

# Misuse Of Anti-Dowry Laws: The Victimization Of Men

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## Abstract

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According to the provisional data of the National Crime Records Bureau (NCRB), out of 90,000 to one lakh cases investigated every year, nearly 10,000 complaints of dowry harassment turn out to be false. The anti-dowry laws are more often being misused than used and caution should be exercised by the judiciary in dealing with such cases. Section 498(A) of IPC (which allows criminal proceedings against husbands and their relatives) often nullifies the genuineness of the cases. Passed by Indian Parliament in 1983, Indian Penal Code 498A, is a criminal law (not a civil law) which is defined as follows, "Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The offence is cognizable, non-compoundable and non-bailable. The biased nature of law is evident from the fact that the burden to prove innocence lies on the accused. The law has made it very easy for a married woman to harm her husband's family. This paper deals with a number of false cases being filed and the misuse of these discriminatory laws in India. Most cases where Sec 498A is invoked turn out to be false (as repeatedly accepted by High Courts and Supreme Court in India) as they are either mere blackmail attempts by the wife when faced with a strained marriage or a way of Extortion of money from the husband's family. The law should be unbiased towards both the genders to stop the victimisation of either gender, giving men an equal chance to defend themselves under natural justice.

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## Introduction

In Indian culture, the bride or her family pays a certain amount of money or property to the groom when a couple is married. This payment is called a dowry.<sup>3</sup>

Dowry Prohibition Act, 1961 defines Dowry as any property, or valuable security is given or agreed to be given either directly or indirectly –

- a. by one party to a marriage to the other party to the marriage; or
- b. by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.<sup>4</sup>

Dowry is an ancient custom and continue to exist in many parts of the country. During the 1980s, dowry deaths were steadily rising in India. Dowry death is the murder of a married woman; committed by the husband or in-laws of the woman, upon non-fulfilment of their coercive demands for dowry in the form of money, articles or property. Cases of cruelty by husband and relatives of the husband culminating into suicide/murder of innocent stranded women though constitute only a small but a gruelling fraction of cases involving cruelty. With the rising number of dowry deaths in India, the need arose to address the problem in an efficient way. Organizations across the country pressurized and urged the government to provide legislative protection to women against domestic violence and dowry<sup>5</sup>. Section 498A of Indian Penal Code was introduced in the year 1983 to solve the problem of Dowry.

Dowry is a social evil, but the lawful evil that is rising due to anti-dowry laws is something to look upon. Section 498A of Indian Penal Code gives a married woman or her relatives right to file a complaint of dowry harassment against husband and his relatives. The husband, his parents, and relatives are arrested immediately

<sup>3</sup> Dowry. Vocabulary.com. N.p., n.d. Web. 6 May 2016.

<sup>4</sup> The Dowry Prohibition Act, § 2 (1961). Print.

<sup>5</sup> Nigam, Mallika. "Understanding Section 498A (of Indian Penal Code, on Domestic Violence) - IPLeders." IPLeders. All, Criminal Law, General, 14 May 2014. Web. 08 June 2016.

without sufficient investigation and put behind bars on non-bailable terms. Even if the complaint is false, they shall be presumed guilty and burden to prove innocence lies on the husband and his relatives<sup>6</sup>.

The Supreme Court, in the case of *Preeti Gupta v. State of Jharkhand*<sup>78</sup>, observed that the Legislature warrants serious re-look of the entire provision. Supreme Court has been giving judgments on the misuse of IPC 498A for many years, and it has also passed various guide lines on making an arrest. According to section 41 of Criminal Procedure Code(CRPC), a police officer before making an arrest should have a reason to believe that the person against whom the complaint filed has committed the said offence, and the police officer should be satisfied that such arrest is necessary. Despite a significant reduction in the number of domestic violence cases registered in the country in the past three years, thousands of people get thrown behind bars over petty domestic disputes, many of which have nothing to with dowry.

According to the provisional data of the National Crime Records Bureau (NCRB),out of 90,000–1,00,000 cases investigated every year, nearly 10,000 complaints of dowry harassment turn out to be false. The figure makes section498Aof IPC one of the most abused laws in the country. Almost twice as many Indian husbands kill themselves as wives. One husband every 8.55 minutes commits suicide to a wife every 16.7 minutes.<sup>9</sup> There is need of significant changes in the provisions for the protection of women against dowry harassment to prevent the victimisation of men.

### **Establishment Of Anti-Dowry Laws In India**

India is considered as a male dominated country but the position of women in society was not inferior from the beginning. In early Vedic Age, women enjoyed equal social status as men. They took part in various rituals, financial matters, and

<sup>6</sup> "What Is 498a: Misuse of 498a: Dowry Law." What Is 498a: Misuse of 498a: Dowry Law. N.p., n.d. Web. 08 June 2016.

<sup>7</sup>Preeti Gupta &Anr vs State of Jharkhand &Anr. 2010 AIR SC 3363. Supreme Court of India. 13 Aug. 2010. Print.

<sup>8</sup>Preeti Gupta &Anr vs State of Jharkhand &Anr. The Supreme Court of India. 13 Aug. 2010. Indiankanoon. Web. 8 June 2016.

<sup>9</sup> Anwar, Tarique. "Flipside of Dowry Law: Men Recall How Section 498(A) Is Unfairly Used against Them." First Post. N.p., 25 Mar. 2015. Web. 8 June 2016.

agricultural activities.<sup>10</sup> Women during early Vedic Age were allowed to re-marry, in the case of death of their husband.<sup>11</sup> During later Vedic Age, Manu assigned an inferior role to women<sup>12</sup>. Wife became dependent on their spouses. The position of women in Indian Society suffered a significant loss during the medieval period which continued up to the British Rule, after which women were gradually getting more rights. After Independence, the government took various measures to uplift the status of society in India. The government passed various legislations to eliminate all the social evils (against women) pertaining in the society.

