



Australian Government
Refugee Review Tribunal

Country Advice

India

India – IND37679 – Domestic violence –
False dowries – Male victims – State
protection – Police – Corruption

12 November 2010

1. What is the definition of domestic violence in Indian law?

Protection from domestic violence in Indian law is covered by the Protection of Women from Domestic Violence Act 2005 (PWDVA). Section 3 of the PWDVA defines domestic violence as “any act, omission or commission or conduct” that:

- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.¹

Section 498A of the Indian Penal Code (IPC) states that “[w]hoever, 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”. Under this section, ‘cruelty’ is defined as:

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.²

2. Can men, by definition, be subjected to domestic violence, and therefore claim protection through the legal system from domestic violence?

¹ Republic of India 2005, *Protection of Women from Domestic Violence Act*, All India Christian Council website, 13 September

http://indianchristians.in/news/images/resources/pdf/protection_of_women_from_domestic_violence_act_2005.pdf – Accessed 4 November 2010 – Attachment 1

² Government of India 1860, *Indian Penal Code 1860 – Section 498A*, Commonwealth Legal Information Institute http://www.commonlii.org/in/legis/num_act/ipc1860111/ – Accessed 9 November 2010 – Attachment 2

The definition of domestic violence in Indian law refers specifically to women as victims who can claim protection, and only refers to men as the perpetrators of domestic violence. Section 2 of the PWDVA states that in the definition of domestic violence, an “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent”. In addition, “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act”.³

A 2007 Madhya Pradesh High Court judgement ruled that “it is clear by the definition of respondent that for obtaining any relief under [the Domestic Violence] Act an application can be filed or a proceeding can be initiated against only adult male person and on such application or under such proceeding, aforementioned protection order can be passed. Obviously those orders will also be passed only against the adult male person”.⁴

An explanation of terms used in the definition of domestic violence outlined in Section 3 of the PWDVA uses language particular to the protection of women. For example, it refers to sexual abuse that “violates the dignity of woman”, verbal abuse “with regard to not having a child”, and economic abuse that deprives “the aggrieved person and her children” of household necessities. The PWDVA also permits “an aggrieved wife or female living in a relationship in the nature of a marriage [to] file a complaint against a relative of the husband or the male partner”.⁵

Section 498A of the Indian Penal Code similarly states that “[w]hoever, 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”.⁶ The US Department of State reports that Indian law protects women from all forms of abuse, “recognizes the right of a woman to reside in a shared household with her spouse or partner while the dispute continues, [and] provides women with the right to police assistance, legal aid, shelter, and access to medical care”.⁷

The Save the Institution of Marriage website describes the PWDVA as “yet another misguided attempt to enact legislation to grant women legal supremacy over men and to create a society where men are deprived of their rights”. The PWDVA is criticised as it “singles out men as the perpetrators of domestic violence and assumes that only women are victims”. Under this law, a male victim of domestic violence has no rights to file a

³ Republic of India 2005, *Protection of Women from Domestic Violence Act*, All India Christian Council website, 13 September

http://indianchristians.in/news/images/resources/pdf/protection_of_women_from_domestic_violence_act_2005.pdf – Accessed 4 November 2010 – Attachment 1

⁴ 498A Organisation 2008, ‘A Guide to Surviving IPC’, IPC 498A website, April, p.19

<http://ipc498a.files.wordpress.com/2008/04/a-guide-to-surviving-ipc-498a-apr-2008ci.pdf> – Accessed 9 November 2010 – Attachment 3

⁵ Republic of India 2005, *Protection of Women from Domestic Violence Act*, All India Christian Council website, 13 September

http://indianchristians.in/news/images/resources/pdf/protection_of_women_from_domestic_violence_act_2005.pdf – Accessed 4 November 2010 – Attachment 1

⁶ Government of India 1860, *Indian Penal Code 1860 – Section 498A*, Commonwealth Legal Information Institute http://www.commonlii.org/in/legis/num_act/ipc1860111/ – Accessed 9 November 2010 – Attachment 2

⁷ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – India*, 11 March, Section 6 – Attachment 4

complaint. It is also argued that the law is open to misuse by women seeking revenge or punishment on their male relatives.⁸

A fact sheet on domestic violence against men provided by the All India Men's Welfare Association (AIMWA) similarly reports that "[d]omestic violence against men, albeit a universal problem, is completely ignored by the society and the Government. There are no laws to protect men from any form of domestic abuse. On the other hand, legal protections given to women have been designed to serve as weapons for legal harassment of men".⁹

