

**RAJYA SABHA
COMMITTEE ON PETITIONS**

HUNDRED AND FORTIETH REPORT

ON

PETITION PRAYING FOR AMENDMENTS IN SECTION 498A
OF INDIAN PENAL CODE, 1860

(Presented on 7th September, 2011)



**RAJYA SABHA SECRETARIAT
NEW DELHI**

September, 2011

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** To be appended at printing stage.*

**Composition of the Committee
(2010-11)**

1. Shri Bhagat Singh Koshyari - *Chairman*
2. Shri Ram Vilas Paswan
3. Shri Nandi Yellaiah
- **4. Shri Rajeev Shukla
5. Shri Avinash Pande
6. Shri Balavant *alias* Bal Apte
- *7. Shri P. Rajeeve
8. Shri Veer Pal Singh Yadav
9. Shri Paul Manoj Pandian
10. Shri Rajaram

Secretariat

Shri Deepak Goyal, *Joint Secretary*
Shri Rakesh Naithani, *Joint Director*
Shri Ashok K. Sahoo, *Deputy Director*
Shri Goutam Kumar, *Assistant Director*

* Nominated w.e.f. 6th December, 2010 in lieu of Shri Moinul Hassan

** Ceased to be Member w.e.f. 12th July, 2011 on being inducted into Council of Ministers

INTRODUCTION

I, the Chairman of the Committee on Petitions, having been authorised by the Committee to submit the Report on its behalf, do hereby present this Hundred and Fortieth Report of the Committee on the petition signed by Dr. Anupama Singh, a resident of New Delhi praying for amendments in Section 498A of Indian Penal Code, 1860.

2. The petition was admitted by Hon'ble Chairman, Rajya Sabha on 11th November, 2010 under the provisions of Chapter X of the Rules of Procedure and Conduct of Business in the Council of States. In accordance with Rule 145 *ibid*, the petition was reported to the Council on 15th November, 2010 by Secretary-General after which it stood referred to the Committee on Petitions for examination and report, in terms of Rule 150 *ibid*.

3. The Committee issued a Press communiqué inviting suggestions from interested individuals/organizations on the subject matter of the petition. In response thereto, more than two thousand memoranda were received by the Secretariat. The Secretariat scrutinised those memoranda and a gist thereof has been suitably incorporated in the Report.

4. The Committee heard the petitioner and others on the petition in its sitting held on 29th November, 2010. The Committee heard the Home Secretary in its sitting held on 17th February, 2011. The Committee also heard certain organizations/ individuals, who had submitted their memoranda on the issues raised in the petition in its sittings held on 3rd and 29th June, 2011. On 25th July, 2011, the Committee recorded the views of representatives of National Commission for Women and National Commission for Protection of Child Rights on the petition. The Committee heard the Secretary, Ministry of Women and Child Development on 1st August, 2011.

4.1 The Committee in its sitting held on 30th August, 2011 took up for consideration the draft Report. The amendments proposed by Shri P. Rajeeve, Member of the Committee, to certain paras of the draft Report were considered but could not be agreed to. At that stage, the said Member observed that his comments/amendments may be treated as 'Minute of Dissent'

and appended to the Report. The Committee agreed to the request of the Member. Thereafter, the Committee adopted the draft Report.

5. The Committee while formulating its observations/recommendations, has relied on the written comments of the concerned Ministries, National Commission for Women and National Commission for Protection of Child Rights, oral evidence of witnesses- official as well as non-official, feedback received in response to the Press Release, observations of the Members of the Committee and interaction with others.

6. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the Report.

NEW DELHI
August 30, 2011
Bhadra 09, 1933 (Saka)
Petitions

BHAGAT SINGH KOSHYARI
Chairman
Committee on

REPORT

The petitioner, Dr. Anupama Singh, a resident of New Delhi has submitted a petition dated 7th July, 2008 seeking amendments in Section 498A of the Indian Penal Code (IPC), 1860 (**Appendix-I**)

1.1 The petitioner has submitted that Section 498A, IPC, which was inserted in Indian Penal Code, 1860 way back in 1983 to protect married women from dowry harassment in their matrimonial home, has been grossly abused and misused by a large section of unscrupulous people for their ulterior motives. She has cited the following types of misuse:-

- (i) to alienate husband from his parents so as to gain control over his finance and social behaviour including his lifestyle;
- (ii) to save her marriage when concealment of true facts about bride's mental health and educational level are unearthed by the groom and his family;
- (iii) as a bargaining tool by those women who indulge in adultery;
- (iv) to seek divorce in order to revive any pre-marital relationship which wife may have had and unwillingly given her consent for marriage in order to satisfy her parents;
- (v) to deny custody of child/children to the father and his family in case of marital discord at the time of pending of divorce petition; and
- (vi) to inflict suffering on husband and his family to settle the scores and to take vengeance.

1.2 The law, as it appears, is cognizable, non-bailable and non-compoundable and thus gives power to the Investigating Officers in police stations to arrest the husband and his relatives whose names are mentioned in the First Information Report (FIR) by the woman or her family under Section 498A.

1.3 She has cited low conviction rate of cases filed under Section 498A to buttress her contention about its misuse. In support of her contention, she has also cited observations of Apex Court, Reports of Justice Malimath Committee and One Hundred and Eleventh Report of Department-related Parliamentary Standing Committee on Home Affairs wherein suitable amendment to the Section has also been proposed. She has also contended that persons arrested under Section 498A on the basis of false accusation might have been acquitted by the court of law but they have to live rest of their lives with the stigma attached to them due to arrest by the police. In order to safeguard the interest of innocent persons which include

elderly citizens, pregnant women, children from false accusation under Section 498A, the petitioner has prayed the following:-

- (i) Section 498A be suitably amended so as to make it bailable, non-cognizable and compoundable;
- (ii) Suitable provisions be specifically inserted in Section 498A so as to make it punishable for whosoever misuses or abuses it;
- (iii) Compensation of financial loss suffered by the persons falsely implicated;
- (iv) Law be made gender neutral to protect the interests of the innocent; and
- (v) six months time bound trial, should be made a statutory requirement under this law for quick disposal of cases.

2. The Ministry of Home Affairs, which is the nodal Ministry for criminal law and criminal procedure, in their initial comments dated 1st January, 2009 have mentioned that cases registered under Section 498A of IPC relating to cruelty by husband and his relatives have increased during the year 2004-2006 as per National Crime Record Bureau (NCRB) data, i.e., 58121 (2004), 58319 (2005), 63128 (2006). The Criminal Law (Amendment) Bill, 2003, which *inter alia* included a proposal to amend Section 320 of CrPC to enable compounding offence under Section 498A of IPC, was deleted from the Bill due to intense pressure by various woman organizations. The Ministry of Women and Child Development were also not in favour of diluting the provisions of Section 498A. The Ministry of Home Affairs has also sought data regarding misuse of Section 498A from all the State Governments/Union Territory Administrations. That Ministry in their subsequent communications dated 28th December, 2010 have mentioned that representations have been received containing suggestions of various organizations and individuals for amendment to Section 498A in view of its gross abuse and misuse thereby causing harassment to innocent relatives of the husband. Considering the observations of Supreme Court, various High Courts and Justice Malimath Committee Report for remedial measures to reduce misuse of the Section, that Ministry have also issued advisories to Chief Secretaries of State Governments/Union Territory Administrations on 20th October, 2009 for taking effective measures for prevention of misuse of 498A in the light of directions/orders issued by courts regarding its misuse. That Ministry have also referred the matter to the Law Commission of India to study the usage of Section 498A, IPC and to suggest amendments, if any, to the problem. At that time, comments of Governments of Arunachal Pradesh, Assam, Chhattisgarh, Gujarat, Goa, Haryana, Jharkhand, Karnataka, Madhya Pradesh, Meghalaya, Mizoram, Nagaland, Punjab, Rajasthan, Sikkim, Tripura, Uttar Pradesh, Andaman & Nicobar Islands, Union Territory of Delhi, Chandigarh, Daman & Diu, Dadra & Nagar Haveli and Lakshadweep were received by them and most of the States/UTs were in favour of making the offence compoundable.