Dowry is one of the biggest social evils facing our country.<sup>13</sup> The dowry system puts enormous financial burden on the bride's family. The government passed various legislations to protect women from dowry harassment. The payment of dowry has been prohibited under specific Indian laws including, The Dowry Prohibition Act, 1961 and Sections 304B and 498A of the Indian Penal Code. Along with The Dowry Prohibition Act, (Maintenance of Lists and Presents to the Bride and Bridegroom) Rules were introduced in 1985. Section 406 IPC, about offences for the criminal breach of trust, applies in cases of recovery of dowry as it is supposed to be for the benefit of the woman and her heirs.

### **The Dowry Prohibition Act, 1961**

Under this Act, whoever gives or takes or abets the giving and taking of dowry shall be punished with imprisonment of not less than five years along with a fine of not less than Rs. 15,000 or the amount of the value of such dowry, whichever is higher.<sup>14</sup> The exemption to this rule is that when presents given to the bride at the time of marriage (without any demands in this regard) or the gifts given to the bridegroom without any demands, provided that such presents are listed in the rules made

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<sup>10</sup>Mehta, Bharat. "Status of Women in Vedic Age." Important India. N.p., 12 Sept. 2013. Web. 10 June 2016.

<sup>11</sup>Prasad, Mata. Indian History. Allahabad: Central Law Agency, n.d. Print.

<sup>12</sup>Jain, M P. Outlines of Indian Legal and Constitutional History. 6th ed. N.p.: Lexis Nexis, 2010. Print.

<sup>13</sup>Chugh, Bharat. "Misuse of Anti Dowry Laws - The Other Side of the Coin." Misuse of Anti Dowry Laws - The Other Side of the Coin. Legal Service India, n.d. Web. 12 June 2016.

<sup>14</sup>The Dowry Prohibition Act, § 3 (1961). Print.

under this Act i.e. (*Maintenance of Lists and Presents to the Bride and Bridegroom*) Rules.<sup>15</sup>

### **Section 304B of IPC**

Due to the increasing number of cases of dowry deaths, Section 304B was inserted in The Indian Penal Code, 1860 with effect from November 19, 1986.<sup>16</sup> Section 304B of IPC states that where the death of a woman is caused by any burns or bodily injury or under any other abnormal circumstances within seven years of her marriage and it is shown soon before her marriage she was subjected to cruelty or harassment by her husband or his relatives for the demand of dowry, such death will be called “Dowry Death” and such husband or relative shall be deemed to have caused her death.<sup>17</sup> Punishment for “Dowry Death” is imprisonment of seven years or more, which may extend to imprisonment for life.

Section 304B IPC along with **Section 113B of the Evidence Act**<sup>18</sup> have enabled the conviction of many who were not caught by the Dowry Prohibition Act, 1961.<sup>19</sup> According to Section 113B of The Evidence Act, when the question is whether a person has committed the dowry death of a woman, if it is shown that such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry soon before her death, the Court shall presume that such person had caused the dowry death. It kind of violated the rule of natural law i.e. *Audi AltremPartem*.<sup>20</sup>

### **Section 498A of IPC**

Due to rising number of “Dowry Deaths” in the 1980s, the government in pressure from feminist groups added section 498A to Indian Penal Code, 1860 (IPC). Section 498A of IPC states that if the husband or the relative of the husband subjects the wife

<sup>15</sup> (Maintenance of Lists and Presents to the Bride and Bridegroom) Rules (1985). Print.

<sup>16</sup> Dr. Bharadwaj. Proposal to Amend Section 304-B of Indian Penal Code. Rep. no. 202. Law Commission of India. N.p.: n.p., October, 2007. 1-89. Print.

<sup>17</sup> Indian Penal Code, § 304b (1860). Print.

<sup>18</sup> The Indian Evidence Act, § 113b (1872). Print.

<sup>19</sup> Nangia, Anshu. The Tragedy of Bride Burning in India: How Should the Law Address It? Vol. Brook. J. Int'l L. 22: 637, 676. N.p.: n.p., 1997. Print.

<sup>20</sup> let the other side be heard as well

to cruelty shall be punished with imprisonment of up to 3 years and shall also be liable to fine.<sup>21</sup> 498A is a Cognizable, Non-Compoundable, Non-Bailable offence.<sup>22</sup>

- Cognizable means that the police officer has the authority to arrest without a warrant and start an investigation without the permission of a court.<sup>23</sup>
- Non-Compoundable offences are those offences where once charges filed, they cannot be dropped by complainant even in the case of a compromise.<sup>24</sup>
- Non-Bailable Offences are those offences in which accused do not have right to get bail without the permission of the magistrate or the court.<sup>25</sup>

Various courts all over India have recognized section 498A to be misused by women.

### **Instances Of Victimisation Of Men (Misuse Of The Law By Women)**

The problem of misuse of Section 498A of IPC came into limelight with the emergence of “**The Nisha Sharma Dowry Case**”. Nisha Sharma dowry case was an anti-dowry lawsuit in India which began in 2003. Nisha Sharma, a software engineer, accused her fiancé (Munish Dalal) along with his family members of demanding dowry. A case was filed against Munish Dalal, and he got arrested. Nisha Sharma case got massive popularity, she shot to fame and became the youth icon. Her story got full coverage and became the front-page news in many newspapers. She was approached by media, women rights activists, political parties, and many others as an ambassador of women empowerment. Nisha and her family members were also invited to Oprah Winfrey’s talk show.