A 2008 article on the MeriNews website, which describes itself as a news platform for 'citizen journalists', states that a recent Delhi High Court judgement ruled that "[t]hough men are victims of violence, such incidences are few and far between, thus ruling out the possibility of protection for men from the parliament".¹⁰

Nevertheless, the Delhi High Court has also ruled that women can be prosecuted under the PWDVA, although only when they commit violence against other females. For example, a woman can be prosecuted for harassing the wife of a male family member. The Delhi High Court interpreted the term 'relative' in the PWDVA as including female members of a family as well as male relatives. No reference is made to the ability to prosecute women who harass their husbands or the husbands of their female relatives.¹¹

On the other hand, the Karnataka High Court has ruled that "[i]n respect of residential rights, custody rights or protection, women can file complaints against only male members under the Domestic Violence Act but not against female members like mother-in-law or sisters-in-law".¹² In 2008, "the Mulund Metropolitan Court...ruled that a mother-in-law could not be prosecuted under the Domestic Violence Act".¹³

Similarly, according to the Rakshak Foundation, under the cruelty provisions of Section 498A of the IPC "[t]he wife/daughter-in-law can file charges against all the women in the husband's family even if they are innocent but the female relatives of a husband do not have similar legal provisions for protection from a daughter-in-law or sister-in-law even in cases where she is abusive".¹⁴

⁸ 'The Domestic Violence Law of India – A Shield or a Sword?' 2006, Save the Institution of Marriage website, 10 November <http://savemarriages.wordpress.com/2006/11/10/the-domestic-violence-law-of-india-a-shield-or-a-sword/> – Accessed 4 November 2010 – Attachment 5

⁹ Dhulia, V. 2009, 'Fact sheet on domestic violence against men in India', All India Men's Welfare Association website, 26 November <http://aimwa.in/fact-sheet-on-domestic-violence-against-men-in-india> – Accessed 5 November 2010 – Attachment 6

¹⁰ 'Domestic violence against men' 2008, MeriNews website, 14 May <http://www.merineews.com/article/domestic-violence-against-men/133775.shtml> – Accessed 9 November 2010 – Attachment 7

¹¹ 'Domestic Violence Act: Women can now be prosecuted' 2010, *Indian Express*, 4 June <http://www.indianexpress.com/news/domestic-violence-act-women-can-now-be-prosecuted/629579/0> – Accessed 4 November 2010 – Attachment 8

¹² 'Mother in law is Safe from Domestic Violence Act' 2010, Supari.org website, 27 September <http://supari.org/safe/> – Accessed 9 November 2010 – Attachment 9

¹³ 'Only men may be tried under domestic violence act: court' 2008, Supari.org website, 6 November <http://supari.org/men-only/> – Accessed 9 November 2010 – Attachment 10

¹⁴ Rakshak Foundation 2010, 'The Silent Tears of Shattered Families: The Ugly Reality of Dowry Law – IPC – 498a', 498a.org website, p.5 <http://www.498a.org/contents/Publicity/498aReport.pdf> – Accessed 8 November 2010 – Attachment 11

India's Women and Child Development Ministry backed the Delhi High Court decision, stating that the "right of the victim against domestic violence can't be guided by the gender of the perpetrator". An affidavit filed by the ministry, however, emphasised the lack of recognition of male victims of domestic violence, noting that "the main purpose of society and the law maker is to provide certain protection to the women... The DV Act is a benevolent piece of legislation aimed to provide for more effective protection of rights of women under the constitution who are victims of violence of any kind within family".¹⁵

Furthermore, *The Age* reports that the Save Indian Family Foundation (SIFF) describes the PWDVA as "too loose and open in its definition of violence. The Act allows women to define virtually any domestic squabble as an act of cruelty by the husband, including name-calling. If a woman reports her husband under the Act, she can win the right to stay in the marital home while the man and his parents can be thrown out".¹⁶

3. What does country information indicate about the prevalence of domestic violence against men in India?

The AIMWA fact sheet on domestic violence against men cites an online survey conducted between April 2005 and March 2006, which "found that out of 100,000 men surveyed during that one year, 98% of men faced severe domestic violence at the hands of their wives and in-laws in the form verbal, physical, emotional, mental and financial abuse". The survey also revealed data that shows that married men have a higher rate of suicide than married women. In addition, the number of suicides of people with a living spouse is higher for men than women, while similar numbers were found between men and women in other categories, "indicating that intimate partner violence a major reason for Indian men committing suicide".¹⁷

