh Administration
8. Shri Hari S. D. Shirodkar, Under Secretary, Law Department, Government of Goa.
9. Shri S. G. Marathe, Joint Secretary (Law), Govt. of Goa.
10. Shri Pramod Kamat, Law Secretary, Govt. of Goa
11. Shri D. V. K. Rao, Under Secretary, Ministry of Women and Child Development, GOI
12. Shri G. Rime, Deputy Secretary (Home), Department of Home and Inter State Border Affairs, Government of Arunachal Pradesh, Itanagar.
13. Shri Harishshankar Vaishya, Addl. Secretary, Government of Madhya Pradesh

* Name not mentioned

D. LIST OF JUDICIAL OFFICIALS/ OTHER OFFICIALS - RESPONDED TO THE QUESTIONNAIRE ON SECTION 498A IPC

- S/Shri/Ms
1. Chandigarh Judicial Academy, Dr. Virender Aggarwal, Director (Academics), Chandigarh.
 2. M. M. Banerjee, Distt Judge, Birbhum, Suri.
 3. Abhai Kumar, Registrar, High Court of M.P, Jabalpur.
(on behalf of Judicial officers, Training Institute)
 4. Nungshitombi Athokpam, Dy. Legal Rememberancer, Govt.of Manipur.
 5. Vijay Kumar Singh, Distt. & Sessions Judge, Jammu.
 6. Shrikant D. Babaladi, Distt. Judge Member, Karnataka, Appellate Tribunal, Bangalore.
 7. Bijender Kumar Singh, Distt. & Sessions Judge, Gopalgunj, Bihar.
 8. R.K. Watel, Distt. & Session Judge, Reasi(J&K)
 9. *Principal Distt. & Sessions Judge, Kishtwar
 10. S. N. Kempagoudar, Distt. Judge, Member, Karnataka Appellate Tribunal, Bangalore.
 11. Udayan Mukhopadhyay, Distt. & Sessions Judge, Purbi Medinapur.
 12. *Distt. & Sessions Judge, Vaishali, Hajipur.
 13. S.H. Mittalkod, Distt. & Sessions Judge, AIG-1, Govt. of Mizoram.
 14. Ranjit Kumar Baig, Distt. Judge, Malda, West Bengal.
 15. Sanjit Mazumdar, Addl. Distt. & Sessions Judge, Malda, West Bengal.
 16. Anant Kumar Kapri, Addl. Distt. & Sessions Judge, Malda, West Bengal.
 17. Kaushik Bhattacharaya, Addl. Distt. & Sessions Judge, Malda, West Bengal
 18. Subodh Kumar Batabayal, Addl. Distt. & Sessions Judge, Malda, West Bengal
 19. Shri Gopal Chandra Karmakar, Additional District and Sessions Judge, Malda, West Bengal.
 20. Sanjay Mukhopadhyay, Addl. Distt. & Sessions Judge, Malda, West Bengal
 21. Sibasis Sarkar, Addl. Distt. & Sessions Judge, Malda, West Bengal
 22. Sabyasahi Chatteraj, Civil Judge (Sr. Divn.), Malda.
 23. Ishan Chandra Das, Distt Judge, Burdwan.
 24. L.K. Gaur, Special Judge, CBI-9, Tis Hazari Courts, Delhi.
 25. M.K. Nagpal, ASJ/Special Judge, NDOS, South & South East Distt., Saket Courts, New Delhi.
 26. Dr. Neera Bharihoke, ADJ-V, South Saket Court, New Delhi.

27. Sanjeev Kumar, Metropolitan Magistrate, South-Saket Court, New Delhi.
28. Chetna Singh, Metropolitan Magistrate, South- Saket Court, New Delhi.
29. Sandeep Garg, Metropolitan Magistrate, South- Saket Court, New Delhi.
30. Anu Aggarwal, Civil Judge, South- Saket Court, New Delhi.
31. *District & Sessions Judge, Ambala
32. S.S. Lamba, District & Sessions Judge, Rohtak.
33. *District & Sessions Judge, Fatehbad.
34. *District & Sessions Judge, Rewari.
35. R.S. Virk, District & Sessions Judge, Gurgaon.
36. K. C. Sharma, District & Sessions Judge, Panipat.
37. *District & Sessions Judge, Kaithal.
38. * District & Sessions Judge, Jind.
39. Deepak Aggarwal, District & Sessions Judge, Jind.
40. D. N. Bhardwaj, District & Sessions Judge, Jind.
41. Dr. Chander Dass, Judicial Magistrate, Jind.
42. Praveen Kumar, Addl. Civil Judge (Sr. Divn.-cum-Sub-Divn. Judicial Magistrate), Safidon.
43. Kumud Gungwani, Sub-Divn. Judicial Magistrate, Narwana.
44. Gurvinder Singh, Gill, District & Sessions Judge, Fatehgarh Sahib.
45. Raj Rahul Garg, District & Sessions Judge, Karnal.
46. *District & Sessions Judge, Bhiwani.
47. Narender Kumar, District Judge(Family Court), Bhiwani.
48. Rajinder Goel, Addl. District & Sessions Judge, Bhiwani.
49. Rajesh Kumar Bhankhar, Chief Judicial Magistrate, Bhiwani
50. Tarun Singal, Chief Judge (Jr.Divn.), Bhiwani.
51. Narender Singh, Chief Magistrate, Ist Class, Bhiwani.
52. Rajni Yadav, Addl. Civil Judge (Sr.Divn.) cum-Sub-Divisional Judicial Magistrate, Loharu.
53. Balwant Singh, Civil Judge (Jr.Divn.) cum-Sub-Divisional Judicial Magistrate, 1st class, Bhiwani.
54. Narender Sharma, Sub-Divn. Judicial Magistrate, Charkhi Dadri.
55. A.S. Nayar, Civil Judge (Jr.Divn.), Charkhi Dadri.
56. Parvesh Singla, Civil Judge, Charkhi Dadri.
57. Kuldeep Jain, Addl. Distt. & Sessions Judge, Sonapat.
58. Sanjiv Kumar, Addl. Distt. & Sessions Judge, Sonapat.
59. Gulab Singh, Addl. Distt. & Sessions Judge, Sonapat.
60. Vivek Bharti, Addl. Distt. & Sessions Judge, Sonapat.
61. Ritu Garg, Addl. Distt. & Sessions Judge, Sonapat.
62. Lal Chand, Civil Judge (Sr.Divn.)-cum-ACJM, Sonapat.
63. Madhulika, C.J.(J.D.)-cum-JMIC, Sonapat.