2.1 The Ministry of Women and Child Development in their initial communication dated 25th June, 2009 have referred to the judgment of Supreme Court in *D.K. Basu vs. State of West Bengal (AIR 1997 SC610)* wherein the power of arrest without warrant should be exercised only after reasonable satisfaction is reached after some investigation as to genuineness and bona fides of the complaint and the reasonable belief as to both the person's complicity as well as need to effect arrest is stressed upon. That Ministry are of the view that the recourse to conciliation between warring spouses and their families may be taken in any case of matrimonial dispute before filing FIR under Section 498A of IPC. The Dowry Prohibition Act, 1961 and the Protection of Women from Domestic Violence Act, 2005 (PWDVA) as well as Section 498A IPC are important legislations which provide legal remedies to women. Their misuse can be curtailed if those laws are harmonized and uniformly implemented. Legal remedy is also available under Section 250 of the Code of Criminal Procedure (CrPC) to curtail misuse of the provisions of IPC and other laws. That Ministry have, therefore, not felt any need for amendment to Section 498A.

Section 498A IPC: Meaning and Background

3. Section 498A was inserted in IPC, 1860 under Chapter XXA along with amendment to First Schedule of the CrPC, 1973 and insertion of Section 113-B in the Indian Evidence Act, 1872 through the Criminal Law (Amendment) Bill, 1983. The Statement of Objects and Reasons of the said Act mentions as under:-

"The increasing number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of both the Houses to examine the working of the Dowry Prohibition Act, 1961. Cases of cruelty by the husband and relatives of husband, which culminates in suicide by, or murder of helpless women concern constitute only a small fraction of the cases involving such cruelty. It is, therefore, proposed to amend the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act suitably to deal effectively not only with cases of dowry death but also cases of cruelty to married women by their in-laws. "

3.1 In 1986, Section 304B was inserted in the IPC for the purpose of controlling the menace of dowry death occurring within seven years of marriage of a woman.

3.2 Relevant substantive, procedural and presumptive Sections related to domestic violence is produced below:-

"498 A. Husband or relative of husband of a woman subjecting her to cruelty (IPC) :
- Whoever, being the husband or the relative of the husband of a woman, subject such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation - For the purpose of this section, "cruelty" means-

- (i) *any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*
- (ii) *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."*

3.2.1 **304B. Dowry death (IPC)** - *(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.*

Explanation - For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) *Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.*

3.2.2 Section 113B in the Indian Evidence Act, 1872 is a complementary Section to the aforesaid Sections in IPC. The relevant Section from the Indian Evidence Act is produced below:

"113B. Presumption as to dowry death- *When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death."*

Explanation- For the purposes of this section "dowry death" shall have the same meaning as in section 304B, of the Indian Penal Code (45 of 1860).

In most of the cases of dowry death (under Section 304B), Section 498A is invoked by the police leading to presumption of harassment or cruelty to the woman by the husband or his relatives. Keeping in view of the fact that witness as to such cruelty to married woman occur in four walls of matrimonial home which may not be easily available to the Court, the accused is presumed to be guilty even though that is against the cardinal principle of criminal jurisprudence in accordance of which the accused is presumed to be innocent unless proved guilty by the prosecution. The burden is shifted to the accused to rebut the said presumption of guilty.

3.2.3 The punishment for offence under Section 498A IPC is imprisonment for three years and fine. The relevant Chapter of Section 320 of CrPC, 1973 is reproduced below:-

Chapter XXA – OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
1	2	3	4	5	6
498A	Punishment for subjecting a married woman to cruelty	Imprisonment of three years and fine.	Cognizable if information relating to the commission of the offence is given to an officer in charge of a police station by the person aggrieved by the offence or by any person related to her by blood, marriage or adoption or if there is no such relative, by any public servant belonging to such class or category as may be notified by the State Government in this behalf.	Non-bailable	Magistrate of the first class

3.2.4 The provisions of Section 4 of the Dowry Prohibition Act, 1961 make exchange of dowry punishable. The said Act defines dowry as any property or valuable security given or agreed to be given either directly or indirectly.

3.3 The offence under Section 498A is cognizable offence where the officer-in-charge of police station may investigate the case without the order of a magistrate and effect arrest without any warrant. The offence is non-bailable because the power to grant bail is not available to the police which has to be obtained from the Magistrate. The crime cannot be generally compounded even after reconciliation/settlement between parties to the dispute.

3.4 Even though the element of cruelty is an essential ingredient common to both the Sections 498A and 304B of IPC but both the Sections are mutually exclusive. Explanation to Section 498A defines the cruelty in following manner:-

- (i) Willful conduct that is likely to drive a woman to commit suicide;
- (ii) Willful conduct which is likely to cause grave injury or danger to life, limb or health of the woman;

- (iii) Harassment with the purpose of coercing woman or her relatives to meet any unlawful demand for property or valuable security; and
- (iv) Harassment meted out to woman or her relatives on account of their failure to meet the demand of property or valuable security.

Thus, the definition of cruelty within the meaning of Section 498A, IPC does not include the simple harassment. The forms of marital cruelty¹ as recognised by the courts are as follows:-

- a) Persistent denial of food;
- b) Insisting on perverse sexual conduct;
- c) Constantly locking a woman out of the house;
- d) Denying the woman access to children, thereby causing mental torture;
- e) Physical violence;
- f) Taunting, demoralising and putting down the woman with the intention of causing mental torture;
- g) Confining the woman at home and not allowing her normal social intercourse;
- h) Abusing children in their mother's presence with the intention of causing her mental torture;
- i) Denying the paternity of the children with the intention of inflicting mental pain upon the mother; and
- j) Threatening divorce unless dowry is given.

When the harassment is coupled with the intention of coercing the woman or her relatives for unlawful demand of property or valuable security, that harassment tantamounts to cruelty and is punishable under Section 498A of IPC.

