

# COVER STORY

## DOMESTIC VIOLENCE - TOLERATING THE INTOLERABLE?

The recognition of domestic violence as a serious human rights violation of women is a recent phenomenon. The notorious 'rule of thumb' was upheld as recently as in the early 20th century. **Nilima Dutta** argues that in India, though provisions such as 498A IPC have been introduced, our poor judicial and penal records underscore the crying need for a comprehensive legislation on domestic violence.

**T**he English common law or law created by English judicial decisions treated the wife as the husband's chattel, allowing the husband to do as he pleased in the private domain of his home. The law actually allowed a man to beat his wife with a stick "no thicker than his thumb" and explicitly sanctioned the abuse of women within marriage. According to Blackstone, a man was allowed to give his wife "moderate correction". *Blackstone's Commentaries Vol 1 8th ed (1775) p 445.*

The position of a woman as a 'chattel', in English common law, changed radically in the fifties when women began to be considered as separate legal entities with distinct legal rights. The law developed mainly to protect women's economic rights granted by marital status. This recognition of a woman's distinct legal identity materialised in the form of payment of maintenance to her on breakdown of the marriage. The right of maintenance was deemed to include the right of shelter or residence. A large number of judge-

ments, handed down by the English courts mark the metamorphosis of the woman from "chattel-wife" to "legal person".

### WHAT IS DOMESTIC VIOLENCE ?

Domestic violence is essentially violence perpetrated by persons in intimate family relationships. Research from several parts of the world indicates that perpetrators of domestic violence are predominantly male and that the violence is usually perpetrated by the male on his female sexual partner. The acts of violence include physical and sexual attacks and threats. Sociological studies indicate that the acts are a means of controlling the victim's thoughts, feelings and behaviour. Domestic violence does not subside in individual relationships unless there are external interventions which protect both the woman and simultaneously encourage behaviour modification in the perpetrator.

The pervasiveness and magnitude of

domestic violence in the nineties is reflected in the Declaration on the Elimination of Violence against Women adopted by the General Assembly of the United Nations at its 83rd Plenary meeting held on December 20, 1993. Article 1 of the Declaration clarifies the term "violence against women" to mean any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Charlotte Bunch, a feminist author who co-ordinated the Global Campaign for Women's Human Rights at the 1993 World Conference on Human Rights in Vienna, in her paper titled 'The Intolerable Status Quo: Violence Against Women and Girls' reports some shocking facts which include the following:

About 60 million women who should be alive today are 'missing' because

of gender discrimination, predominantly in South and West Asia, China and North Africa. In the United States, where overall crime has been growing for the past two decades, a woman is physically abused by her intimate partner every nine seconds. In India, dowry related deaths account for more than 5000 women being killed each year by husbands and in-laws. Mutilation of women in Bangladesh by throwing acid on their faces.

### THE MYTHS ABOUT DOMESTIC VIOLENCE

Domestic violence is not caused or provoked by the actions or inactions of the woman.

Alcohol or drug abuse, depression, lack of money or lack of a job do not directly cause domestic violence. These may be factors which may put women at greater risk of violence because of the stresses created by financial hardship and relationship crises. Many abusers blame the victim or other things for their violent acts and do not take responsibility for the abusive behavior.

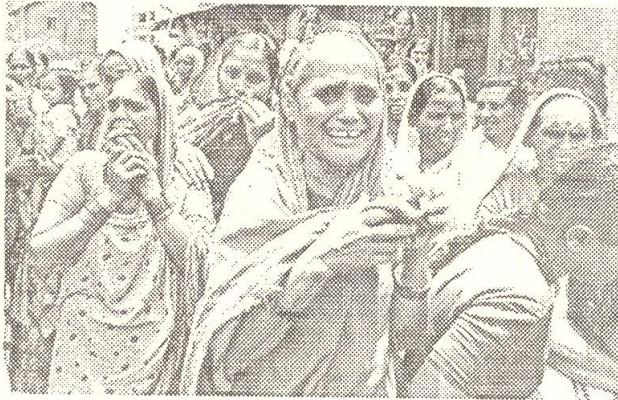
The causes of domestic violence are not known to date. The research carried out in different parts of the world indicates that any social structure which treats women as fundamentally of less value than men is conducive to violence against women. Victims of violence are predominantly women, while perpetrators are overwhelmingly males which gives credence to the theory that violence is an outcome of gender inequality.

