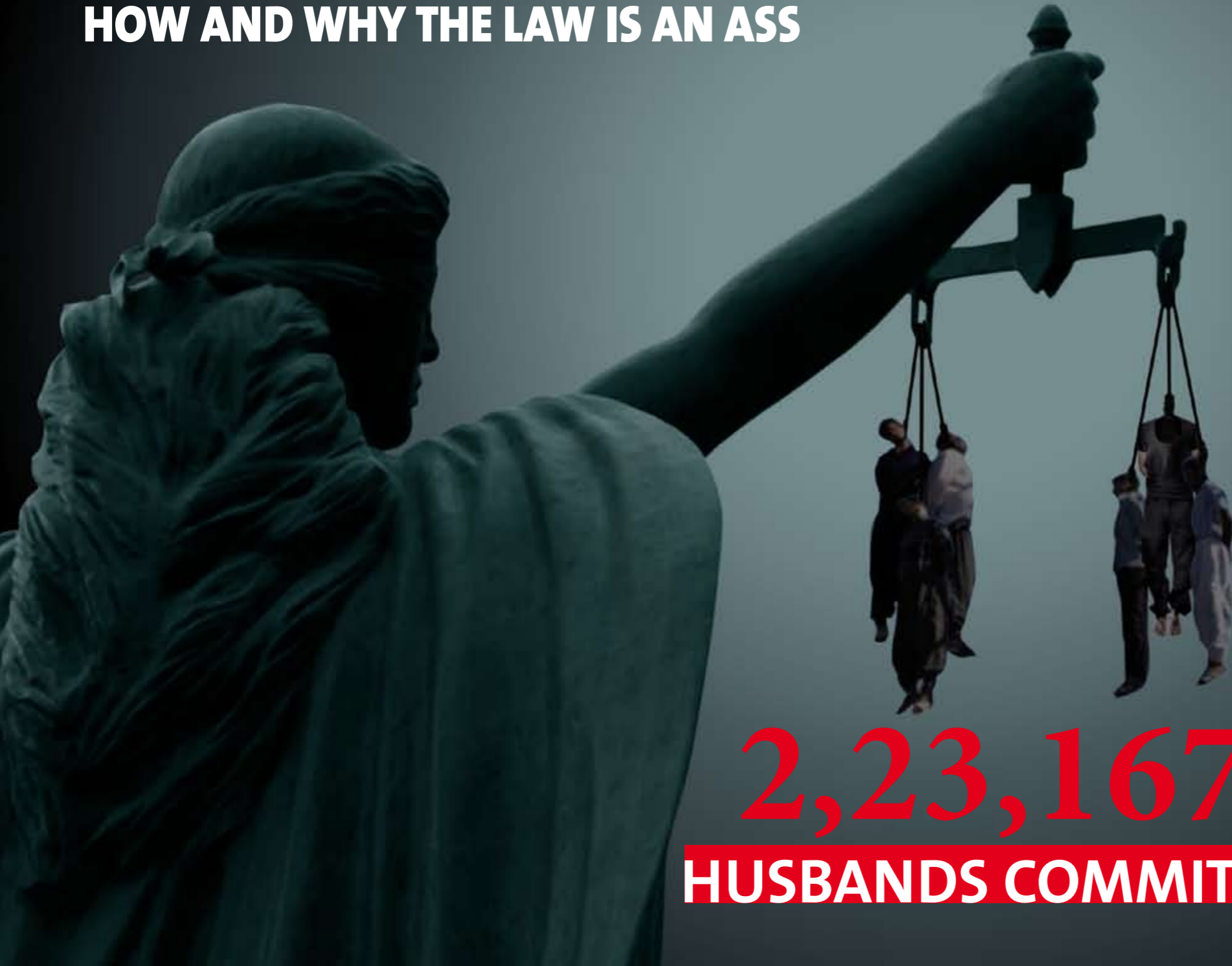


★ **DOWRY LAW**★
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★ **SEC 498 (A)****HOW AND WHY THE LAW IS AN ASS**

