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Misuse of 498A - much ado about nothing?

Allegations have been made repeatedly that the penal code's protection against matrimonial cruelty is often abused by women. But no evidence is given to support this claim, says Bikram Jeet Batra.

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March 2004 - Section 498A of the Indian Penal Code (IPC), which defines the offence of matrimonial cruelty, was inserted into the IPC by an amendment in 1983. Offenders are liable for imprisonment as well as a fine under the section and the offence is non bailable, non-compoundable and cognizable on a complaint made to the police officer by the victim or by designated relatives.

31 March 2005: Since the publication of this article, India Together has received a number of letters from readers claiming that they were falsely implicated and harassed by their wives using section 498A of the IPC. A few readers have also posted their views on our Interact forum addressing the question of abuse.

The section provides an explanation that elaborates the meaning of *cruelty* as follows:

> a) any wilful conduct which is of a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb, or health (whether physical or mental) 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."

A Tata Institute of Social Sciences study from 1999 indicates that few women's organisations recommend recourse to section 498A IPC as a first resort. The study, which includes data relating to cases that eight women's organisations in Mumbai have helped register, shows that the number of cases they registered under 498A are miniscule compared to their experience of the prevalence of domestic violence. There is no doubt that a large number of cases go unreported or do not enter within the domain of the law.

However, allegations of misuse of section 498A by women have been voiced consistently by the police and others over a number of years. These have been in addition to a number of court judgments that have included similar observations. However almost all allegations and statements have been anecdotal or general in nature and there has been little statistical data put forward to substantiate these claims. This document examines recent allegations of 'misuse' made by the Malimath Committee and the Shinghal Report (both under the aegis of the Ministry of Home Affairs) and by a sitting Judge of the Delhi High Court, and examines them vis-à-vis the statement made on the subject by the Ministry of Home Affairs in the upper house of the Parliament.

Of Use and "Misuse"

In November 2000, there was a storm of protest from women's organizations after the legal adviser to the Delhi Commissioner of Police prepared a report, which made sweeping statements about the misuse by married women of section 498A. This report argued that "[t]he reasons for disharmony between the wife and the husband arise only when either the wife is reluctant/refuses to adjust herself in the family circumstances or if the husband feels reluctant to accommodate his wife either on account of unnecessary interference by the parents of the wife or non-cooperative attitude of the wife." Later reports follow a similar trend.

The report of the Malimath Committee, submitted in April 2003, while ostensibly discussing the reform of the Criminal Justice System, discusses the "heartless provisions" of section 498A. The (all male) Committee is informed on these issues by a "general complaint" of misuse of the provisions. Interestingly the Committee gives no references to evidence of misuse in its 600 page report, despite including 360 pages of appended data including the responses to the questionnaire that the Committee sent out and the 16 research

papers and the 23 reports the Committee considered; none of these even discussed the issue of violence against women, much less section 498A. Neither did the Committee deem it necessary to get the views of either victims of matrimonial cruelty, or of groups and individuals working on these issues in arriving at its recommendation.

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- report prepared by legal adviser to the Delhi Commissioner of Police.

• Laws against domestic violence

In an emotional rant (16.4.4), the Committee refers to a situation where:

> *"a less tolerant and impulsive woman may lodge an FIR even on a trivial act. The result is that the husband and his family may be immediately arrested and there may be a suspension or loss of job. The offence alleged being non-bailable, innocent persons languish in custody. There may be a claim for maintenance adding fuel to fire, especially if the husband cannot pay. Now the woman may change her mind and get into the mood to forget and forgive. The husband may also realize the mistakes committed and come forward to turn over a new leaf for a loving and cordial relationship. The woman may like to seek reconciliation. But this may not be possible due to the legal obstacles. Even if she wishes to make amends by withdrawing the complaint, she cannot do so as the offence is non-compoundable. The doors for returning to family life stand closed. She is thus left at the mercy of her natal family."*

No wonder then that the Committee recommends that the section be made bailable and compoundable to give a chance to the spouses to come together. The Committee goes as far as to suggest that that the amendment might be beneficial for women as they would be able to get better maintenance due to the husband not losing the job. The fact the most of the accused are released on bail anyway by Magistrates is completely ignored by the Committee.

Hot on the heels of the Malimath Committee, the judgment of the Delhi High Court on 19 May 2003 in the case of Savitri Devi v. Ramesh Chand and others (104 [2003] Delhi Law Times 824) also honed in on the issue of "misuse." Delivered by the Hon'ble Justice J.D. Kapoor (who is also author of the book Laws and Flaws in Marriage: How to Remain Happily Married, Konark Publishers, Delhi: 2002), the judgment discusses section 498A extensively. The hon'ble judge "feel(s) constrained to comment" upon it as it "hit[s] at the foundation of marriage itself and has not proved to be so good for the health of the society at large".

