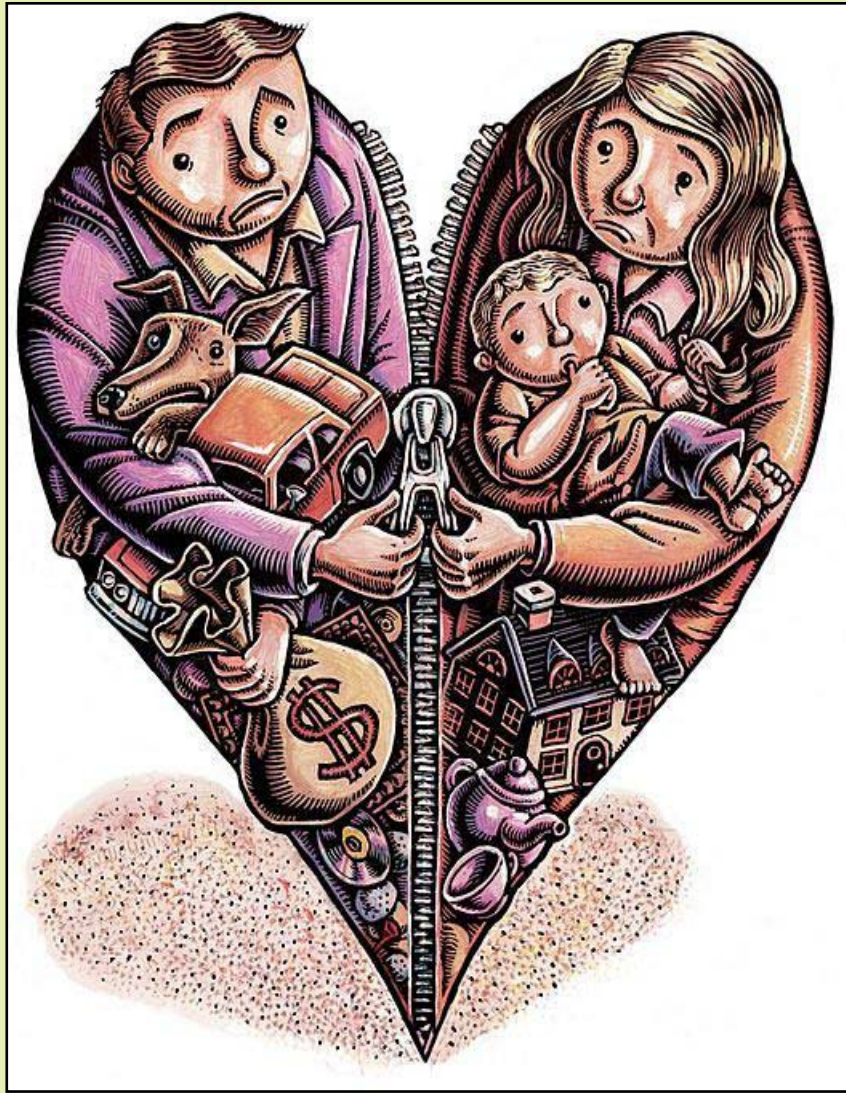

Indian Dowry Law (498a) : Myth Vs. Reality

An Investigative Report

APRIL 2006



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

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

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

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

We are not talking about the dowry deaths or physical injury cases but about dowry harassment cases that require no evidence and can be filed just based on a single-sentence complaint by the wife. With an estimated 40,000 such accusations per year and an average of 5 members of the husband’s family implicated in each of these 498a cases, about 200,000 people are directly affected by these false accusations. The number of such cases is increasing by about 20% every year as there is a lot of money to be made by the divorce industry. This poorly formulated law is inviting unscrupulous people to file false cases, and causing the imprisonment of innocent people without investigation. These innocent people undergo stigmatization and hardship even before a trial in the court of law which leads to emotional, physical and financial strain. Some of the falsely accused have committed suicide after being jailed, unable to bear the social consequences.

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

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

2. INTRODUCTION

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

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

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



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

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

IPC-498a is

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

The accused are presumed guilty, and the burden is on the accused to prove innocence in the courts. The FIR is typically a 10-plus page imaginary story, with absolutely no supporting evidence. It typically takes about 5 to 7 years for the accused to prove their innocence in the courts. The conviction rate in these cases is close to zero. The delay in the provision of justice amounts to the denial of justice.

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

Why do people misuse IPC 498a?

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

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

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

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

What does 498a do to society?