Many overseas jurisdictions view acts of domestic violence as criminal acts. In countries like Canada, Australia, New Zealand, Chile and the United States, considerable legislation has been developed to recognise and prosecute crimes of domestic violence.

### LEGAL RESPONSES TO DOMESTIC VIOLENCE IN INDIA

#### *Position in Civil Law*

Prior to the amendment of the Indian Penal Code, Indian women experiencing domestic violence had recourse only to civil law remedies of injunctions or restraining orders available to any persons subjected to assault and battery. The remedy is



invoked by approaching any civil court which has jurisdiction over the place where the acts of violence occurred or are likely to occur.

Personal laws or laws relating to succession, guardianship and custody, marriage and divorce do not explicitly recognise domestic violence in the way common law recognises it, that is, as assault and battery. Even though assault and battery do not generally form grounds of divorce or separation in a marriage, protective injunctive orders available under the

common law can be claimed in a court of civil jurisdiction which would include a Family Court. (Grievous hurt caused by one spouse to the other is a ground of divorce under the Parsi Marriage and Divorce Act, 1936.)

Most matrimonial statutes which are part of personal law recognise domestic violence in the form of "cruelty", a civil, matrimonial fault, which entitles the person experiencing the cruelty to petition a court for reliefs like divorce or separation. Cruelty is not defined in any of the matrimonial laws except in the Dissolution of Muslim Marriages Act, 1939.

#### *Position in Criminal Law*

India has no national law or policy on domestic violence.

The Dowry Prohibition Act, 1961 was the first piece of legislation in post-independent India which acknowledged, though not explicitly, that women had a subordinate socio-economic status. The lower socio-economic status of women facilitated exorbitant demands for dowry by men who after marriage would accept the economic burden of maintaining the wife. Policy makers believed that if criminal sanctions were to be attached to the giving and taking of dowry, perhaps the practice would decrease and alleviate the harassment suffered by women who were unable to fulfil dowry demands.

Section 2 of the Act defines dowry as any property or valuable security given or agreed to be given either directly or indirectly, in connection with the marriage by one party to a marriage to the other party (that is to the bridegroom or bride) or by

the parents of either party to the marriage or by any other person. Dowry or mehr given by Muslims to whom the Muslim Personal Law or Shariat applies, is excluded from the purview of the Dowry Prohibition Act, 1961.

The Act punishes both the giver and taker of dowry. A demand for dowry is also an offence punishable with imprisonment of six months. In the event that dowry is given or paid to a person other than the bride, the person receiving the dowry is deemed to hold the dowry in trust for the bride or woman and is obligated to transfer the dowry or property to the woman in the time given in section 6 of the Act. Punishment for not transferring the dowry in the stipulated period is by way of imprisonment and/or fine.

Physical and emotional abuse of the wife, relating to dowry demands, were not made offences under the Dowry Prohibition Act, 1961 even though there was sufficient evidence of such abuse.

Currently, there is no civil or criminal statute which deals exclusively with domestic violence. A limited recognition of the criminal nature of domestic violence is reflected in sections 498A and 304B of the Indian Penal Code which were introduced by the Criminal (Amendment) Acts of 1984 and 1986 respectively. In practice, crimes have been registered when made in the context of dowry demands from the wife ignoring the gender aspect of the violence and the lack of power women have in patriarchal societies.

An analysis of some recent Supreme Court judgements show that judges have not been able to devise criteria for determining domestic violence, nor have they awarded punishment consistently. The rules of

circumstantial evidence which normally surround crimes of secrecy, such as murder, have been applied inflexibly in gender related crimes. The gender aspects of domestic violence have not underpinned the rulings of the Supreme Court resulting in outcomes which are not significantly different from other criminal prosecutions for murder.

#### *1. Sharad B. Sarada vs. State of Maharashtra (1984) 4 SCC 116*

Although this case was decided before the introduction of section 498A of the Indian Penal Code, it is being discussed because there is a distinct element of gender and cultural bias in the Supreme Court judgement.

The brief facts of the case are as follows: Manjushree aka Manju was married to Sharad Sarada, a chemical engineer, on February 11, 1982. Manju became unhappy because of indifference of the husband and ill-treatment by the in-laws. She visited her parents home at Beed briefly on three occasions, prior to her death which took place sometime between 11:30 pm and 1 am on the night of June 11-12, 1982.