The 2008 MeriNews article referred to in the response to question two provides similar data on suicide rates in India from the National Crime Records Bureau, which shows that "the number of suicides committed by men in the year 2005 and 2006 stands at a staggering figure of 1,50,000, as compared to 50,000 women... Of these 1,50,000, 1,08,000 have been suicides by husbands". Furthermore, it is argued that the majority of cases of domestic violence filed against men in India are false, motivated by extortion.¹⁸

A June 2006 article in *The Telegraph* reports the release on bail of a male doctor, initially accused of domestic violence against his wife, after it was shown that he was the actual victim of abuse. The Calcutta High Court judge stated that the misuse of the cruelty

¹⁵ 'Women too can be booked under Domestic Violence Act: Govt' 2010, *The Times of India*, 16 May – Attachment 12

¹⁶ Dhillon, A. 2007, 'Men say wives use India's pro-women laws to torment them', *The Age*, 24 December <http://www.theage.com.au/news/world/men-say-wives-use-indias-prowomen-laws-to-torment-them/2007/12/23/1198344884127.html> – Accessed 4 November 2010 – Attachment 13

¹⁷ Dhulia, V. 2009, 'Fact sheet on domestic violence against men in India', All India Men's Welfare Association website, 26 November <http://aimwa.in/fact-sheet-on-domestic-violence-against-men-in-india> – Accessed 5 November 2010 – Attachment 6

¹⁸ 'Domestic violence against men' 2008, MeriNews website, 14 May <http://www.merinews.com/article/domestic-violence-against-men/133775.shtml> – Accessed 9 November 2010 – Attachment 7

provisions of Section 498A of the IPC, under which accused persons can be arrested without verification of the allegations, was dangerous and should be stopped.¹⁹

4. Is there information that raises the issue of discrimination against Indian men who have brought shame upon their wives' families?

Aside from the prevalence of false dowry cases being filed against men in India, discussed in detail in the response to question five, no information was found on discrimination against men who have brought shame upon their wives' families.

There are numerous reports of honour killings in India, as outlined by *Inter Press Service* in September 2010, although these cases generally involve attacks on both males and females marrying outside their family's caste, lineage or religion.²⁰

5. What country information is available concerning false dowry cases being brought against husbands or men in India?

The Dowry Prohibition Act (DPA) 1961 bans the “giving or taking of any valuable security or property in ‘consideration of marriage’” either before, at, or any time after the marriage.²¹ Section 498A of the Indian Penal Code protects women against harassment from her husband or his relatives, “where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand”.²²

Section 498A is cognisable, non-compoundable, and non-bailable. That is, a person accused of dowry harassment can be arrested and detained without investigation, and must attend court to request bail. In addition, a complaint made under Section 498A cannot be withdrawn. A person accused under this section is presumed guilty and must prove their innocence in court, a process which generally takes approximately eight years. Furthermore, no penalty is prescribed for the misuse of Section 498A.²³

The US Department of State reports that despite the prohibition on dowries, dowry disputes continue to be a serious problem in India.²⁴ The misuse of the anti-dowry laws by women filing false complaints against their husbands has been well-documented. A report by the Rakshak Foundation identifies an “overwhelmingly large number of false dowry

¹⁹ ‘Tortured man out of wife abuse net’ 2006, *The Telegraph*, 9 June http://www.telegraphindia.com/1060609/asp/bengal/story_6329925.asp – Accessed 5 November 2010 – Attachment 14

²⁰ ‘Gov’t Hems and Haws Over ‘Honour Killings’’ 2010, *Inter Press Service*, 9 September – Attachment 15

²¹ Rakshak Foundation 2010, ‘The Silent Tears of Shattered Families: The Ugly Reality of Dowry Law – IPC – 498a’, 498a.org website, p.8 <http://www.498a.org/contents/Publicity/498aReport.pdf> – Accessed 8 November 2010 – Attachment 11; Republic of India 1961, *The Dowry Prohibition Act 1961*, Government of India Ministry of Women and Child Development website, 20 May <http://wcd.nic.in/dowryprohibitionact.htm> – Accessed 11 November 2010 – Attachment 16

²² Government of India 1860, *Indian Penal Code 1860 – Section 498A*, Commonwealth Legal Information Institute http://www.commonlii.org/in/legis/num_act/ipc1860111/ – Accessed 9 November 2010 – Attachment 2