64. Ranjana Aggarwal, Addl. Civil.(Sr.Divn.), Sonapat.
65. Rajesh Kumar Yadav, C.J.(S.D.)-cum-JMIC, Sonapat.
66. Harish Gupta, Addl. Civil.(Sr.Divn.), Ganaur.
67. K.P. Singh, Addl. Civil.(Sr.Divn.), Gohana.
68. Sanjiv Jindal, Addl. Distt. & Sessions Judge, Narnaul.
69. Rajneesh Bansal, Addl. Distt. & Sessions Judge, Narnaul.
70. Sudhir Jiwan, Addl. Distt. & Sessions Judge, Fast Track Court, Narnaul.
71. Praveen Gupta, Addl. Chief Judicial Magistrate, Narnaul.
72. Chander Hass, Chief Judicial Magistrate, Narnaul.
73. *Distt. & Sessions Judge, Gurdaspur.
74. Rajesh Kumar Yadav, Addl. Distt. & Sessions Judge, C.J.(JD)-cum-JMIC, Sonapat.
75. * Distt. & Sessions Judge, Chandigarh.
76. *Distt. & Sessions Judge, Sirsa.
77. *Distt. & Sessions Judge, Jhajjar.
78. *Distt. & Sessions Judge, Faridabad.
79. *Distt. & Sessions Judge, Yamuna Nagar at Jagadhri.
80. *Distt. & Sessions Judge, Panchkula.
81. *Distt. & Sessions Judge, Pehowa.
82. Rajinder Pal Singh, Addl. Civil Judge (Sr. Divn.), Pehowa.
83. Gurcharan Singh Saran, Distt. & Sessions Judge, Shaheed Bhagat Singh Nagar.
84. *Distt. & Sessions Judge, Rupnagar.
85. Inderjit Singh, . Distt. & Sessions Judge, Jalandhar.
86. *Distt. & Sessions Judge, Ferozpur.
87. *Distt. & Sessions Judge, Kapurthala.
88. *Distt. & Sessions Judge, Mansa.
89. Amit Kumar Garg, Judicial Magistrate 1st Class, Kurushetra.
90. *Distt. & Sessions Judge, Kurushetra.
91. Manish Batra, Addl. Distt. & Sessions Judge, Kurushetra.
92. Harleen Sharma, Civil Judge (Jr. Divn), Kurushetra.
93. Sanjiv Kumar, Addl. Distt. & Sessions Judge, Kurushetra.
94. Sanjiv Arya, Judicial Magistrate 1st Class, Kurushetra.
95. Arun Kumar Singhal, Addl. Distt. & Sessions Judge, Kurushetra.
96. Jagjit Singh, Civil Judge (Sr. Divn), Kurushetra.
97. Amarinder Sharma, Civil Judge (Jr. Divn), Kurushetra.
98. Raj Gupta, Civil Judicial Judge, Kurushetra.
99. Anudeep Kaur Bhatti, Judicial Magistrate 1st Class, Kurushetra.
100. Akshdeep Mahajan, Judicial Magistrate 1st Class, Mohindergarh.
101. Narender Pal, Judicial Magistrate 1st Class, Narnaul.
102. *Distt. & Sessions Judge, Hisar.
103. *Distt. & Sessions Judge, Amritsar.

104. *Distt. & Sessions Judge, Patiala.
105. *Distt. & Sessions Judge, Hoshiapur.
106. *Distt. & Sessions Judge, Ludhiana.
107. *Distt. & Sessions Judge, Bathinda.
108. *Distt. & Sessions Judge, Sri Muktsar Sahib.
109. Shri S. Sivaiah Naidu, Registrar General, Government of Andhra Pradesh.
110. Shri J.P. Gupta, Director (JOTRI) High Court of Madhya Pradesh, Jabalpur
111. *District & Sessions Judge, Kinnaur at Rampur Bushahr, H.P.
112. *District & Sessions Judge, Simaur at Nahan, H.P.
113. *District & Sessions Judge, Kangra at Dharmshala, H.P.
114. *District & Sessions Judge, Una, H.P.
115. *District & Sessions Judge, Hamirpur, H.P.
116. *District & Sessions Judge, Bilaspur, H.P.
117. *District & Sessions Judge, Solan, H.P.
118. *District & Sessions Judge, Kullu, H.P.
119. *District & Sessions Judge, Mandi, H.P.
120. *District & Sessions Judge, Chamba, H.P.
121. *Director, HP Judicial Academy Shimla, H.P.

