

MEMORANDUM ON THE PROPOSED AMENDMENT TO SECTION 498 A
OF THE INDIAN PENAL CODE, 1960

1. The Constitution of India, 1950 guarantees the Fundamental ‘Right to Equality’ to all citizens under Article 14. Article 14 states that “*the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*” Equal protection necessitates equal treatment in similar circumstances. It is well settled law that the principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, as the varying needs of different classes of persons often requires separate treatment. It is in this context that a number of laws for the protection and upliftment of women including Section 498 A of the Indian Penal Code have been enacted.

2. Further, Article 14 operates on the basis of ‘intelligible differentia’. This means *reasonable classification* of persons for different treatment. It signifies that differently-placed citizens can be treated differently under the same law as long as the classification is based on an intelligible differentia which distinguishes persons that are grouped together from others excluded from the group and such differential treatment must have a reasonable and rational connection with the objective that the law in question is supposed to reach. It is in this context that the Constitutional validity of Section 498 A has been upheld. In *Krishan Lal v. Union of India* reported in 1994 *Cr.LJ 3472 (P&H)* the Court held “the husband and relatives of husband of a married woman form a class apart by themselves and it amounts to reasonable classification especially when a married woman is treated with cruelty within the four walls of the house of her husband and there is no likelihood of any evidence available” In *Inder Raj v. Sunita* reported in 1986 *Cri.L.J.1510* the Constitutional validity of the said section was challenged on the ground that it gave arbitrary power to the police and the court because the words ‘cruelty’ and ‘harassment’ were vague. The Court held that the imports of these words were clearly understood and therefore the section cannot be held to be violative of Article 14, 20(3) and 21 of the Constitution.

3. In the case of *Sushil Kumar Sharma v. Union of India* reported in *JT 2005 (6) SC 266*, which has been cited by the Petitioner as well as widely circulated in the print and electronic media because of the words “legal terrorism” used therein, the Hon’ble Supreme Court has upheld the constitutional validity of Section 498 A. It is pertinent to note that the Court has also observed in

the aforesaid judgment: *“It is well settled that mere possibility of abuse of a provision of law does not per se invalidate a legislation. It must be presumed, unless contrary is proved, that administration and application of a particular law would be done "not with an evil eye and unequal hand"”*

4. Article 15(3) states that *“Nothing in this article shall prevent the State from making any special provision for women and children”* Thus, it has been held in *Yusuf Abdul Aziz v. State of Bombay* reported in *AIR 1954 SC 321* that any law making special provisions under Article 15(3) cannot be challenged on the ground of contravention of Article 14.
5. Section 498 A was inserted in the Indian Penal Code, 1960 in 1983. The amendment was a result of a sustained campaign by the women’s movement to highlight the rising incidences of cruelty in marriages and dowry harassment. The *Statement of Object and Reasons* inter alia states *“The increasing number of dowry deaths is a matter of serious concern..... Cases of cruelty by the husband and relatives of the husband which culminate in suicide by, or murder of, the hapless woman concerned, constitute only a small fraction of the cases involving such cruelty. It is therefore proposed to amend the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their in-laws.”* Thus, the SOR clearly outlines the intention of the legislature and the need and purpose of enacting the law.
6. The Petitioner has stated that the section should be made gender-neutral in light of the “perceived” misuse. Section 498 A has been enacted with the specific purpose of protecting women taking into consideration their special needs when customary norms demand that a woman leaves her natal home and goes to her in-laws home to start her matrimonial life. The unequal position in which they are placed warrants a special law to protect women within the privacy of their matrimonial home. If the law is made gender neutral it will fall within the realm of laws relating to assault which have already been provided for in the Indian Penal Code. Thus, making the law gender-neutral will nullify the very purpose of the law. The substratum of the section is to protect women from cruelty and harassment in their matrimonial home and if it is made gender neutral it will negate the rationale behind the law.

7. It has been held in *Gurbachan Singh v. Satpal Singh* reported in AIR 1990 SC 20, that the initial burden to prove that the accused has subjected the woman to cruelty is on the prosecution. At that stage the provisions of Section 113 A of the Evidence Act would not be invoked. It is only after the initial onus has been discharged that the Court can invoke Section 113 A. This clearly indicates that unless the prosecution initially presents a water-tight case with sufficient evidence of cruelty the case will not proceed and therefore the question of misuse does not arise.
8. There are sufficient safeguards within the Code of Criminal Procedure and the Police Manual to prevent any misuse and arrest of relatives who are not central to the abuse like a young sister-in-law or an aged mother-in-law. This cannot be used as a pretext to repeal a beneficial legislation. The law cannot be faulted for its misuse. All laws, not just the provision of S.498 A are subject to misuse and it is the duty of the state administration to ensure that no law is misused by the police using any extra-constitutional powers which amounts to an abuse of power. Any perceived misuse must be dealt with at that level and not by bringing amendments to a beneficial legislation which was enacted specifically to prevent violence against women.
9. Moreover, the Code of Criminal Procedure (Amendment) Bill, 2010 has inserted Section 41 A which provides for further safeguards relating to the arrest of a person in the case of a cognizable offence. The section reads as follows: “...*issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.*” The section also states that if such person, at any time, fails to comply with the terms of the notice, the police officer can arrest him for the offence mentioned in the notice, subject to such orders passed by a competent court. Thus, these multiple layers of safeguards have been provided against arbitrary arrest and therefore the Petitioner’s contention that persons are arbitrarily arrested under this section does not hold true.
10. The myth of the misuse is deliberately projected by unscrupulous lawyers and the police. This negative projection leads to a lucrative legal practise. Lawyers deliberately propagate the myth that since the offence is non-bailable, the husband and his relatives cannot be granted bail. The accused may not be granted bail immediately, as in the case of a bailable offence, but as per the procedures followed in all cases of non-bailable offences, he must be produced before a magistrate within 24 hours of his arrest and can be released on bail on a surety or personal bond.