²³ Rakshak Foundation 2010, ‘The Silent Tears of Shattered Families: The Ugly Reality of Dowry Law – IPC – 498a’, 498a.org website, p.4 <http://www.498a.org/contents/Publicity/498aReport.pdf> – Accessed 8 November 2010 – Attachment 11

²⁴ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – India*, 11 March, Section 6 – Attachment 4

cases” being filed in India.²⁵ The founder of the 498.org website, which reports on the misuse of the law, claims that the site receives at least eight to ten complaints from harassed husbands every day.²⁶ According to the National Crime Records Bureau, more than 19,000 false dowry cases were registered in India between 2004 and 2006.²⁷ The Rakshak Foundation states that due to the prevalence of these cases, “the conviction rate...is close to zero”.²⁸ *The Telegraph* reports that the high acquittal rate can be partly attributed to the long trial process of five to ten years.²⁹

An August 2010 article in *The Times of India* reports that the Supreme Court has recognised the widespread misuse of the anti-dowry law by women lodging false or inflated claims of cruelty against their husbands and in-laws. Increasing cases containing false accusations have led to the imprisonment of husbands and their families. The court has highlighted the difficulties faced in extracting the truth in such cases, and, as such, has requested that the government considers changing the laws.³⁰ The Supreme Court also described the misuse of these laws as weapons in marital disputes as ‘legal terrorism’.³¹

Uma Challa, President of the All India Forgotten Women’s Association, stated in April 2010 that Section 498A of the IPC concerning dowry and cruelty “is the most heavily misused law in the country”. Challa notes that several authorities have indicated that almost 98 percent of dowry cases are false, lodged with ulterior motives of blackmail and extortion by “vindictive wives to legally harass husbands”. Husbands and mothers-in-law are increasingly reporting false accusations of marital cruelty and dowry harassment, while many individuals have reportedly committed suicide over the humiliation and trauma associated with fighting such cases, which can take 5 to 7 years to complete. Furthermore, according to the National Human Rights Commission, the Tihar jail in New Delhi is “overflowing” with people who have been falsely accused of dowry harassment.³²

The Age also describes the prevalence of false dowry cases being brought against husbands in India, reporting that domestic violence and dowry laws are increasingly being

²⁵ Rakshak Foundation 2010, ‘The Silent Tears of Shattered Families: The Ugly Reality of Dowry Law – IPC – 498a’, 498a.org website, p.4 <http://www.498a.org/contents/Publicity/498aReport.pdf> – Accessed 8 November 2010 – Attachment 11

²⁶ Swamy, V. K., 2008, ‘The abuse of dowry law’, *The Telegraph*, 30 July, http://www.telegraphindia.com/1080730/jsp/opinion/story_9620938.jsp – Accessed 20 August 2010 – Attachment 17

²⁷ ‘Are India’s anti-dowry laws a trap for urban males?’ 2008, *Reuters*, 5 September <http://blogs.reuters.com/india/2008/09/05/are-indias-anti-dowry-laws-a-trap-for-urban-males/> – Accessed 10 November 2010 – Attachment 18

²⁸ Rakshak Foundation 2010, ‘The Silent Tears of Shattered Families: The Ugly Reality of Dowry Law – IPC – 498a’, 498a.org website, p.4 <http://www.498a.org/contents/Publicity/498aReport.pdf> – Accessed 8 November 2010 – Attachment 11

²⁹ Swamy, V. K., 2008, ‘The abuse of dowry law’, *The Telegraph*, 30 July, http://www.telegraphindia.com/1080730/jsp/opinion/story_9620938.jsp – Accessed 20 August 2010 – Attachment 17

³⁰ ‘Amend dowry law to stop its misuse, SC tells govt’ 2010, *The Times of India*, 17 August <http://timesofindia.indiatimes.com/india/Amend-dowry-law-to-stop-its-misuse-SC-tells-govt/articleshow/6321987.cms> – Accessed 5 November 2010 – Attachment 19

³¹ Dhillon, A. 2007, ‘Men say wives use India’s pro-women laws to torment them’, *The Age*, 24 December <http://www.theage.com.au/news/world/men-say-wives-use-indias-prowomen-laws-to-torment-them/2007/12/23/1198344884127.html> – Accessed 4 November 2010 – Attachment 13; Challa, U. 2010, ‘Dowry Act – A weapon of harassment’, *The Sunday Indian*, 25 April, http://www.thesundayindian.com/article.php?article_id=8811 – Accessed 20 August 2010 – Attachment 20