The post-mortem indicated that Manju died due to administration of potassium cyanide. At the time of her death, her husband was the only person present. Prior to her death, Manju had written two letters to her sister Anju and her friend Vahini, giving some indication of her misery and unhappiness in the marital home. These letters as well as Manju's statements to her parents during her last visit to them in May 1982, were treated as dying declarations.

The prosecution alleged that Manju was killed by her husband, who was having an illicit affair with another woman. The husband, in his de-

fence, alleged that Manju had committed suicide.

The trial court agreed with the prosecution that it was a case of homicide and imposed a death sentence on the husband. The evidence before the trial court was mainly circumstantial. The High Court confirmed the sentence of the trial court. The husband's appeal to the Supreme Court was decided by a three judge Bench.

To arrive at its determination, the Supreme Court had to consider (a) whether Manju's letters and her oral statements to her parents and relatives, constituted dying declarations under section 32(1) of the Evidence Act, 1872; (b) whether evidence of Manju's natal family members could be believed; (c) whether the prosecution could be allowed to rely on circumstances which the accused was not given a chance to explain in his statement under section 313 of the Criminal Procedure Code.

The Supreme Court's interpretation of the letters written by Manju differed markedly from that of the lower courts. The Court concluded that Manju's letters revealed her unhappiness after marriage which at the same time showed that she had no serious complaints of ill-treatment against the husband or in-laws.

Para 78 of the judgement states that Manju's father, as a loving parent, would not have sent her back to her husband's home if Manju was really unhappy and frightened for her life. This is a clear indication that the Court ignored the cultural reality where a newly wed woman is encouraged to make the marriage work, regardless of the ill-treatment she may receive.

The accused husband did not draw any censure from the Court for entering into a marriage with Manju,

despite having an ongoing relationship with Ujwala Kothari.

It was speculated that Manju could have had access to potassium cyanide as her mother and maternal uncle had a plastics factory at Beed from where potassium cyanide could be obtained. The judgement is silent on the fact that the accused husband who was a chemical engineer, also had a chemicals factory, and that obtaining potassium cyanide ought not to have been difficult.

The Supreme Court reiterated the stand taken in *Hate Singh Bhagat Singh vs. State of Madhya Bharat AIR 1953 SC 468* which says that if the accused is not given an opportunity under section 313 of the Criminal Procedure Code (CrPC) to explain circumstances which are against him, such circumstances cannot be used against the accused.

Justice Sabyasachi Mukherji, who dissented on some facts of the judgement expressed disquiet at the wording of the last letter dated June 8, 1982, written by Manju to her sister as the English translation states that Manju was sensing a 'foul' atmosphere in the house.

The appeal was allowed as the Court concluded that the guilt of the accused husband was not proved beyond reasonable doubt. Sharad Sarada was acquitted of all charges and released.

2. *State (Delhi Administration) vs. Laxman Kumar and ors (1985) 4SCC 476*

On February 16, 1980 Sudha was married to Laxman Kumar. Sudha and her husband began residing with his brother Subhash and his family at Janata Vihar, Ashok Nagar in New Delhi. Laxman's younger brothers resided on the first floor flat in the same building. The mother-in-law Shakuntala lived at Barot about 50

kms from Delhi.

Sudha was pregnant and expected to deliver her baby in the first week of December 1980. On December 1, 1980 around 9 pm Sudha's neighbours heard a woman shouting for help. They rushed to the flat and found Laxman attempting to close the entrance door, while Subhash was standing with his hand on the latch of the door which opened into the courtyard. The neighbours pushed their way in and finding Sudha aflame, they extinguished the fire. Sudha stated that her mother-in-law Shakuntala had set her on fire. She made two other statements before succumbing to burn injuries in the early hours of December 2, 1980. All statements were used as dying declarations and given the evidentiary value laid down by the Evidence Act. The last statement made by Sudha was a dying



declaration taken down in writing by a police officer in the presence of a doctor. It was disregarded at the trial because of technical defects. After investigation, Laxman, Subhash and Shakuntala were charged with murder.

