



GET YOUR OWN BLOG NEXT BLOG»

[BlogThis!](#)

Cathartic Nemesis

Genius may have its limitations, but stupidity is not thus handicapped. -- Elbert Hubbard (1856 - 1915)

Monday, January 31, 2005

The Use and Misuse of Dowry Laws

Sometime ago, I found the following comment in the list waiting for approval before being displayed on my site.

Name : MisuseDowryLaws URL : <http://misuseof498a.clawz.com> Comment : Because of extremism displayed by some selected Feminists in India, there will be great fun in coming years. Please search for dowry 498a in google and find the emergence of a backlash and angryharry.com in India. E-mail : misuse498a@lycosyahoo.com

I was somehow rather surprised by it because whoever wrote it seems to associate [Section 498\(a\)](#) of the Indian Penal Code exclusively with Indian anti-dowry laws. I have, of course, often heard allegations of the section being misused but have very rarely heard any actual cases being cited to support such a claim.

In fact, a Tata Institute of Social Sciences study in 1999 indicates that few women's organisations recommend recourse to section 498(a) IPC as a first resort and that the number of such cases are miniscule in comparison to the prevalence of domestic violence. However, such studies have done little to stop a large spectrum of people ranging right from husbands and their families to some members of the judiciary from voicing their complaints.

There seem to be two sides to the story : one is that Indian society is patriarchal and public attitudes are firmly in favour of men and wives are usually held responsible for marital problems as the following statement in a report prepared by the legal adviser to the Delhi Commissioner of Police in November 2000 shows: "...the reasons for disharmony between the wife and the husband arise only when either the wife is reluctant/refuses to adjust herself in the family circumstances or if the husband feels reluctant to accommodate his wife either on account of unnecessary interference by the parents of the wife or non-cooperative attitude of the wife."

It would be hard for anyone to deny that domestic violence is rampant -- a look at any given day's edition of a local newspaper would probably report at least two cases of women who've been killed / burned to death by it. And those are just the most extreme cases. No one really knows how many instances of domestic violence go completely unnoticed and it seems faintly ridiculous to me to render useless one of the few laws which exist to combat it.

This, however, is precisely what the The (all male) Malimath Committee suggested in a way by recommending that such complaints be made bailable and compoundable. The committee produced a 600 page report which among other things included 16 research papers but for some reason excluded not only any discussion on the issue of violence against women but also excluded any inputs either from victims of marital cruelty or from those working in the field. Some of its reasoning seems to have been encapsulated in 16.4.4 of the report which says: "A less tolerant and impulsive woman may lodge an FIR even on a trivial act. The result is that the husband and his family may be immediately arrested and there may be a suspension or loss of job. The offence alleged being non-bailable, innocent persons languish in custody. There may be a claim for maintenance adding fuel to fire, especially if the husband cannot pay. Now the woman may change her mind and get into the mood to forget and forgive. The husband may also realize the mistakes committed and come forward to turn over a new leaf for a loving and cordial relationship. The woman may like to seek reconciliation. But this may not be possible due to the

By Nandita Saikia

[Send E-mail](#)

[Guestbook](#)

[Subscribe](#)

Enter your email address below to subscribe to **Cathartic Nemesis!**

[powered by Bloglet](#)

[Links](#)

[Cold SnapDragon](#)

[News](#)

[Human Interest Stories](#)

[Not Just Statistics](#)

[Sitemap](#)

[Site Search](#)

Quote of the Day
Reality leaves a lot to the imagination.
[John Lennon](#)
[more Famous Quotes](#)

[Previous Posts](#)

legal obstacles. Even if she wishes to make amends by withdrawing the complaint, she cannot do so as the offence is non-compoundable. The doors for returning to family life stand closed. She is thus left at the mercy of her natal family."

But the other side of the story is that there is abuse of the law although the extent to which such abuse takes place has never been firmly established. There are of course unscrupulous women who use section 498(a) of the IPC for their own ends but what one also has to realise is that very often women are encouraged by lawyers and/or the police etc. to add that the violence they faced was related to dowry so that their complaints would be taken 'seriously'. And that is what is ironical because the section itself is not designed exclusively in reference to dowry-related problems : in itself, it is meant to deal with all forms of domestic violence.

Section 498(a) is, in a way, in favour of women. It was created by an amendment to the Indian Penal Code in 1983.

Complaints under it are cognizable, non-bailable and non-compoundable. Close on its heels came two amendments to the Dowry Prohibition Act of 1961 -- in 1984 and 1986 -- which made dowry giving and taking cognizable offences. Those accused under both these laws are not assumed to be innocent until proven guilty ; contrary to other laws, the accused are, in theory, required to prove that they have not committed a crime although in reality they often easily get bail.

Tilting the balance in favour of women has often been useful since previously women could not meet the burden of proof quite simply because marital violence usually occurred behind closed doors and that being the case, in the absence of independent witnesses, there was no easy way for women to prove their cases beyond reasonable doubt as was required under criminal law.

The problem, however has been that there was no mechanism brought into play to ensure that women didn't lie. The law against perjury is virtually non-functional in India and there are no deterrents to ensure that complaints made under this section to ensure that only genuine cases are registered.

In December 2003, the Minister of State for Home Affairs, I. D. Swami said, "There is no information available with the Government to come to the conclusion that many families in India are suffering due to exaggerated allegations of harassment and dowry cases made by women against their husbands and other family members involving them in criminal misappropriation and cruelty."

The statement is probably not entirely true although cases of abuse of section 498(a) may simply be isolated ones and not part of a general trend. The answer though probably doesn't lie in making the law bailable and compoundable but in amending it so that bonafide and malafide complaints can be separated.

References: 1. Statement referred to in reply to Rajya Sabha starred question no. 230 for 17.12.2003 regarding amendments in sections 406 and 498(a) of the IPC <http://164.100.24.219/annex/200/AS230.htm> 2. Laws against domestic violence : Underused or Abused? by Madhu Kishwar <http://www.indiatogether.org/manushi/issue120/domestic.htm> 3. Misuse of 498A - much ado about nothing? by Bikram Jeet Batra <http://www.indiatogether.org/2004/mar/law-sect498a.htm>

posted by Nandita Saikia at 1:29 PM

- [The Use and Misuse of Dowry Laws](#)
- [Reality TV on the News](#)
- [There's bad luck... and then there's BAD LUCK](#)
- [What greater delight is there than to behold...](#)
- [Water, water, every where, Nor any drop to drink.](#)
- [Divorce and the Legal Process](#)
- [Women's Rights and the Media](#)
- [Wear Your Attitude](#)
- [Witch-hunts](#)
- [Responses to the HIV / AIDS Epidemic](#)



[Terms of Use](#)

Indian Bloggers Ring

[[Join](#) | [Hub](#) | ? | [<<](#) | [>>](#)]

Visit a complete list of [WebRing](#) memberships [here](#)



[<< Home](#)