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# FORAY

## SUNDAY PIONEER



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### Men in flak

Section 498A was introduced in the Indian Penal Code 25 years ago to protect the married woman from torture or death. Over the years, however, it has acquired the infamous tag of having become a tool for harassment and extortion from married, harried husbands. With around 60,000 complaints every year, 200,000 men are hit by falsities. **Gauri Kohli** reports on the most misused law in India --



Suresh is a Chicago-based engineer whose wife left him after three years of marriage. She moved out of the US and returned to India without assigning any reason. Suresh sent a notice for restitution of conjugal rights, a remedy by which a person can obtain a direction from court to the effect that his spouse must live with him and carry out her wifely obligations.

His wife went to Hyderabad in January 2005 and filed a case under Section 498A of the IPC the same year. Section 498A, which came into effect 25 years ago, is a criminal law under which the wife and her family can charge any or all of the husband's family of physical or mental cruelty. It is a cognizable, non-bailable criminal offence.

Suresh's wife demanded money to withdraw the case and also filed for divorce in Hyderabad. Suresh, on the other hand, filed for divorce in the US in December 2005 where his wife contested it, demanding alimony.

The couple was granted divorce in the US on June 5, 2006. But Suresh's woes continued. He was stunned to one day find his name among those wanted by the Interpol. "My name appeared in the Categories of Offences: Crimes against life and health and an arrest warrant was issued in Hyderabad," says Suresh.

As per law, a country can seek a Red Corner Notice on a criminal who flees the country, cancel his visa and seek his extradition.

Suresh today is a harried man even as his ex-wife continues to demand money. Unlike most other cases under Section 498A, Suresh is the only one from his family to have been named by his spouse despite the fact that the couple lived in a joint family.

Ditto with Shankar, based in New Jersey and married in November 2003. Shankar has already spent Rs 1.2 lakh fighting a case under the dreaded Section 498A. He is not the only accused in the case. His parents, sister and brother-in-law too are on the mat, for what he claims is a false case.

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"I have been falsely implicated under this Section and have also been issued Interpol's Red Corner Notice. I have now got conditional bail in India," he tells you. He does not know how to recall the notice and will not get a visa due to it. He now plans to write to the consulate general.

This means, whenever Suresh and Shankar check in or out of India at the international immigration counter, the moment their passport numbers are fed in, a red flag will appear beside their names to alert the immigration officer that they are wanted by the police in India. They will be detained irrespective of nationality and the airport police will take them away to the nearest police station.

The gross abuse of this anti-dowry law, originally meant to act as a shield for protection of harassed women, has escalated to alarming proportions.

Not only senior citizens, even women and children are being abused using this legal process. According to one estimate, over 5,000 innocent women get arrested under Section 498A, which has been projected as a law for welfare of women.

As per a recent report by the National Crime Records Bureau, a child is arrested everyday, a senior citizen every 2.4 hours, a woman every 23 minutes and a man every five minutes. This when the conviction rate under Section 498A is just two per cent and 25,000-30,000 false cases are filed every year in the country.

Besides facing charges like adultery, dowry demands and wife beating, there have been cases where the husband has been issued a Red Corner Notice by Interpol.

However, social activist and director of Centre for Social Research Dr Ranjana Kumari feels: "If demanding and giving dowry is a crime, accepting it is a bigger one. If the Interpol has issued Red Corner Notices in some cases, it means the accused is absconding and should surrender."

According to the Interpol Wing of the CBI, 39 notices have been issued across the country from 2000-2006 under dowry harassment cases.

But the case of Dr Urvik Patel from Anand in Gujarat is worrying. Patel is fighting a twin battle -- that of dowry death and dowry harassment, this despite the fact that his wife committed suicide much after their separation. A case under Section 498A was filed against him on August 29, 2007 and he was also booked under Section 306 of the IPC along with his parents for abetment of suicide. "I separated from my wife on January 27, 2007 after she kept accusing me of having affairs and complaining that my parents were ill-treating her. I dropped her at her father's place and told her I was not happy the way things were going. She later threatened court action, suicide and demanded a share in property. On August 29, 2007, she committed suicide at her father's house by consuming poison," says Patel.

His father-in-law has filed the cases against him, his mother and father. Currently, they are out on bail but his father-in-law has challenged it in Gujarat High Court.

Mohd Arif Khan, an engineer with an MNC in Delhi, too, faces the 498A wrath. Married in December 1996, Arif's wife, a senior lecturer in chemical engineering in AMU, went on study leave on November 24, 2006. "I caught my wife with a man on the night of November 24 at IIT's Roorkee campus. When I reached the campus, I found my wife with another man who was hiding in the cupboard. She had already put our sons, aged 6 and 9, to sleep. The man tried to flee but I managed to keep him in the room. I then complained to the hostel chief warden who assured strict disciplinary action against my wife and the man," says Khan. She claimed that the man used to come to teach her children.

The couple later moved to Delhi and all seemed to be fine but soon there were problems relating to the custody of their children. Arif filed a civil suit for the custody of their elder son on December 15, 2006. He is awaiting action on it. Meanwhile, he received a notice of from his wife's advocate on December 30, 2006 in which it was evident that she would implicate him and his parents under Section 498A. Arif has now filed a case with the Roorkee Police against his wife and the man under sections 504, 506, 452, 497, 323 and 352 of the IPC.