3.5 The element of cruelty² is one of the grounds for divorce in personal laws of our country besides insanity, adultery, impotency, desertion, etc. These laws *inter-alia* provide civil remedy in the form of decree of divorce or judicial separation for the spouse. There is tendency to encourage the woman to link the divorce case with Section 498A of IPC by including demands for dowry in the ground of cruelty. There is tendency to demand the return of more than what was given as '*Stridhan*', which is the absolute property of the women by using Section 498A of IPC. There is also demand for more money as enhanced settlement as a pre-condition for divorce by mutual consent where both the parties have to declare and convince the court that their marriage has irreversibly broken down. By invoking Section 498A in the divorce petition filed by woman, the criminal proceedings in addition to civil

¹ Laws against Domestic Violence, Manushi (Vol. 137) July-Aug, 2003, New Delhi, pp.24-25

² The Hindu Marriage Act, 1955 (Section 13);
The Dissolution of Muslim Marriage Act, 1939 (Section 2);
The Special Marriage Act, 1954 (Section 27);
The Indian Divorce Act, 1869 (Section 18);

proceedings are set in as a result of which the relatives of husband as well as he himself are arrested by the mere complaint of the woman.

3.6 The cases of domestic violence against married woman in matrimonial home during the period from 2005 to 2009 under Sections 498A and 304B of IPC, 1860 indicate the increasing trend. The percentage increase of cases under Section 498A in 2009 over 2008 is around ten percent. The table below contains the figures of cases:

Crime Head	No. of cases					Percentage variation in 2009 over 2008
	2005	2006	2007	2008	2009	
Torture (Section 498A, IPC)	58,319	63,128	75,930	81,344	89,546	10.1
Dowry Deaths (Section 304B, IPC)	6,787	7,618	8,093	8,172	8,383	2.6

(Source: NCRB, Crime in India, 2009)

Judicial pronouncements on Section 498A of IPC

4. Supreme Court and various High Courts have time and again examined the Section 498A, IPC. Delhi High Court in the case of *Savitri Devi vs. Ramesh Chand and others* (Criminal Revision No. 462 of 2002) (2003 Criminal LJ 2759, 104 (2003) DLT 824, II (2003) DMC 328) have examined the section 498A and observed as follows:-

“Before parting, I feel constrained to comment upon the misuse of the provisions of Section 498A/406 IPC to such an extent that it is hitting at the foundation of marriage itself and has proved to be not so good for the health of the society at large. To leave such a ticklish and complex aspect of proposition as to what constitutes ‘marital cruelty’ and ‘harassment’ to invoke the offences punishable under Sections 498A/406 IPC to lower functionaries of police like sub Inspectors or Inspectors, where as some times even courts find it difficult to come to the safer conclusion is to give the tools in the hands of bad and unskilled masters.

This Court has dealt with thousands of cases and matters relating to dowry deaths and cases registered under Section 498A/406/306 IPC arising out of domestic violence, harassment of women on account of inadequate dowry or coercion of the woman for not fulfilling the demand of dowry and hundred of divorce cases arising therefrom. Experience is not so happy nor is implementation or enforcement of these laws is anything but satisfactory or punctilious.

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 or the husband whether living away or in other town or abroad and married, unmarried sisters, sister-in-laws, unmarried brothers, married uncles and in some cases grandparents or as many as ten to fifteen or even more relatives of the husband. Once a complaint is lodged under section 498A/406 IPC whether there are vague, unspecific or exaggerated allegations or there is no evidence of any physical or mental harm or injury inflicted upon woman that is likely to cause grave injury or danger to life, limb or health, it comes as an easy tool in the hands of Police and agencies like Crime Against Women Cell to hound them with the threat of arrest making them run here and there and force them to hide at their friends or relatives houses till they get anticipatory bail as the offence has been made cognizable and non-bailable. Thousands of such complaints and cases are pending and are being lodged day in and day out. These provisions have resulted into large number of divorce cases as when one member of the family is arrested and sent to jail without any immediate reprieve of bail, the chances of salvaging or surviving the marriage recede into background and marriage for all practical purposes becomes dead."

4.1 The Supreme Court in its judgment on a *Writ Petition (Civil) No.141 of 2005 – Sushil Kumar Sharma vs Union of India and others* (JT 2005 (6) SC 266) has also observed as follows:-

"The object of the provision (Section 498A) to prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bonafide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy 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-virus, 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 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 a shield and not an assassin's weapon."

4.2 The Supreme Court of India in *Preeti Gupta and Anothers vs. State of Jharkhand and Anothers in SLP (Criminal) No.4684 of 2009* has observed that :-

"Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. 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".

4.3 The Supreme Court in *Som Mittal vs. Government of Karnataka* (Appeal (Criminal) 206 of 2008) has observed the following regarding Section 498A:-

“Often false FIRs are filed e.g. under Section 498A, IPC, Section 3/4 Dowry Prohibition Act, etc. Often aged grandmothers, uncles, aunts, unmarried sisters, etc. are implicated in such cases, even though they may have nothing to do with the offence. Sometimes unmarried girls have to go to jail, and this may affect their chances of marriage.”

4.4 The Punjab and Haryana High Court on the issue of constitutional validity of Section 498A, IPC in *Krishan Lal and others vs Union of India and others* (1994 Criminal LJ3472) has observed as under:-

“The husband and relatives of husband of a married woman form a class apart by themselves and it amounts to reasonable classification especially when a married woman is treated with cruelty within the four-walls of the house of her husband and there is not likelihood of any evidence available. Consequently, Section 498A of the Code cannot be said to be offensive of Article 14 of the Constitution.”

Observations of various Committees/ Commission on Section 498A IPC

5. The Malimath Committee on Reforms of Criminal Justice System (2003) has while pointing out flaws in the implementation of the Section 498A, IPC, recommended for suitable amendment in IPC to make the offence under Section 498A, bailable and compoundable. The Malimath Committee in its report (*vide paras 16.4.4 and 16.4.5*) has observed as under:-

“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 can not pay. Now the woman may change her mind and get into the mood to forget and forgive. The husband may also realise 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 undergoes stigmatisation 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.”

5.1 The Law Commission of India in its Hundred and Fifty-fourth Report (1996) has also found this Section as harsh as it does not provide any opportunity for reconciliation to the aggrieved spouses. The Commission in the said Report (*vide Chapter XII, para 4*) has observed that:-

“It was felt that as Section 498A is not included in the Tables appended to Section 320 of the Code, it could not be compounded by the parties. Many instances were cited where though the parties wanted to compound yet in the absence of an enabling provision, they could not do so. This has created hardship even in genuine cases. In order to meet this situation, it is recommended that the Section 498A be inserted in the Table under sub-section (2) of Section 320 CrPC, where it can be compounded with the permission of the Court.”

5.2 Besides this, the Department-related Parliamentary Standing Committee on Home Affairs in its One Hundred and Eleventh Report on Criminal Law (Amendment) Bill, 2003 (2005) has also recommended that express provisions may be made in Section 320 of CrPC to reflect the availability of compounding of offence to the relatives of the husband.

Petitioner's deposition before Committee

6. The petitioner while deposing before the Committee has submitted that the Section 498A of IPC is being fearlessly abused and misused with ulterior motive because the Section is itself harsh being non-bailable and cognizable which has led to arrest of relatives of husband including senior citizens, minor children, women even pregnant one. There are reported instances where the said law has been misused by women to become rich by extorting large sum of money from the families of her husband, particularly the NRI bridegroom. It has been used as a bargaining tool by some women in the divorce suit pending before the Court.