LOOPHOLES IN AN ACT, ORIGINALLY LEGISLATED TO SAFEGUARD WOMEN'S RIGHTS, ARE BEING MISUSED BY DISGRUNTLED WIVES TO PUT HUSBANDS AND IN-LAWS IN MISERY, TSI'S **ANIL PANDEY** AND **VIKAS KUMAR** WRITE

Amit Budhiraj, a techie from Bangalore, killed his wife Rinku Sachdeva and then hanged himself. Amit was a software engineer with Infosys Technologies for the last nine years. He had married Rinku Sachdeva who was working in a Mumbai-based multinational bank. Soon after the marriage, Amit came to know about her affair with a colleague of hers. When Amit protested, Rinku threatened him of sending him to jail under Dowry Act 498A. Amit searched over the Internet and came to know about the draconian provisions of the Act. It was amply clear that not only him but also his aged parents would have to spend the rest of their lives behind the bars. Amit decided to kill his wife and himself to save his parents the embarrassment of court proceedings.



Amit Budhiraj and Rinku Sachdeva

A nine-page suicide note was found on the bed in the couple's house. Amit had described his mental condition in detail. R. P. Chug, an advocate who counsels husbands who are wrongly victimised by this law, tells TSI, "I argue a lot of cases related to Dowry Act 498A. Every month I come to know of one person committing suicide after having been falsely implicated. If misuse of the law is not stopped, the number of such cases will surely rise." Chug is no male chauvinist and has a long history of fighting for women's rights and has worked with many women's rights groups. As per records of National Crime Records Bureau (NCRB), 1,87,540 people were arrested under 498A in 2007. Out of these, only

2,23,167**HUSBANDS COMMITTED SUICIDE IN 5 YEARS**

“My brother tried to prove his innocence through his death”



After the death of our father, the whole family's responsibility came upon my brother Pushkar's shoulders. He was a government employee in Lucknow. He was falsely implicated by his wife under the Dowry Act. After the complaint was lodged, Pushkar was locked up for 15 days but was released on bail. However, his wife's family threatened those who

gave the bail. They withdrew the bail and he was sent to jail for four months. He kept fighting for three years but in vain. Ultimately, he committed suicide by hanging himself. His suicide note read, “My wife has wrongly implicated me in a dowry case...I had to sell my house as the financial situation of my family worsened. My in-laws are responsible for my death.” Rani added that her brother was innocent and was twice put behind bars. She also said that no one heard Pushkar's plea.

My mother is ill and my younger brother handicapped and unemployed. I have two sisters who are married. So, there is no one to take care of my mother. In fact, we live in a rented house and running a household has become next to impossible for us.

(Rani is Pushkar Singh Patwal's sister and lives in Lucknow. The photograph is of her mother.)

“Being a husband is a crime”

My mother has a kidney problem and my sister is mentally challenged. After my marriage, instead of taking care of them, my wife started treating them very badly. One day, I was shocked to find a love letter written by my wife to her lover. When I spoke to her about it, my wife became furious and left our Mumbai home. She came back after a year but her behaviour towards my mother



PHOTO: SANJAY SOLANKI

and sister did not change. After a few days, she suddenly demanded divorce from me and considering the scenario, I agreed. We filed a writ for divorce but after 18 months, she backtracked and accused me of fraud. I knew she might file a false case under Section 498A. I wrote a letter to the Human Rights Commission and Mumbai Police Commissioner regarding my case. However, my apprehensions proved right when she actually filed a case and police arrested me and my father on November 24, 2009. We were put behind the bars for three days. If this was not enough, another case was filed against me under Domestic Violence Act. Since my father remained in jail for more than 24 hours, he was suspended from his job. My mother is ill and needs injections at regular intervals. Each injection costs around Rs 2,000, it has become impossible for us to sustain.

(Narain Mishra lives in Mumbai.)

13,247 were found guilty. The data shows that 94 per cent were found to be innocent. NCRB data also points towards a trend of increasing number of suicides in married males in the last decade. Every 19 minutes, a person is murdered whereas every 10 minutes, a husband commits suicide. Between 2005 and 2008, 2,23,167 married males committed suicide. This is double the number of wives committing suicide in the same time period.