Other inmates assaulted Munish Dalal in Dasna Jail. His elderly mother and sister also suffered due to this trail. His mother was arrested along with him; she was even denied her pension by the school where she was a teacher.

After 12 years, on 29 February 2012, a district court in Gautam Budh Nagar district acquitted Dalal and his family. According to the court, the prosecution failed to prove that Munish Dalal or his family members had demanded dowry from Nisha

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<sup>21</sup> Indian Penal Code, § 498a (1860). Print.

<sup>22</sup> *Ibid.*

<sup>23</sup> "Difference between Cognizable & Non-Cognizable Offences." N.p., 2014. Web. 13 June 2016.

<sup>24</sup> "Criminal Procedure Code(CrPC)." Criminal Procedure Code(CrPC). N.p., n.d. Web. 13 June 2016.

<sup>25</sup> "Non-Bailable Offences." Power of 49. N.p., n.d. Web. 13 June 2016.

Sharma's father. The court observed that there was "lack of strong evidence" in the case against Dalal and his relatives.<sup>26</sup>

This case is a classic example of blatant misuse of Anti-Dowry Laws in India where a man suffered for 9 years by wrong charges filed against him, and there is no substantial provision for taking any certain action against those who are using the law for their personal vendetta. People followed Nisha projected as a strong woman standing up for her rights, but Manish was the real victim in this scenario, victimized by the faulty law. People need to be made aware of the gross injustice that is taking place with not only Manish but many other men accused of false dowry charges.

As per information received from Hon'ble High Courts during the year 2011, There were 3,40,555 pending trials in various courts by the end of 2010.<sup>27</sup> As many as 9,38,809 accused were impacted in these cases. The implication of husband's relative was found untrue in most of the decided cases.

A similar situation arose in the case of *State of Punjab v. Balwinder Singh and others*<sup>28</sup> where complainant (Rajinder Kaur) filed charges against her husband (Balwinder Singh) and his family members under Section 498A of IPC. She accused her husband of demanding a sum of Rs. 1,20,000 as dowry and beating her when his demands were not fulfilled. She also projected herself as being suffering from cancer at the time of filing the complaint. Balwinder Singh and his relatives were arrested in the case and ultimately, they were challaned. The Punjab and Haryana High Court observed that all the charges against respondents were false and upheld the previous judgement of Additional Sessions Judge, Fast Track Court, Ludhiana acquitting the accused of all the charges framed against them. The Court also found that the story constructed by the complainant that she was suffering from cancer is

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<sup>26</sup> "All Let off in Nisha Sharma Dowry Case after 9 Years." News18. N.p., 1 Mar. 2012. Web. 13 June 2016.

<sup>27</sup> India. Law Commission of India. Ministry for Law and Justice. Section 498A IPC. By P. V. Reddi, Shiv Kumar Sharma, and Amarjit Singh. Vol. 243. N.p.: n.p., n.d. 1-88. Print.

<sup>28</sup> State of Punjab v Balwinder Singh and Others. 2015 AIR SC 3778. Punjab and Haryana High Court. 20 July 2011. Print.

false because no evidence has been led to prove that she was suffering from such disease.

The trial continued for a long period of seven years during which accused Balwinder Singh had to suffer proving his innocent and even being arrested based on false charges.

Taking into account the misuse of anti-dowry law a large number of cases turns out to be false against different people along with their family member. In the latest case of **HRD Union Minister Sh. Arjun Singh**, being involved in a criminal case filed by the wife of his grandson against her husband & his other family members along with the said Minister for demanding dowry from her.<sup>29</sup> The local UP police requested that this case should get transferred to CBI for investigation.<sup>30</sup> Now when the involvement of a Union Minister is there, in such a case the government does not want to take any risk in its investigation, but what about those cases where ordinary citizens are concerned in such issues?

As indicated by the statistics distributed by National Crime Records Bureau for the year 2011<sup>31</sup>, 3,39,902 cases under S,498A were pending trial in different courts toward the end of the year and 29,669 cases under S,304-B of IPC. The conviction rate in S,498A cases is 21.2% and in S,304-B cases, it is 35.8%. Number of cases reported under S,498A in the year 2011 are 99,135 and amid the two earlier years, they were 94,041 and 89,546. Therefore, there is slight increment (around 5%) in the reported cases each year. As expressed before, numerous cases go unreported. The measurements identifying with reported episodes may not in this way outfit a solid near marker of the genuine occurrence of wrongdoings in the States. Case in point, when contrasted with different urban communities, the rate offers of incident reported under S, 498-An is the second most noteworthy in Delhi. It might be on account of that the rate of reporting is obviously high. The dowry-death cases (S,304-

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<sup>29</sup>Gautam, Jitendra. "Anti-Dowry Laws – Use or Misuse." Manupatra (n.d.): n. pag. Web. 14 June 2016.

<sup>30</sup> "Dowry Case Filed against Arjun Singh, Family | Latest News & Updates at Daily News & Analysis." Dna. N.p., 30 July 2007. Web. 14 June 2016.

<sup>31</sup> India. National Crime Records Bureau. Ministry of Home Affairs. Crime in India 2011 Statistics. N.p.: n.p., 2011. Print.