6.1 She informed the Committee that during the period from 1995 to 2006, the number of cases have increased by hundred twenty percent and 1, 40,000 people had been arrested under the said provision. It was informed that thirty percent of bail applications before the Courts pertain to Section 498A. She further added that an evaluation of post implementation of Section 498A might be carried out to assess its deterrent effect. The petitioner has pleaded to make the law bailable and compoundable; and also for provision of stringent punishment for abusers of Section 498A of IPC.

Suggestions/Viewpoints of Stakeholders and concerned Organisations/Individuals

7. The Committee has received more than two thousand memoranda from various organizations/individuals expressing views on the subject matter of the petition both in favour and against. The petition was supported by an overwhelming majority of organizations/individuals whereas some organizations/individuals have rejected it. The Committee gave opportunity to some of the organizations/individuals who requested for an audience before it. A list of organizations/individuals those appeared before the Committee is

at **Annexure-I**. The views expressed in the memoranda as well as during the oral evidence by witnesses are divergent and diametrically opposite. Some other views also emerged before the Committee. The views have been summarised and given below.

Viewpoints in favour of the Petition:

- (i) Section 498A of IPC permits arrest of the husband and his female or male relatives irrespective of their age, marital status, health condition merely on the basis of allegation of wife. In that context, the terms "cruelty", "harassment" and "relatives of the husband of the women" had been interpreted to suit the complainant and investigating agency leading to enhancing the suffering of innocent relatives of husband, who are merely related by blood or marriage but might even not residing with the husband or even might not have visited the family in the near past. These terms need to be defined in the code;
- (ii) Section 498A, IPC together with Section 113B of the Evidence Act, 1872 are technically flawed from the time of their insertion in the statute books because those Sections presume the alleged accused to be guilty till proven innocent which goes against the cardinal principle of criminal jurisprudence in accordance of which any individual is presumed to be innocent until proved guilty beyond reasonable doubt;
- (iii) The said provisions make complete disregard of Fundamental Right to Life and also directly violates Universal Declaration of Human Rights, 1948 to which our country happens to be a signatory;
- (iv) Section 498A could be resorted to any time during life period of husband by wife even to suppress her fault and further her own self interest. Some sort of time limit similar to the time (within seven years of marriage) provided under Section 304B of IPC for dowry death might be provided in Section 498A;
- (v) Sometimes petty marital squabbles between spouses in order to have control over husband and his family often drive the wife to resort to 498A which strikes at the root of institution of marriage and the trend of 'live-in-relationship' may get a boost which may promote polygamy and children born out of that relationship would be worst suffers in the times to come;
- (vi) The stigma and insults suffered by the family of the husband due to misuse of Section 498A cannot be wiped out in any manner in our society. Provision for penalty and recovery of prosecution cost from the lady or her family who misuses the Section 498A may be incorporated. Suitable compensation to the persons who are affected by such process;
- (vii) Cruelty or domestic abuse is not gender specific. The assumption that victims of physical, verbal, emotional, sexual, and financial abuse are women always is wrong. According the Universal Declaration of Human Rights, all are equal

before the law, and are entitled without any discrimination to equal protection of the law. Therefore, Section 498A may be made gender neutral;

- (viii) Making the offence under Section 498A, bailable and compoundable would also provide great relief to Indian judicial dockets and pendency of cases would be reduced substantially;
- (ix) There is a large difference in the number of person arrested under Section 498A IPC and convicted under this Section, which shows how some people are misusing this for ulterior motive;
- (x) Arrest of elderly people, children and pregnant woman in the name of relative of the husband is the hardest situation a family can face; and
- (xi) Application of Section 498A to extort money from bridegroom's family specially the NRI bridegrooms would completely destroy the institution of marriage in future;

Viewpoints against the Petition:

- (i) Domestic violence, particularly against women in their matrimonial home, is a common phenomenon in India and also a serious offence which is consistently increasing. According to the National Family Survey of India thirty seven percent of married women have experienced some sort of physical, mental and sexual violence in their matrimonial home;
- (ii) Sections 498A as well as 304B were inserted in IPC way back in 1983 and 1986, respectively, to check dowry death and torture related to demand for dowry because the Dowry Prohibition Act, 1961 and even Section 406 of IPC were not effective to contain and control these heinous crimes against women;
- (iii) Section 498A was enacted after long debate within the legal community, in Parliament and following agitation by women parliamentarians and women organizations in the country. Forty to fifty percent domestic violence cases against women go unreported because a woman never wants to break her family by lodging case against her husband; she goes to police only after suffering prolonged harassment and torture in her matrimonial home;
- (iv) There is low conviction rate of cases relating to Section 498A because the woman happens to be the weaker party in the case and is unable to gather the evidence of cruelty against her husband and family of in-laws;
- (v) If the Section 498A be made bailable and compoundable, women and their families would have to go to a Judicial Magistrate for registering the case and only thereafter that arrest can be effected by the police. At that point, recourse to mediation and reconciliation at community level may be taken by the police

but in the mean time, the woman may commit suicide because of torture. Section 498A provides an apt remedy to the torture of women in matrimonial home;

- (vi) The menace of dowry is rampant in our country and linked to it is the child sex ratio which is dwindling over the years because of female foeticide being done clandestinely in our society. The reasons of misuse of Section 498A for amendment of the law are not convincing, particularly in the face of increasing crime against women and dowry deaths; and
- (vii) Misuse of Section 498A can be checked by other Sections of IPC (182, 203, 209 and 211). Instead of tampering with the law, the police needs to be sensitised about the directions given by the Supreme Court in *D.K. Basu vs State of West Bengal (1997)* case which regulate the power of arrest by the police;

Other viewpoints on the petition:

- (i) To make the Section compoundable, views were expressed both in favour and against. Those against making the offence compoundable said that if this is done then the wives would be prompted to bargain for allowing divorce which would act harsh upon the husbands. It was suggested that mediation/conciliation could be tried before going to court;
- (ii) Application of Section 498A has been detrimental to the future of the child who undergoes the trauma throughout his/her life when his/her father is sent to jail. Arrest of children under the said Section contravenes the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000;
- (iii) The Police should not be allowed to summon randomly a husband and his family members to the police station in the name of counseling or questioning in case marital disputes. Police involvement in the counseling should be banned;
- (iv) Section 498A IPC is presently under criminal law even though it deals with a dispute which is of matrimonial in nature. Even the people accused under these laws are common people and not hard core criminals. Therefore, Section 498A IPC may be brought under civil law;
- (v) Definition of 'dowry' needs to be clarified in the Dowry Prohibition Act, 1961 as there is likelihood that causal demand for financial assistance or loan by husband may not be treated as a willful demand for dowry. The provision of dowry to the girl by her family has been considered as status symbol and practiced during *kanya daan* in the form of gift which is permissible under the Dowry Prohibition Act. In case of difference and discord between the spouses, the properties given as gift are treated as dowry by the wife. It is suggested that an undertaking may be made mandatory that no exchange of dowry takes place at the time of registration of marriage;