An Act, originally meant to empower women, has become a curse for many women too. This view is echoed by Neena Dhulia, chairperson of All India Mother-In-Law Protection Forum, who says, “Due to the loss of social reputation, the entire family suffers. It becomes difficult for them to get their son or daughter married. This leaves a psychological scar on the family. Many close friends and relatives, who see their sufferings from close quarters, do not marry at all. They prefer remaining single for their whole lives. If the trend persists, it will immensely damage the social fabric of the country.” President Pratibha Devi Singh Patil famously said about this Act, “Instances exist whereby protective legal provisions for the benefit of women have been subjected to distortion and misuse to wreak petty vengeance and to settle scores. It is unfortunate if laws meant to protect women get abused as instruments of oppression.” The Supreme Court bench of justices Arijit Pasayat and H.K. Sema had termed this misuse as “legal terrorism”. The Apex Court said, “The role of the investigating agencies and courts is that of a watchdog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations.”

The case of Shoaib Malik and Ayesha Siddiqui has hogged much limelight in newspapers and on news channels. When Ayesha lodged the complaint against Shoaib under 498A, Shoaib accepted all of her demands and agreed to a divorce. It has also been reported that Shoaib allegedly paid Rs 15 crore as compensation to Ayesha Siddiqui to reach the settlement.

However, this does not mean that exploitation and abuse of women for dowry has stopped. The reality is that most women who fall prey to demands of dowry do not dare to go to court. Most of those who go to court misuse the Act. Dr Anupama, chairperson of Mothers and Sisters Initiative (MASI, an organisation of mothers-in-law and sisters-in-law), tells TSI, “It is the police and the advocates who are more responsible for the misuse

of the Act. Section 498A has become a big source of income for advocates, judges and the police. Police and advocates instigate wives to lodge complaints. Once a complaint is lodged, the husband's family completely comes in the grip of police and advocates and they take undue advantage. Recently we conducted a survey in the courts of Delhi in which we found that one-third of the cases of bail everyday are related to 498A.”

Husbands, mothers-in-law and sisters-in-law, who have been wronged, have formed several organisations to fight the injustice meted out to them. Husbands have even started celebrating December 19 as Husband's Day. They meet at specific places in their respective cities to share their stories of grief and harassment. As per NCRB statistics, more than 40 per cent of cases lodged against women are related to 498A.

Even legal experts are of the view that laws framed in India for the benefit of women are so impractical and biased that their misuse becomes a certainty. Sandeep Bhartia of the Gender Human Rights Society says, “The committees which frame such laws face tremendous pressure from feminist lobbies.” Founder member of Save India Family Foundation, Gurdarshan Singh, says, “Only one provision should be added to 498A that if a girl is found guilty of lodging a false case she will be punished. This will act as a deterrent against misuse.”

Kiran Kukreja, MASI spokesperson, goes further, “These feminist organisations and the National Commission for Women are responsible for breaking homes. For them, only the daughter-in-law is the woman. Mothers-in-law and sisters-in-law are not women in their eyes.” Broken homes affect children more than adults. However, supporters of Section 498 A don't seem to care for the tiny ones.

In the last five years, 3,36,842 cases have been registered under the Dowry Act. This means an equivalent number of families have been broken. An entire generation of children will grow up without the love of their parents. A US study done on children has startling revelations. Children who come from broken homes have a 32 times more chance of leaving home, 20 times more tendency of going to jail, 20 times more chance of behavioral disorder. They are 14 times more likely to commit rape, nine times more likely to drop out of school and five times more likely to end their lives. The number of such children in India runs in lakhs and is only slated to increase. Now, this presents a scary future. ■

“Can a case be filed thrice?”



My family was completely ruined by my daughter-in-law. My son, an engineer, is wandering here and there like a mad man. I am living with my 70-year-old husband in a dharmshala. My daughter-in-law has confiscated our house. She and my son moved out of our house after three years of marriage but she continued harassing him. Moreover, she filed a case under Section 498A thrice against us. However, we came out clean twice after police in-

vestigation but we were not so lucky the third time. My son was arrested and my daughter-in-law ousted us from our house. My husband was admitted to the hospital for many days. She has been ordered to vacate the house by the Deputy Inspector General but she has not followed the order yet. We are still living in a dharmshala.