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

A study by Professor K. Nagaraj, senior economist at the Madras Institute of Development Studies (MIDS) shows that the distribution of suicides by marital status reveals some shocking patterns. The rates do not vary much between the sexes for the never married. Among those currently married, while the rate for males is about 17 per 100,000 persons, the rate for females is 11.4 per 100,000. Among those widowed, while the rate for males is 21 per 100,000 persons, the rate for females is also significantly lower, at 6.6 per 100,000. However, among divorced males the suicide rate is 164 per 100,000 persons, but even in this class, among females the rate is only 63 per 100,000. While the suicide rate for separated men is about 167, for females it is 41 per 100,000 persons. (<http://www.hinduonnet.com/fline/fl1821/18210960.htm>)

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

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

A man immolated himself on 22 March, 1992 in New Delhi. The reason being complaint of 'dowry demand' by the estranged wife which led him to jail twice. In a note left behind, he held half a dozen persons responsible including his father-in-law and sister-in-law for driving him to suicide.

Another man, a bank employee hanged himself on 12 June, 1990 in his flat in Maya Puri, Delhi. The wife often used to stay with her parents. He did not like this.. His efforts to persuade his wife to return to his home only resulted in his wife filing a false dowry complaint against him.

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

Another instance of mass suicide involving three members of a family was reported a few years ago in Ballabgarh, Haryana. In this case, the persons that committed suicide were not the daughters-in-law. Instead, the husband himself, his young sister and their hapless mother consumed poison and ended their lives because of the growing unreasonable demand of the daughter-in-law and the continuous harassment inflicted by her family. No chests were beaten, no tears shed over these self-killings by a well-to-do family. The case failed to stir the general conscience of media and masses,



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

perhaps because these dowry deaths were different from the commonly heard examples.

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

easy excuse for many women with two advantages in mind—getting rid of the man and extraction of *Moti Rakam* (hefty amount) to bring the panicked husband and his family to terms.

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

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

Today every husband is perceived as a virtual torturer and the mother-in-law as a demon. A fair amount of blame for this rests on the media which, with a view to sensationalize

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

One wonders where this growing tendency of misusing the useful laws by unscrupulous parties is leading the society. Harassing and victimizing women for dowry is condemnable. We all have sisters, and daughters, and undoubtedly they require legal protection from all forms of harassment and cruelty but what if the legal loopholes of this very law are misused by women to harass their husbands and in-laws?

Though smaller in number, these harassed families also need equal legal protection..

How long will their sufferings remain unnoticed and cries unheard?

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"Today every husband is perceived a virtual torturer and the mother-in-law a demon"

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

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

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

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

Section 498A was inserted in the Indian Penal Code in 1984 with a view to protect women against dowry harassment. From the very beginning of this law there is reaction from the society including legal luminaries that this law could be misused and there would be severe deleterious effect in the society. But before going to its deleterious effect let us consider if the volume of complaints have gone down as may be seen in The Crime in India statistics. The volume is continuously going up which means that there is no deterrence effect of section 498A of IPC. This is now 2006. This very fact itself needs that the law is to be amended to curb the rising graph.

Coming to the judicial observations and remarks we find that continuously their lordships are showing anguish over the law. Here are some recent judicial observations.

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

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

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

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

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

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

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

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

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

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

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

"From the reading of the FIR, it is evident that there is no

specific allegation of any act against petitioners Nos.2 and 3, which constitute offence under s.498-A I.P.C. I am satisfied that these two persons have been falsely implicated in the present case, who were minors at the time of marriage and even at the time of lodging the present FIR. Neither of these two persons was alleged to have been entrusted with any dowry article nor they alleged to have ever demanded any dowry article. No specific allegation of demand of dowry, harassment and beating given to the complainant by the two accused has been made. The allegations made are vague and general. Moreover, it cannot be ignored that every member of the family of the husband has been implicated in the case. The initiation of criminal proceedings against them in the present case is clearly an abuse of the process of law”

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

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

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

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

can be unleashed. The provision is intended to be used a shield and not an assassin’s weapon. If cry of “wolf” is made too often as a prank assistance and protection may not be available when the actual “wolf” appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre-conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumptions are drawn which again are rebuttable. **It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations.** It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.”

