

SECTION 498A: A Report Based Upon Analyzing Data From the National Crime Records, 2005-2009

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With reference to the review being conducted by the Committee on Petitions, Rajya Sabha on the perceived 'misuse' of Section 498A, we have analysed the all India statistics of the National Crime Records on Section 498A and Section 304B from 2005-2009 and are presenting the report below.

Context of Introduction of Section 498A

Married women in India face violence within their homes that often results in their murder by their husband and his relatives. After a long struggle by the women's movement, Section 304B was introduced into the Indian Penal Code to address murders of recently married women and Section 498A was added to deal with the cruelty they faced by their husband and his relatives. The movement brought to the forefront the increasing number of dowry deaths despite the Dowry Prohibition Act and aimed to prevent women from being killed by making domestic violence a criminal offence and providing them with an option to redress domestic violence before it led to their death. The context in which the law was introduced has not changed since the law was introduced. We still live in a society where the female child is unwanted and thousands of female foetuses are aborted every year and the girl child is frequently discriminated against in nutrition, educational opportunities and health care. The Child Sex ratio 2011 decreased to 914 females for every 1000 males according to the 2011 census.

Section 498A Still Very Necessary: Increasing Violence against Women in their homes

Despite the introduction of these sections, violence against women in India is rampant and crimes against women have been increasing at an alarming rate over the last 5 years, at a rate that is higher than all IPC crimes put together. Whilst total cognizable crimes under IPC have increased by only 16.39 percent from 2005 to 2009, total crimes against women has increased by 31.02%, almost double that of total cognizable crimes.

Table 1: Percent Increase of Crimes Against Women Compared to Total Cognizable Crimes under IPC

Table

YEAR	2005	2006	2007	2008	2009	Percentage Increase in 5 years
Total crimes against women	155553	164765	185312	195856	203804	31.02
Total cognizable crimes under IPC	1822602	1878293	1989673	2093379	2121345	16.39

Increasing Wife Murders and Domestic Violence against Women in their Marital Homes by their Husband and his relatives

Further, increasing numbers of women are being killed by their husband and his relatives. In 2009, 9675 women were murdered by their husband and his relatives and 2847 committed suicide due to dowry resulting in 12522 women dead as a result of the violence they faced in their marital homes. Between the years 2005 and 2009, the total number of women murdered by their husband and his relatives increased by 23.1 percent and the total number of women committing suicide on account of dowry increased by 23.5 percent.

Table 2: Murder of Women by their Husband and/or his Relatives; and Suicides by Women due to dowry

Table

YEAR	2005	2006	2007	2008	2009	Percentage Increase in 5 years
Dowry Death 304B	6787	7618	8093	8172	8383	23.5
Wife Murder 302/303	1038	825	969	1195	1267	22.1
Culpable Homicide due to Dowry 304/308	33	7	19	41	25	-24.2
Total number of women murdered by husband and his relatives	7858	8450	9081	9408	9675	23.1
Suicides due to dowry (306)	2305	2276	3110	2981	2847	23.5
Total number of women murdered or committing suicide due to dowry over the year	10163	10726	12191	12389	12522	23.2

We can see exactly how high the murder of women in their marital home is when we compare it to murder in general. While the number of murders in general is reducing, murders of wives are increasing. In 2009, the number of women murdered in by their husband and his relatives was 9675 and the number of murders in general was 31102 (exclusive of wife murder), making wife murder 31.1% of murders in general. Further, between 2005 and 2009 the incidence of murder in general reduced by 1.8 percent while wife murder increased by 22.percent.

Table 3: Comparison of Murder and Wife Murder

Table

YEAR	2005	2006	2007	2008	2009	Percentage Increase over 5 years
Murder (inclusive of murder of wife) 302/303	32719	32481	32318	32766	32369	-1.1
Wife Murder 302/303	1038	825	969	1195	1267	22.1
Murder (exclusive of murder of wife)	31681	31656	31349	31571	31102	-1.8
Total number of women murdered by husband and his relatives	7858	8450	9081	9408	9675	23.1

All data is taken from the National Crime Records Bureau 2005-2009, unless otherwise stated. Married women in India also continue to face increasingly high rates of violence within their homes. Over a five year period from 2005 to 2009, domestic violence against married women increased by an overwhelming 53.5 per cent.