My house is situated on Talkatora road in Lucknow and is worth crores. The Supreme Court order says that my daughter-in-law is not entitled to this house but the police is not helping us. How much injustice we have suffered is difficult to describe. I don't know about the Dowry Act but want to ask a simple question: Can this case be filed thrice on a person if he is twice found innocent?

(Asha Rani Agrawal lives in Lucknow.)

“My daughter-in-law took away our old-age support”

She has already lost her earnings during the court hearings but is still waiting for justice. Wrinkles of sorrow can be easily traced on her face and her eyes always brim with tears. We met Swarnlata at the BJP office where she had come to seek help from its women's cell national president. Swarnlata was a middle school teacher in Sangrur district, Punjab. She has one son. After she got him married, her daughter-in-law lodged a complaint of harassment for dowry against her family. Frustrated by the turn of events, her son left home. In a letter to her, he stated, “I am disappointed and fed up with my life. Either I will commit suicide or will become a saint. I will never return home.” The hapless mother is still waiting for her son to return. Swarnlata says, “My daughter-in-law repeatedly kept demanding money. When her father went to jail for a scam in a cooperative society, we paid for his bail too. She also took away all my gold. I have nobody in this world. My only desire is to see my granddaughter once.”

(Swarnlata now lives in Delhi.)



PHOTO: VIKRAM KUMAR



Dowry Act

A WEAPON OF HARASSMENT

Crucial amendments should be brought to IPC Section 498A to prevent misuse of law

WHAT THE LAW SAYS

MONETARY COMPENSATION FOR EMOTIONAL AND PHYSICAL TROUBLE WILL EVENTUALLY LEAD TO OPENING OF A FLOODGATE OF FALSE CHARGES

Passed by the 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 cognisable, non-compoundable and non-bailable."

If a woman lodges a complaint of dowry harassment in the nearby police station, the husband, his old parents, his sisters and other relatives would be immediately arrested and put behind bars on a non-bailable term without any investigation. Even if you are not guilty, you will be presumed as guilty until you are proved innocent. This section of Indian Penal Code is non-compoundable (complaint can not be withdrawn) and non-bailable.

Mahesh Tiwary, advocate in Supreme Court, explains the legalities involved, "Under section 497 of IPC, cases of adultery cannot be filed against a wife and thus she cannot be prosecuted." As it stands, this Section makes only men punishable for having sexual relations with wives of other men without the consent of their husbands. Women cannot be punished even as abettors.

What is more shocking is even if after a prolonged legal battle, the husband's family comes clean, the court does not punish women for filing false cases. Under

Section 12 of IPC of Protection of Women from Domestic Violence Act, 2005, husband or in-laws can be asked to evict the house if wife feels threatened. Mahesh Tiwary says, "This means that practical ownership of every house rests with wives. Once she decides that her husband should not stay with her, he will have to leave at any cost."

Panduran Kutty is one of the lucky persons who was acquitted by the court. He says, "When I see hapless husbands being humiliated and trampled in the courts and in the police stations, I feel it is a crime to be a husband in this country." So far he has counselled more than 1000 persons suffering from the same trauma. He says, "Do not expect this system to be logical and reasonable. If you think you have tons of evidences and the judge will hear you, you are imagining things."

A senior advocate, on the condition of

THESE LAWS WERE ORIGINALLY ENACTED TO PROTECT WOMEN WHO FACE REAL ILL-TREATMENT, HARASSMENT AND TORTURE AFTER MARRIAGE

anonymity, tells TSI, "These laws were made to protect real women facing ill-treatment and torture. But this has become a tool for extortion for upwardly mobile women, specially in the elite class. Average settlement of Rs 50-60 lakh is commonplace. And nobody is spared. I have cases of IAS, IPS officers, corporate managers and executives, commissioners. These laws were made for protection of Sitas but being potently misused by Surpnakhas."

Sandeep Bhartiya, President of Gender Human Rights Society, has another take on the law, "Seventy-first Law Commission Report 1978 strongly recommended that irretrievable breakdown of marriage should be made a ground for divorce. Supreme Court reiterated the need for inclusion of irretrievable breakdown of marriage as a ground for divorce." Mahesh Tiwary says, "There has been an alarming rise in the number of divorce cases being filed in the courts these days."