From Registrar General of Karnataka High Court, Bangalore

122. Shri S. Harish Kumar, Principal Distt. & Sessions Judge, Chitradurga, Karnataka
123. Shri Shivashankar B. Amarannavar, District & Sessions Judge, Bagalkot. Karnataka
124. Shri Lakshman F. Malavalli, VI Addl. District & Sessions Judge, Mysore, Karnataka
125. Shri T.G. Channabasappa, Presiding Officer, Fast Track Court III. Mysore, Karnataka
126. Shri Narendra Kumar Gunaki, District & Sessions Judge, Udupi, Karnataka.
127. Dr. Shashikala MA Urankar, Principal District & Sessions Judge, Bidar, Karnataka
128. Shri John Micheal Cunha, Presiding officer, KSTAT, Bangalore, Karnataka
129. District & Sessions Court, Koppal, Karnataka
130. Shri Pradeep D. Waingakar, Chief Judge, Court of Small Causes, Bangalore.
- 131.** Shri L. Subramanya, Principal District & Sessions Judge, Bijapur.
132. Shri S.V. Kulkarni Presiding Officer & Addl. & Sessions Judge (Ad hoc), Fast Track Court, Jamakhandi, Dist Bagalkot, Karnataka

From the Registrar General, High Court of Chattisgarh, Bilaspur

133. Shri R.C. S. Samant, Director, Chhattisgarh State Judicial Academy, Bilaspur
134. Shri Ashok Panda, District Judge, Durg, Chhattisgarh
135. Shri Ashok Kumar Sahu, Addl. District & Sessions Judge, Durg,
136. Shri Kamlesh Jagdalla, Additional Judge, First Class, Durg,
137. Shri Venseslas Toppo, Civil Judge, Class-II, Durg, Chhattisgarh
138. Ms. Chhaya Singh Bagel, Magistrate, First Class, Durg, Chhattisgarh
139. Smt. Swarnlata Toppo, Civil Judge, Class I, Durg, Chhattisgarh
140. Shri Srikant Srivas, Officer, First Class, Durg, Chhattisgarh
141. Shri Thomas Ekka, Civil Judge, class II, Durg, Chhattisgarh
142. Shri Anish Dube, Civil Judge, First Class, Rajhara, Chhattisgarh
143. Shri Vivek Kumar Tiwari, Judicial Magistrate First Class, District Balod, Chhattisgarh
144. Shri Deepak Kumar Kaushal, Judicial Magistrate First Class, Bametara, Dist. Durg, Chhattisgarh
145. Shri Praveen Kumar Pradhan, Judicial Magistrate First Class, Bametara, Dist. Durg, Chhattisgarh
146. Ms. Pushplata Markandey, Civil Judge Class-2, Durg, Chhattisgarh
147. Shri Jitendra Kumar Jain, Chief Judicial Magistrate, Durg, Chhattisgarh
148. Shri Santosh Thakur, Civil Judge Class-2, Durg, Chhattisgarh
149. Shri Manish Kumar Dubey, Civil Judge, Class-2, Durg, Chhattisgarh
150. Shri Abhishek Sharma, Judge class II, Durg, Chhattisgarh
151. Smt. Shyamvati Bharavi, Civil Judge, Class-1, Durg, Chhattisgarh
152. Ms. Mamta Shukla, Civil Judge, Class II, Durg, Chhattisgarh
153. Smt. Sushma Lakda, Civil Judge, Class II, Durg, Chhattisgarh
154. Shri Ashok Kumar Lal, Judicial Magistrate, Class-I, Durg, Chhattisgarh
155. Ms. Yashoda Kashyap, Civil Judge, class II, Durg, Chhattisgarh
156. Shri Jitender Thakur, Judicial Magistrate, Class-I, Durg, Chhattisgarh
157. Shri Sandeep Bakshi, District & Sessions Judge, Raipur, Chhattisgarh
158. Smt. Anita Jha, District and Sessions Judge, Bilaspur, Chhattisgarh

159. Shri C.B. Bajpai, District and Session Judge, Mahasamund, Chhattisgarh
160. Shri Anil Kumar Shukla, District and Session Judge, Dhamtari.
161. Shri Gautam Chourdiya, District and Sessions Judge, Janjgir, Champa, Chhattisgarh
162. * District and Sessions Judge, Sarguja, Ambikapur, Chhattisgarh
163. Smt. Vimla Singh Kapoor, District and Session Judge, Korea, Bakunthpur Chhattisgarh
164. Shri I.S. Ubojeba, District and Session Judge, Bastar, Jagadalspur, Chhattisgarh
165. Smt. Satyabhama Ajay Dubey, Chief Judicial Magistrate, Uttar Bastar, Kanker, Chhattisgarh
166. Shri N.S. Patel, Judicial Magistrate Class-I, Bhanupratap Pur, Kanker, Chhattisgarh
167. Shri J.S. Patel, Judicial Magistrate, Class-I, Dist N.B. Kanker, Chhattisgarh
168. Shri Shiv Mangal Pandey, District and Session Judge, Raigar, Chhattisgarh
169. Shri Prabhat Kumar Shastri, District & Sessions Judge, Jashpur, Chhattisgarh
170. Shri M.P. Singhal, District and Session Judge, Rajnada, Chhattisgarh
171. *District and Sessions Judge, Korba, Chhattisgarh
172. Shri A.K. Bek, JFMC (South Bastar Dantewada), Chhattisgarh
173. Smt. Anita Dharia, Addl. JFM, Dantewada, Chhattisgarh
174. Shri Ramjivan Devgan, Civil Judge, class I, Bijapur, Chhattisgarh
175. Shri V.K. Chanakya, Chief Judicial Magistrate, South Bastar, Dantewada, Chhattisgarh
176. Smt. Yogita Vinay Wasnik, Judicial Magistrate, Class-I, South Bastar, Dantewada
177. Shri Yashwant Wasnik, Civil Judge, Class I, Sukma, Chhattisgarh
178. Shri Balram Kumar Devagan, District Magistrate, Class-II, Bacheli, Dantewada
179. Shri Amrit Kerkatta, Civil Judge, class I South Bastar District, Kanta, Chhattisgarh
180. Smt. Anuradha Khare, District and Sessions Judge, Kabeerdham, Chhattisgarh

From High Court of Jharkhand, Ranchi (Jharkhand)

