

No. 16/48/2009-Judl. Cell  
Government of India/ Bharat Sarkar  
Ministry of Home Affairs/ Grih Mantralaya  
(Judicial Cell)

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Jaisalmer House  
26, Mansingh Road  
New Delhi-110011  
December 7, 2009

✓ To

Sh. Mithun Kumar  
#51, 2<sup>nd</sup> Cross, Satyasaibaba Layout  
K.R. Puram  
Bangalore- 560079 (Karnataka)

**Sub:** - Information sought by Sh. Mithun Kumar under the Right to Information Act, 2005- reg.

Sir,

I am directed to refer to your RTI application dated 04.11.2009 received in Judicial Division of this Ministry on 16.11.2009 on the subject cited above and to furnish herewith a copy of the advisories issued by this Ministry to the Chief Secretaries of the State Governments/UT Administrations in connection with misuse of Section 498A of IPC.

2. As regard, the information sought by you at point (2), it may be stated that all the State Governments/UT Administrations have been requested to take effective measures in the light of the directions /orders issued by the Courts as well as the advisories issued by Ministry of Home Affairs.

Yours faithfully

*[Signature]*  
Director (Judl.)  
Tel. No. 2307 4185

**Encls:-a/a**

Copy forwarded for information to:-

- (i) Shri S.K. Bhatnagar, Deputy Secretary and CPIO, MHA, North Block, New Delhi w.r.t. OM No. 43020/01/2009-RTI dated 12.11.2009.



(64)

No. 3/5/2008-Judl.Cell  
Government of India/Bharat Sarkar  
Ministry of Home Affairs/Grih Mantralaya  
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Jaisalmer House, Man Singh Road,  
New Delhi – 110 011.

October 20, 2009

To

The Chief Secretaries of State Governments/Union Territory  
Administrations  
(As per list attached)

Subject:- Misuse of Section 498A of IPC- regarding

Sir,

'Criminal law' and 'criminal procedure' are in the Concurrent List of 7<sup>th</sup> Schedule to the Constitution of India. Both Parliament as well as State legislatures are competent to enact laws in regard to these matters. However, enforcement and implementation of the laws made under these provisions is the domain of the State Governments.

2. The scourge of dowry crimes has been prevalent in the Indian society for a long time and nasty manifestations of crimes relating to dowry as instances of cruelty to married women have been coming up time and again. Serious concern was expressed by all right-thinking persons of the country including several women's organizations, social workers and even law courts about this cruelty. As a consequence thereof, Section 498A was incorporated in the Indian Penal Code in the year 1983 to provide for adequate punishment for any cruelty inflicted on a married woman by the husband and his relatives. The punishment is imprisonment for three years and fine. The offence is cognizable as well as non-bailable.

3. The Section reads as follows :-

"498A. 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 -

(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

Ministry of Home Affairs  
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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".

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4. The objective of inserting Section 498A was to protect women being subjected to cruelty by the husband or his relatives. The 'explanation' added to the Section, has tried to define what 'cruelty' would in such circumstances, mean.

5. While the initial reaction to insertion of Section 498A was more or less welcome, of late, representations have been received by the Government alleging misuse of the provisions of the Section. In some cases, every member of the husband's household has been arrested irrespective of whether they had a role in inflicting cruelty on the married woman or not. In some cases, the provisions have been used to settle personal scores. Cases have been reported where momentary anger has resulted in invocation of Section 498A, which resulted in the arrest of the members of the family shutting down any possibility of reconciliation in future and a total collapse of the marriage. **Even where there is a divorce proceeding, the case under Section 498A continues to persist because of the offence being non-compoundable.**

6. The Delhi High Court in the case of **Savitri Devi Vs. Ramesh Chand and others** (Criminal Revision No.462 of 2002) have examined section 498A at length. The Court among other things 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 length. 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 whereas 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 grand-parents or as many as 10 to 15 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." ( J.D. Kapoor J ).

7. Justice Arijit Pasayat of the Supreme Court in the Judgment on a Writ Petition (Civil) No.141 of 2005 - **Sushil Kumar Sharma vs Union of India and others** has observed as follows.

"The object of section 498A is to prevent 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 license to unscrupulous persons to wreak 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."

8. The Supreme Court has in one case opined that no arrest need be made only because it is lawful for the police officer to do so. The police officer must be able to justify the arrest apart from his power to do so. No arrest should be made in a routine manner on a mere allegation of commission of an offence made against a person.

9. In the light of the above judicial pronouncements, an attempt was made earlier to find a via media by amending this Section to make the offence compoundable. However, this could not be pursued because of the opposition from women organisations.

10. Further, the views of the Ministry of Women and Child Development on the issues are that the important legislations such as Section 498A IPC, Dowry Prohibition Act 1961 and Protection of Women from Domestic Violence Act, 2005 which provide protection and legal remedies to women should not be tinkered with. As these are special laws governing the same subject matter, these laws need to be harmonized and uniformly implemented. At the same time, if some set procedures are followed, misuse of laws may be curtailed.



11. Since amending the law at this stage is likely to be opposed again, in order to lay to rest the allegation of misuse of Section 498A of IPC, the State Governments are requested kindly:

- (a) To comply with the procedure as laid down in D.K.Basu's case. The Hon'ble Supreme Court in its judgement dated 18.12.96 in CRL CWP No.539/86 - D.K.Basu vs. State of West Bengal has stated that the power of arrest without a warrant should be exercised only after a reasonable satisfaction is reached, after some investigation, as to the genuineness and bonafides of a complaint and a reasonable belief as to both the person's complicity as well as the need to effect arrest. Therefore in any matrimonial dispute it may not be necessary in all cases to immediately exercise the powers of arrest. Recourse may be initially taken to dispute settlement mechanism such as conciliation, mediation, counselling of the parties etc.
- (b) Mahila desks may be created at Police Stations and 'Crime Against Women Cell' may be created at least at the district level which could specifically cater to complaints made by women.
- (c) In cases of matrimonial disputes, the first recourse should be to effect conciliation and mediation between the warring spouses and their families and recourse to filing charges U/S 498A IPC may be resorted to in cases where such conciliation fails and where there appears a prima facie case under section 498A and other laws. The Counselling mechanisms envisaged under PWDV Act 2005 should be instituted by State Government and any counselling of parties should be done only by professionally qualified counsellors and not by the police. The police may consider empanelling professional counsellors with the CAW Cell.

12. All the State governments/UT Administrations are requested to take effective measures in the light of the directions/orders issued by the Courts and advisories issued by the Government of India from time to time to put to rest the allegations of misuse of section 498A of IPC.

13. The receipt of this letter may please be acknowledged.

Yours faithfully



(Shashi Bhushan)

Joint Secretary (Judicial)

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