³² Challa, U. 2010, ‘Dowry Act – A weapon of harassment’, *The Sunday Indian*, 25 April, http://www.thesundayindian.com/article.php?article_id=8811 – Accessed 20 August 2010 – Attachment 20

abused by “unscrupulous wives...to intimidate or blackmail husbands”. The Save Indian Family Foundation’s helpline is reportedly “inundated with calls from distraught men whose wives have laid false complaints against them to get them thrown in jail”. One such victim explains that “his wife threatened to have him and his elderly mother thrown into jail by falsely accusing him of demanding more dowry after their marriage two years ago. ‘She used to blackmail me. If I didn’t do what she wanted, she threatened to go to the police and charge me under the anti-dowry laws’”.³³

A number of sources similarly identify particular cases where men have been falsely accused of dowry harassment by their wives. A 2008 article in *The Telegraph* describes the arrest of a man immediately after his wife filed a dowry harassment complaint with the police, without any further investigation. Aside from suffering public humiliation, the man also lost his job as a result of the charges.³⁴ In 2008, *Express India* reported the suicide of a man who alleged that he had been the victim of a false dowry case filed by his wife and her family. As a result of the charges, he spent four months in judicial custody.³⁵ An advocate for victims of false dowry and domestic violence cases in Jaipur, Ashwani Bohra, argues that such cases can damage the careers of young men, who also suffer from biased police investigations based on distorted facts.³⁶

Furthermore, a 2010 report in the *Saudi Gazette* indicates that even Indian men working overseas can be subject to false dowry cases. One Indian expatriate, Mohammed Mustafa, was implicated along with his family in a false dowry case filed by his brother-in-law’s wife. Mustafa states that Indian expatriates charged under Section 498A can be arrested and jailed upon return to India. Their passports can also be confiscated as a bail condition, preventing them from returning to their jobs overseas.³⁷

6. Does the information provide the motivation behind such cases: e.g. revenge, retribution, an illegal means of making money?

A 2010 report by the Rakshak Foundation states that women misuse the anti-dowry laws outlined in the Dowry Prohibition Act and Section 498A of the Indian Penal Code for a number of reasons, including to legally extort money, to obtain a divorce due to another relationship, as a bargaining tool after committing adultery, to dominate and control their husband, to deny their husband custody of their children, or to release their husband from a marriage in which they entered fraudulently.³⁸

³³ Dhillon, A. 2007, ‘Men say wives use India’s pro-women laws to torment them’, *The Age*, 24 December <http://www.theage.com.au/news/world/men-say-wives-use-indias-prowomen-laws-to-torment-them/2007/12/23/1198344884127.html> – Accessed 4 November 2010 – Attachment 13

³⁴ Swamy, V. K., 2008, ‘The abuse of dowry law’, *The Telegraph*, 30 July, http://www.telegraphindia.com/1080730/jsp/opinion/story_9620938.jsp – Accessed 20 August 2010 – Attachment 17

³⁵ ‘False dowry case? Man kills self’ 2008, *Express India*, 7 February <http://www.expressindia.com/latest-news/False-dowry-case-Man-kills-self/270124/> – Accessed 5 November 2010 – Attachment 21

³⁶ Sharma, N. K. 2009, ‘Jaipur men victim of false dowry cases’, *The Times of India*, 20 March <http://timesofindia.indiatimes.com/city/jaipur/Jaipur-men-victim-of-false-dowry-cases/articleshow/4289425.cms> – Accessed 5 November 2010 – Attachment 22

³⁷ Amtul, S. 2010, ‘Indian anti-dowry law boon or bane for Indian expats?’, *Saudi Gazette*, 2 May <http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentID=2010050271076> – Accessed 5 November 2010 – Attachment 23

³⁸ Rakshak Foundation 2010, ‘The Silent Tears of Shattered Families: The Ugly Reality of Dowry Law – IPC – 498a’, 498a.org website, pp.4-5 <http://www.498a.org/contents/Publicity/498aReport.pdf> – Accessed 8 November 2010 – Attachment 11

The report further emphasises that causes of marital disputes leading to the misuse of anti-dowry laws can include “sexual dissatisfaction, drinking or smoking by the husband, lack of privacy, financial constraints, husband’s ‘extra leaning’ towards his parents or brothers and sisters, or even wife’s own leaning towards her own family or some other man...In such cases ‘demand of dowry’ becomes an easy excuse for many women with two advantages in mind – getting rid of the man and extraction of *Moti Rakam* (hefty amount) by forcing the panicked husband and his family to agree to the terms dictated by her”.³⁹

Uma Challa, President of the All India Forgotten Women’s Association, similarly advises that “[w]omen 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”.⁴⁰

The Age reports that women are abusing India’s dowry and domestic violence laws to “intimidate or blackmail” their husbands who, in most cases, are wealthy professionals. An Indian female lawyer states that “I have known innocent, decent men put in jail by women because they want custody of the children or the house. I’ve seen men turned into mental wrecks fighting these cases because cases in India can take 20 years, ruining your life”.⁴¹

7. Does the information indicate that a man subjected to serious harm by his wife’s family would be unable to seek redress against the perpetrators of the harm he fears through the Indian police and legal system?

