

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?