B) reported amid the years 2009-11 are: 8,383, 8,391 and 8,618. There is a perspective point that if the offence under S,498A is made bailable or non-cognizable, it will stop to be an impediment against cruelty delivered on married women. As noticed earlier, the conviction rate in appreciation of the cases under s.498A is quite low – it is around 20%.

### Motive of Misuse

- **Money:** Sometimes girl files a false complaint about fulfilling her need for money or on behalf of individuals interested in money (typically their fathers or mothers in addition to others having a share of the spoils). She puts the guy and his entire family behind bars and blackmails for extorting money. A large scale business run through these extortion rackets as a full-time profession. Numerous degenerate lawyers and police officers unequivocally impel and help the young lady in doing this coercion and commonly get 20-25% of the cut.<sup>32</sup>In several cases, complaints of harassment and dowry demands are filed for the motive of getting husband's property, where the husband is only inheritor of large property.
- **Vengeance:** False complaints commonly filed for the purpose of revenge. Matrimonial disputes may lead to hatred for mother-in-law, sister-in-law, husband or other relatives by wife and put them in jail by lodging a false complaint against them is a perfect way of taking revenge. She will have her revenge and the family will collectively bear the brunt of it.<sup>33</sup> It is common when she is not able to adjust with the new family.
- **Cover for Wrongdoings:** When the wife has done something wrong like having an affair with someone else or committing adultery. She needs to cover it up with a dowry harassment case to gather sympathy and to give cover to her guilt.<sup>34</sup>It likewise places her in a decent position to arrange a fat settlement and addition guardianship of children, if children are included.

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<sup>32</sup>Gautam, Jitendra. "Anti-Dowry Laws – Use or Misuse." Manupatra (n.d.): n. pag. Web. 14 June 2016.

<sup>33</sup>*Ibid.*

<sup>34</sup> "What Is Section 498A of The Indian Penal Code?" wordpress (n.d.): n. pag. Web. 15 June 2016.

498A will be filed when paternity is being referred. Try not to depend on DNA proof, as the courts don't/or are hesitant to permit it. The Evidence Act still administers Indian Law from 1872.

- **Disputes with husband:** If she is just not into her husband and dislike her significant other and 498A is an advantageous device to escape the marriage. The most widely recognized false complaints are documented right when husband records suit for compensation of conjugal rights, and the notification is served on the wife; wife files charges of dowry demand and harassment. When her goal is to gain control of every aspect of his life, including his relationship with his parents or finances. Her failure to do so may result in misuse of Anti-Dowry Laws by her.
- **To marry the boyfriend:** Sometimes complaint is filed to force the husband into settling the divorce with large alimony payments and then marrying the boyfriend. In some case to go with ex-boyfriend come to be known after marriage.<sup>35</sup> At that point, they need to escape marriage with drawing out cash spent in marriage and record these false cases to extort.
- **Looter Wife:** Cases have come to light, where a lady used to Wed many men and trick every one of them,<sup>36</sup> by living at some point with them and after that making burglary of valuable property and vanish. On the off chance that instance of conning and robbery is documented against such lady, a criminal complaint of alleging harassment and dowry demand are filed.

### Supreme Court's View On The Issue

Section 498A was challenged by a writ filed under Article 32 of the Constitution of India, 1950 in the case of *Sushil Kumar Sharma V. Union of India (UOI) and Ors.*<sup>37</sup>. It was prayed that Section 498A should be declared unconstitutional and ultra vires. Supreme Court observed that "many instances have come to light where the

<sup>35</sup> "All Let off in Nisha Sharma Dowry Case after 9 Years." News18. N.p., 1 Mar. 2012. Web. 13 June 2016.

<sup>36</sup> Singh, Kiran. "'Protection of 'Innocent Victims' of Matrimonial.'" Criminal Law Journal 116 (2012): n. pag. Web.

<sup>37</sup> *Sushil Kumar Sharma Vs. Union of India (UOI) and Ors.* JT 2005 (6) SC 266. Supreme Court of India. 19 July 2005. Print.

complaints are not bonafide and have been filed with the oblique motive. Merely because the provision is constitutional and intra vires, does not give a license to unscrupulous persons to wreck personal vendetta or unleash harassment.” It was also observed that by misusing the provision, a “Legal Terrorism can be unleashed.”<sup>38</sup> Supreme Court rejected the plea stating that legal system is responsible for achieving the ultimate objective of punishing the guilty and protecting the innocents.

In another landmark judgement of *Preeti Gupta Vs. State of Jharkhand*,<sup>39</sup> Preeti Gupta was the sister-in-law of the complainant who filed an appeal against the judgement of the High Court of Jharkhand dated 27.4.2009 passed in Criminal Miscellaneous Petition Nos.304 of 2009. Supreme Court allowed the appeal and observed the following: -

*“The legislation should take a serious relook of the entire provision. Commonly in a large number of complaints exaggerated versions of the incident are reflected. The tendency of over connotation is also implied in a significant number of these cases.”*

Everyone concerned has to suffer immensely due to these criminal trials. The deep scars of the suffering of ignominy are not wiped out even by the ultimate acquittal in the trial. Unfortunately, the courts are flooded with a large number of these complaints and also society has to suffer enormous social unrest affecting harmony, peace, and happiness of the citizens. The pragmatic realities should be taken into consideration by the legislature, and suitable changes should be made in the current law. It is imperative for the government to take into account the informed public opinion and the pragmatic realities and make necessary amendments in the relevant provisions of law.

