



## **HARYANA STATE LAW COMMISSION**

**Ist Floor, DHL Square, Plot No. 9, HSIIDC IT Park, Sector 22, Panchkula (HR)-134109,  
Telephone No.0172-4004268**

### **NINTH REPORT**

**To amend Section 320 (2) and the Schedule  
to The Code of Criminal Procedure - Re.  
Section 498 A of The Indian Penal Code.**

**Government of Haryana**

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Chairperson**

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**Government of Haryana**

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## **NINTH REPORT**

**20 April, 2023**

### **To amend Section 320 (2) and the Schedule to The Code of Criminal Procedure - Re. Section 498 A of The Indian Penal Code.**

The offence of subjecting the woman to cruelty by her husband or his relatives punishable with imprisonment for three years and fine under Section 498-A of IPC is non-compoundable. There is general grievance with which we are presently concerned. One of the principal allegations is that these provisions are being grossly misused and abused by filing false cases and including innocent persons as accused thereby subjecting husbands and their relatives to undue suffering and hardship. It is alleged that criminal proceedings under Section 498-A take several years for disposal, by which time, the parties would have lost their youth and vigour which is impossible to compensate. It is further alleged that trauma and depression which such criminal proceedings contribute to a large number of married men have resulted in their committing suicide. More and more children are losing the care and protection of one or the other parent, thereby affecting their progress, physically and mentally.

2. The law is definitely made with good intention to protect women against the ill-treatment by husband, in-laws, relatives, however there is general complaint that it is used as a tool or a weapon so that the personal scores can be settled, ranging from property settlements,

marriage expenses & gifts; taking revenge for any reason; to mere ego satisfaction; bringing down the moral status of the other side. It lends itself to easy misuse by women who will find it hard to resist the temptation to “teach a lesson” to her husband’s relatives and at the end leading to file frivolous and false cases. As the Section is non-compoundable, in case of reconciliation, it becomes difficult to withdraw the case. The Section being non-cognizable, & the presumption is against the accused, the burden of proving innocence which lies on the accused is heavy one. It is observed that the rate of divorce in the recent times has gone up considerably and the section if wrongly used, as is the case currently, will reduce any hope of reconciliation for the couple. It is very essential that the women be protected and given justice, it is also equally essential that the institution of marriage should be held supreme at all the times and a section like 498-A, if used wrongly would be a big blow to the institution of marriage. Even if the woman later wants to reconcile with her husband, if she has used section 498-A, the trust and the feelings between the couple gets completely destroyed leading to complete breakdown of marriage. The ultimate sufferers of the ‘Dowry case’ are also the minor children, who because of the tender age will undergo a lot of mental trauma which will affect their upbringing as a fully developed and responsible citizen of the country.

Weak family relations have always lead to ‘juvenile offenders’ and later as hardened criminals.

3. The Commission would like at this stage itself to point out that the Committee on Reforms of Criminal Justice System constituted

by the Government of India under the Chairmanship of Dr. Justice V.S. Malimath has recommended that offence under Section 498-A of IPC should be made compoundable. The reasons furnished in the said report read as follows:

***“16.4. CRUELTY BY HUSBAND OR  
RELATIVE OF HUSBAND – SECTION 498-  
A OF IPC***

*16.4.1. This provision is intended to protect the wife from being subjected by the husband or his relatives to cruelty. Cruelty for the purpose of this Section means willful conduct that is likely to drive the woman to commit suicide or cause grave injury or damage to life, limb or health, mental or physical. It also includes harassment by coercing to meet unlawful demands. This is a very welcome measure. But what has bothered the Committee are the provisions which make this offence non-bailable and non-compoundable.*

*16.4.2. The woman who lives with the husband and his family after marriage is expected to receive affection and caring and not cruelty and harassment. True to the Indian tradition the woman quietly suffers without complaining, many inconveniences, hardships and even insults with the sole object of making the marriage a success. She even tolerates a husband with bad habits. But*

