

# A PASSAGE FROM INDIA

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## CONVENTION

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# Misuse of IPC Section 498 A

## The "Misuse of IPC Section 498A"

In urban India, the majority of families have adequate knowledge regarding IPC Section 498A, more commonly known as the "dowry-law", which was introduced in an attempt to eliminate DOWRY that affects mostly the poverty stricken. As per this law, both giving and taking of dowry is illegal, but only the taker is to be punished. Most cases where Sec 498A is invoked turn out to be false as they are mere blackmail attempts by the wife (or her close relatives) when faced with a crumbling marriage.

**Section 498 (A) of the Indian Penal Code makes it mandatory for the police to file charges against the husband, his parents and other relatives/friends (whoever being named on the complaint by the wife or her close relatives) and put them in jail.**

**There is no penalty (not even a fine) for filing a false case.** This section is non-bailable, non-compoundable (complaint can't be quashed) and cognizable (arrests without investigation or warrants). There have been many instances where, without any investigation, the police have arrested elderly parents and even grandparents, unmarried sisters, pregnant sister-in-laws and 3 year old children. Some accused parents, sisters and even husbands have committed suicide after time in jail.

Recent statistics reveal that there are almost 33 million widows in India. The suicide rate among married men in India is 3.2 times higher than in married women; whereas before marriage, the rate is almost equal (IndiaStat.com). Therefore, all mothers (and their husbands) contemplating an Indian marriage for their son should be careful as unholy matrimony could be injurious to the young man's health and this is even before the marriage starts crumbling and leads to the "divorce wars". Once the word "divorce" comes into the picture, the attempt is to grab what you can, and what better way to settle old scores and take over the husband's family's assets? Obviously, it has to be achieved with the "dowry" accusations, the sure shot way of making money as then the husband's entire family is under the gun to settle on the wife's terms.

Currently, there is no law/way for the husband and his relatives to escape harassment from the police, courts and the wife, if she loses tolerance and respect for other's emotions. Also, since in-laws are deeply resented, the wife's vengeful drive is molded by her parents and based on their knowledge of this section for their own mundane selfish reasons. It is estimated that about 25,000 dowry cases are filed in India every year, 65% are dismissed by the courts because they are blatantly false and the rest are settled out of court after the wife or her parent's monetary demands have been met.

There is strong affirmation from the judiciary and the Malimath committee that this section needs to be amended (made bailable/compoundable/applicable only to husband) before it inflicts irreparable damage to the institution of marriage. In the Karnataka High Court's judgment, CrI.A. 589 of 2003, made on 4-9-2003 (Saldhana vs. Rajendra Prasad), the Judge states that in about half the cases, prosecution is thoroughly unjustified. Various rulings from other parts of the country too have questioned the Law commission of India's decision to keep this Section in its present form (eg: MANU/AP/0979/2002, Saritha vs. Ramachandra).

Several Police Commissioners and members of the Judiciary have said that the laws are being used for ulterior motives. A women head of a Women Police Station in her interview to a leading daily newspaper of New Delhi gave a courageous statement that 99% complaints of dowry demands are false and baseless. An article published in a Times of India publication states that 90% women prisoners in Tihar Jail are locked up because of dowry related cases.

In most parts of the civilized world, domestic issues like divorce are resolved by civil laws. Even in criminal law, a person is considered innocent until proven guilty. As per the draconian dowry law (IPC Section 498A), the man, his family and his friends are considered guilty without any evidence are jailed and harassed until proven innocent and face life-long stigmatization. In any regular divorce, there is no way that a wife would acquire a part of her husband's property or a lump sump payment from him, when marriage is irretrievably broken within a couple of years. However, using 498A and complimentary laws, the wife can lay claims to all her husband's family assets. This is the main reason for the misuse of the dowry laws.

The US Department of State has already posted a warning for its citizens at <http://travel.state.gov/india.html> DOWRY/VISA DEMANDS: A number of U.S. citizen men who have come to India to marry Indian nationals have been arrested and charged with crimes related to dowry extraction. Many of the charges stem from the U.S. citizen's inability to provide an immigrant visa for his prospective spouse to travel immediately to the United States. The courts sometimes order the U.S. citizen to pay large sums of money to his spouse in exchange for the dismissal of charges. The courts normally confiscate the American's passport, and he must remain in India until the case has been settled. There are also cases of U.S. citizen women whose families force them against their will into marriages to Indian nationals.