181. Shri Anil Kumar Choudhary, District and Session Judge, Bokaro, Jharkhand

182. Md. Mushataque Ahmed, District and Session Judge, Chatra, Jharkhand
183. Shri Rajesh Kumar Dubey, District and Session Judge, Singhbhum at Chaibasa, Jharkhand
184. Shri Amitav Kumar Gupta, Principal District and Session Judge, Deoghar, Jharkhand
185. Shri Satyendra Kumar Singh, Principal District & Sessions Judge, Dhanbad, Jharkhand
186. *Principal District & Sessions Judge I/C, Dhumka, Jharkhand
187. Shri Shiv Narayan Singh, District & Sessions Judge, Garhwa, Jharkhand
188. Shri Pradeep Kumar Srivastava, District & Sessions Judge, Giridih, Jharkhand
189. Shri Kamesh Mishra, I/c District & Sessions Judge, Godda, Jharkhand
190. Shri Om Prakash Pandey, Principal District & Sessions Judge, Gumla, Jharkhand
191. Shri Deepak Kumar, Chief Judicial Magistrate, Jamshedpur, Jharkhand
192. Shri Brijesh Bhadur Singh, Secretary, DLSA, Civil Courts, Jamshedpur, Jharkhand
193. Shri S.S. Prasad, Sub-Divisional Judicial Magistrate, Jamshedpur, Jharkhand
194. Shri K.K. Srivastava, Registrar/Judge-in-Charge-cum-J.M., Class-I, Civil Court, Jamshedpur, , Jharkhand
195. Smt. Sanjeeta Srivastava, Judicial Magistrate 1st Class, Jamshedpur, Jharkhand
196. Smt. Kashika M. Prasad, Judicial Magistrate, 1st Class, Jamshedpur, Jharkhand
197. Shri Rakesh Kumar Singh, Judicial Magistrate 1st Class, Jamshedpur, Jharkhand
198. Shri Taufique Ahmed, Judicial Magistrate 1st Class, Jamshedpur, Jharkhand
199. Shri Arun Kumar Dubey, Judicial Magistrate, 1st Class, Jamshedpur, Jharkhand
200. Shri Anil Kumar Ray, Addl. Chief Judicial Magistrate, Jamshedpur, Jharkhand
201. Shri Dinesh Kumar, Judicial Magistrate 1s Class, Jamshedpur, Jharkhand
202. Shri Sachindra Nath Sinha, Judicial Magistrate, 1st Class, Jamshedpur, Jharkhand
203. Shri Suraj Prakash Thakur, Judicial Magistrate, 1st Class, Jamshedpur, Jharkhand
204. Shri Goutam Mahapatra, District and Sessions Judge, Jamtara

205. Shri Ajit Prasad Varma, Principal District & Sessions Judge, Koderma, Jharkhand
206. Shri Naveen Kumar, Principal District and Sessions Judge, Lohardaga, Jharkhand
207. Shri Vishnu Kant Sahay, Principal District & Sessions Judge, Palamau, Daltonganj, Jharkhand
208. Shri Binay Kumar Sahay, District and Sessions Judge, Pakur, Jharkhand
209. Shri Rajesh Kumar Vaish, District & Sessions Judge, Sahibganj, Jharkhand
210. Shri K.K. Srivastava, Principal District & Sessions Judge, Seraikella-Kharsawan, Jharkhand
211. Shri Narendra Kumar Srivastava, District & Sessions Judge, Simdega, Jharkhand
212. Shri Dharendra Kumar Mishra, Admn. Officer, Judicial Academy Jharkhand, Ranchi

From the High Court of Kerala

213. *Kasargod District Judge Kerala
214. *Wayanad District Judge, Kerala
215. Shri M.J. Sakthydharan, Addl. District Judge
216. *District and Sessions Judge, Manjeri, Kerala
217. Shri P.Ubaid, District Judge, Palakkad, Kerala
218. * Addl. District Judge, Alappuzha
219. Shri K. Ramakrishnan, District Judge, Thodupuzha
220. Shri N. Revi, District Judge, Pathanamthitta
221. Shri Thomas Pallickaparampil, District and Sessions Judge
222. * Chief Judicial Magistrate, Kasaragod, Kerala
223. Shri K.P. John, Chief Judicial Magistrate, Kozhikode, Kerala
224. Shri S. Satheesachandra Babu, Chief Judicial Magistrate, Manjeri, Kerala
225. * Chief Judicial Magistrate, Palakkad, Kerala
226. Shri P.S. Antony, Chief Judicial Magistrate, Thrissur, Kerala
227. Shri K. A Rajamohanan, Addl. Chief Judicial Magistrate, Ernakulam, Kerala
228. *Addl. Chief Judicial Magistrate(EO), Ernakulam, Kerala
229. Shri B. Vijayan, Chief Judicial Magistrate, Ernakulam, Kerala
230. Shri P.C. Paulachen, Chief Judicial Magistrate, Thodupuzha, Kerala
231. Ms. Indukala.S., Chief Judicial Magistrate, Pathanamthitta, Kerala
232. * Chief Judicial Magistrate, Kollam, Kerala

List of Police officials replied to questionnaire

233. Renchamo P. Kikon, IPS, DIG, Nagaland, Kohima,

- 234. Mrinalini Srivastava, Supdt. Of Police, CID, Gangtok, Sikkim.
- 235. *Dy. SP(HQ), O/o DGP, Andaman & Nicobar Islands, Port Blair.
- 236. Shri Deepak Purohit, Supdt. Of Police, D&NH, Silvasa.
- 237. P.C. Lalchhuanawama, AIG-1 (for DGP), Govt. of Mizoram, Aizwal.
- 238. S. R. Dass, Asstt. I.G. Police(Pers), Govt. of Tripura, Agartala.
- 239. *Inspector General of Police (HQ), Bihar, Patna.
- 240. *Suptd. Of Police, Panaji, Goa.
- 241. *Addl. DG of Police (Crime), Punjab Chandigarh.
- 242. Shri Mangesh Kashyap, DCP (HQ), Office of the Commissioner of Police, Delhi
- 243. Shri T. Pachuau, IG of Police (Adm), Police Department, Government of Manipur.
- 244. Inspector General of Police, UT, Chandigarh

*Names not mentioned.