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<sup>38</sup> India. Law Commission of India. Ministry for Law and Justice. Section 498A IPC. By P. V. Reddi, Shiv Kumar Sharma, and Amarjit Singh. Vol. 243. N.p.: n.p., n.d. 1-88. Print.

<sup>39</sup>Preeti Gupta &Anr vs State of Jharkhand &Anr. AIR 2010 SC 3363. Supreme Court of India. 13 Aug. 2010. Print.

A copy of the judgment was sent to the Law Commission and the Union Law Secretary, Government of India so that appropriate steps can be taken in the interest of the society.<sup>40</sup>

Supreme Court took a significant step towards resolving the issue of Misuse of Anti-Dowry Laws in the case of *Arnesh Kumar V. State of Bihar*.<sup>41</sup> Arnesh Kumar was charged with Section 498A and Section 4 of Dowry Prohibition Act, 1961 after a complaint was filed against him by his wife accusing him of demanding ₹8,00,00, a Maruti Car, an Air-Conditioner, Television Set, etc. The accused knocked the door of the Supreme Court of India under Special Leave Petition asking for anticipatory bail. Supreme Court granted the leave and made further observations: -

"The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the "provisions that are used as weapons" rather than shield by "disgruntled wives". Getting husband and his relatives arrested is the simplest way to harass them. Bed-ridden grandmothers and grandfathers of the Husbands, their sisters living abroad for decades are arrested in many cases." "Crime in India 2012 Statistics" distributed by National Crime Records Bureau, Ministry of Home Affairs demonstrates arrest of 1,97,762 persons all over India amid the year 2012 for an offence under Section 498-A of the IPC, 9.4% more than the year 2011.<sup>42</sup> Almost a fourth of those arrests under this procurement in 2012 were ladies i.e. 47,951 which delineates that mothers and sisters of the husbands were generously incorporated into their arrest net. It contributes 6% out of the aggregate persons arrested under the violations submitted under Indian Penal Code. It represents 4.5% of total crime committed in various areas of penal code, more than whatever other violations aside from theft and hurt. The rate of charge-sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is just 15%, which is most reduced over all heads. Upwards of 3,72,706 cases are pending trial of which on current assessment, almost 3,17,000 are likely to result in acquittal. Arrest curtails

<sup>40</sup> *Supra* Note 21

<sup>41</sup> *Arnesh Kumar v. State of Bihar*. 8 SCC 273. Supreme Court of India. 2 July 2014. Print.

<sup>42</sup> India. National Crime Records Bureau. Ministry of Home Affairs. *Crime in India 2012 Statistics*. N.p.: n.p., 2012. Print.

freedom, brings humiliation, and scars are cast forever. Both lawmakers and police are aware of it.”

Supreme Court further reviewed the enforcement of section 41(1) A of CrPC<sup>43</sup> which guide state of fulfilment of certain procedure before arrest, and went ahead to watch that the Section 498A of IPC has turned into the hands of displeased wife, where guiltless individuals were captured with no proof because of non-bailable and cognizable nature of the law. Supreme Court passed certain guidelines to ensure that the police do not unnecessarily arrest the accused, and magistrate does not authorise detention casually and mechanically.<sup>44</sup> *It further added that the direction not only applies to the cases registered under Section 498A of IPC or Section 4 of the Dowry Prohibition Act but all such cases where an offence is punishable by imprisonment of a term which is less than seven years or can be extended to seven with or without fine.*

### **Flaws In Anti-Dowry Laws**

The Anti-Dowry Laws enacted to protect and safeguard women right has many flaws which leads to its misuse. The given law under s.498A is a gender biased law which talks only about protection of a section of society. This law has given tremendous powers in the hands of women which ultimately led to misuse. It is used as a harassment tool to torture husband and in-laws, Even the aged persons and minors are not spared.

- It has been called a "Draconian law"<sup>45</sup> - Men are increasingly being trapped in false cases under the Anti-Dowry laws. It was called draconian as this section did not leave any option to the victimised men as it is "non-bailable," "non-compoundable", and "cognizable." The burden of proving the innocence lies on the husband. It is cognizable and, so, in the beginning was compared to the Prevention of Terrorist Act but later that part was scraped.

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<sup>43</sup> When Police may arrest without warrant- sec 41, Code of Criminal Procedure, 1972. Print.

<sup>44</sup> Sharma, Reetu. "Dowry Harassment: First Investigate Then Arrest, Rules SC." [www.oneindia.com](http://www.oneindia.com). N.p., 03 July 2014. Web. 15 June 2016.

<sup>45</sup> "India Together: Anti-dowry Legislation Destined to Fail - Manushi, Issue 148." India Together: Anti-dowry Legislation Destined to Fail - Manushi, Issue 148. N.p., n.d. Web. 16 June 2016.

- Gender Biased Law- It clearly violates the fundamental basis of our Constitution " Equality before the law." For example, when a man causes a minor hurt to a woman, he is prosecuted for non-bailable offence(s.498A), but if a woman commits the same offence, it's just a bailable offence.
- There is no clear distinction between voluntary gifts and extortionist demands- Often the voluntary gifts to the groom's family are given a name of extortionist demand just to file false Dowry case. The bride's family take advantage of this flaw in the law and threaten groom's family of the FIR.<sup>46</sup>
- Husband and his family are presumed to be guilty - Once the FIR is lodged, the accused Husband and his family are assumed to be guilty which is not correct Burden of proof lies on the Accused. In proving their innocence, they have to suffer a lot whereas, the bride's family just register's FIR and then enjoy life with the maintenance amount.<sup>47</sup>
- The poor innocent women (mother-in-law, sister-in-law) in the husband's family are also harassed by the misuse of this Women Protection law- they are also the women but are ignored during the proceedings and arrest. Investigations and lifelong trials mentally torture them.
- As dowry giving is also a crime, so why not the bride's family face prosecution- Giving dowry is also illegal. The bride's family should also face some consequences because they had also breached the law by giving dowry.
- Even after the Complainant takes the complaint back, the innocent husband is not freed with the charges- As per the provisions of this law, once the FIR is registered the accused husband and his relative has left with no option to save themselves from the harassment even if he has paid the maintenance amount.