*You can read about the numerous cases of misuse of 498A on Google by searching for "India 498A"*

### The Hidden Side of the "Dowry Accusations"

In the most obvious case of false dowry accusations (where the philanthropic and wealthy Ambati family from New York were accused of demanding a dowry of \$1,200 by their daughter-in-law Archana and her father Mr. Nanda (a former honorary Home Guards Commandant) of Karnataka, India. Because of the Nanda's legal connections and political manipulations with the help of the women's support groups, there was a complete lack of public outrage over the leniency shown to the Nandas (who had filed the false dowry accusations in an attempt to extort US \$500,000 from the Ambatis). After being found guilty of such an outrageous deception, they were not even sanctioned.

Although, there had been no public outcry at the leniency shown to the Nandas, there however was an outcry in the last New Delhi High Court case in which a woman was charged with making malevolent and baseless dowry accusations to have even a child sent to jail. That was from the women's support groups, denouncing the fact that "This case will deter genuine dowry victims from reporting abuse." The illogic was breath-taking, for we rightly reserve particular opprobrium for dowry seekers. But by making light of the false dowry accusation, women's groups are trivializing dowry itself. You cannot debase a currency for some of the time; once debased, it stays debased.

False dowry allegations, however, are about power, for they mobilize the proper revulsion society feels about the crime against the unfortunate target. So we should protect the powerful societal taboo on dowry by treating those who falsely allege dowry abuse with the severity with which we treat dowry seekers. That is the least the true dowry victims deserve. Certainly people such as the Nandas who go to such extraordinary lengths to subvert legal and cultural taboos against dowry for their own purposes should be severely punished. Not even a day's sentence for such an elaborate ruse is a bad joke.

Madhu Kishwar, a women's rights activist says that even if there is some misuse of the dowry laws, she condones it (however, what if the law was misused against her own male relatives). Brinda Karat, the former General Secretary of the All India Democratic Women's Association (AIDWA) thinks that the misuse of 498A is of insignificant consequence as men need to pay for all the wrongs done over the centuries to women and if there is any attempt to dilute the dowry laws, her 50 lakh followers will take to the streets in India. Senior Advocate Indira Jaising who is very active on women's issues says that there is some misuse of 498A but that is irrelevant.

The NCW chairperson Poornima Advani admits that the dowry laws are being misused, but when the NCW chairperson was asked why no action has been taken against those giving dowry, she replied: "We must remember that it is the poverty stricken people who are the main victims". If that is really the case, Indian society needs to answer an important question: "Why are dowry accusations almost non-existent among these poverty stricken people, and the communities and professions where dowry is a traditional, and why is it that most such (obviously false) accusations come from educated, modern and liberated families with political and legal connections?"

In a recent interview with HindustanTimes.com, Shobhaa Dé said: "Marriage as an institution is under threat. People are questioning the rules of the game and asking themselves whether they need marriage at all. There is no 'perfect recipe' for marriage. Each couple has to arrive at their own formula - and that takes years. The single most important ingredient in this recipe is 'love'. Without that, there is nothing. Men and women, who cheat, will always cheat. There is no gender difference. Of course, women today have more opportunities to stray than ever before". Sexual encounters are mere handshakes and changing partners is as easy as changing a dress. Tolerance is virtually non-existent in the current generation, and this is resulting in the high divorce rate.

The Ambati case is a prime example of how the Dowry Laws can be abused by unscrupulous families to extort money from innocent families, especially NRIs and other well-to-do Indians. The institution of marriage is under threat along with the future of our families and children. All god-fearing people, NRI and the human rights organizations, the Indian government and the leaders of the civilized world should take notice of the growing epidemic of false dowry harassment cases filed against innocent Indian families/NRIs and take steps to curb the spiraling abuse of this law.

You can read about the numerous cases of misuse of the dowry laws at: <http://indiatogether.org/2004/mar/law-sect498a.htm>