Annexure – III-A
[refer para 10.1 of the Report]

**Broad Analysis of 474 replies to questionnaire on Section 498-A IPC
regarding bailability**

	Individuals*	Organisations/ Institutions**	Government Officials	Officials/ Judicial officials	Grand Total
Bailable	83	14	3	100	200
Non-Bailable	4	5	8	109	126
Partial bailable	3	3	1	23	30
Repeal	74	0	1	1	76
No Comments	29	2	0	11	42
Total	193	24	13	244	474

* Two NRIs

** One organization from USA

Some of the responses received - Gist

Sri Justice (Retd.) A.S. Gill, Chairman, Punjab State Law Commission expressed the view that there is no need to exercise the power of arrest of husband and his family members as it will result in breakdown of family. Recourse may be initially taken to dispute settlement mechanism such as conciliation, mediation and counselling. The process of making effort for reconciliation is to be initiated even at the Police Station level by taking the aid of respectable persons named by both parties. The counselling mechanism under Domestic Violence Act can also be availed of by taking the assistance of professionally qualified counsellors appointed by State Government. The offence should be made bailable and compoundable. Bailability will not become in any way counter-productive. There is every need to sensitize the police in these matters and only an experienced officer should be entrusted with investigation. Compounding should be allowed subject to the permission of Court. The main reason for low conviction rate in the prosecution under Section 498-A is due to the fact that the allegations are exaggerated and beyond facts. Crime against Women Cell (CWC) should consist of persons who are well educated and experienced and have orientation to deal effectively with marital dispute.

National Commission for Minorities:

The issue can be best addressed by educating public through awareness programmes, also designed for minorities.

Members of National Commission for Minorities (Dr. H.T. Sangliana & Shri K.N. Daruwala)

Police should have open and balanced approach. In all cases, straightway the case need not be registered. The decision to register a case may be taken by the Inspector level officer. Cases under 498A to be handled with utmost care. Only after satisfying with the genuineness of the complaint, an arrest should be made and not in a routine manner. Formal investigation can be kept in abeyance until the conciliation attempt is completed which should not be more than three weeks. Right mediators can be identified through NGO nets and retired officials from Police and judiciary. In Karnataka, women's help centres are available in the compound of Commissioner of Police. The fourth parties agreed to compromise after registration, Court's permission may be taken to compound. If no death is involved, it may be made bailable. Bail should be granted to the accused if his/her age is above 60 and if no direct involvement is established. Free legal aid cell will be useful to butt availability of such help when required is

doubtful. Long pendency of cases discourages the complainants from pursuing the matters further.

Shri Daruwala:

A detailed inquiry before arrest is necessary. However, the physical security of the women must be ensured. Arrest should be made normally with warrants. Police must record reasons for arrest without warrant. The offence could be made bailable though the bail has to be granted sparingly. There should be Police and anti-dowry cell in every district manned by trained woman police. The two processes, conciliation and investigation can proceed side by side. Offence could be made compoundable. Women do not have easy access to LSAs at grass root level. Measures to spread awareness should be taken through media and even it can be made part of school curricula.

Dr. Ranbir Singh, Vice-Chancellor (on behalf of NLU Delhi) – There is enough evidence to suggest that this Section has been misused in many ways. However, the misuse did not flow from the principle and intention on which this law is based. Robust effort should be made to implement the law so that the social objective of the law does not suffer. The misuse or false implications could be minimised by insisting on strict observance of the law of arrest as evolved in *D.K. Basu case* [(1997) 1 SCC 416]. Secondly, the mandate of this law should be shifted from penal to restorative purpose. The recourse to mediation and conciliation in the first instance is the best idea. The arrest and other drastic legal measures should begin when all the options of restoration have failed. Registering the case is the legal obligation of the Police but they need not act in undue haste to effect the arrest. They should be guided by the spirit of Section 157 Cr. P.C. It would be worthwhile to divide the offence under Section 498-A in two categories depending on the gravity of the act of cruelty alleged. The offence can then be categorised as bailable or non-bailable. Offence of milder degree may be treated as family discord and be addressed with an approach of reconciliation. Awareness building programmes involving statutory bodies and NGOs should be organised. The officers manning women Police Stations must be given adequate training.

Dr. Bimal Patel, Director, GNLU, Gandhinagar, Gujarat - The Police should investigate the case and only on satisfaction of commission of offence under 498-A they should think of arrest. Making the offence bailable solves the problem to certain extent, though there are divergent views. The recourse can also be taken to Section 437 Cr. P.C. The offence can be made compoundable with the permission of Court. There should be better coordination between the LSA (Legal Services Authority) and Police. CWC should be under the control of Inspector level woman officer.

Judicial Officers Training Institute, (JOTRI), Jabalpur –

1. Police has to register the criminal case on receiving FIR alleging commission of offence under Section 498A, but they should commence investigation keeping in view the two conditions contemplated under Section 157 Cr.PC.

Having regard to the nature of dispute, preliminary investigation should be done instead of straightway arresting the husband or other relatives named in the FIR. Immediate arrest of the husband and other close relatives will destroy the possibility of amicable resolution of dispute forever.

2. Police officer may commence investigation but before taking harsh measures by way of arrest etc., there should be a process of reconciliation with the help of counseling centres run by reputed NGOs or Govt. mediation centres. The concerned police officer should contact the DLSA or TLSA so that the authority may take steps to arrange the task of conciliation.
3. Offence should remain non-bailable with cautious approach of the police in making arrest. Misuse or over-implication cannot be a ground of making the offence bailable as this will defeat the objective of Section 498A.
4. Counseling/mediation procedures should be completed preferably within two months from the date of appearance of husband and wife. If the husband does not respond to the notice from family counseling centre or does not cooperate in the process of counseling, then only, the I.O. should proceed against the erring party according to law after receiving the report from the counselors/mediators. After amicable settlement, further investigation of the criminal case shall be stopped and the case be closed.
5. Police should not get involved in the actual process of conciliation. Family counseling courts should be established in every district with professional counselors. Mediation Centres are also helpful in resolving matrimonial disputes.