Table 4: Incidence of Torture Inflicted Upon Women by their Husband and his Relatives – Section 498A

Table

YEAR	2005	2006	2007	2008	2009	Percentage Increase over 5 years
Torture by husband and relatives 498A	58,319	63,128	75,930	81,344	89,546	53.5

Crimes against women in their marital homes when taken as a percentage of total IPC crimes against women show that more than half (50.1%) of all crimes against women in 2009 were committed by or were a result of violence by their husband and his relatives. Crimes against women in their marital homes had contributed to 44 percent of total crimes against women in 2005 which shows that there was an increase of 6.1% in the marital family's contribution to crimes against women between 2005 and 2009.

Table 5: Crimes against women in their marital homes as a percentage of Total IPC crimes against women

Table

Year	2005	2006	2007	2008	2009	Percentage Increase over 5 years
Dowry Death 304B	6787	7618	8093	8172	8383	23.5
Wife Murder 302/303	1038	825	969	1195	1267	22.1
Culpable Homicide due to Dowry 304/308	33	7	19	41	25	- 24.2
Torture by husband and relatives 498A	58,319	63,128	75,930	81,344	89,546	53.5
Suicides due to dowry (306)	2305	2276	3110	2981	2847	23.5
Total Crimes against women in their marital homes	68482	73854	88121	93733	102068	49.0
Total IPC crimes against women	155553	164765	185312	195856	203804	31
Crimes against women in their marital homes as a percentage of Total IPC crimes against women	44.0	44.8	47.6	47.9	50.1	6.1

Keeping in view the high and increasing rates of violence against women, the rising number of murders of women and increasing numbers of suicides due to violence in their marital homes, the need for Section 498A is more than it has ever been before.

All data is taken from the National Crime Records Bureau 2005-2009, unless otherwise stated

Chargesheet Rates

Chargesheet rates under Section 498A are high pointing to the fact that prima facie evidence is available in a majority of the cases. The average chargesheet rate under Section 498A over the period 2005-2009 was 93.90 percent.

Table 6: Chargesheet Rates Under Section 498A IPC

Table

Year	Cases reported during the year	Chargesheet rate (percentage)
2005	58319	Not available
2006	63128	94.1
2007	75930	93.9
2008	81344	93.7
2009	89546	93.9
Total	368267	93.90

Decreasing number of Arrests

Contrary to the allegations that in section 498A cases, large number of family members of the husband are arrested and harassed, figures clearly show that less than 2 persons per case were arrested in 2009. Besides, the number of arrests under section 498A has systematically decreased from 2.19 persons in 2005 to 1.95 in 2009. The fact that more than one person is arrested is natural since women are usually subjected to abuse not only by their husband but also by other members of his family.

Table 7: Number of arrests under Section 498A

Table

Year	Cases reported during the year	Total Number of persons arrested	Average Number of persons arrested per case
2005	58319	127560	2.19
2006	63128	137180	2.17
2007	75930	156412	2.06
2008	81344	164861	2.03
2009	89546	174395	1.95

Further, the average age wise distribution of arrests of five years from 2005-2009, shows that a majority of arrests namely 76 percent were between the age groups of 18-45 and about 19.98 percent were in the age group of 45-60.

Disproving popular claims that large numbers of aged men and women are arrested under section 498A, statistics show that the average percentage of arrests of people above 60 years of age was only 3.75% of all arrests of which 2.63% were male and 1.31% were female. On an average, 77.12 percent of all arrests were male, and 22.93% were female.