At the trial, it was established that Sudha had been treated with cruelty and subjected to dowry demands. The defence plea that Sudha's sari

had accidentally caught fire when she was using the kerosene stove in the courtyard, was not accepted.

Sudha's dying declarations were used as corroborative material. The trial court found the accused guilty and imposed a death sentence. The High Court acquitted the accused. Two appeals against the acquittal orders were filed in the Supreme Court, one by the Delhi Administration and the other by the Indian Federation of Women Lawyers. The Supreme Court sentenced Shakuntala and the husband Laxman Kumar to life imprisonment. Subhash's acquittal by the High Court was not interfered with.

4. *Vanka Radhamanohari vs. Vanka Venkata Reddy and ors (1993) SCC 4*

In 1990, the wife filed a complaint in the magistrate's court against her husband and his relatives under section 498A for cruelty and under sections 494 IPC for bigamy. The wife had been compelled to leave the matrimonial home in 1985 due to cruelty. The husband moved the High Court under section 482 of the CrPC. The High Court quashed the proceedings in the trial court on the ground that the complaint section 498A was filed beyond the limitation period of three years. The High Court was silent on the bigamy proceedings as the limitation period for bigamy is seven years.

The wife appealed against the High Court order. The Supreme Court referred to section 473 of the CrPC which casts an obligation on the courts to examine complaints filed beyond the limitation period as well as to condone the delay, if necessary, in the interests of justice. The trial court was directed to proceed against the husband and other accused on the basis of the original

complaint filed under sections 498A and 494 of the IPC.

5. *State of West Bengal vs. Orilal Jaiswal & anr. (1994) 1 SCC 73*

Usha was married to Orilal Jaiswal on May 31, 1985. The prosecution alleged that on April 19, 1986, Usha committed suicide by hanging herself, in her husband's house. Her brother alleged that Usha had been murdered. The accused were finally charged only under sections 498 A and 306 IPC (abetment of suicide). It was established that the accused had harassed Usha for dowry and treated her with severe cruelty. There was no dying declaration made by Usha.

The conviction of the accused by the trial court was reversed by the High Court which was influenced by the absence of a dying declaration, lack of letters of complaint written by Usha, no specific dates being given by Usha to her mother about the acts of cruelty and dowry demands. The Supreme Court, on appeal, held

that there was sufficient evidence of cruelty to Usha prior to her death and convicted both Orilal Jaiswal and his mother Gujarartidebi under section 498A. The accused were given benefit of doubt regarding the offence under section 306 IPC. The Court spent considerable time articulating on the degree and standard of proof required for conviction in criminal proceedings. The Court stated that even after introduction of section 498A in the IPC and section 113A of the Evidence Act, the requirement of proof beyond reasonable doubt, was not altered.

6. *Hem Chand vs. State of Haryana (1997) 11 SCC 552*

Saroj Bala was married to Hem Chand, a police officer, on May 24, 1982. She was sent back to her maternal home whenever the persistent dowry demands were not met. On November 13, 1984, Hem Chand left his wife with her parents as he wanted to get Rs 25,000 for purchase of some land. Sometime

later, Hem Chand took his wife back.

On May 20, 1987, Saroj Bala went to her father to get Rs 25000 as demanded by the husband. Her father gave her Rs. 15,000 with a promise to give the balance. On June 16, 1997, Saroj Bala died of strangulation in her matrimonial home. The husband took her body to his village. Saroj Bala's father alleged that his daughter had been murdered for dowry. The police sent the highly decomposed body for post-mortem. Death by strangulation was confirmed by the forensic examiner. The husband was charged under sections 498A and 304B of the IPC.

In defence, the husband stated that he found his wife hanging from a hook on the ceiling. He explained his conduct in taking his wife's body to the village as done in confusion. The trial court awarded life imprisonment to the husband for offences under sections 498A and 304 B IPC. This was upheld by the High Court