### **Law Commission 243rd Report**

The s.498a was enacted to protect women from dowry harassment and domestic violence. However, in the course of time cases of misuse of this section were pouring

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<sup>46</sup> "Men Being Harassed in False Dowry Cases." A Wide Angle View of India. N.p., 21 Apr. 2008. Web. 16 June 2016.

<sup>47</sup>*Ibid.*

in. Looking at the increasing instances of misuse of Anti- dowry law, the Supreme Court of India observed in the *Preeti Gupta V. State of Jharkhand*<sup>48</sup> case that a serious relook of the entire Anti-Dowry provision is the need of the hour.<sup>49</sup> So the Supreme Court along with Various High courts and the Home Secretary Government of India wrote a letter dated 1st September 2009 to the Law Commission of India to amend the existing s.498a of the IPC and other allied provision in CrPC.

The report has recommended various changes to amend the Anti-dowry law and to diminish its misuse. The two very significant amendments to s.498A of the IPC was, one is to make the offence compoundable which means now the complainant and the accused can enter into a compromise. The second is to increase the penalty for misusing the law (filing false cases and making malicious complaints) from ₹1,000 to ₹15,000.

The over-implication of law has led to the enormous increase in no of cases. As per information received from various Hon'ble High Courts at the end of 2010. There were 3,40,555 cases pending trial of which conviction rate was only 15- 20%.<sup>50</sup>

It has also been reported that in many instances false allegations are made against husband and his relatives under malice intention. The filing of charge sheet also closes the door of conciliation between the parties.<sup>51</sup> The High Court gave directions to regulate the power of arrest and to take reasonable conciliatory procedures in many cases, one of which is *Chandrabhan Vs. State*<sup>52</sup>. In this case, the Delhi high court observed that most of the time the cases are filed over trifle fights and ego clashes, the unfortunate children suffering the most. The directions given to police authorities were-

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<sup>48</sup>Preeti Gupta & Anr vs State of Jharkhand & Anr. 2010 AIR SC 3363. Supreme Court of India. 13 Aug. 2010. Print.

<sup>49</sup>Nigam, Mallika. "Understanding Section 498A (of Indian Penal Code, on Domestic Violence) - IPleaders." IPleaders. All, Criminal Law, General, 14 May 2014. Web. 08 June 2016.

<sup>50</sup>India. Law Commission of India. Ministry for Law and Justice. Section 498A IPC. By P. V. Reddi, Shiv Kumar Sharma, and Amarjit Singh. Vol. 243. N.p.: n.p., n.d. 1-88. Print.

<sup>51</sup>Datta, Saurav. "Proposed Anti-Dowry Law Will Make Women More Unsafe." Proposed Anti-Dowry Law Will Make Women More Unsafe. N.p., 16 Mar. 2015. Web. 15 June 2016.

<sup>52</sup>Chandrabhan Vs. State. No.1627/2008. Delhi High Court. 4 Aug. 2008. Print.

- FIR should not be registered in a habitual manner rather the officer himself scrutinize the situation and then register FIR.
- The approval by DCP/Addl. DCP is mandatory before registering the case.
- Before the registration of FIR, all possible steps towards conciliation should be taken and in case, there is no possibility left for conciliation; then necessary steps should be taken (return of Sthridhana and dowry articles to the complainant).
- A thorough investigation by the police officer and permission from DCP/ACP is required before the arrest of accused.
- Prior Approval of the DCP in the case of collateral accused like in-laws.

*Tr. Ramaiah Vs. State*<sup>53</sup> is also a significant case, where Madras High Court has given certain directions to be followed by the police officers, and which was a crucial part of the 243rd report --

- The station officer of all Women police stations can only register an FIR after getting approved by Dowry Prohibition Officer. Except in the cases of dowry death/suicide or offences of serious nature has been committed.
- No arrest of aged persons and minors should be done in matrimonial disputes.
- If the arrest of the accused is necessary during the investigation, its permission should be taken by Superintendent of Police in writing.
- While handling cases at All Women Police Stations, the use of weapons like Lathis or any physical force is completely prohibited.<sup>54</sup>
- The complainant should be protected by providing adequate security at Government homes. There has to be take proper care of children.
- Stridhana properties, whether movable or immovable has to be returned at the earliest. Legal aid should be provided to them for requital of their grievances.

#### **Malimath Committee report supporting Amendments in the Anti-dowry law: -**

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<sup>53</sup> Tr. Ramaiah Vs. State. CrI. O.P. No.10896 of 2008, Madras High Court. 7 Jul. 2008. Print.