Even in cases of rape and murder the magistrates grant bail unless it hinders investigations and Section 498 A of IPC is no exception.

11. The Petitioner incorrectly refers to Section 498 A as a ‘get-rich-quick-scheme’ and states that the section is used by women to deny custody of children to the father. It is important to note that there are a number of detailed provisions in Family Law relating to maintenance, alimony and child custody for women and there is no need for a wife to resort to filing a criminal case under this section for the aforesaid reliefs.
12. The Petitioner’s unfounded claims that the law is used by women as a tool to harass senior citizens, children, women (including pregnant women) and men is pure conjecture. Further, the Petitioner’s contention that this section is used by women to “obscure adultery” “conceal true facts about their mental health and educational level” is nothing but mere speculation and premised on sensationalised media reporting. Infact, the entire Petition placed before the Hon’ble Committee is steeped in gender bias and prejudice and based on exaggerated media reporting and propaganda created on the internet. It is not supported by any credible research or fact-finding. Moreover, the Petitioner has conveniently quoted certain statements from a few judgments/reports which are out of context and do not provide a complete picture and are thereby misleading.
13. The Petitioner’s statement that “*This law being an exception in Criminal Law presumes the accused as guilty until proven innocent; hence the women’s word is taken as a gospel of truth*” is unsubstantiated and does not hold true because the law does not accord any special status on this section which are contrary to the well settled principles of criminal jurisprudence.
14. The statistics contained in the ***National Crime Records Bureau Report of 2008*** clearly dispels the myth of the misuse of Section 498 A. The following statistics under the heading “***Cruelty by Husband and Relatives***” shows:

No. Of cases reported	% to total IPC crimes	Rate of crime	Charge-sheeting rate	Conviction Rate
81,344	3.9	7.1	93.7	22.4

- The above table demonstrates that only 81,344 cases have been reported under Section 498 A in 2008 and therefore this constitutes a miniscule 3.9% of the total IPC crimes. This indicates the under-use of the section.
- The rate of charge-sheeting is 93.7. The process of charge-sheeting an accused is a detailed and exhaustive one and undertaken by the police after due investigation. This clearly reveals the bonafides of the cases reported under this section. Moreover, Section 498 A, is among the offences with the highest charge-sheeting rate in the Report.
- The Petitioner cites the low conviction rate as a reason for its misuse. However, the sluggish speed at which the entire criminal justice administration system (police investigation and courts) functions is well known. Thus, a conviction rate of 22.4 is justified in view of the below-mentioned statistics.

Percent disposal of IPC Cases by the Police in 2008

Crime Head	Disposal	Pending
Cruelty by Husband and Relatives	72.7	27.3

Percent disposal of IPC Cases by the Courts in 2008

Crime Head	Disposal	Pending
Cruelty by Husband and Relatives	14.2	85.8

Further, the NCRB Report observes that the ***incidence of crime reported under Section 498 A has increased from 2004 to 2008 as indicated below:***

2004	2005	2006	2007	2008
58,121	58,319	63,128	75,930	81,344

Source: National Crime Reports Bureau, Ministry of Home Affairs, Government of India

This displays that women are increasing being treated with cruelty and subjected to harassment in their matrimonial home and therefore S. 498 A is imperative to protect them from such violence. Any amendments to the section will leave women susceptible, without adequate protection and at the mercy of the very people who are subjecting her to such cruelty and harassment.

15. The *National Family Health Survey for the year 2005-2006* contains the following relevant information relating to crimes against women.
- Nearly two in five (37 percent) married women have experienced some form of physical or sexual violence by their husband
 - Two in five women who have experienced physical or sexual violence report having injuries, including 36 percent who had cuts, bruises or aches; 9 percent who had eye injuries, sprains, dislocations, or burns; and 7 percent who had deep wounds, broken bones, broken teeth, or other serious injuries.
 - The prevalence of spousal physical or sexual violence is much higher among women in the poorest households (49 percent) than among women in the wealthier households (18 percent)
 - One in six (16 percent) married women have experienced emotional violence by their husband
 - Only one in four abused women have ever sought help to try to end the violence they have experienced.
 - Two out of three women have not only never sought help, but have also never told anyone about the violence.
 - Only 2 percent of abused women have ever sought help from the police.

Source: National Family Health Survey 3, 2005-2006, Ministry of Health and Family Welfare, Government of India

The aforesaid statistics not only demonstrate the high incidence of domestic violence that women in India are subjected to, but also their reluctance to talk about it and approach any authorities for relief.

16. Further, a 2005 United Nation Population Fund Report has observed that around two-thirds of married women in India were victims of domestic violence.
17. Any amendments to Section 498 A will abrogate the constitutional mandate of Articles 14 and 15 (3). It will be a failure of the State to achieve its intended goal of gender equality. Gender quality can never be achieved if women are deprived of the few laws available to them that address the issue of violence against women. It is a well known fact, that there is yet much to be achieved for the advancement of women in fields relating to health, education and political participation, among others. Moreover, the depreciated economic status of women in society

further weakens their vulnerable position. A law can be made gender neutral only if all the concerned persons are on an equal footing. It can be nobody's contention that women and men in India are on an equal plane. Such a statement would not only be fallacious but also imprudent. Thus, the Petitioner's contention that Section 498 A should be made gender neutral does not hold any ground.

18. We therefore unanimously and strongly oppose the Petition for amendment to the Section 498 A of the Indian Penal Code.
19. Further, we would be happy to offer our services to the esteemed committee and appear before the Hon'ble members to submit oral evidence on the issue.