Director, H.P. Judicial Academy, Shimla - Make 498-A IPC gender neutral. 498-A should be removed from criminal case as it is a family matter and because of this many adverse consequences will follow. The filing of Police report after FIR must be completed in three months and court proceedings should be completed within one year thereafter.

Dr. Neera Bharihoke, ADJ, Delhi - No immediate arrest and it should be the last resort. Make it bailable and compoundable. There should be a supervisory body over CWC. LSA must spread awareness.

Dr. Neera Gupta: Offences under Section 498A to be made non-cognizable, bailable. Persons who misuse the provision shall be penalized on completion of trial by the very same court. Separate provisions should be introduced for this purpose. Heavy fine of Rs.10 lakhs should be there. Persons who use women-protection laws for settling personal scores should be punished. The Section must be made gender neutral. Police should keep away from counselling.

Ministry of Women and Child Development, Government of India - Law according protection to women should be not be tinkered with; however, if some set procedures are followed, misuse can be curtailed. No arrest should be made on a mere allegation. In matrimonial disputes, it may not be necessary to immediately exercise the power of arrest in all cases. First recourse should to settlement mechanism. Counselling of parties should be done by professional qualified counsellors and police should empanel such persons Mahila desks to be set up at Police Stations and CAW Cells.

Lawyers Collective (Ms. Indira Jaisingh, Sr. Advocate, New Delhi) - Police should take action as per the existing laws and the procedure specified under Cr. P.C. Let it remain non-bailable and non-compoundable. Need to strengthen coordination between LSA and Police Station. Transparency of action and accountability can act as safeguards. Under-staffed and untrained CAW Cell cannot be helpful for these cases. Police force needed to be infused with basic human values and made sensitive to the constitutional ethos.

Ms. Nagaratna A., Asstt. Professor of Law, NLSIU, Bangalore - Offence should be made bailable and compoundable with the permission of Court. The Police soon after recording FIR must commence investigation and find out the existence of *prima facie* case. At no point Police shall have the power to arrest the accused without warrant of a Magistrate. Aged parents and sisters of the husband and other relatives must be spared from the ill-effects of unnecessary arrest. For the purpose of arrest, the offence should be made non-cognizable; but, for the purpose of investigation, it shall remain cognizable so that the I.O. can commence the investigation without waiting for permission by a Magistrate like in a non-cognizable offence. Secondly, the I.O. shall have the power to arrest only after fulfilling the conditions laid down under the amended Cr.P.C. CWCs shall be headed by well-qualified and trained women Inspectors. LSA can play a role for conciliation at pre-investigation and pre-trial stage.

AIDWA (Ms. Keerti Singh, Delhi)

Police failure in taking timely action and in investigating the case on proper lines commented upon. Police should act according to the existing law and they do not need any directions to be cautious about these complaints as they are already taking long time even to register the FIR. If the woman complaints of physical violence, she should be immediately provided medical aid and the husband/in-laws should be stopped from committing further acts of violence, if necessary by arresting

him. Custodial interrogation could yield good results. The police has to help the victim woman by providing medical counseling and/or sending her to a shelter home. Crisis centres should be set up at the block and district level.

The seriousness of the crime should not be diluted by making it bailable and compoundable. Making it compoundable even with the permission of the Court will only result in the woman facing more pressure to compromise. In any event, if a compromise is reached, it gets recognition from the court to quash criminal proceedings. Reconciliation should not be thrust upon the woman. It would be wrong to first try to reconcile both the parties. Conciliation by a trained counselor should be resorted to only if it can be carried out without compromising the rights and position of the woman and only if the woman wants the return of dowry/streedhan to settle the matter.

It would not be advisable to entrust the investigations to the CWCs to the exclusion of regular Police Stations. The experience shows that CW Cells have not been positive. The number of Police Stations should be increased and personnel properly trained. CWCs should be headed by a lady DSP.

KFWL (President, Ms. K. Devi, Advocate), Kochi – It should remain non-bailable but shall be made compoundable with the permission of Court. Immediate arrest to be made only if offence is grave and affected the life, limb or health of the victim. There should be better coordination between LSA and Police. Crime against Women Cell in every district is desirable and should be headed by an IAS Officer. Nominees from local bodies, NGO, LSAs, mental health specialists apart from Police personnel should be the members thereof.

Rakshak Foundation (Shri Sachin Bansal, Santa Clara, USA) – Make it bailable and compoundable. No arrest before investigation. There should be better coordination between LSA and Police. Fast Track Courts to dispose of cases within a time bound schedule shall be opened.

Shri Priyank Parekh, Manchester, USA – Police to thoroughly investigate and not to arrest immediately, make it bailable and compoundable. CWC with well trained Police officer is desirable.

Dr. Virender Aggarwal, Director (Academics) Chandigarh – Make it non-bailable. It should remain non-bailable and non-compoundable. On receiving FIR, Police should make preliminary inquiry through relatives, neighbours etc. to find out the genuineness of the case before taking any action. LSA can decide whether to deal with case as criminal matter or in the realm of matrimonial civil law. CWC should only help the regular investigation agencies.

Shri Sivaiah Naidu, Registrar General, High Court of A.P. – Efforts for conciliation should be made on receipt of complaint. Immediate arrest should not be resorted to unless there is immediate danger to the victim or the husband is about to leave the jurisdiction of Indian Courts. Make the offence bailable and compoundable. Conciliation between the parties before effecting arrest is desirable and such conciliation can take place through the institution of LSA. The panel of mediators may consist of family welfare experts and trained counselors. LSAs in Taluka and District levels should play a more active role. There should be CAW Cell at District

Headquarters and it shall be headed by Dy.SP rank officer. The woman police deployed in this cell should have ample experience in life and proper awareness of laws related to woman.

