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## Completed Projects

### A Research study on the use and misuse of Section 498A of the Indian Penal Code

#### The Backdrop

Violence against women (VAW) is a phenomenon that cuts across boundaries of culture, class, education, ethnicity and age. The feminist movement of the 70s and 80s made major contribution in getting VAW recognised as a critical area of concern. It is an important human rights.

In the 1980s, the incidences of 'dowry death' were steadily rising in India, so women's organisations across the country pressurised the Criminal Law Amendment Committee (1982) and urged the government to provide legislative protection to women against domestic violence and dowry, so that the victim gets justice while she is still alive. As a result of the intense campaigning and lobbying, significant amendments were made in the Indian Penal Code, the Indian Evidence Act and the Dowry Prohibition Act, with the intention of protecting women from marital violence, abuse and dowry demands. The most important amendment came in the form of the introduction of Section 498A in the Indian Penal Code (IPC). This was the first time that an attempt was made to consider domestic violence against women a criminal offence.

#### Indian Penal Code - Section 498A, IPC

#### Introduced in the Penal Code by Criminal Law (Second Amendment) Act of 1983 (Act No. 46 of 1983)

498A. HUSBAND OR RELATIVE OF HUSBAND OF A WOMAN SUBJECTING HER TO CRUELTY: Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation: For the purposes of this section, "cruelty" means

- (a) Any wilful 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
- (b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Analysis of the section shows that this law deals with four types of cruelty:

- " Any conduct that is likely to drive a woman to suicide,
- " Any conduct which is likely to cause grave injury to the life, limb or health of the woman,
- " Harassment with the purpose of forcing the woman or her relatives to give some property, or
- " Harassment because the woman or her relatives are either unable to yield to the demand for more money or do not give some share of the property.

Section 498A of the Indian Penal Code, is a criminal offence. It is a cognizable, non-bailable, and non-compoundable offence.

#### Need for the Study

In March 2003, the Committee on Reforms of the Criminal Justice System formulated by the

Government of India, Ministry of Home Affairs, under the Chairmanship of Dr. Justice V.S. Malimath, made several suggestions regarding the Criminal Justice System. The committee suggested amendments to section 498A on the plea that it was being misused.

In the context of the Malimath Committee's recommendations and the landmark judgement of Justice J.D. Kapoor, the Centre for Social Research (CSR) with the support of IFES and USAID took up the present study to investigate some of the issues, with regard to IPC Section 498A.

#### **Key Objectives:**

- a) To analyse the prevalence, patterns and trends of DV (domestic violence) related cases filed under section 498A and to assess the need of this provision.
- b) With the help of secondary and primary data, to understand and analyse whether section 498A is being used or misused as indicated in the Malimath Committee Report.
- c) To serve as a base for conducting further detailed studies pertaining to the legal effectiveness of the current statutes and the need for new statutes to combat DV.

#### **Study Area:**

Delhi  
Karnataka (Banglore, Mysore)  
Rajasthan (Jaipur, Ajmer) and  
West Bengal (Kolkata, 24 Pargana south).

The states represent the four regions of the country, with different socio-cultural backgrounds, and where the rate of incidences of cruelty towards women, by husbands and relatives, vary.

#### **Methodology:**

This study is a preliminary research to understand the perceptions of different categories of people affected by the implications of 498A, i.e., the victims, the accused, relatives of both sides and other role players like, police, NGOs, lawyers, judges and the community at large. The research methodology has been set keeping in mind the need to arrive at a perception regarding the use or misuse of section 498A and on how domestic violence and reactions to it are perceived. This research is exploratory and qualitative in nature.

The data used for the research are of three types:

- (a) Secondary information
- (b) Primary data through interviews of a limited sample and FGDs (focused group discussions)
- (c) Case Studies through case tracking in the courts.

#### **Findings of the Study**

Nearly five crore married women in India are victims of domestic violence (DV). Only 0.1 percent (1 out of 1000 DV cases) of these are being reported. Out of 100 cases that are ordered for investigation under 498A, only in 2 cases the accused get convicted.

According to the available statistical information from the National Crime Records Bureau and information available from NGOs working with victims of violence, there is a general tendency to avoid seeking redressal among the victims of domestic violence. However, when a victim of domestic violence seeks help from any of the agencies, be it family, friends, NGOs, or lawyers, before registering a complaint, at each stage she is asked to reconcile the matter or to put up with the situation. Reconciliation in 498A cases takes place at every stage including the police station, Crime Against Women Cells and courts.

We found that in five cases filed under Section 498A the parties settled the matter after agreeing on maintenance and divorce.

In a majority of the cases before a victim filed the complaint under Section 498A, the minimum period she suffered physical and mental torture, was for about three years.

The trial process is quite lengthy and the proportion of pending cases is quite high (out of the 40 cases based on victims' interviews which went for trial in court, 28 cases are still pending). In the cases tracked, the normal trial period was between five to ten years.

" It was found that it was difficult to prove physical and mental torture. In all the eight cases in which the accused were acquitted, the victims were found to have suffered physical and mental torture, but as there was not enough evidence to prove torture, the accused were let off.

The cases where the accused were convicted had been filed under Section 498A along with section 304B and 302, which are applicable after the death of the victim. There were no convictions in any of the cases registered only under Section 498A.

It has been found that out of 30 cases there is not a single case where the accused has been convicted only under Section 498A. The accused have been acquitted (11 cases) by the court where the prosecutor failed to provide evidentiary proof of cruelty, mainly mental, inflicted on the victim as provided under Section 498A IPC. It is difficult to prove cruelty when the victim is still alive. This makes conviction only on the basis of Section 498A, difficult. Only in cases where Section 498A is used along with other Sections is the conviction rate high.

In most of the cases where there is acquittal at the District Court, the matter is not taken up at higher courts. Only where there is a conviction at the lower courts are cases taken to higher courts.

The study also has observed that 6.5 percent of the total cases studied through victims' interviews were found false at the level of investigation. Many of the accused, police, judges and lawyers, categorically said that 'educated and independent minded women' misuse the section.

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