Besides accusations of dowry harassment, other charges like abduction, murder and abetment to suicide are also adding to the woes of many.

Take the case of Prameet Narula, who married Jaspreet Kaur on October 13, 2002, and the couple stayed at Prameet's Noida residence. Soon, they developed differences due to a conflict regarding emigration to Australia. The two, filed a mutual divorce petition on May 14, 2004 on grounds of "social and temperamental differences".

The first motion was listed on June 2, 2004. However, the judge was on leave that day and the hearing had to be postponed. The same night, Prameet received three phone calls from their house which indicated some altercation there. "My mother-in-law Lovejeet Kaur allegedly committed suicide on June 3, 2004 by setting herself on fire at her house in the presence of her husband Jaswinder Singh. Circumstantial evidence indicated a possible altercation between husband and wife and that the site of crime was disturbed," says Prameet.

Jaswinder was interrogated the same day when he stated: "She was suffering from depression."

"Along with this, statements of Daljit Singh (my wife's uncle) and Kamaljit Singh (my wife's brother) were recorded the same day. Daljit safeguarded Jaswinder by saying that "my sister was sick and suffering from depression."

"After a week, Jaspreet filed an FIR against me that her mother committed suicide due to me and lodged a criminal case under Section 306. Thereafter, the police asked me to pay Rs 4.2 lakh to Jaswinder," says Prameet. He filed a writ against this in Delhi High Court in October 2004. The court instructed further investigation with no coercive action against Prameet and also asked Jaspreet and her father to be present for the next hearing.

The court stated: "Since chargesheet is under scrutiny, this petition is dismissed. Interim Orders (No Coercive action against petitioner) to continue until the chargesheet is filed."

Jaspreet is now settled in Australia and will be eligible for Australian citizenship in June 2008. Several summons have been issued to her even through the Indian High Commission in Australia, but she has not accepted them, delaying the case. Prameet meanwhile continues to bear the brunt of a case which he says has been lodged merely to harass him.

There have been cases of men implicated under 498A committing suicide. As per the National Crime Records Bureau, the ratio of male: female victims of suicide in India is 63: 37 and nearly 44.7 per cent of these are married males and 25 per cent married females.

The gravity of the problem can be ascertained from the fact that the website [www.498a.org](http://www.498a.org) has had 2,50,000 hits in just one month. Says Satya Kumar of 498a.org: "The consequences of misuse of 498A are far reaching than lawmakers could think of in the 1980s. Section 498A is misused because it is a badly formulated law which invites misuse. It assumes that the wife/daughter-in-law cannot lie and has not been reviewed in the last 24 years since it came into effect."

In an informal meeting of Rakshak Foundation members with four sitting High Court judges in June 2006, where Karnataka High Court Chief Justice Cyriac Joseph and Delhi High Court Justice AK Sikri and Justice M Lokur were present, Joseph stated: "Please tell Union Minister Vayalar Ravi that section 498a is the most abused IPC section in India and his Government must do something to fix it."

The Supreme Court has observed that "by misuse of the provision, a new legal terrorism can be unleashed. The provision is intended to be used a shield and not an assassin's weapon."

Says Vineet Ruia, Human Rights activist and member of Save Indian Family Foundation: "Nowadays, educated urban Indian women have turned tables. They have discovered loopholes in the existing judicial system and are using dowry laws to harass husband and his family, disabled individuals and even children."

Says Kumar: "With 60,000 such accusations every year, 200,000 persons are directly affected by false accusations. The number of such cases has increased 100 per cent in the last decade and by more than 15 per cent in just the last two years. This poorly formulated law is inviting unscrupulous people to file false cases causing imprisonment of innocent people without investigation."

Despite the SC and Justice Malimath Committee recommendation that the law should be modified so that innocent people are protected, the suggested amendments have been ignored.

The committee recommended that IPC 498A be made bailable and compoundable. The Supreme Court called it "legal terrorism" and Justice JD Kapoor of Delhi High Court recently suggested that section 498a be made "bailable."

The US State Department has issued a travel warning regarding the misuse of dowry laws in India and highlighted the fact that Indian courts require large sums of money to settle such cases. The Canadian Government has issued a similar warning.

According to a study conducted by the Centre for Social Research, 70 per cent of policemen feel the section is being misused. They reported that they had identified instances of misuse in at least 10 per cent of the cases they had investigated. Sixty per cent of the cops identified that it was the educated, influential and economically independent women who were caught making false allegations.

But Mahesh Tiwari, practising criminal lawyer at Supreme Court, says: "Ninetyfive per cent cases filed under this section are false. In most cases, the prosecution has no evidence to prove the allegations. The cases are either filed to extort money from the in-laws or to settle other scores."

Kumari, however, argues that "in a majority of the cases before a victim filed the complaint under section 498A, the minimum period she suffered physical and mental torture was for about three years. It is difficult to prove physical and mental torture."

As per a CSR study conducted on 70 lawyers, 50 per cent felt that section 498A is ineffective or not of much use in dealing with domestic violence as it closes the door for any reconciliation. They believed that section 498A had created a kind of fear psychosis among men. Fortyeight per cent supported the Malimath Committee Report and said that making it bailable and compoundable would enhance the possibility of reconciliation.

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