All data is taken from the National Crime Records Bureau 2005-2009, unless otherwise stated

Table 8: Statement of Persons Arrested By Sex and Age-Group Under Section 498A IPC

Table

Year	Total Cases Reported	Total Arrests	No of arrests per case	Percent age of arrests Below 18 Years	Percent age of arrests Between 18-30 Years	Percentage of arrests Between 30-45 Years	Percent age of arrests 45-60 Years	Percent age of arrests Above 60 Years	Total Percentage of arrests Below 18-above 60 years	
				M&F	M&F	M&F	M&F	M&F	M	F
2005	58319	127560	2.19	0.27	36.86	39.10	20.24	3.54	77.47	22.53
2006	63128	137180	2.17	0.20	38.94	37.66	19.77	3.43	77.22	22.78
2007	75930	156412	2.06	0.24	38.83	38.11	18.90	3.92	77.20	22.80
2008	81344	164861	2.03	0.18	39.07	36.98	19.94	3.83	77.33	22.67
2009	89546	174395	1.95	0.20	38.00	36.90	20.95	3.94	76.52	23.71
Total	368267	760408	2.06	0.21	38.38	37.68	19.98	3.75	77.12	22.93

Low Conviction Rates

The average percentage of convictions in cases under Section 498A from 2005-2009 is 20.87 percent and the average percentage of persons convicted is 21.62 percent.

Table 9: Statement of cases and persons convicted under section 498A IPC

Table

Year	Cases Reported During the Year	Number of Cases in Which Trials Were Completed	Number of Cases in Which Conviction Was Upheld	Conviction Rate of Cases (%)	Number of Persons Convicted	Persons Convicted (%)
2005	58319	29866	5739	19.22	14583	19.58
2006	63128	31261	6857	21.93	16995	21.71
2007	75930	32622	6831	20.94	18827	21.41
2008	81344	34347	7710	22.45	23077	23.95
2009	89546	37323	7380	19.77	21120	21.02
Total	368267	165419	34517	20.87	94602	21.62

All data is taken from the National Crime Records Bureau 2005-2009, unless otherwise stated

Convictions under Section 498A are low when compared with conviction rates under all IPC crimes. Conviction under Section 498A was 21.02 percent as compared to 41.7 percent under all IPC crimes in 2009 ie almost half that of IPC crimes.

Table 10: Comparison of Convictions

YEAR	2005	2006	2007	2008	2009
Section 498A	19.58	21.71	21.41	23.95	21.02
Total crimes against women	Not available	31.3	29	30.1	27.8
Total cognizable crimes under IPC	Not available	42.9	42.3	42.6	41.7

The low rate of convictions can be explained by the nature of marital violence which takes place between the four walls of a home and witnesses in such cases are hard to find. It also shows that the investigation by the police is very weak because despite prima facie evidence in almost 94 percent of cases, they are unable to secure convictions due to lacunae in their investigation. The lack of priority given to these cases results in the investigations being routinely delayed and crucial evidence getting lost. Besides, trials are delayed and it takes years for a 498A case to be decided. Witnesses are lost as they may move, become hostile or even die during this time.

Further, women are represented by public prosecutors whilst the accused are represented by senior criminal lawyers who are usually more competent than the public prosecutors. In a study conducted by Swayam, Kolkata, on *Gender Equality and the Judicial System in West Bengal*, although a majority of judges identified that a woman would probably face the most serious problems in her life in marital home ranging from torture to death, 80 percent said that they would encourage their female relatives who asked for advice in situations of domestic violence to 'adjust' and 'compromise' and put up with the violence unless it reached 'unbearable proportions' and 78 percent believe that women are somehow to blame for the violence inflicted on them. The reluctance of courts to convict under this section is also due to these attitudes that condone and accept marital violence. These attitudes also force women to compromise with their husbands despite the violence they face and to withdraw cases under section 498A which they may have filed through quashing cases in the High Court.

The Myth of Misuse

Statistics contradict the common claims that a majority of 498A cases are false since 90.63 percent of all cases of 498A were found to be true on investigation and only 9.37 percent were declared false on account of mistake of fact or of law. Despite the mistaken notion that 'false cases' under Section 498A are increasing, statistics clearly show that they have decreased from 10.53 percent in 2005 to 9.37 percent in 2009.