- (vi) Daughter has equal share in the self acquired property of her father, which needs to be secured for her development. In the case of allegation of dowry, the capacity of the dowry given also needs to be verified;
- (vii) Cases relating to dowry and Section 498A might be tried in Family Courts under the Family Court Act, 1984;
- (viii) Provisions of Section 498A IPC, PWDVA and Section 125, CrPC are inter-linked and women generally use it against their husband. Husband has to run from one court to another to defend himself innocent for the same set of allegations. Since the allegations in all the cases are similar hence both Domestic violence case and 498A IPC may be combined together so that a lot of harassment in the form of running around the courts can be reduced;
- (ix) In most of the complaints, false claims are made that many articles are given to the husband and his relatives as dowry during the marriage without any proof or evidence. Dowry Prohibition Officer, appointed under Dowry Prohibition Act, may file an affidavit to the Court with proof and evidence of the claims of the wife regarding the dowry exchange. Section 498A, IPC may be amended in such a way that no arrest should be made till the Dowry Prohibition Officer files an affidavit to the Court;
- (x) The Court should not entertain complaint under Section 498A, IPC if the marriage is not registered. All marriage certificates must clearly specify any *stri-dhan* which is given to the wife or gifts to the husband including cash or any articles;
- (xi) It has been seen that a trial under 498A, IPC takes a minimum of five to eight years in the trial court and if the matter is appealed to the Session Court, High Court and Supreme Court it can take around fifteen to twenty years. Husband and his relatives spend a significant portion of their life running around the corridors of the court, police station and lawyer's office. Offence under Section 498A, IPC may be tried in the fast tract court with a mandate to deliver judgment in sixty days as is the case in the PWDVA; and
- (xii) Section 498A IPC may be amended in such a way that children and grandparents and other relatives may not be arrested under this Section.

Home Secretary's deposition before Committee

8. The Home Secretary in his deposition before the Committee touched upon reported misuse of Section 498A, IPC because of harsh provisions of the said Section. On the issue of amendment to Section 498A of IPC so as to make it bailable, compoundable he apprised the Committee that in view of opposition of Ministry of Women and Child Development the Home Minister had to withdraw the proposed legislation from the Cabinet. However, in pursuance of recommendations of Parliamentary Standing Committee on Home Affairs to bring a

comprehensive legislation to both IPC & CrPC, the Home Ministry with the approval of the then Home Minister had written to the Law Commission to bring about comprehensive amendments to both IPC & CrPC including amendment to Section 498A of IPC.

8.1 Home Secretary apprised the Committee that the Ministry of Home Affairs *vide* their letter dated 20th October, 2009 sent an advisory to all the State Governments/UT Administrations on misuse of Section 498A, which emphasises on the following:

- Power to arrest without warrant should be exercised only after reasonable satisfaction as to bona fides of a complaint
- In matrimonial disputes, it may not be necessary to exercise immediate power of arrest but to attempt the recourse to other dispute settlement mechanisms
- Recourse to filing charges under Section 498A, IPC may be resorted to where conciliation fails and where there appears a prima facie case under the said provision or other laws. Counselling should be conducted by professional trained counsellors and not the police. The mechanism instituted under the PWDVA may be used for this purpose.

Submissions of Ministry of Women and Child Development

9. The Secretary of the Ministry of Women and Child Development in his deposition before the Committee has submitted that the objective of inserting Section 498A in IPC was to protect women being subjected to cruelty by the husband or his relatives. But over the period, representations have been received by the Government alleging misuse of the provisions of the Section. After examining such representations in consultation with the National Commission for Women, the Ministry of Women and Child Development come to the conclusion that Section 498A, IPC & other laws such as Dowry Prohibition Act and PWDVA are important legislations which provide protection and legal remedies to women and these should not be tinkered with and at the same time; if some set procedures are followed, its misuse can be curtailed.

9.1 The Secretary has further added that the advisories issued by the Ministry of Home Affairs to all the State Governments/UT Administrations on misuse of Section 498A should be implemented in letter and spirit to put an effective check on the misuse of section 498A, IPC. Further Section 41 of CrPC which provides that police may arrest without warrant on commission of a cognizable offence or on the basis of a reasonable complaint or reasonable suspicion, has now been amended by the Criminal Procedure Code (Amendment) Acts of 2008 and 2010, to restrict this discretionary power of the police may also be instrumental in putting a check on the misuse of Section 498A. As per the amendments, an arrest without warrant in case of a reasonable complaint or reasonable suspicion can only be made under certain specific circumstances. The Committee has been apprised that the PWDVA provides for a comprehensive mechanism for counselling between the parties to arrive at a settlement (Section 14 read with Rule 14 of PWDVA). Increasing use of PWDVA and its provisions on

counseling would lead to a decrease in the number of complaints filed under Section 498A, IPC. There is also a need for sensitisation of the police so that they can encourage women approaching them to use the PWDVA.

9.2 It has been further submitted by the Secretary that there might be mala fide allegations under Section 498A, IPC but this can be effectively addressed within the existing legal framework such as provisions under the criminal law for filing a false case (Section 211 of IPC) or for perjury/giving false evidence (Sections 191 and 193 of IPC). Cognizance of a case under any of the above provisions can be taken by a competent Court as per Section 340 read with Section 195 of the CrPC. Further, the apex Court and High Courts also have inherent powers to take cognizance of such cases and impose penalties in the form of fine. One of the legal remedies that can be further considered for preventing filing of false complaints under Section 498A is by proposing punishment of imprisonment upto six months in the Section itself for the misusers, which would act as a deterrent for the complainant. However, to ensure that bona fide complainants are not victimised, adequate safeguards would also need to be incorporated to effect that. Since the incident of dowry death is on increase, that Ministry is not in favour of making the said Section non-cognizable because of the fact that it would place enormous burden on women to approach judicial magistrate to file initial complaint against their husbands or his family thereby putting a barrier to their access to justice.

9.3 Regarding the prayer of the petitioner to make Section 498A compoundable, the Secretary has mentioned that the Ministry of Women and Child Development has not been in favour of making it universally compoundable because the courts have already inherent power under Section 482 of CrPC, 1973 to quash the FIR in the event of out of court compromise/settlement between parties to secure the ends of justice.

9.4 In view of the Secretary, making the law bailable and non-cognizable would dilute its deterrent effect and would be detrimental to the interest of women with bonafide allegations of cruelty. Effective implementation of the PWDVA and facilitating counselling under it would provide women with the option to explore possibility of conciliation and would in the longer run, reduce the number of cases filed under Section 498A, IPC. However, incorporation of some checks and balances against abuse of the provision may be considered, which includes provision of imprisonment upto six months for a complainant who files a false complaint, and empowering Courts to specifically adjudicate on whether the arrests made by the police are justified/ made without prima facie evidence/in collusion with person(s) filing false complaint.

Views of National Commission for Women

10. The Member Secretary, National Commission for Women in her deposition has mentioned that Section 498A, IPC and other laws such as Dowry Prohibition Act, 1961 and the Protection of Women from Domestic Violence Act, 2005 (PWDVA) are important legislations which provide protection and legal remedies to women, should not be tinkered with. She also contended that if the Section is implemented with set procedures, its misuse can be curtailed.

But having said that, she has suggested following methods to minimise the misuse of the Section 498A, IPC:-

- (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, atleast at the district level which would specifically deals the complaints made by women. When a wife moves to file a complaint to a women cell, a lot of persuasion and conciliation 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 very 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.

