

## **A GUIDE TO SURVIVING IPC 498A**

We should not think that we are men and women. But only that we are human beings, born to cherish and to help one another.

-Swami Ranganathananda

All the strength and succor you want is within you. Do not be afraid.

-Swami Vivekananda

The quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of criminal law.

-The Supreme Court Of India, Joginder Kumar Vs State Of U.P., 1994

The National Police Commission in its Third Report referring to the quality of arrests by the police in India mentioned power of arrest as one of the chief sources of corruption in the police.

-The Supreme Court Of India, Joginder Kumar Vs State Of U.P., 1994

No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter.

-The Supreme Court Of India, Joginder Kumar Vs State Of U.P., 1994

The accused in these cases might have been on bail - but the injustice of pendency of trial for long periods is the uncertainty and the concomitant anxiety suffered by the under-trial. The under-trial is inhibited in making future plans for his life or executing present ones due to the uncertainty which pendency of trial brings. His confidence starts to erode and at the end of the trial, even if he is honorably acquitted, the scars of the long trial remain. He feels condemned despite the acquittal.

-The Supreme Court On The Right To A Speedy Trial

Once a complaint is lodged under Sections 498A/406 IPC whether there are vague, unspecific or exaggerate allegations or there is no evidence of any physical or mental harm or injury inflicted upon woman that is likely to cause grave injury or danger to life, limb or health, it comes as an easy tool in the hands of Police and agencies like Crime Against Women Cell to hound them with the threat of arrest making them run here and there and force them to hide at their friends or relatives houses till they get anticipatory bail as the offence has been made cognizable and non-bailable. Thousands of such complaints and cases are pending and are being lodged day in and day out.

-Justice JD Kapoor, Delhi High Court

Torture is not merely physical, there may be mental torture and psychological torture calculated to create fright and submission to the demands or commands. When the threats proceed from a person in Authority and that too by a police officer the mental torture caused by it is even more grave.

-The Supreme Court Of India, Arvinder Singh Bagga v. State of U.P, 1994

Torture and police brutality are endemic in India.

-Supreme Court Lawyer And Architect Of The Indian DV Act, Indira Jaising, In A London Court, 1999  
I object to this exploitation of the law. It is wrong to misuse the law. The law is for those who need it.

-Union Minister For WCD, Renuka Chaudhary, on the Arjun Singh 498A episode

The idea should be to see how the police system works, the concerned official out there should not lodge an FIR and arrest the groom and his side before investigating. These kind of shortcuts are mainly tainting the image of the prevailing law. The way uncles, aunts are also humiliated is not fair, we agree that they should not be booked until a full-proof investigation is carried out. Instead of amending the law we should try to improve our police system and investigating procedure.

-Spokesperson Of The NCW, 14 /Jan /2007, TOI Article: "NRIs cry foul over IPC 498A, dowry law"

## INTRODUCTION

People don't know what Section 498A of the IPC is nor do they know what to do when a 498A case is registered against them. I hope to shed some light on what this law is really about, the effects it will have on you and your family and how to survive this ordeal.

This document is divided into three chapters. The first chapter gives you an overview and attempts to educate you about your rights and some applicable laws. The second chapter gives you an idea about what you can expect to face once you get caught up in the Indian criminal justice system. The third chapter details what you can do to fight this menace and also gives you some general information.

This document is best read on a computer connected to the Internet due to the numerous links to websites that are embedded in the document. However, most of the content and supporting material is summarized here.

There are two classes of Indian citizens, the privileged and the ordinary. The privileged will never get into a situation like this, as the laws don't apply to them. The Arjun Singh 498A case is a prime example. Though an accused in a criminal case, he is still a Union Minister whereas thousands of govt employees have lost their jobs or find themselves under suspension due to an unsubstantiated allegation.

This document is meant for the not so privileged, the law-abiding citizens who have no idea about what it means to get entangled in a criminal case on the basis of an allegation.

Man or woman, regardless of age or marital status, if you have an estranged 'Bahu' (daughter in law) in your family, whether she is living/lived/never lived with you; you can be jailed under Section 498A of the IPC, based on her complaint in the police station. The objective of the 'Bahu' and her parents is to subject you and your family to an ordeal designed to break your will and ensure that you give in to their demands. This law targets families who belong to the middle and upper middle classes of society and NRIs, as these segments of society are vulnerable to legalized extortion by corrupt agencies of the government.