Table 11: Cases Declared False on Account of Mistake of Fact and Law Under Section 498A IPC, 2005-2009

Table

Year	Cases reported during the year	Number of Cases declared false on account of mistake of fact or of law	Percentage of Cases declared false on account of mistake of fact or of law
2005	58319	6141	10.53
2006	63128	6365	10.08
2007	75930	8215	10.82
2008	81344	7616	9.36
2009	89546	8392	9.37

All Laws are Open to Misuse

If we compare cases declared false on account of mistake of fact or of law under Section 498A with cheating, kidnapping and abduction, Criminal Breach of Trust, we find that cases declared false on account of mistake of fact or of law under these sections are far more than that under Section 498A and they are on the increase whereas those under section 498A are on the decrease.

Table 12: Percentage of other IPC Cases Declared False on Account of Mistake of Fact or of Law

Table

Year	Cheating	Kidnapping and Abduction	Criminal Breach of Trust	Section 498A
2005	22.59	18.06	12.56	10.53
2009	24.56	19.94	12.83	9.37

We would like to highlight that all laws are open to misuse and 498A is no exception. The possibility of misuse of a law does not invalidate the law. We must keep in mind the reality and powerlessness of the overwhelming majority of Indian women and the entire purpose and context in which this law has been enacted. There are existing provisions in the IPC for misuse of any law and if 498A is misused, these sections can be invoked.

- **Sec 182** makes giving false information to a public servant with the intent to cause injury to another person punishable by imprisonment.
- **Sec 209 & 211** respectively make a false claim in court and a false charge with the intent to injure punishable.
- **Section 41A** says that the police instead of arresting the accused, will be obliged to issue him a notice of appearance for any offence punishable with imprisonment up to seven years.

In view of the fact that many laws are misused and only Section 498A, a law to protect women from violence has been singled out for amendment clearly shows social attitudes towards domestic violence that accept and condone it. The fact that Section 498A, a law to protect women from violence has been singled out for amendment on this premise clearly points to the patriarchal social attitudes that condone this violence. Further, if the law enforcing mechanism does its job properly, any misuse can be prevented.

Section 498A is a Hardly Used Law

The demand for amendments to Sec 498A stem from a general myth that Sec 498A is misused. Statistical data and our experience in working with women facing domestic violence clearly shows that rather than Sec 498A being misused, it is a Section that is 'hardly used' by women. Our social context, the actual extent of Domestic Violence and the ultimate use of 498A by women clearly substantiate this fact.

NFHS 3 showed that 40% of married Indian women face Domestic Violence of any form, physical, mental or sexual. Taking 40% of married Indian women in 2008 (Projected Census figures) and seeing how many have used 498A (NCRB 2008 data), we find that **only 0.03%** of women who face Domestic Violence actually file cases under Sec 498A.

Table 13: Lack of use of Section 498A

Table

Year	Number of married women Projected Census data 2008	Actual number of married women facing violence NFHS 2005-06 statistics - 40% of married women face domestic violence	Number of women filing cases under section 498A according to National Crime Records Bureau in 2008	Percentage of women using Section 498A in 2008
2008	23,42,96,508	93,71,86,032	81,344	0.03

It is clear from these statistics that women hardly use section 498A let alone misuse it. Only a tiny number actually report marital violence and file a case under Section 498A, due to the shame and stigma attached to it as well as the fact that a large percentage believe that their husband has a right to beat them (56 percent wives interviewed under the National Family Health Survey 2, 1998-99 said that their husband had a right to beat them). Women accept violence as a part of their daily marital life and do not even perceive it as a crime

In a context where women are dependent on their husband and their family for their basic necessities, and support is not forthcoming from their families, society and state agencies, they do not have the means, ability or power to file cases under Section 498A let alone 'false cases'. When the expectation of society from women is that they should put up with violence, it is hardly surprising that the very act of registering a case of 498A is seen as misuse, and not a crime. This allegation about the misuse of Section 498A stems from these social attitudes.