10.1 The National Commission for Women in their written response submitted on 25th August, 2011 to the Committee contradicted the common claim that a majority of 498A cases are false since more than ninety percent of all cases under Section 498A, IPC are found to be true on investigation and less than ten percent are found to be false on account of mistake of fact or of law. And the percentage of cases declared false is declining. The analysis of figure of cases under Section 498A during the period from 2005 to 2009 as submitted by the Commission is given below:

**Cases declared False on account of Mistake of Fact or Law under
Section 498A, IPC (2005-2009)**

Year	Cases reported during the year	Number of cases declared false on account of mistake of fact or of law	Percentage of cases declared false on account of mistake of fact or of law
2005	58319	6141	10.53
2006	63128	6365	10.08
2007	75930	8215	10.82
2008	81344	7616	9.36
2009	89546	8392	9.37

10.2 That Commission opposed the prayer of the petitioner to make the Section 498A, IPC non-cognizable, bailable and compoundable on following grounds:-

- (i) making the offence non-cognizable will place a huge burden on women who will have to go through the judicial process to file an initial complaint thus making it difficult to take recourse of this law, if not impossible for women for whose benefit this law was enacted;
- (ii) in case of making it bailable, police will be empowered to give bail, then no one involved in domestic violence will ever be arrested. Further anticipatory bail under Section 438, CrPC can be obtained from Magistrate even in the criminal cases; and
- (iii) compounding the crime under Section 498A will send Court a message that the gravity of crime is less than that of other similar crimes. Further woman will be under tremendous pressure to withdraw complaint and compromise by her family. However, procedure for quashing FIR filed under Section 498A due to compromise/settlement already exists with the High Courts under CrPC.

Views of National Commission for Protection of Child Rights

11. The Chairperson, National Commission for Protection of Child Rights (NCPCR), who appeared before the Committee has submitted that the Commission often receives complaints regarding custody of child/children in the dispute arising out of matrimonial relation from one of the parents who have no access to the child with a allegation that the child is not being treated well and needs protection from a non congenial atmosphere. In such cases of domestic

violence, the child is often subjected to abuse because he/she is manipulated to take sides as a witness to such a acrimony which has a harmful impact on the child leading to anxiety, depression, social withdrawal, aggressive behaviour, lack of attention and insecurity, etc.

11.1 She mentioned that a child who is separated from one or both parents needs to be facilitated to maintain personal relations and direct contacts with both parents on a regular basis, except if it is contrary to the child's best interest. She apprised that as per the data obtained from NCRB, 1007 children have been booked under 498A of IPC during the period from 2007 to 2009. The children should not suffer in such cases as they have no control over the causes/grounds under Section 498A and are victim of circumstances. She has suggested following measures for protection of child rights in matrimonial cases:-

- (i) The children should not be arrested or charge-sheeted under Section 498A in any circumstance;
- (ii) The matters of children whose cases are pending before Magistrates and/or Juvenile Justice Boards should be reviewed by the Chief Judicial Magistrate/Chief Metropolitan Magistrate or the District Judge concerned in the light of the provisions under Section 14 (2) of the Juvenile Justice (Care & Protection of Children) Act, 2000;
- (iii) The concerned Magistrate should solicit a detailed report from the Probation Officer, Child Welfare Committee, District Legal Aid Services Authority or the District Officer in-charge of Child Protection/Child Welfare on the impact of his/her order on his children/dependants, before sentencing an adult under Section 498A. This proposition is in no way intended to interfere with the judicial proceedings, but intended to ensure that while attempting to deliver justice to a woman, great injustice is not done to children affected in the process;
- (iv) Since a child needs to have regular contact with both the parents as required under Article 9(3) of the UN Convention on Rights of the Child, 1989 to which India is a signatory, Section 498A of IPC should in no circumstances be allowed to be used to depriving the child from access/regular contact with both the parents;
- (v) Whenever any child is apprehended by the police under section 498A, IPC such child must be handed over to the Juvenile/Child Welfare Officer of the concerned Police Station or Special Juvenile Police Unit (SJPU), as envisaged under Rule 11 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. The Juvenile/Child Welfare Officer shall thereafter, produce the child before the Child Welfare Committee at the earliest but within twenty four hours. The Child Welfare Committee shall arrange for counseling and interim care of the children in child friendly environment;

- (vi) The affected children need to be heard and consulted *in camera* by the concerned family courts and district courts adjudicating family disputes such as divorce, legal separation, custody and visitation rights of parents/spouses;
- (vii) The best interest of the child (both in short term and long term) should be the primary consideration in deciding the custody and access of children involved in divorce/legal separation to their parents; and
- (viii) The family courts and district courts adjudicating the divorce, legal separation and custody matters should have at their disposal sufficient number of professionally qualified and trained family counselors to counsel the parents and children involved so that amicable settlement/compromise among the contesting parents in the interest of their children may be done.

Deliberations of Committee

12. The views of the Members of Committee emerged during the course of the deliberations of the Committee are summarised below: -

- (i) There is vagueness in the definitions of the terms 'cruelty', 'unlawful demand' and 'relatives of the husband of women', which need to be specific, leaving no scope of misinterpretation for the investigating agency and the court;
- (ii) The burden of proof must be on the prosecution like other offences and not on the accused;
- (iii) Provisions of Section 498A of IPC were introduced to curb the harassment of a woman either in the hands of the husband or his family members, connected with the demand of dowry. But within a short span of time this Section has become a tool in the hands of bridal side either to blackmail the husband or other in-laws;
- (iv) The natural death or voluntarily suicidal death or self emolition by woman are taken as a dowry death. So the definition of dowry also needs to be clarified in clear terms. Every money transaction or demand should not necessarily be construed as demand for dowry. The loan or financial assistance sought by the husband from the wife side to settle his family or business or profession must not be treated as dowry so also the *stridhan* of the women;
- (v) The Section is underused in rural area but overused in urban area;
- (vi) Bail out or the acquittal does not in all cases wipe out the stigma and insults suffered by the husband or his relatives during pre-trial, trial or post-trial period. Such news is promptly and repeatedly brought out in the print as well as in the electronic media. Instances are there where the innocent minor brothers/sisters, the long-long distant relatives, boy/girl friends, of the husband, the priest

performing marriage, the barber and the people attending the marriage, etc. were arrayed as an accused under Section 498A of IPC;

- (vii) The innocent children born out of their wedlock are the worst sufferers. It badly affects their upbringing. The children need the shelter, guardianship, love and affection from both mother and father;
- (viii) Under the existing frame work of the law after being implicated under this Section, the agony of divorce between the spouses is bound to occur. The divorce is so thorny that in such a case the wife is always looser;
- (ix) The advisory issued by Ministry of Home Affairs to State Governments/UT Administrations to prevent misuse of Section 498A of IPC should be notified by the concerned Government; and
- (x) Fast track Courts may be assigned to decide cases under Section 498A in view of huge pendency thereof; counselling mechanism available under Family Court Act, 1984 may be attempted to before trial of cases under Section 498A.