Justice Kapoor prefers to focus on how section 498A results in the "social catastrophy (sic)" of thousands of divorce cases, due to arrest of members of the family and the subsequent reduction of chances of salvaging or surviving the marriage. Rather than examining the cruelty that led to such complaints, the judgment states its concern for the women involved since "remarriage is not so easy" and "women lacking in economic independence starts feeling (sic) as burden over their parents and brothers."

The judgement repeatedly merges "misuse" of the provisions of section 498A by women complainants and misuse of the provisions by the Police. The hon'ble judge derides the police as "bad and unskilled masters" in whose "iron and heavy hands" the "ticklish and complex" issue of domestic disputes should not be left. Further, the "misuse" by women complainants is explained only as the "growing tendency" among women to rope in each and every relative in the complaint. Needless to say there is no further discussion on the elements, cases or data that constitute this "growing tendency."

In what appears to be an acknowledgement of the severity of the situation of domestic violence in the country, the Justice refers to "thousands of cases and matters relating to dowry deaths and cases registered [author's emphasis]." However, this is followed by the vague statement that "experience is not so happy nor is implementation or enforcement of these laws is anything but satisfactory or punctilious." Similarly at another juncture, the hon'ble judge concludes, "These provisions were though made (sic) with good intentions but the implementation has left a very bad taste and the move has been counter productive."

However, rather than attempting to provide justice to the victims through guidelines for better implementation of the law by the police, the Judge quickly moves to ordering that Section 498A/ 406 IPC be weakened--made bailable, and necessarily compoundable, thereby nullifying the admittedly "good intentions" of section 498A.

Following the above order by the Delhi High Court it was reported in the Press that the then Commissioner of Police of Delhi, R S Gupta set up a committee to study various aspects of the court's order. The Committee was also to study the cases lodged with the crimes against women cell and ascertain whether "the law was being followed in both letter and spirit." Amnesty International India is unaware of the status of this study.

Double-Speak in the Home Ministry?

In the Statement of Objects and Reasons provided in the Criminal Law (Amendment) Bill 2003 that was put before parliament in August 2003, the Home Minister, Shri. LK Advani states, "it has been widely reported that this provision (Section 498A IPC) has been misused and is also harsh as it is non-compundable."

However when the Home Ministry was asked for the data on misuse in a question in Parliament in December 2003, the Minister of State for Home Affairs, Shri I.D Swami stated, "There is *no information available* with the Government to come to the conclusion that many families in India are suffering due to exaggerated allegations of harassment and dowry cases made by women against their husbands and other family members involving them in criminal misappropriation and cruelty."

However, Amnesty International India is aware that the Bureau of Police Research and Development, Ministry of Home Affairs, given the range of opinions on the issue, commissioned a report on the functioning and implementation of section 498A by Mr. N.K Shinghal, who is a retired police officer.

At best, the "Study Report on Crimes Against Women - Role of Section 498-A, IPC in States of Delhi & Haryana" submitted by Mr. N.K Shinghal (Shinghal Report) is a wishy-washy document that says nothing at all; at worst, a document that intentionally seeks to obfuscate the issue of use and misuse of these provisions. The Report is characteristic of State actors' and legal system's approach to the issue – it claims 'misuse' merging the question of police and complainant misuse, but provides no data for this 'misuse.' In fact, strong on data in other segments, the Shinghal Report only relies on "view and comments" when referring to "quite substantial" misuse, arguing that "no quantification of the same may be possible." (Page 36)

This is odd, given that earlier the Shinghal Report notes, "[n]either the central Crime against Women cell nor any of the Districts (of Delhi) reported having found any complaint to be totally false. No action for lodging a false complaint was accordingly initiated in any case during the 5 year period (1995 –99)." (Page 22) Elsewhere the Report claims, "The general view is that making totally false or baseless complaints may not be very common (though not unknown)." (Page 37)

Rather than clearing the air with the assistance of the above, the Shinghal Report attempts to play to the gallery while yet being reasonable. Thus while it agrees that Section 498A is not being abused (false cases etc), it argues that it is being misused (exaggerated complaints etc), ignoring completely the context and understanding of the term misuse within which the report itself was commissioned. Further, even though the Shinghal Report notes the position of members of the women's movement with respect to the lack of a civil remedy leading to more cases being filed under Section 498A, it continues with its play on words which seeks to mislead.

Even though the Malimath Committee and the Shinghal Report, both under the aegis of the Home Ministry suggested "substantial abuse," the statement on 17 December 2003 by the Ministry of Home Affairs (in response to a question in the Rajya Sabha) completely contradicted their findings and should, at the least, temporarily clear the air.

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(Emphasis added, see original text at http://164.100.24.219/annex/200/AS230.htm)

This has not however prevented the Government from introducing in Parliament the Criminal Law (Amendment) Bill, 2003 (introduced in Rajya Sabha on 22 August 2003) which included a provision to make Section 498A IPC compoundable with permission of the Court. This development is a cause for concern also because Andhra Pradesh

has already amended the law in this manner via the Code of Criminal Procedure (Andhra Pradesh Amendment) Act, 2003, which came into force on 1 August 2003.