Allegations of Misuse Are Not Substantiated

Allegations of misuse are general statements which have no basis or proof and are based on a view that women in India enjoy great power and have the ability to influence the law machinery to immediately act on their behalf and arrest and victimize people without any evidence. These point to a complete lack of understanding of women's reality in our country today as well as the attitude of the police towards violence against women.

Recommendations

1. Section 498A must remain cognizable, non bailable and non compoundable.

The provision is the only Section which acts as a preventive mechanism for marital violence.

Why cognizable?

A non cognizable offence prevents the police from registering a FIR, investigating, or ordering an arrest without the express permission or directions from the court. The fact that the law is cognizable allows the police to take immediate action on the complaint of a woman and the issue can be addressed without the leave of the court. As it is, women find it difficult to reach the Police Station and file a complaint as the police are reluctant to take action under Sec 498A. Making the offence non-cognizable

All data is taken from the National Crime Records Bureau 2005-2009, unless otherwise stated will place a huge burden on women who will have to go through the judicial process to file an initial complaint thus making it difficult if not impossible for women for whose benefit this law was enacted to use the law. If the law becomes non-cognizable, there no action taken will be taken by the police and the law will become totally toothless and remain on paper.

Why non- compoundable?

Making the offence compoundable implies that the complainant may withdraw her police complaint at any point of time. Law sets a standard for society to follow. Marital Violence is a crime and compounding it will send out a message that the gravity of crime is less than that of other similar crimes. Further, women will be under tremendous pressure to withdraw complaints and compromise by family, the other party, lawyers and courts and will end up being far more vulnerable to cruelty and violence. A procedure for quashing 498A cases already exists in the High Court and we can utilize it where women decide to withdraw the case. The law must remain non-compoundable to ensure that social pressure does not result in women being forced to withdraw cases.

Why non-bailable?

Section 498A should remain non bailable, requiring the accused to appear before a magistrate to obtain bail. The assumption that the police arrest families as soon as the FIR is filed is definitely not borne out of our experiences or that of other organizations working on this issue. In fact, we see that a majority of men avoid arrest and get anticipatory bail thru influence and with corrupt police assistance and in a large number of cases, the accused husbands obtain bail almost immediately. . Everyone who gets arrested under Section 498A feels that the arrest was 'unwarranted' as they do not think that they have committed a crime as domestic violence has such social sanction. While there may be a few cases of 'unwarranted arrest', these are few and far between as women do not have the power or resources to ensure the police acts in this manner. The fact that the section is non-bailable gives it teeth. If the police are allowed to give bail then no one will ever be arrested and there women's interests will be completely compromised

2. Steps must be taken to ensure that the criminal justice system takes section 498A as seriously as other crimes. Gender sensitisation training must be imparted to the police and judiciary

3. Training must be parted to the police to ensure that investigation by the police in such cases is effective

4. The term "cruelty" should also be defined better to reduce its ambiguity as it makes it difficult to prove physical and mental torture, resulting in the acquittal of the accused for lack of evidence.

5. Further, trails should be made time bound to prevent harassment to all parties.

Conclusion

In view of the facts and context detailed above, the prevailing social attitudes and the widespread violence against women in their homes, the need for Section 498A is more urgent than ever before. Even today, women in India are by and large unequal in every sphere, dependent on men and their families for their existence, faced with increasing Marital Violence and social pressures to maintain family no matter the violence, lose their lives daily due to Marital Violence, are unaware of laws to protect them, lack resources and support to pursue the law, and do not have the power to negotiate or influence. Men on the other hand have exposure, knowledge and resources to access the law, and use their power to influence the system and get away with it. Making the law non cognizable, bailable and compoundable under these circumstances will make women completely vulnerable and the purpose of the law will be totally defeated.

Besides, the Indian State is responsible to ensure that all its citizens, especially the most historically marginalized, are provided protection to live a life of dignity and respect. Article 15 of the Constitution of India and International Conventions like CEDAW (which India has ratified) has recognised the unequal status of women and therefore made special provisions for women to address this inequality. Sec 498A, 304B, 306, PWDVA 2005 are all legislations to address the gendered nature of violence against women