The UK Home Office cites a 2009 Human Rights Watch report on police in Uttar Pradesh, Himachal Pradesh and Karnataka, which found that officers treat claims of domestic violence as a ‘private matter’. In interviews with police, Human Rights Watch found that the majority of officers “said that they do not treat domestic violence as a normal criminal offense to be registered and investigated, with the perpetrators arrested or monitored. Instead, they encourage ‘compromise’ between domestic violence victims and their spouses or spouses’ families”. Although the report focuses on domestic violence against women, the police may have a similar attitude in cases involving male victims. Nevertheless, it is also reported by the UK Home Office that police officers in India have undergone domestic violence awareness training.⁴²

³⁹ Rakshak Foundation 2010, ‘The Silent Tears of Shattered Families: The Ugly Reality of Dowry Law – IPC – 498a’, 498a.org website, p.8 <http://www.498a.org/contents/Publicity/498aReport.pdf> – Accessed 8 November 2010 – Attachment 11

⁴⁰ Challa, U. 2010, ‘Dowry Act – A weapon of harassment’, *The Sunday Indian*, 25 April, http://www.thesundayindian.com/article.php?article_id=8811 – Accessed 20 August 2010 – Attachment 20

⁴¹ Dhillon, A. 2007, ‘Men say wives use India’s pro-women laws to torment them’, *The Age*, 24 December <http://www.theage.com.au/news/world/men-say-wives-use-indias-prowomen-laws-to-torment-them/2007/12/23/1198344884127.html> – Accessed 4 November 2010 – Attachment 13

⁴² UK Home Office 2010, *Country of Origin Information Report – India*, 21 September, pp.118, 120-1 – Attachment 24

As discussed in the response to question two, the Protection of Women from Domestic Violence Act only recognises women as victims. Protection for male victims is not provided for under this Act.⁴³ The Save Indian Family Foundation emphasises the assumption in Indian law that only women can be victims of domestic violence. It is reported that male victims are often “abused by everyone including the police, the courts and the civil authorities. The vast majority of cases where the wife and her aides are guilty of harassment...go unpunished due to limitations in our laws and social values”.⁴⁴

Nevertheless, a male victim of harm from his wife’s family may be able to access protection under the Indian Penal Code. In particular, Section 503 prohibits criminal intimidation, whereby a person threatens another person with injury or harm, and Section 383 prohibits intentionally putting a person in fear of injury in order to commit extortion.⁴⁵

8. Does country information indicate that a man who has had a false dowry case brought against him would be unable to seek redress against the perpetrators of the harm he fears through the Indian police and legal system?

As mentioned in the response to question five, no penalty is prescribed for the misuse of Section 498A of the IPC relating to dowry harassment, and courts are often reluctant to consider defamation and perjury cases against witnesses who make false testimonies.⁴⁶ Nonetheless, punishment for intentionally giving false evidence is outlined in Section 193 of the IPC.⁴⁷

A report by the 498A Organisation indicates that police rarely investigate claims of dowry harassment before arresting the accused. In 2007, an Indian judge stated that “In all these cases in the name of investigation, except recording statement of complainant and her few relatives, nothing is done by police. The police do not verify any circumstantial evidence nor collect any other evidence about the claims made by the complainant. No evidence about giving of dowry or resources of the complainant’s family claiming spending of huge amounts is collected by the police. This all is resulting into gross misuse of the provisions of law”.⁴⁸ Furthermore, in October 2010, it was reported that a man committed suicide

⁴³ UK Home Office 2010, *Country of Origin Information Report – India*, 21 September, p.118 – Attachment 24

⁴⁴ Save Indian Family Foundation and Pariwarik Suraksha Sanstha (undated), ‘A Comprehensive Report on the Misuse of Anti-Dowry Laws in Marital Disputes’, 498a.org website, p.2 http://www.498a.org/contents/Publicity/498a_YehKaisaInsaaf.pdf – Accessed 8 November 2010 – Attachment 25