Sr. No.	Head of Crime	CRIME AGAINST WOMEN*					
		YEAR					
		1993	1994	1995	1996	1997	1998
1.	Rape						till Nov
2.	Molestation	1146	1303	1364	1443	1243	1024
3.	Kidnapping/Abduction of Women & girls	3011	3080	3477	3231	3117	2684
4.	Eve-Teasing	903	912	960	940	968	906
5.	Dowry murder by burning	1415	541	703	950	974	839
6.	Dowry murder by other means	49	50	63	67	57	67
7.	Dowry attempt to commit murder by burning	32	75	67	74	48	49
8.	Dowry attempt to commit murder by other means	10	22	28	25	33	28
9.	Dowry attempt to commit suicide by burning	5	14	17	19	19	24
10.	Dowry attempt to commit suicide by other means	17	50	58	9	23	27
11.	Death u/s 304-B I.P.C. by burning	31	79	39	26	19	43
12.	Death u/s 304-B I.P.C. by other means	129	163	142	116	120	104
13.	Cruelty by husband or relatives of husband 498A I.P.C.	187	231	230	215	159	146
14.	Abetment of suicide (if victim is woman)	6740	7105	8208	8589	7610	6391
15.	Importing of girls (upto 21 years)	0	1097	1350	1372	1468	1471
16.	Sati Prevention Act	0	41	13	17	0	0
17.	Immoral Traffic Prevention Act	0	0	0	0	0	0
18.	Indecent Representation of women (Prohibited)	0	163	181	206	1401	331
		0	5	1	9	5	150
	Total	13675	14931	16901	17308	17264	14284

(\*Compiled by the office of the DIG of Police, Maharashtra, Crime Against Women Cell. Figures pertain to Maharashtra.)

in appeal. The High Court stated that the accused being a police officer should be punished with life imprisonment. Hem Chand then appealed to the Supreme Court which ruled as follows:

Saroj Bala had died an unnatural death. The death took place within seven years of her marriage. Prior to her death she was subjected to cruelty and harassment for dowry by the accused husband. The ingredients of section 30 B and 498A were satisfied. Since the husband had subjected the wife to cruelty before her death, the presumption that he had caused her death, offered by section 113 B of the Indian Evidence Act, could be made. The court admitted that there was no direct evidence to link the accused with the unnatural death. There was no charge under section 302 IPC, for murder. Yet, it was satisfied that the offence of dowry death had been committed by the accused. The Court reduced the sentence of life imprisonment imposed by the High Court.

This judgement is a clear departure from the decision made by the Supreme Court in *State of West Bengal vs Orilal Jaiswal*. Although section 304 B was not available as an offence when Usha Jaiswal died, the Court shied away from convicting the accused for abetment of suicide.

#### 7. *Pawan Kumar vs State of Haryana (1998) 3 SCC 309*

On May 29, 1985, Urmil was married to Pawan Kumar. Shortly after, there began demands for a scooter and a fridge. The husband and parents-in-law ill treated her and harassed her. She was subjected to mental cruelty. Though Urmil informed her relatives, she was pacified and sent back.

After a visit to Delhi in April 1987 where she stayed with her sister, she was reluctant to return to her matrimonial home. When he came to fetch her on May 17, 1987, there was a quarrel between Urmil and her husband in front of her sister.

She however left with her husband and her parting words to her sister indicated that she was not likely to be seen again.

On May 18, 1987 Urmil was found burnt to death on the first floor of her matrimonial home after a neigh-



bour reported about smoke emanating from the house.

The trial court convicted the husband and his parents for offences under sections 304B, 498A and 306 IPC. The High Court confirmed the sentence but reduced the husband's sentence from 10 years to seven years. The Supreme Court found that the evidence clearly established that Urmil was tortured and harassed in order to clearly construe to be a dowry demand within the meaning of section 304. An agreement for dowry would not always be necessary.

The remaining ingredient which had to be established to complete the offence under section 304B was whether Urmil had been subjected to cruelty or harassment soon before her death. The defence plea was that there was no corroborative evidence to substantiate allegations of cruelty. The Supreme Court made a remarkable and probably unprecedented observation on what constitutes cruelty by observing that mental torture or cruelty would come within the purview of sections 304B and 498A of the IPC. The Court

noted that all the ingredients of the offence under section 304B were satisfied. The burden of proving that they did not cause the dowry death was placed on the accused by section 113B of the Indian Evidence Act. The Supreme Court ruled that the evidence against the husband was strong enough to convict him. The evidence against his parents was not cogent to uphold their conviction and acquitted them.