*then, when her suffering crosses the limit of tolerance she may even commit suicide. For the Indian woman marriage is a sacred bond and she tries her best not to break it. As this offence is made not compoundable it make reconciliation and returning to marital home almost impossible.*

*16.4.3. If the woman victim lodges an F.I.R alleging commission of offence under Section 498A, her husband, in-laws and other relatives of the husband would be arrested immediately. If she has no independent source of income she has to return to her natal family where also support may not be forthcoming. Her claim for maintenance would be honoured more in default than in payment especially if the husband has lost his job or suspended from his job due to the arrest. Where maintenance is given, it is often a paltry sum.*

*(Thus the woman is neither here nor there. She has just fallen from the frying pan into the fire.) Even when there is a divorce, or reconciliation, the criminal case continues as Section 498A is non compoundable.*

*16.4.4. In less tolerant 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, if the husband cannot pay. She may change her mind and get into the mood to forget and forgive. The husband may realize the mistakes committed and come forward to turn 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 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.*

*16.4.5. This section, therefore, helps neither the wife nor the husband. The offence being non-bailable and non-compoundable makes an innocent person undergo stigmatization and hardship. Heartless provisions that make the offence non-compoundable operate against reconciliations. It is therefore necessary to make this offence (a) bailable and (b) compoundable to give a chance to the spouses to come together.”*

4. The Law Commission of India has also examined this issue in its 154<sup>th</sup> Report and recommended that offence punishable under Section 498-A of the IPC be made compoundable. The reasons for the same are furnished in Chapter XII at paragraph 4 on pages 154.66 and reads as follows:

*“4. Of late, various High Courts have quashed criminal proceedings in respect of non-cognizable offences because of settlement between the parties to achieve harmony and peace in the society. For instance, criminal proceedings in respect of offences under Section 406, I.P.C., relating to criminal breach of trust of dowry articles or Stridhan and offences under Section 498-A, I.P.C., relating to cruelty on woman by husband or relatives of husband were quashed in Arun Kumar Vohra v. Reetu Vohra, [1995 (1) All India Criminal Law Reporter 31], Nirlap Singh v. State of Punjab [1993 (2) All India Criminal Law Reporter 800].*

*In the Workshops convened by the Law Commission at various places, it was felt that as Section 498A is not included in the Tables appended to Section 320 of the Code, it could not be compounded by the parties. Many instances were cited where though the parties wanted to compound yet in the absence of an enabling provision, they could not do so. This has created hardship even in genuine cases. In order to meet this situation, it is recommended that section 498A be inserted in the Table under sub-section (2) where it can be compounded with the permission of the Court.”*



5. The Ministry of Home Affairs in its 111<sup>th</sup> Report on the Criminal Law (Amendment) Bill 2003 (August 2005), observed thus: *“It is desirable to provide a chance to the estranged spouses to come together and therefore it is proposed to make the offence under Section 498A IPC, a compoundable one by inserting this Section in the table under sub-section (2) of Section 320 of Cr. P.C.”* The 128<sup>th</sup> Report of the Standing Committee (2008) on the Code of Criminal Procedure (Amendment) Bill, 2006 reiterated the recommendation made in the 111<sup>th</sup> Report.

6. We are in complete agreement with the views expressed by Justice Malimath Committee on Reforms of the Criminal Justice System, the Law Commission of India, the Ministry of Home Affairs in its 111<sup>th</sup> Report on Criminal Law (Amendment) Bill 2003 and 128<sup>th</sup> Report of the Standing Committee (2008) on the Code of Criminal Procedure (Amendment) Bill, 2006, on the question of compound ability of the offence under Section 498-A of IPC which we have already extracted in the previous paragraphs.