⁴⁵ Government of India 1860, *Indian Penal Code 1860 – Sections 383, 503*, Commonwealth Legal Information Institute http://www.commonlii.org/in/legis/num_act/ipc1860111/ – Accessed 11 November 2010 – Attachment 26

⁴⁶ Rakshak Foundation 2010, ‘The Silent Tears of Shattered Families: The Ugly Reality of Dowry Law – IPC – 498a’, 498a.org website, p.4 <http://www.498a.org/contents/Publicity/498aReport.pdf> – Accessed 8 November 2010 – Attachment 11

⁴⁷ Government of India 1860, *Indian Penal Code 1860 – Section 193*, Commonwealth Legal Information Institute http://www.commonlii.org/in/legis/num_act/ipc1860111/ – Accessed 11 November 2010 – Attachment 27

⁴⁸ 498A Organisation 2008, ‘A Guide to Surviving IPC’, IPC 498A website, April, p.44 <http://ipc498a.files.wordpress.com/2008/04/a-guide-to-surviving-ipc-498a-apr-2008ci.pdf> – Accessed 9 November 2010 – Attachment 3

after allegedly being harassed and assaulted by police in a dowry case lodged by his wife.⁴⁹

Nevertheless, the Save Indian Family Foundation advises that a “victimised husband can use legal safeguards against any misuse of laws by his wife”. A husband can lodge a police complaint against his wife and her family in cases of false dowry harassment. He can also register a case in court under Section 156(3) of the Criminal Procedure Code (CrPC), which empowers a magistrate to order a police investigation in cognisable cases, such as those under Section 498A of the IPC.⁵⁰

In April 2009 a man falsely accused of dowry harassment, Nishant Saini, “filed a retaliatory complaint in court seeking the arrest of his wife... for ‘forcefully giving dowry which he never demanded’”. Saini had initially filed a complaint with the police, who refused to register his case. He then approached the court seeking action against his wife and her family under Section 156(3) of the Criminal Procedure Code, and Section 3 of the Dowry Prohibition Act, which prohibits the giving of dowry. The police officer was ordered by the magistrate to investigate the dowry claims; however, he again failed to file a report and “told the court that no case could be registered against the bride or her parents”. The Deputy Police Commissioner of south Delhi was subsequently ordered to take action against the police officer for contempt of court.⁵¹

Furthermore, the Delhi High Court set “guidelines for the Delhi Police to be followed during investigations in dowry related complaints and IPC-498A”. The court stated that if “an educated women gets married to a person despite a dowry demand, she and her family become accomplices under section 3 of DPA”.⁵² In another judgement, the Delhi High Court “ruled that lodging false dowry complaints against men amounts to cruelty and can be a ground for dissolution of marriage. The court granted divorce to a man who alleged mental cruelty by his wife”. During the court proceedings, the wife admitted filing a false dowry case against her husband.⁵³

In August 2010, the central Indian government requested that states prevent false dowry cases and the misuse of the DPA and Section 498A of the IPC. The government called for police officers and courts to treat marital disputes and dowry harassment claims “with utter care and caution”, and use mediation as a first recourse. Following failure of reconciliation efforts, charges can be filed under Section 498A. A letter issued to state chief secretaries by the Ministry of Home Affairs stated that “[a]ll state governments/UT

⁴⁹ ‘Legal Terrorism – Man committed Suicide’ 2010, Supari.org website, 26 October <http://supari.org/jogendra-gupta/> – Accessed 9 November 2010 – Attachment 28

⁵⁰ Save Indian Family Foundation and Pariwarik Suraksha Sanstha (undated), ‘A Comprehensive Report on the Misuse of Anti-Dowry Laws in Marital Disputes’, 498a.org website, pp.9-10 http://www.498a.org/contents/Publicity/498a_YehKaisaInsaaf.pdf – Accessed 8 November 2010 – Attachment 25; Republic of India 1973, *Criminal Procedure Code 1973 – Section 156*, Vakilno1.com website <http://www.vakilno1.com/bareacts/CrPc/s156.htm> – Accessed 11 November 2010 – Attachment 29

⁵¹ Pandey, V. 2009, ‘Man moves court against wife in false dowry case’, *Daily News & Analysis*, 16 April http://www.dnaindia.com/india/report_man-moves-court-against-wife-in-false-dowry-case_1248165 – Accessed 5 November 2010 – Attachment 30