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

“16.4.4 **In less tolerant impulsive woman may lodge an FIR even on a trivial act. The result is that the husband and his family may be immediately arrested and there may be a suspension or loss of job. The offence alleged being non-bailable, innocent persons languish in custody.** There may be a claim for maintenance adding fuel to fire, if the husband cannot pay. She may change her mind and get into the mood to forget and forgive. The husband may realize the mistakes committed and come forward to turn a new leaf for a loving and cordial relationship. The woman may like to seek reconciliation. But this may not be possible due to the legal obstacles. Even if she wishes to make amends by withdrawing the complaint, she can not do so as the offence is non compoundable. The doors for returning to family life stand closed. She is thus left at the mercy of her natal family. 16.4.5 This section, therefore, helps neither the wife nor the husband. The offence being non-bailable and non-

compoundable makes an innocent person undergo stigmatization and hardship. **Heartless provisions that make the offence non-bailable and non-compoundable operate against reconciliations. It is therefore necessary to make this offence (a) bailable and (b) compoundable to give a chance to the spouses to come together.**

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

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

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

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

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

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

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

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

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

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

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

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

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

Nakul says, "The Indian legal process is a punishment in itself, especially when it lingers on aimlessly for 5-10 years after the harsh period of police investigations (institutionalized blackmail to be frank). Since there are no legal repercussions if the wife is found to be fabricating a false 498a charge, wives use this almost by default even if they want a divorce for reasons other than dowry harassment and cruelty on the part of the husband. Even if they (complainants) lose the case, there's nothing for them to actually lose, as the wife gets a lawyer from the state (public prosecutor), she doesn't

have to appear other than for her statements during the trial (2-3 court sessions as opposed to the innumerable sessions which the accused husband and family have to attend throughout the duration of the case). This no-lose situation is what makes the law-misusing wife confident of inflicting damages to her husband without any harm to her whatsoever."

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

There are many heart-rending



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

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

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

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

Divesh notes that "most of the arrests that have been purposely made are on Friday evening. The reason is that the next two days being weekend off ensures that the husbands and his parents and relatives spend at least that many days in jail till the court opens on Monday. And if that day happens to be a government holiday then the proceedings are in suspension for a further while. The other popular days are days before holidays especially if the holiday is on Friday, then Thursday is apt for arrest as the proceedings are halted for three days minimum and the husbands and his innocent

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

What are the social consequences of misuse of 498a?

Once a family has been tortured using the 498a weapon, the



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

chances of reconciliation between the husband and wife is nil. The divorce that ensues is another mode of harassment for the already impoverished husband because he is forced to pay a hefty alimony/maintenance demanded by his wife. As Mihir notes, "An interesting ruling of the Allahabad High Court, where the wife was made to pay maintenance to her husband after divorce seemed to be a light of hope for those aggrieved and deprived husbands. But all the women had voted against this ruling criticizing the judgment as biased."

Shishir asks, "Why are they calling it as biased? Do they despise providing any kind of financial support to their husband? Or do they feel that providing financial support is only a man's domain and responsibility and not that of women? It is evident from the momentum of these women's

rights campaigns that they not only want to assert their own 'rights' in the society but also they want to dictate men's 'duties.' Many feel that this kind of attitude on the part of women defeats any attempts of achieving gender equality.

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

Sharat, another victim states, "According to an estimate, there are around 25,000-30,000 false 498a cases filed every year in India. This creates multi-dimensional problems to the families and society:

- 1) Lot of productive time, energy and money of the family are spent in proving themselves innocent.
- 2) Law implementers and judiciary have to spend countless number of hours presiding over a 'civil' matter (false in more than 90% cases) while the judiciary already has 20 million civil and criminal case backlogs.
- 3) Tax-payer money is spent on the government lawyer appointed to the daughter-in-law and letting her fight her vicious lie.
- 4) Families who have never spent a single minute with lawyers, courts and police, are forced to run frantically from pillar to post to defend an alleged crime they never committed and they are bound to get depressed with the judiciary and police system.
- 5) Eventually, the institution of marriage might become more like a business transaction in which a man and wife will have to document every agreement in writing in front of lawyers."

When victims and activists protest against misuse of 498a and other dowry-related laws, they face large-scale denunciation by groups claiming to be women's rights activists. But is their criticism justified? As one female victim questions, "Why do we need unfair laws which will 'benefit' a woman if she is a daughter-in-law or wife but harm her if she is a sister-in-law or mother-in-law? When it is natural for a woman to simultaneously play all these roles how can a heavily misused law such as IPC 498a be beneficial to women in its current form?"

Shishir notes, "498a law, which was enacted to protect women from any unlawful dowry or related harassment, is now **become a multi-million racket in our society.**

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

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

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

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

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

Lawmakers, are you listening?