Haryana State Law Commission would like to further add the following reasons in support of the same:

If the offence under Section 498-A of IPC is made compoundable with the permission of the Court, the interest of the wife would be adequately safeguarded as the Court would ensure that the settlement is fair and bonafide and not secured by force, undue influence and

inducement. If she is not interested in amicable settlement, she can always refuse to compound the offence. If, however, the offence is made compoundable, there would be scope for reconciliation between the husband and wife which is very desirable particularly in the interests of the children. Compounding may either lead to the wife and the husband living together or agreeing to live separately. In matrimonial matters, the possibility of the parties forgiving each other by forgetting the past and agreeing to continue to live together should be explored and efforts should be made to bring about amicable settlement. There would be another dimension to the problem if the couple have children. In such a situation, the interest of the children and their future should be safeguarded. Efforts must be made to see that the children do not suffer because of the conflicts between the father and the mother. What is in the best interest of the husband or the wife should not be the criteria that should guide the ultimate decision of the parties to live together or not. The children being the product of their marriage, their legitimate rights, expectation for love, caring and protection of both the parents until they are able to stand on their own legs have to be taken into consideration by the parties before deciding whether they should settle their disputes or not. If the offence is made compoundable, there is a possibility of the parties leaning in favour of settlement taking into consideration also the interest and future of their children. In the interest of the innocent children, law should lean in favour of promoting their interest by encouraging the husband and wife to settle their disputes and live together. We see no reason why doors for settlement of the dispute

amicably should be closed by making the offence expressly not compoundable. There need not be any fear that if the offence is made compoundable, it is likely to be misused by the husband by exercising undue pressure on the wife to settle the dispute amicably as there would be enough safeguards in this behalf if the compounding is permitted only with the permission of the Court. The Court before according permission would make due enquiries and also ascertain from the wife as to whether her consent to compound is voluntary or not. Therefore, there is no basis for the fear that the wife would be undoubtedly pressurized or induced to compromise against her will.

7. The universal declaration of human rights has declared that one of the most valuable rights of every person is to establish a family. Family as a unit is the key for peace, tranquility and progress of the society. Therefore, law should lean in favour of sustaining the institution of the marriage by encouraging all possible efforts for settlement rather than closing the doors for the same, by making such offence as compoundable.

8. It must be borne in mind that the civil law which provides for divorce enjoins a duty on the Court dealing with such cases to make every effort to bring about reconciliation among the parties and to help them to live together in the marriage. Civil law has consistently favoured resolving of such disputes amicably between the husband and wife so that they continue to live together in marriage. If the offence is made compoundable, it would also assist the parties to agree on terms which

are comfortable to both of them in the event of the parties agreeing to separate. If the offence is not compounded, there is possibility of enmity growing between the two families which is not good for themselves or for the society. It must be borne in mind that punishment under Section 498-A does not automatically entitle the parties to get their marriage dissolved though it may be one of the important factors to be taken into consideration by the Court in proceedings seeking divorce.

9. Section 320 of Cr.P.C has been recently amended increasing the number of compoundable offences which do not involve concerns of public interest. Therefore, Law should encourage compounding of offence under Section 498-A of IPC.

10. The Courts have often faced with very awkward situations. The husband and wife would have entered into the compromise either agreeing to dissolve their marriage or to settle their differences and decide to live together as husband and wife, but the law comes in the way of accepting the same as the offence is non-compoundable. Whenever the Courts faced such situations, they have not hesitated to respect the settlement and close the case notwithstanding the fact that the law does not permit compounding of such offence. Quite often, the Courts have invoked the inherent powers under Section 482 of Cr.P.C and quashed the criminal proceedings in order to bless the settlement arrived at between the parties. In the case between *G.V. Rao v/s L.H.V Prasad and others* reported in (2000) 3 SCC 693, the Supreme Court observed that there has been outburst of matrimonial disputes in recent