### CONCLUSION

1. There is no distinct pattern discernible in the judgements of the Supreme Court and a great deal of subjectivity is evidenced in the judgements.
2. Domestic violence is still not viewed as a serious criminal offence by the judiciary in India. None of the above judgements acknowledge that domestic violence is a closed-door crime, ignored by neighbours and the community. The judgements also reveal a glaring ignorance about the reality of the lives of many battered women that they may still 'love' their husbands, they may not be willing to jeopardise their marriages, they may not be likely to write letters to their family members complaining about domestic violence and dowry demands and so on.
3. The doctrine of presumption of innocence operates heavily in favour of the accused, even though sections 113 A and 113 B clearly transfer the burden of proving that he did not cause the death, to the accused. A heavy reliance on sections 498 A and 304 B of the IPC which have severe penalties on conviction, creates its own backlash, as judges want stronger and clearer proof of guilt.
4. What comes through very strongly then is the need to have a comprehensive law on domestic violence that incorporates both civil and criminal remedies to tackle the issue head on.

## CAMPAIGN AGAINST SECTION 498A

The annual almost ritualistic campaign against section 498A got off to a predictable start late last year — a lot of vitriol, disproportionate press publicity and nothing by way of substantiating the charges. On November 23 1998, it was the turn of the Purush Hakk Saurakshan Samiti. At a public meeting in Mumbai, reportedly attended by 100 men and a few women, apart from the usual call for a scrapping of the legislation or in the alternative demanding the creation of section 498B, open threats were issued. A common thread in all the speeches favoured the adoption of terror tactics against those women who 'harassed' their husbands by resorting to section 498A.

The only thing new in all this were the threats. Not a single instance of misuse was cited by anyone though the Samiti claimed to have 3000 husband-'victims' as members. This aspect is totally overlooked in the undue media coverage that invariably follows such events. The other aspect which has missed scrutiny is the regularity with which these campaigns are orchestrated.

The first salvo was fired in 1993 when the then joint commissioner of the Bombay police, R.D. Tyagi issued a circular stating that 498A complaints should not be registered in a hurry and that only those complaints involving dowry and/or physical injuries ought to be registered. The directive was in response to the campaign launched against the provision by vested interests. Taking cue, in 1994 a petition was filed by some lawyers in the Bombay High

Court that the section ought to be scrapped from the statutes as it was being misused by women to harass and black-mail their husbands and in-laws. The most offensive attack the next year came from none other than a sitting High Court judge. Justice P.K. Pendse of the Bombay High Court gave public vent in 1995, to his partisan view that the section gave sanction for misbehaviour on the part of women and that they used the section to slander innocent men. By 1997, the number of lawyers in the anti-section -498A petition before the Bombay High Court had increased to 200.

Section 498A was introduced into our statutes in 1983. In contrast to the frivolous and obviously anti-women stands demonstrated above, crime figures have a different story to tell. While the highest number of complaints in crimes against women are under section 498A, crimes against women on the whole have been alarmingly on the rise.

The latest National Crimes Research Bureau report shows that 53 housewives in India commit suicide every day.

The Union Home Ministry statistics show that a woman is killed every half hour in India.

The police figures (see Table) go to prove that there was a drop in cases filed under section 498A from 8,589 cases in 1996 to 7,605 in 1997 and 6,391 cases registered till November 1998.

The Crime Against Women cell of the Maharashtra police found that four out of 10 women complainants die by the time the case is registered.

Are the proponents of the anti-498A campaign seriously arguing that dowry harassment crimes do not occur or that domestic violence ought not to be recognised as a crime? What this campaign encapsulates is the male-centric world view that what women are subjected to within the four walls of their matrimonial homes should not be covered by penal provisions. The corollary to this being that only after she becomes a burnt or battered victim or a corpse ought the law to step in. The experience of women who have been combating domestic violence goes to prove that there is little scope for misuse of section 498A as it is no easy task to convince the police force to register a case in the first place. Tyagi put in writing what was and continues to be the mindset of the police force in dealing with complaints of domestic violence. Once a case is registered it takes years for the courts to reach a decision. A simple survey will further show that the 498A cases which come up for trial are those where the women have been grievously or mortally injured. Cases of harassment per se either never reach the courts for trial or are compromised before the counselling centres or in the family courts.

A thorough study of the cases that were tried under this section, and the trend of judicial decisions will go to prove one thing and that there is a need to broaden not curtail the ambit section 498A of the Indian Penal Code if we are serious about curbing crimes against women.

- Susan Abraham