<sup>54</sup> *Ibid.*

The committee in its report said that the strict law enacted to safeguard women's liberty is now being used as a tool for blackmail and harassment of husband and his near relatives.<sup>55</sup> As soon as the FIR is lodged under s. 498A of IPC, the accused persons get arrested without even scrutinizing the situation correctly. After the accused persons are sent to jail for this non-bailable and non-compoundable offence, the possibility of reconciliation or salvation of marital relation becomes zero. The committee recommends that proper investigation should be performed before arrest as marriage is a sacred bond, and neither the husband nor wife but children are worst affected. They pointed out that amendment is required in the s.498A making it a non-bailable and non-compoundable offence.<sup>56</sup>

**Recommendations mentioned in the 243rd report: -**

- **Compounding the offence**-The Supreme Court in the case *Ram Gopal V. The State of MP*<sup>57</sup>observed that the law must be amended making it compoundable. The earlier report 237th of the law commission under the title "Compounding of offences" recommended that the offence under section 498A of IPC should be made compoundable.
- **Conciliation if possible**-All efforts should be made to take the complaint to the mediation centre or District legal aid centre or team of the counsellor of that District.
- **Non-bailable offence**- The offence should remain non-bailable. Police should take necessary steps to protect women from further harassment.
- **The increase in Compensation amount**- The compensation amount given to the victimised husband and his family shall be increased from ₹1000 to ₹150000.
- **Women police stations should be established**- Well-trained police officers should be appointed to head such police stations. There should be a separate room for the complainant and the accused women under s. 498A.

<sup>55</sup>*Supra Note 36*

<sup>56</sup> "Malimath Report: Delusions of Gender-sensitivity." Malimath Report: Delusions of Gender-sensitivity. Human Rights Features, 17 Nov. 2003. Web. 15 June 2016.

<sup>57</sup> Ram Gopal vs State of MP. No. 6494 of 2010. Supreme Court of India. 30 July 2010. Print.

**Police officer to cross-check the situation**-On receiving the FIR, the police officer should conduct a cross-check of the allegation filed by the complainant by asking questions or interviewing her in the presence of a respectable lady/counsellor attached to a reputed NGO. Then the police officer must start the process of investigation by visiting the accused person's home, and listen to him and his relatives part.

### Harassment Of Husband's Family

The unscrupulous wife registers a false dowry complaint. Husband and his whole family have to face the serious consequences. The parents, children and unmarried brother and sister of husband, everyone has to bear the loss. They are harassed by not only police or judiciary but also by the society in a number of ways.

Family members of the husband had to go through physical, mental, financial as well as social torture.

- Minor children are the worst victims - They do not face legal action but social problems like single parenting. They are brought up in a criminal environment, which results in a split personality.
- Unmarried sister and brother of the husband get adversely affected- No one wants to marry their son and daughter in the family that was arrested under s. 498A. This false prosecution also brings defamation with, which creates a lot of problems for the family to survive in society.
- Many old parents commit suicide because of the defamation and fear of harassment- it has been observed that accused in-laws often commit suicide under the fear of harassment in police custody and investigation.
- The innocent family members are kept with hard-core criminals- These people are generally educated and had never been prosecuted before. This arrest severely affects their personality and thinking.
- The family members also lose their job and suffer financial crisis- As soon as the arrest of the family members under s.498A is made, the family members appointed to Government jobs are suspended. It cripples the economic status of the family.

### Gross Human Right's Violation -Illegal Detention

Misuse of Anti-dowry law by unscrupulous wives is a gross violation of human rights. The Supreme Court has observed its abuse in various cases and called it a "legal terrorism".<sup>58</sup> It is said to be a gender biased law which is misused to harass husband and in-laws. As soon as an FIR is lodged, the police arrest the accused person under s.498A without any investigation of the truthfulness of the allegations. The same has been observed by The Supreme Court in *Joginder Kumar vs. State of UP*<sup>59</sup> case that This is an indiscriminate arrest that leads to violation of accused person's human rights. It has also been emphasized that no arrest should be made just because the police officer has authority to do so instead the police officer should have the proper justification for arresting. Arresting and detaining a person in police lock-up can cause irreparable harm to his reputation and self-esteem. Denying a person of his liberty is a serious matter, so there must be some reasonable precautions to be taken before performing it. In the similar case mentioned in the report of MASUM, a human Rights organisation in West Bengal there were many irregularities and violated numerous guidelines regarding arrest procedures.<sup>60</sup> The absence of female police officer in arrest at night and producing of memos of arrest. As per the recommendation of the report, the police should first check that all the ingredients mentioned in the s.41 of CrPC should be satisfied before arresting a person.

The innocent accused man loses their job as soon as they are arrested, which dismantle his financial status. It makes him more vulnerable to the disgruntled wife's demands.

Innocent trapped men not only face the defamation in the society but also are mentally harassed by police and judiciary. The torture suffered by victimised

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<sup>58</sup>Sushil Kumar Sharma Vs. Union of India (UOI) and Ors. JT 2005 (6) SC 266. Supreme Court of India. 19 July 2005. Print.

<sup>59</sup>Joginder Kumar vs State of U.P. 1994 SCC (4) 260. Supreme Court of India. 25 Apr. 1994. Print.

<sup>60</sup> "Human Rights Violation - Illegal Detention (498a Case)." Fight Against Misuse of IPC-498a. N.p., 8 Apr. 2005. Web. 15 June 2016.

husband and his innocent relatives in police stations and judicial courts are analysed below –

**Harassment by Police: -**

- Police instead of issuing a "Notice of Appearance" to the accused person, calls him and threaten him to come to the police station without any legal written summon.
- Even though having no expertise and authority on marital conciliation, they try to do so and threatens the innocent husband and his family to bow down and accept his wife's demands or else have to consequences.
- Husband has to face Psychological and mental torture so that he breaks down and gives his consent to give unreasonable maintenance amount.
- Nowadays, police also even go to the accused man's working place to defame him and jeopardize his situation and arrest him without showing him the complaint copy. (which clearly violates the provision of CrPC s.41(1)(a)).
- Police also pick-up the innocent relatives whose name has not been there in the complaint about interrogation and forced them to give statements.