⁵² Pandey, V. 2009, ‘Man moves court against wife in false dowry case’, *Daily News & Analysis*, 16 April http://www.dnaindia.com/india/report_man-moves-court-against-wife-in-false-dowry-case_1248165 – Accessed 5 November 2010 – Attachment 30

⁵³ Save Indian Family Foundation and Pariwarik Suraksha Sanstha (undated), ‘A Comprehensive Report on the Misuse of Anti-Dowry Laws in Marital Disputes’, 498a.org website, pp.9-10 http://www.498a.org/contents/Publicity/498a_YehKaisaInsaaf.pdf – Accessed 8 November 2010 – Attachment 25

administrations are requested to take effective steps...to put to rest the allegations of misuse of section 498A of IPC”.⁵⁴

A 2008 article in *The Telegraph* reports that the Ministry of Women and Child Development is “open to making changes in the dowry law to make it less prone to abuse by women”. In addition, police in Delhi and Hyderabad have reportedly instructed officers to investigate claims of dowry harassment prior to making any arrests.⁵⁵ However, the 498A Organisation’s 2008 report states that the police summon people for counselling only in some cases, and that “[t]here is absolutely no investigation done by the police to verify the accusations”.⁵⁶

9. Is there information available that people would not be able to obtain police protection if they are poor and cannot bribe police?

The 498A Organisation report states that “Section 498A [of the IPC] fosters corruption, as the very nature of it, due to its loopholes, exposes the police force to corruption”. It is argued that when a dowry case is filed, the police treat the accused according to their social standing and the officer’s perception of the accused. Furthermore, the counselling session which, in some cases, is imposed prior to making an arrest, is an opportunity for the police to make “a demand to settle the issue monetarily”. Upon arrest, the police reportedly continue to demand bribes, intimidate, and threaten the accused and, depending on the social standing of the accused, may “resort to coercive tactics” such as physical assault. The report states that the police “make an average of Rs. 10,000 for each 498A case, and that is a very low estimate”.⁵⁷

Pervasive police corruption and the prevalence of bribes to police officers are also identified by the US Department of State and a number of non-governmental organisations. According to Human Rights Watch, “[p]olice officers sometimes make arrests in retaliation for complaints of police abuse, in return for bribes, or due to political considerations or the influence of powerful local figures”. A report by Transparency International and the India Center for Media Studies identified almost one million Indian households living below the poverty line who were forced to pay bribes to police officers to obtain public services. In January 2010, Trace International reported that bribes to police officers accounted for 30 percent of all bribe demands.⁵⁸

The UK Home Office cites a 2005 Transparency International India report, which found that more than 10 percent of Indian households had reported paying bribes to police in order to receive services. The Asian Human Rights Centre reported that “[n]ot only is corruption rampant, it is done in the open. 81% of those who paid bribes reported doing so directly to police officers rather than middlemen. This suggests that bribery itself has

⁵⁴ ‘Govt asked police to stop misuse of dowry law’ 2010, *DNA Sunday*, 22 August – Attachment 31

⁵⁵ Swamy, V. K., 2008, ‘The abuse of dowry law’, *The Telegraph*, 30 July, http://www.telegraphindia.com/1080730/jsp/opinion/story_9620938.jsp – Accessed 20 August 2010 – Attachment 17

⁵⁶ 498A Organisation 2008, ‘A Guide to Surviving IPC’, IPC 498A website, April, p.31 <http://ipc498a.files.wordpress.com/2008/04/a-guide-to-surviving-ipc-498a-apr-2008ci.pdf> – Accessed 9 November 2010 – Attachment 3

⁵⁷ 498A Organisation 2008, ‘A Guide to Surviving IPC’, IPC 498A website, April, pp.31-33, 43 <http://ipc498a.files.wordpress.com/2008/04/a-guide-to-surviving-ipc-498a-apr-2008ci.pdf> – Accessed 9 November 2010 – Attachment 3

⁵⁸ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – India*, 11 March, Sections 1d, 4 – Attachment 4

become institutionalized and that some instances of it are not even perceived as deviant”.⁵⁹

Nevertheless, in 2008 the Central Information Commission launched a text-messaging campaign aimed at “encouraging the public to report government employees who sought bribes”. The Commission reportedly received approximately 200 calls and 40 emails on a daily basis from members of the public in Tami Nadu and Pondicherry. In 2006 the Indian government introduced a national anti-bribery campaign; however, it focuses on the public’s right to information from government agencies.⁶⁰

Attachments

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⁵⁹ UK Home Office 2010, *Country of Origin Information Report – India*, 21 September, p.33 – Attachment 24

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