Deep Rooted Patriarchy

Despite the clarity of the statement of the Ministry of Home Affairs it is unlikely that the allegations around misuse will end now or in the near future. That the Bureau of Police Research and Development commissioned a report on the evaluation of section 498A raises concern. On the other hand, despite evidence suggesting gross misuse of POTA there has been no such study commissioned to evaluate POTA. Indeed, Amnesty International India is unaware of similar studies being commissioned to evaluate the functioning of any other particular laws. Similarly the Malimath Committee when suggesting reform of the Criminal Justice System only referred to the "misuse" of section 498A. Seema Sakhare of the Stree Atyachar Virodhi Parishad puts it succinctly, "Society cannot digest it – the thought that a woman has power, however little, to get back at her oppressors is unbearable."

The extent of the patriarchy is evident in the Shinghal Report when it notes, "Most of the police officers, barring a few at senior levels and the defence lawyers, considered both the sections to be not only adequate, but also overtly biased in favour of women, leading to their increasing abuse." (Page 9) It further goes on to observe that "[e]xcepting in cases involving serious violence, the Courts also take a liberal view in this regard, particularly in respect of accused other than the husband." (Page 25) Elsewhere the Shinghal Report observes that the "liberal attitude of the Magistrate/Judges in granting quick bails" could flow from impressions of misuse. The Report's author also repeatedly focuses on "substantial misuse" without providing any proof for it.

Despite similar claims of abuse or misuse of other laws, no evaluations of those were commissioned. Seema Sakhare of the Stree Atyachar Virodhi Parishad puts it succinctly, "Society cannot digest it – the thought that a woman has power, however little, to get back at her oppressors is unbearable."

• Dangerous Bill, reconsidered

Related to this is the notion of marriage and over-arching concern to save the marriage. To our lawmakers and the law implementers this seems to be the primary motive – far more important than assisting the victim/ complainant in their quest for justice. Thus the Malimath Committee is "bothered' by the offence being non-bailable and non compoundable, as it makes "reconciliation and returning to marital home almost impossible." (Para 16.4) This concern for the marital home is particularly egregious, considering it comes immediately after a reference to women committing suicide when their suffering crosses the limit of tolerance. The Committee is also of the opinion that since matrimonial cruelty impacts mainly the victim and not the values of the society, once a woman who has been a victim of such cruelty is awarded a divorce, there is no requirement for the criminal case to continue. (Para 14.10.06)

Similar opinions are also visible in Justice Kapoor's judgment (discussed earlier) – a part of the judgment that according to Supreme Court Senior Advocate, Indira Jaisingh, "cannot be called a judgment at all as it is nothing more than the personal opinions of the judge." Elsewhere Indira Jaisingh has also called for judges to not "confuse the role and purpose of criminal law and their own role with that of marriage counselors."

The Shinghal Report also exposes the mindset of the police. In reply to allegations of corruption, the policemen claim that delays in registration and arrest under Section 498A are "totally bonafide and in the interest of preserving/ restoring marital harmony and keeping the marriage going" (Page 42). Referring to the low rate of complaints that get converted into criminal cases (as low as 3% in one district of Delhi), the report attributes it in part to efforts made to bring about a settlement between the parties through counseling or advice which is justified by police officers as being in the interest of the family/ society in preventing a break up of marriage and preserving and restoring marital/ family harmony (Page 22). It does not seem to bother Mr. Shinghal that marital counseling is not the primary, or indeed any, role of the police.

Long-term Solutions

A large number of cases registered under section 498A are subsequently withdrawn though this is not necessarily because they were false. These withdrawals take place for a variety of reasons, discussion on which is beyond the scope of this document and which have been discussed elsewhere by the women's movement.

At the same time, cases of abuse of section 498A cannot be ruled out. Reports of the police requiring an element of dowry to the complaints are common as are reports of lawyers and victims/ complainants exaggerating the matter and bringing in more members of the husband's family within the complaint. However, all laws are capable of and subject to abuse and misuse – including Section 498A. The solution does not lie in dismissing the law or taking away its teeth completely by making it compoundable and bailable. This is akin to throwing away the baby with the bathwater.

Steps need to be taken towards more effective use of the law. A number of suggestions have been made that merit consideration. This includes defining terms better including 'mental cruelty,' and providing operational indicators to reduce their ambiguity in use. Amnesty International India understands that the Mumbai police have also issued such guidelines prepared in consultation with NGOs and women's rights activists. Providing a civil law on domestic violence is also another step forward. It is only by providing both a civil and criminal remedy that we will find both – workable options for women complainants and reduction in the use of the criminal provisions. As Indira Jaisingh puts it, "[n]o society can simultaneously deny its citizens a civil legal remedy and claim a criminal remedy is being 'misused.'"

In this respect Amnesty International India supports initiatives towards a comprehensive bill on the protection of women from violence within the home which would include recommendations and additions made by civil society groups and women's rights activists on the previously tabled ''Protection of Women from Domestic Violence Bill 2002'' and on the report of the Parliamentary Standing Committee on the bill. ⊕

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