times on account of matrimonial skirmishes, quite often assuming serious proportions resulting in serious heinous crimes in which the elders of the family are also involved. In the result those who could have counselled and brought about reconciliation, are rendered helpless as they are arrayed as accused in criminal case. After the prosecution is launched for the offence under Section 498-A of IPC against the husband and his relatives, if the parties ultimately realize futility of their quarrel and decide to come together and live peacefully as husband and wife, if the criminal case is not terminated, it would come in the way of husband and wife patching up their differences and living together. When such awkward situations have arisen, the Courts have invoked their inherent powers under Section 482 of Cr.P.C and quashed the criminal proceedings to enable the parties to act according to the settlement that they have arrived at amicably. In the case between **Madhavrao Jiwajirao Scindia and others v/s Sambhajirao Chandrojirao Angre and others** reported in (1988) 1 SCC 692, the Court quashed the criminal proceedings for offence under Section 498-A of IPC on being satisfied that the chances of an ultimate conviction in that case are bleak and therefore, no useful purpose would be served by allowing the prosecution to continue. In the case between **B.S. Joshi v/s State of Haryana** reported in AIR 2003 SC 1386, the Supreme Court came to the conclusion that it is not proper to refuse to quash the proceedings invoking Section 482 of Cr.P.C when the wife who had filed a complaint for the offence under Section 498-A of IPC had settled the matter and agreed for a divorce, on the ground that it would not be proper to prevent

aggrieved women from settling the cause of the complaint at the earliest point of time. In this background, the Court invoked its inherent power under Section 482 of Cr.P.C and quashed the prosecution for the offence under Section 498-A. Thus the Supreme Court has consistently resolved such problems by quashing the proceedings invoking their inherent powers in order to secure the ends of justice notwithstanding the fact that offence under Section 498-A is not compoundable. The trend of judicial precedents clearly favours removal of the obstacle of the offence under Section 498-A IPC being non-compoundable by quashing the prosecution invoking the inherent powers under Section 482 of Cr.P.C.

11. There is again a hurdle that all the parties could not approach the Hon'ble High Court for quashing of proceedings under Section 498-A, of IPC because of monetary problems on in some of the cases, Hon'ble High Court is situated at a far off places and the parties could not afford such a time and money to spare for approaching the Hon'ble High Court for quashing of proceedings under Section 482 of Cr. P.C. So, it would be in the interest of society particularly in matrimonial/family relations, the offence under Section 498-A, IPC should be made compoundable, so that the parties could compound the matter at their door step i.e. in the Lower Court itself.

12. More serious offences relating to marriage for which punishment is much higher have been made compoundable. Offence under Section 494 of marrying again during the life time of the husband or wife for which punishment is 7 years and fine, is compoundable with

permission of Court. Offence of Adultery punishable under Section 497 is punishable with imprisonment of five years and fine is compoundable without permission of Court. Therefore, making the offence under Section 498-A IPC for which punishment is much less namely, 3years and fine making it non-compoundable is manifestly unjust, unfair and unreasonable.

### **RECOMMEDATIONS**

13. For the reasons stated above, the Haryana State Law Commission recommends: -

*that the table to sub-section (2) of Section 320 of Cr.P.C relating to offences which may be compounded with the permission of the Court be amended by adding the following immediately below the columns relating to Section 494 as follows:*

<i>1</i>	<i>2</i>	<i>3</i>
<i>Husband or relative of husband of a woman subjecting her to cruelty</i>	<i>498-A</i>	<i>The woman who is subjected to cruelty.</i>

\* \* \* \* \*

**Note:** Section 320 and schedule 1 of the Code relating to compounding have been enacted under Entry 2 of Concurrent List III of Schedule VII to the Constitution of India. Therefore, Parliament as well as the

State Legislature have concurrent power to enact laws to regulate Criminal Procedure. As the Parliament has already enacted the Code of Criminal Procedure, 1973, Article 254 of the Constitution comes into play. It provides that where the law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provision of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for consideration of the President and has received his assent shall prevail in that State. It is, therefore, clear that the amendments proposed in this report can be passed by the Haryana Legislature and reserved for consideration of the President. After receipt of the assent of the President, the amendments shall come into operation in the State of Haryana.

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