**Harassment in Court: -**

- Husband and his near-relative often feel the tormenting situation in court, when they are asked to give Divorce and pay large amount of "Extortion money" under the name of "alimony."
- As soon as the FIR is registered, an interim order is issued to the husband before investigating the facts. Once the man starts paying the maintenance, the judicial proceedings are dragged for years. The poor man keeps running to court trying to prove himself innocent, whereas, wife gets husband's money and lives her life.
- Judges grant interim bail to the accused husband and his relative; then the cases are sent to mediation centre. Where men are forced to accept each and every unreasonable demand of wife, and if he denies doing so, his bail is cancelled and is put behind the bars again to suffer.

- These courts seem to think partially on by the perception that has been set in the society that men are tortured, and women are victims.

The abuse of Anti-dowry law and harassment faced by men has increased a lot in the recent years, so an NGO named Save Indian Family Foundation(SIFF)<sup>61</sup> has raised its voice and is fighting for man's right. It promotes gender equality and family harmony and creates awareness against the Misuse of Anti-dowry law and various other Anti-male laws.

### Suggestions

The court and legislature should make some changes to minimise the misuse of Anti-Dowry Act. By the analysis of the statistics, data, cases, and reasons for misuse which lead to a gross violation of men's right, the researcher(s) have given some suggestions which will in some way diminish the victimisation of men.

- The law should be made gender neutral - Every person should be treated equally before law irrespective of the gender. They should have equal rights and responsibilities. The legislature should enact a similar law to listen to grievances of victim husband and his family members tortured by a scrupulous wife.
- The offence should be made bailable<sup>62</sup> - It is mainly misused because of being a non-bailable offence. It should be amended and made bailable, to protect aged persons, school going minor and pregnant ladies from the tormenting custody. Even the accused husband does not deserve losing his job (with the arrest, the person gets suspension).
- The offence should be made Compoundable - After registering the FIR, even if the wife wants to take it back realizing the trifling issue of the fight, it becomes impossible to withdraw the case. To save men from becoming victims of these false cases and dismantle situations, the offence should be

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<sup>61</sup>Virag. "Save Indian Family Foundation - SIFF." Save Indian Family Foundation SIFF. N.p., 21 Mar. 2015. Web. 15 June 2016.

<sup>62</sup>Goel, Akshay. "Sec-498 A I.P.C. – Its Use and Misuse." Legal Services India. N.p., 25 Dec. 2010. Web. 16 June 2016.

made compoundable. It will also open the door for the salvation of the matrimonial relations.

- The Penalty for false allegations should be increased - As per the recommendation of the 243rd report of law commission, if a woman files a false complaint by personal revenge then she has to pay the penalty.
- Registration of "marriages" and "gifts exchanged" should be done- All the gifts exchanged during marriages should be registered so that later, the bride's family could not call them dowry or extortionist demands and file a false complaint.
- Time bound investigation and trial by the court: - The speedy trial will not only provide justice to the victim but also will save the innocent accused husband from being victimised.
- Family Conciliation centres should be established in every district - The parties should first go to these centres to settle the dispute. The person sitting should give his/her unbiased suggestion to the parties. They should not blindly follow the old belief of "each women being Sita".
- Dowry givers should also be penalised- giving dowry is equally a crime as demanding dowry. So if the complainant agrees that her family had given dowry during the marriage, the bride's family should be prosecuted under Dowry Prohibition Act 1961.
- Certain laws to protect husband's right should be enacted- Government should make some laws to safeguard innocent husband's rights. Husband also deserve to be protected from the mental, psychological and social torture that they have to go through because of this misuse.

### Conclusion

Imagine yourself all excited entering into a new stage of your life by getting married but what if this joyful event turns out to be the biggest fear of your life. You not only have to live next decade filled with hardships, but you and your relatives may be harassed from time to time. This is what happens to men, who are falsely accused of demanding dowry under Anti-Dowry Laws. Victimised men may never be able to

trust anyone again. These laws were designed for poor masses with low income and beat the spouses, but those women are never seen around the courts since they cannot afford the lawyer's expenses. It is actually used by the miscreants only and lawyers for their money minting purposes. Various organizations are working for the protection of men from these draconian laws like "Save Indian Family Foundation (SIFF)"<sup>63</sup>, "Men Rights India"<sup>64</sup>, "498a.org"<sup>65</sup>, etc. The Indian justice system is still searching an efficient way to mitigate dowry harassment legally. The misuse of Anti-Dowry law doesn't make it void, but some amendments should be done to eradicate the problem. Women are the one, who have to understand that passing of such a law is to protect them from harassment and torture. It should not be misused to derive the wrong benefit from it. The spirit of this law should be retained for those who need it. In the end, ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent, either male or female.

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<sup>63</sup> "Save Indian Family Foundation - SIFF." Save Indian Family Foundation SIFF. N.p., n.d. Web. 16 June 2016.

<sup>64</sup> "Men Rights India - Men Rights, Man Sense!" Men Rights India. N.p., n.d. Web. 16 June 2016.

<sup>65</sup> "Fight Against Misuse of Dowry Law (IPC-498a) - Get Free Advice and Protect against 498a." Fight Against Misuse of Dowry Law (IPC-498a) - Get Free Advice and Protect against 498a. N.p., n.d. Web. 16 June 2016.