Shri Abhay Kumar, Registrar, High Court of M.P., Jabalpur – No immediate arrest but register the case and start preliminary investigation. It shall remain non-bailable but compoundable. Family counseling centres should be opened all over the State.

Additional Chief Judl. Magistrate (E.O.), Ernakulam – Simultaneous with the registration of a case under Section 498-A, the Police should intimate the matter to the Protection Officer and cause an application to be filed before the Judl. Magistrate under the Domestic Violence Act so that the possibility of conciliation could be explored under judicial supervision. Arrest should be resorted to only after getting permission from the Magistrate. Do not make the offence bailable but make it compoundable. There should be regular meetings between LSA at the District level and SHO of Police Stations to take stock of the cases under 498-A.

Shri Thomas Pallickparampil, District Judge, Kerala – Do not make offence bailable but make it compoundable. Interrogation without arrest will be ideal situation. LSA may be assigned better and extensive role. Pre-litigation adalats ought to be organized. However, LSAs should not be constrained to coordinate with Police Stations. Need for specially trained senior woman police officer in CWC.

Shri Narendra Kumar, District Judge (Family Courts)- Bhiwani – Make it bailable and compoundable. On receiving FIR, definite conclusion based on history of family life, root cause for lodging FIR should be arrived at. Proper training should be given to women police officials. To spread awareness by making it mandatory for TV channels to show protective penal provisions and civil rights available to women.

Shri R.R. Garg, District Judge, Karnal – No immediate arrest. First, matter to be sent to Conciliation Board or Counseling/mediation centres. It should remain non-bailable but compoundable. Need to spread awareness through print and electronic media. CWC to be headed by woman police officer of the rank of S.P.

Ms. Renhcamo P. Kikon, DIG of Police, Nagaland, Kohima - It should remain non-bailable but compoundable. Initially preliminary investigation and steps for reconciliation/mediation to be taken. If efforts fail, then the case to be registered under Section 498-A. Women Cell should be headed by Inspector rank lady officer. LSA should educate women and help them at grass root levels.

I. G. of Police – Union Territory, Chandigarh – Before registering the FIR, police should adopt a conciliation process with the help of competent counselors and should act as an observer in order to avoid unwarranted arrest. A time limit of 45 days is already being followed in this process. Offence to remain non-bailable but compoundable with the permission of Court. CWC should be established in every District with experienced and well trained women police officials.

Shri Mangesh Kashyap, DCP (HQ), Delhi: Section 498(A) of IPC is certainly needed in its unadulterated form. Some procedural improvements could be made before registering FIR. In order to ensure that the facts are not exaggerated, the aggrieved woman should be asked to write an application after few sessions of interactions with a Counsellor. In case the complaint is found exaggerated benefit of doubt should be given. All possible efforts should be made through counselling and mediation to keep the woman and her children in the matrimonial home. **Make it non-bailable.** Case registered under 498A should be investigated by officer in the rank of Sub Inspector or above. They should be supervised regularly by an ACP once in a fortnight and DCP / ADCP once in a month.

Shri D.V.K. Rao, Under Secretary, Ministry of Women & Child Development, Delhi: On receipt of complaint, police should immediately register a FIR and conduct investigation into the matter. However, immediate arrest of husband should not be resorted to unless the alleged act of cruelty is *prima facie* very serious and calls for such arrest. Mediation and counseling process should be undertaken but the police should exercise restraint in making arrest of relatives. It should remain non-bailable and non-compoundable. Appropriate reconciliation effort as a first step should be undertaken. Mediation should be done by trained professionals and should be completed within two months. Legal Services Authorities should play a more extensive role in facilitating the conciliation. Crime against women cell should be established in every District and should consist of personnel who have been trained and sensitized to deal with cases of violence against women.

Shri T. Pachuau, IG of Police, Manipur – It should remain non-bailable but compoundable with the permission of the Court. Immediate arrest and custodial interrogation of husband and relatives should be avoided. Action to be taken to examine the victim and the accused soon after filing of FIR. Legal Services Authority (LSA) of the District or professional counselors will be ideally suited to process conciliation.

**REPLIES OF GOVERNMENT OFFICIALS TO THE QUESTIONNAIRE
ON SECTION 498A IPC**

1. Secretary, Law Department, A&N Admn., Port Blair

No immediate arrest without relevant evidence and efforts of reconciliation. **Make it Non-bailable and compoundable.** Better co-ordination between legal services and police is required for amicable settlement. CWC should handle the matter since beginning till its logical conclusion.

2. *Pr. Secretary(Law), Govt. of Himachal Pradesh

No immediate arrest before making proper investigation and enquiry with relatives and neighbours. **Make it bailable and compoundable.** Better co-ordination between legal services and police is required for amicable settlement. No need of CWC.

3. Government of Meghalaya (Law Department)

Make it **bailable and compoundable.**

4. Govt. of West Bengal (Law Department)

No immediate arrest before making proper investigation and enquiry with relatives and neighbours. **Make it non-bailable and compoundable.** Better co-ordination between legal services and police is required for amicable settlement. CWC should be set up in every district comprising

of a District Judge, Distt. Social Welfare Officer and a Woman Social worker working in the specified field.

5. ***Home Secretary, Chandigarh Administration**

No immediate arrest. After FIR initially preliminary investigation be done with relatives and neighbours. Make it **Non-bailable and compoundable**. LSA & police station should work for amicable reconciliation. CWC should have lady police officers who can handle domestic problems and pre-complaint counseling. They should be given training time to time about amendments in criminal laws and latest judgement of courts in such cases.

6. **Law Department, Tripura.**

Insert Section 154-A in the Cr.P.C. as "Special Law" by way of amendment to prescribe the procedure for arrest and detention in order to check misuse of Sec.498-A of IPC.