Observations/Recommendations

13. Having gone through the evidence produced before it by different stakeholders, the Committee finds it difficult to give a straight answer to the request made in the petition in terms of yes or no. The petitioner and the stakeholders who have come up in favour of the petition have vehemently protested against the misuse of the provisions of Section 498A IPC. The fact that these provisions of the IPC are being misused stands corroborated through several sources. In the first place, the Ministry of Home Affairs, the nodal Ministry for the subject, had come out with a formal proposal to amend Section 320 of the Criminal Procedure Code, 1973 in the year 2003 so as to make the offences under Section 498A of the IPC compoundable. The proposed amendments were, however, withdrawn after intense pressure from various women's organisations. Next, there are the recommendations of the Malimath Committee on Reforms of Criminal Justice System set up in 2003 which considered the implementation of Section 498A of IPC and recommended that the offence in this Section may be made bailable and compoundable to give chance to the parties in the marriage to come together. Further, the Committee finds several pronouncements of the High Courts as well as the Supreme Court from time to time highlighting in strong terms the instances of misuse of provisions of Section 498A of IPC and recommending remedial action. All these inputs received by the Committee strongly advocate modifications in the provisions of the existing law in order to prevent its misuse.

13.1 The Committee is deeply moved by the serious concern it has come across from different quarters calling for modification in Section 498A of IPC so as to prevent its misuse. But the Committee is unable to oversee the inputs it has received from the Ministry of Woman and Child Development, the National Commission for Women, National Commission for

Protection of Child Rights and other organisations that have pleaded before the Committee against the petition. The Committee notes that the amendments brought about by the Criminal Law (Amendment) Bill, 1983 were at a time when married women in society were very insecure and crimes against them were high. In that scenario, Section 498A of IPC, which was introduced then along with some other amendments in the Criminal Procedure Code and the Indian Evidence Act whereunder a specific offence was created *vide* Section 498A IPC and categorized non-bailable and cognizable. This step has been able to send a strong message across the country that married woman need to be seen with due respect and that they dare not be mal-treated in their matrimonial home. The fact that offence under Section 498A of IPC is cognizable and non-bailable is acting as a big deterrent in the society. In the opinion of the Committee, this historic step has succeeded in containing the magnitude of crime against women in the country. **Therefore, the Committee is unable to agree to the petition in so far as categorising the offence under Section 498A IPC as non-cognizable and bailable is concerned. The Committee recommends that the offence under Section 498A of IPC may continue to remain cognizable and non-bailable as any change in the law at this stage might go against the interest of the women community in general. The Committee fears that any interference in the present law might reverse the social protection of women in their matrimonial home that has been built up so far.**

Making the offence under Section 498A IPC compoundable:

13.2 The Committee notes that the offence under Section 498A IPC is essentially 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.**

13.3 **Having recommended that the offence under Section 498A of IPC should continue to be cognizable and non-bailable, the Committee strongly recommends that the ill-effects and misuse of the present legal provisions is also checked. The Committee fears that failure to do so might leave no option except to dilute the law by making the same non-cognizable and bailable. In this context, the Committee recommends certain additional measures as contained in the succeeding paragraphs.**

Power to arrest:

13.4 The Committee feels that the offences under Section 498A IPC being cognizable and non-bailable, the police authorities have all powers to arrest the person(s) named in the complaint filed by the wife. The Committee notes that the words 'relative' appearing in

Section 498A IPC is ambiguous and as a result, anybody named in the complaint is liable to be arrested. **As a first step to check misuse of provisions of Section 498A IPC, the Committee recommends that the provisions of Section 498A IPC should be suitably modified so as to define the term ‘relative’ which may exclude the arrest of small children and very elderly people and also distantly related persons who might not have a role in the commission of offence. Secondly, the Committee would very much like to see that the powers of arrest on such complaints are exercised carefully and cautiously. The Committee notes that advisories have been issued by the Ministry of Home Affairs to all State Governments/ UT Administration for preventing the misuse of Section 498A IPC. The Committee would like these guidelines to be followed and implemented strictly in letter and spirit by the State Governments/UT Administration. The Committee further recommends that these guidelines should be adequately published by the State Governments/UT Administration and displayed publically in police stations so that the public is aware of their rights/liabilities and is not harassed on account of ignorance of law.**

13.5 In this context, the Committee appreciates that the States of Andhra Pradesh and National Capital Territory of Delhi have issued orders to regulate and restrict the power to arrest under Section 498A IPC by prescribing that such arrests can be done only with the prior written approval of DCP/ DSP. **The Committee finds merit in this action and recommends that other State Governments/UT Administrations should follow suite and arrests under Section 498A, IPC should be done only with the written orders of the police officer of the level of DCP or equivalent and for acceptable reasons. The Committee recommends that the State Governments/UT Administrations may issue necessary directions in this regard. The Committee in this context further recommends that the State Governments/UT Administrations may also keep an eye on the number of complaints registered under Section 498A, IPC and the arrests made as follow up by calling periodic data from their police Department for monitoring whether the provisions of the law are not being misused. In case the State Governments/UT Administrations fail to check the misuse there would be no option left but to dilute the offence, the Committee feels.**

Counselling and Mediation:

13.6 The Committee is of the opinion that the process of counseling available in some States is very vague and not properly defined. There are instance where no counseling was done to any of aggrieved party and they are forced to take recourse to Section 498A of IPC. The Committee feels that the process of counseling has to be initiated prior to the invoking of provisions of Section 498A. **The Committee recommends that adequate provisions may be introduced in Section 498A to make the process of counseling compulsory before any arrests are made. The Committee further advocates that professional and trained family counselors should do the counseling in the Women's Cell so that frivolous cases are screened at the initial stage itself and Section 498A is invoked in rare cases. The report of the counseling process may be submitted to the concerned DCP or equivalent rank officer and only when the concerned officer is not satisfied with the results of the counseling, provisions of Section 498A may be invoked. The Committee also**

recommends that the process of counselling which is being handled by the Police Department should be developed professionally by involving qualified counselors and reputed NGOs so that people have more confidence in the mechanism and they could be approached for intervention timely and arrive at some settlement without reaching the stage of complaint under Section 498A, IPC. The Committee hopes that a professionally managed counselling system would definitely be able to curtail the number of complaints under Section 498A.

Time bound trial:

13.7 The Committee notes that the trial under Section 498A takes a very long time to complete and if any party takes the matter to High Court/Supreme Court in appeal, husband and his relatives spend a significant portion of their life in running around the courts. **The Committee recommends that a provision may be appropriately inserted under Code so that the offence under Section 498A may be tried in the fast track courts with a mandate to deliver judgment in time bound manner.**

Check on false complaints:

13.8 The Committee express serious concern over the fact that misuse of the provisions of Section 498A has increased insurmountable harassment, agony, pain of the innocent relatives of husband and stigma attached due to such abuse of the process of law can not be wiped out in any manner. Whatever available remedy in the criminal law or civil law available to the aggrieved party can be resorted to only after his/her suffering and after prolong period of trial in the court of law. **The Committee feels that the Government should consider providing legal remedies for preventing filing of false complaints or complaints with ulterior motive to harass the husband and his relatives under Section 498A. The Committee recommends that Section 498A be amended so as to provide for specific penalty in case the complaint is found to be false or with some other ulterior motive. The Committee hopes that this would act as a deterrent because the complainant will be aware of the consequences which may follow if the complaint is found to be false by the Court, at any stage of the proceedings.**

Dowry and Registration of Marriage:

13.9 The Committee is concerned that dowry is at the root of most of the matrimonial disputes. The country has a Dowry Prohibition law since 1961 but the same has failed to check effectively the menace of dowry. Even in case of matrimonial dispute that lead towards filling of a complaint under Section 498A, IPC the issue of return of dowry items remain in the background during the continuance of the criminal proceedings.