The present law proposal of Sexual Harassment at Workplace Act, 2005, talks of paying monetary compensation for emotional, mental trouble caused due to sexual harassment at office or workplace. What is more alarming is that the draft law does not put any time limit for filing the case.

Monetary compensation for emotional trouble will lead to a floodgate of false complaints opening just like we see in case of matrimonial disputes.



Uma Challa
President, All India Forgotten Women's Association

It is an established fact that IPC Section 498A is the most heavily misused law in the country. Several authorities have noted that in close to 98 per cent of cases filed under IPC 498A, the accusations are false and that the complaints were only filed with ulterior motives. It is predominantly a tool of blackmail and extortion in the hands of vindictive wives to legally harass husbands and their families.

Women who suppress vital personal information before marriage,

women who are forced into marriages due to family pressures, women who have pre-marital or extra-marital relationships, women who are unable to adjust with the husband's family, women who dislike living with in-laws are getting into the habit of exaggerating every marital discord as 'harassment and abuse', threatening the husband and his family, getting them arrested and imprisoned under false allegations of cruelty and dowry harassment, making them run around courts for years, and subjecting them to various hardships by misusing IPC Section 498A.

Several authorities have noted the widespread misuse of this law.

- The Supreme Court of India termed the misuse of IPC Section 498A as "Legal Terrorism".
- The World Health Organisation, in its report on India clearly cited Section 498A as one of the major reasons for the "Increasing Abuse of the Elderly in India".
- News agencies have also reported many cases where individuals have ended their lives unable to endure the humiliation of being arrested and the trauma of fighting false cases, which typically span 5-7 years.
- The National Human Rights Commission noted that the Tihar jail is overflowing with people falsely accused under dowry cases.

Noted women's rights activist Madhu Kishwar acknowledged that IPC Section 498A is heavily misused and that a significant proportion of individuals who approach "Manushi" these days are mothers-in-law and husbands who are falsely accused of marital cruelty and dowry harassment. Renowned IPS officer Kiran Bedi admitted that many poor and illiterate mothers-in-

law and sisters-in-law, who are falsely charged under anti-dowry laws languish in prison every year.

A look at the National Crime Records data shows that every year, over 1 lakh innocent persons (one innocent person every 5 minutes) are arrested under the act. Every year, close to 30,000 innocent women (one innocent woman every 20 minutes) and 4,000 innocent senior citizens (one innocent elderly person every 2.5 hours) are arrested. Every year close to 350 children (one child per day) are arrested under the same act. Numerous families have been broken and are suffering immeasurable economic hardship and emotional trauma. In addition to penalising innocent citizens, a large backlog of false cases pending in courts prevents genuine victims of abuse from obtaining justice. The country has already incurred a huge social cost in addition to the enormous burden imposed on the public exchequer. There is a need to make legal amendments:

1. Ban Police involvement in marital counseling and pass directives to resolve all marital disputes under civil law. Marriage is a civil matter and should be treated as such. Marital issues should be dealt with utmost caution so that harmony is restored between disputing spouses.

2. Make civil and criminal laws applicable to men and women equally. Spousal abuse is not gender-specific, and the assumption that victims of physical, verbal, emotional, sexual, and financial abuse are always women is wrong. According to the Universal Declaration of Human Rights, "all are equal before the law, and are entitled without any discrimination to equal protection of the

law". Hence, IPC Section 498A should confer equal protection upon men and women.

3. Make Section 498A of IPC bailable. This goes against the Universal Declaration of Human Rights which states that "everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law".

4. Make Section 498A of IPC non-cognizable. Innocent citizens are being arrested everyday based on mere complaints without requiring evidence or investigation. Even children and senior citizens are not being spared. IPC Section 498A, being a cognizable offence, violates a citizen's right to due process.

5. Punish those who misuse IPC Section 498A. Misuse of the process of law not only costs the public exchequer dearly but also destroys the personal lives of many innocent citizens. Abuse of the judicial process should be treated as a serious crime, and persons who misuse IPC Section 498A as a weapon for settling personal scores in marital disputes should be severely punished.

Make Section 498A bailable, non-cognizable; punish those who file false charges