7. **Law Department, Govt. of Goa**

Make it compoundable with the permission of court. **Make it bailable only for husband's relatives not staying with him. Otherwise, it should remain non-bailable.**

The police, on receiving the complaint under section 498-A of IPC, is required to find out whether there is any prima facie case reflected in the complaint. No immediate arrest should be made but if alleged offence is a grave /en only immediate arrest and custodial interrogation of husband and his relatives named in the FIR could be made.

Investigation is to be completed in three months. Efforts should be made by police first to send the parties for conciliation / settlement by the appropriate authority appointed under the "Protection of Women from Domestic Violence Act, 2005." The conciliators / mediators or professional counsellors (who may be part of NGOs) or the friends or elders known to both the marital parties; lady and men lawyers only who volunteer to act in such matters or District Legal Service Authority may be invited in conciliation/counseling process. There is need for coordination between LSAs and the Police Station. It is desirable to have a separate CWC in every District to deal exclusively with such cases. Women police Cell should be headed by a Lady DySP,

8. Department of Home and Inter State Border Affairs, Government of Arunachal Pradesh, Itanagar.

Before a regular case is registered, preliminary enquiry should be mandatory during which both sides should be heard and efforts be made for mediation and reconciliation. It should not be made bailable. Reconciliation through counseling should be the first step prior to registration of the case and a limit time of 90 days for the counseling process is recommended. Keep it **non-bailable and non-compoundable**. Investigation by CWC to the exclusion of the jurisdiction of the police station is not advisable.

9. Government of Madhya Pradesh

Before arresting the accused, the first step is to mediate and opt for compromise as far as possible within one month's time. The mediators can include experienced, respectable citizen or even police officers. Make it **bailable** so that it cannot be misused. Try to compromise the matter

between the aggrieved parties within one month with the help of Police Officer or respectable citizens i.e. NGOs.

10. **Dy. Legal Remembrancer, Government of Nagaland.**

No comments as misuse of law is not prevalent in this State.

11. Some replies of States (enclosed to Home Ministry's letter)

Chattisgarh: shall be made bailable and compoundable with permission of Court.

Uttarakhand: Bailable, cognizable and compoundable

NCT of Delhi – Compoundable with permission of Court. Preliminary enquiry to be made before registration of FOR.

Chandigarh Admn. Bailable, non-cognizable and compoundable.

Rajasthan – bailable and compoundable



Queensland

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Victims of Crime Assistance Act 2009

Current as at 5 September 2014

[s 84]

- (5) Subsection (2) does not apply—
- (a) if 1 of the applications is an application for victim assistance and the other application is for funeral expense assistance; or
 - (b) to an application by a witness secondary victim of a more serious act of violence that is only for assistance for loss of earnings, if—
 - (i) under section 71(5), the application has been separated from the application for other assistance relating to the act; and
 - (ii) the earlier application is for assistance other than for loss of earnings.

84 Deferring decision if applicant is detained

- (1) This section applies if the applicant for assistance is being detained in a correctional services facility under the *Corrective Services Act 2006*.
- (2) The government assessor can not decide the application until the applicant is released or discharged under the *Corrective Services Act 2006*.
- (3) However, if under subsection (2) the application is not decided within 5 years after it was made, the government assessor must, despite that subsection, decide the application as soon as reasonably practicable.

Division 5 Working out amount of assistance

85 Deciding amount of assistance generally

- (1) This section applies for deciding the amount of assistance (if any) to be granted to an applicant.

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- (2) In deciding the amount, the government assessor may have regard to, and may reduce the amount that would otherwise be payable to the applicant on the basis of, the following—
- (a) the extent to which the applicant's conduct directly or indirectly contributed to the injury suffered by the applicant as a direct result of the act of violence in relation to which assistance is sought;
 - (b) if the applicant is a related victim—
 - (i) the amount the applicant, or other related victims of the act of violence, expected to receive from the primary victim but for the primary victim's death; and
 - (ii) the financial resources (including earning capacity) and financial needs of the applicant and other related victims of the act of violence; and
 - (iii) if the applicant is seeking assistance on the basis of being a family member of the primary victim, the nature of the relationship between the applicant and the primary victim, including, for example, whether the applicant was a dependant of the primary victim;
 - (c) any other matter prescribed under a regulation for this section.
- (3) If there are 2 or more secondary victims of an act of violence to whom an assistance limit applies, the government assessor must decide the proportion of the assistance limit that is granted to each victim having regard to the following principles—
- (a) an equal distribution of the assistance limit is to be achieved to the greatest practicable extent;
 - (b) appropriate regard must be given to a victim for whom exceptional circumstances exist.
- (4) If there are 2 or more related victims of an act of violence, the government assessor must decide the proportions of the

[s 86]

assistance limits that are granted to each victim on the basis of their relative needs.

- (5) A question of fact for deciding the matter mentioned in subsection (2)(a), or for deciding the category of the act of violence in relation to which special assistance is sought, must be decided on the balance of probabilities.
- (6) The government assessor may be satisfied on the balance of probabilities that an act of violence of a particular category has caused a person's injury even though—
 - (a) no person has been charged with, or convicted of, an act of violence of that category in relation to the injury; or
 - (b) a person has been charged with, or convicted of, an act of violence of a different category in relation to the injury.
- (7) If a regulation prescribes a matter for subsection (1)(c), the government assessor may reduce the amount of assistance that would otherwise be payable to a person on the basis of the matter only if the person's application for assistance is made after the matter is prescribed.

86 Reduction if relevant payment received

- (1) This section applies if the government assessor is reasonably satisfied an applicant for assistance in relation to an act of violence has received, or will receive, a relevant payment for the act.
- (2) The government assessor must reduce the amount of assistance that would otherwise be payable to the applicant by an amount equivalent to the relevant payment.
- (3) If the assistance payable to an applicant is reduced under subsection (2) and an amount of assistance remains payable to the applicant after the reduction, the government assessor must—
 - (a) decide the component of assistance for which the amount is payable, having regard to—