6. TYPICAL TRAITS OF COMPLAINANT AND ACCUSED

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

Typical Complainant is a woman:

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

Typical Accused is man and his family:

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

7. THOUGHT PROVOKING QUESTIONS ABOUT 498A

Registration of FIR, arrest and court proceedings:

- When an FIR under IPC section 498A (498a) is registered, the accused are automatically arrested and jailed without investigation. The Supreme Court of India has ruled several times that arrest should be an exception, and not a compulsory. Why is there no penalty for disobeying the Supreme Court's orders? Is it not mental cruelty to subject a person to arrest without investigation or reasonable cause?
- Why is there no provision in the criminal law that can serve to deter false and exaggerated claims?
- Why does not the judicial system use its power to deter frivolous complaints made by unscrupulous individuals and prosecutions by corrupt law and order personnel for wasting the honorable courts' precious time and imposing the financial burden on the public exchequer?
- Why is there no provision by which the costs relating to false 498a cases can be recorded and recovered from the complainants to compensate the falsely accused?
- Why is there no penalty for the complainant who does not appear to the court proceedings?

Equality of laws:

- According to established research, the frequency of husbands committing suicide is three times that of wives committing suicide. When a wife commits suicide it is automatically deemed to be dowry death, under IPC section 304B. Why do we have no such protection for husbands? [ref: <http://www.flonnet.com/fl1821/18210960.htm>]
- The existing laws protect a woman from cruelty and harassment by her husband and in-laws. Why does the law not provide protection to a man against cruelty and harassment by his wife and in-laws?
- The Dowry Prohibition Act clearly states that the dowry giver is also punishable under the said Act. Why do the police and judicial authorities not take any action against those who admit that they gave dowry?
- Dowry laws were made to protect women from harassment. What legal protection is available to a woman who is being harassed by a daughter-in-law or sister-in-law? What legal remedies are available to a woman whose daughter-in-law or sister-in-law has booked a false dowry case against her?

8. STEPS AND SUGGESTIONS

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

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

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

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

3. Civil Law: Most of 498a sections have already been covered in other sections of criminal laws. The only thing that doesn't come under any IPC is cruelty. After removing other parts of this section, 498a should come under Civil Law.

4. Definition of Mental Cruelty: Mental cruelty has been vaguely defined in the act, which leaves scope of misuse.

This should be clearly elaborated to remove loopholes in the law. There should be provision for men also to file a case for mental cruelty by his wife.



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

It's high time government acts on these suggestions

5. Investigation by Civil

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

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

7. Compoundable: Once FIR has been registered it becomes impossible to withdraw the case even if wife realized that she has done a blunder and wants to come back to her matrimonial home she cannot do so. To save institution of marriage this should be made compoundable. Moreover, in the scenario where both decided to end

the marriage by mutual divorce, continuation of criminal proceedings hamper their life.

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

9. Penalty for making false accusation: Whenever any court comes to the conclusion that the allegations made

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

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

11. Right to Equality: Everyone should have equal rights and responsibilities. It will not work if a particular wife has all the rights but wants no responsibility (for its actions). There should be similar law to protect harassed husband and his family members.

9. MEDIA REPORTS

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

"90 percent of dowry harassment complaints are false."

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

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

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

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

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

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

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

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



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

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

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

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

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

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

There are many who feel that legal luminaries should find

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

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

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

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

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

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

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

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

"In quite a few cases, women are filing complaints which are not only motivated but quite misleading — just to harass

men deliberately," said the MCW Member Secretary Sudha Bhawe.

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

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

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

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

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

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

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

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

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

Emphasising that unless the allegations are of "very serious nature" and "highest magnitude", the arrest should always

be avoided”, the Court observed “arrest of a person for less serious or such kinds of offence or offences which can be investigated without arrest by the police cannot be brooked by any civilized society”.

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

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

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

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

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

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

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

- **THE Rahul: “Some brides are ‘villains’, not victims: lawyers”:** The Times of India. Cities: Kolkata. Wednesday, May 01, 2002. DS

Sociologist Bula Bhadra believes that domestic violence against men is yet to become a public issue. “If we go by the numbers, it’s still a private issue. I believe anyone can be abusive. We need to look at the bigger picture. We have to take into account the power relations — whoever is in

the dominant position in a family structure, be it a man or a woman, will tend to use his or her power to inflict hurt on the other. But as women are gaining more power today, we can see a ‘fear psyche’ working among men.”

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

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

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

- **“498a”**
- **“Misuse Dowry laws”**
- **“Elder abuse India”**
- **“Misuse of 498a”**

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