13.10 **The Committee is of the considered view that a strong and effective anti dowry law can go along way in curbing matrimonial disputes. Accordingly, the Committee recommends that the existing Dowry Prohibition Act, 1961 may be strengthened so that**

no dowry is given in marriage and whatever gifts are exchanged in the marriage are listed out and acknowledged by the parties to the marriage in writing. The Committee feels that such a step by the Government would curb the dowry related matrimonial disputes which are substantial portion of the whole lot of disputes.

Juvenile in conflict with law (Section 498A IPC):

13.11 As per the data of NCRB as shared with the Committee by the National Commission for Protection of Child Rights (NCPRB) children arrested under Section 498A of IPC during the period 2007-09 are 1007. Their arrest was opposed by the Commission in their written submission as such actions contravene the provisions stipulated in a special legislation, i.e., Juvenile Justice (Care and Protection of Children) Act, 2000. As per sub-rule (2) (I) of Rule 3 of Juvenile Justice (Care and Protection) Rules, 2007, a juvenile is presumed to be innocent of any malafide or criminal intent up to the age of eighteen years. Further, non-stigmatisation principle enunciated under Rule 3, *ibid* prohibits arrest of juvenile to protect them from mental harassment in judicial custody. The children in most of the criminal cases are victim of circumstances. Arrest by police or summoning them as witnesses to the police station for investigation purpose also put mental harassment to the children. So, it is the impact not the intent which matters most in the case of juvenile in conflict with law. Such children need to be counseled by the professional counselors. The Integrated Child Protection Scheme (ICPS) also provides cadre of counselors to provide professional counseling service to the families for the care and protection of children. The Family Court Act, 1984 objective of which is to promote conciliation and speedy settlement of disputes relating to marriage and family affairs stipulates the service of counselors in the Act (Section 6). There are Family Counseling Centres (FCCs) run by Non-Governmental Organisations with financial assistance from Ministry of Women and Child Development through Central Welfare Board/ State Welfare Board. **The Committee recommends that services of such professionals trained family counselors may be utilized in the Crime Against Women Cell/Mahila Desk at every police station for mediation, conciliation of conflicts arising out of matrimonial relationship between warring spouses which would also take care of custody, care and protection of their children. The Committee reiterates that the recourse to Section 498A or arrest thereunder should not be taken before making an attempt for reconciliation through the assistance of professional family counselors.**

13.12 The Committee notes with concern that the innocent children who are the victims under Section 498A IPC are the worst sufferers. It badly affects their upbringing. The children need the shelter, guardianship, love and affection from both mother and father as the parents are the source of inspiration of the child. **The Committee recommends that there is a need to ensure that provision of Section 498A should not be invoked in case of juveniles. However in case of any aberrations, the police must ensure that the children are put under the care of Child Welfare Committee which would arrange for counselling and interim care of the children in child friendly environment.**

Minute of Dissent

30th August, 2011

To

**Chairman,
Standing Committee on Petitions,
Rajya Sabha**

Respected Sir,

I would like to submit some observations to the draft report of petition of Section 498A of IPC. I have gone through the draft report and I do not agree with some of the recommendations. Accordingly, I am submitting herewith my note of dissent on succeeding paras for incorporation in the report:-

1. Para 13.2: Though the Committee knows that the incident of false cases on account of fact or law are limited to 10% of the cases registered under 498A IPC, even the NCW has detailed that cases which are compromised or settled are often listed as mistaken on account of fact. I feel that making the law compoundable will result in extreme pressure being put on the complainant/petitioner to withdraw her complaint/case. The kind of pressure that is put on women to withdraw criminal cases is also evident in other crimes against women like rape, molestation etc. In any event since women are the more vulnerable partners in a marriage, making 498A compoundable will result in them being coerced and persuaded to withdraw even genuine cases. I disagree with the observation that women and their families have tendency to rope in as many relatives of the husband's family as they can. I feel that there is no basis for assuming that women are widely abusing the process of law. It is well known that cases of 498A which get settled out of court are readily quashed by the High Court. At the lower level if evidence is not given then cases again fall through. In a number of cases compromise and reconciliation takes place and nobody has complained that they are unable to reconcile because of this law. I firmly believe that 498A must remain non-compoundable.

2. Para 13.5: The experience related by women's organizations and groups clearly shows that the police are extremely reluctant to proceed with a case under Section 498A and that arrests take place in a very miniscule number of cases. If any recommendation regarding prior permission to arrests is made this will go against women who are victims of criminal violence. Even in heinous cases of Section 498A in which violence has taken place no arrests will be made leaving the husband and or member of his family free to continue to torture the woman. I feel it is important to point out that Section 498A is the only Section in the IPC which deals with marital violence. The violence can be on account of dowry but may also be violence unrelated to dowry as Section 498A clearly states "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 of life, limb or health, whether mental or physical of the woman" would amount to an offence. Thus this Section covers physical beatings/battery/violence and the police in a given case may

be required to arrest immediately. I feel if the mandatory permission of the DCP is to be taken before arrest in many cases it will be counterproductive.

3. Para 13.6: As far as mediation and counseling is concerned, no provisions need to be introduced in Section 498A to make the process of counseling compulsory. Even in cases of persistent or extreme violence the women is often counseled and pressurized to return to the marital home or to withdraw or settle the case on terms unfavourable to her. If such a provision is added it will result in intimidating even tortured women/victims from taking recourse to law.

4. Para 13.8: I do not support the provision that if a complaint is found to be false by the court the complainant should be punished. If a complaint is not proved it cannot be stated to be false. In fact in a number of criminal cases because of lackadaisical investigation and non collection of relevant facts/statements/documents etc the case does not get proved. In such cases it would be absurd and highly unjust to say that these cases are false. Even the criminal law provides for the manner in which action can be taken against false cases and no further provision is necessary.

5. Paras 13.11 & 13.12: While I agree that a juvenile should not be arrested for committing an offence under Section 498A IPC, I feel that the Committee's recommendations are mixing the issue of custody, care and protection of the children of the parties with Section 498A. A child who is in conflict with the law and has committed an offence under 498A will of course have to go through the process outlined in the Juvenile Justice Act. I do not feel that if a woman complains then the Child Welfare Committee should step in a manner that it may be abandoned, lost, neglected or abused children. The question of custody will have to be decided by the guardianship/custody or designated courts in this behalf. While children need both the parents, women/mothers who are gravely injured and wish to pursue complaints should not be forced/compelled by any mandatory provision to reconcile by professional counselors guided mainly by the concern of children. Such a provision would effectively ensure that women with children would be additionally compelled by the State to withdraw their complaints.

Thanking you,

sd/-
(P. Rajeev)