There is no way to avoid a 498A from being filed, unless you are very well connected or somehow manage to make her realize that it is not in her long term interest to do so. However, you will win if you choose to fight. A typical case will go on for 3 to 7 years.

Be prepared to lose some of your most productive years professionally. Be prepared to lose your hair. Be prepared to spend money and lots of it. Be prepared to shed a lot of tears. Above all, be prepared to watch your parents and siblings suffer, all on account of the abuse of this idiotic law.

To fight a 498A, you will need patience, courage, knowledge about the laws, your fundamental rights, information about how others have fought their cases, a clear idea about what they want from you, and you need to develop the ability to think like a crook. Things become easier if you are well connected/develop connections with the bureaucracy. Patience and the ability to think clearly and unemotionally are the most important qualities needed.

If you are innocent, you will eventually prevail. I assure you of this.

If you apprehend being 498A'd, don't just stand there like a deer caught in the headlights. From the people you talk to and from the online portals you visit, you will learn that this is a criminal law to combat domestic violence and dowry harassment etc, etc, etc. I'll ignore this and cut to the chase.

In its present form,

### 498A IS AN EXTORTION RACKET

In legal terms, 498A is an offence, which is:

- **Cognizable:** Offences are divided into cognizable and non-cognizable. By law, the police are duty bound to register and investigate a cognizable offence. 498A is a cognizable offence.
- **Non-Bailable:** There are two kinds of offences, bailable and non-bailable. 498A is non bailable. This means that the magistrate has the power to refuse bail and remand you to judicial or police custody.
- **Non-Compoundable:** A non-compoundable case, e.g. Rape, 498A etc, cannot be withdrawn by the petitioner. The exception is in the state of Andhra Pradesh, where 498A was made compoundable.

In actual terms, 498A is an offence, which is:

- **Cognizable:** The police will register a 498A case since it is required by law, but they don't investigate but go on to arrest people because of the money to be made in bribes from both sides in a 498A case.

- **Non-Bailable:** Since bail is at the discretion of the magistrate, all sorts of games will be played to have families locked up while negotiations go on to settle the case. This may happen in cases where the magistrates are allegedly corrupt or, the public prosecutor and the cops are in cahoots.
- **Non-Compoundable:** Though 498A is non compoundable, the courts are allowing the withdrawal of the case when the parties agree to reconcile or settle case. In real terms, if you pay up, the case goes away. If you don't you'll get stuck with a criminal case that will go on for years.

The other characteristics of this extortion racket are:

- It is a law that fosters corruption and enables govt agencies like the police to violate Fundamental Rights.
- It plays a role in gender based vote bank politics.
- It denies justice to the real victims of dowry harassment.
- It exposes innocent families to the evils of the corrupt Indian criminal justice system.
- This is a law poisoning the lower judiciary by exposing it to corruption.
- Above all, this is a gamble bound to fail if the falsely accused choose to fight back.

The sooner you realize what this law is about, the faster you will be able to take the first steps to fight this extortion racket. It will take years, but you will prevail. Each case is unique. But they all have a common thread running through them. I have outlined the high level scenario, as every case is unique and has a story line of its' own.

I concede that my narrative is simplistic, but the outlines apply in most cases. This is not legal advice but more of a set of observations, opinions and suggestions. The intent is not slander or defame any person or institution, but to raise awareness about this pernicious law so that citizens can defend themselves. When taking action, please do so, after seeking the advice of your lawyer.

I am assuming that you belong to the middle/upper middle class, and there is marital discord. Your parents may have retired or are close to retiring. You may or may not be part of an extended family living under the same roof. Your spouse may have warned you that she will file a 498A against you for some reason or the other. You or your parents may have assets in some form or another such as cash, salary, property etc. The family of your spouse may be politically connected. If you have kids, you will have to deal with the additional agony of watching them being treated as pawns in this game.

I have settled on **498A Wives** as the best way to refer to women who abuse Section 498A of the IPC.

### **Motives And Instigators:**

Let's start with the motives and instigators:

- **Money:** The greatest of motivators. A 498A can lead to great terms for a fat cash settlement, or help her dad or sibling in their ventures, etc, etc.
- **Vengeance:** Hell hath no fury like a woman scorned. She will have her revenge and your family will collectively bear the brunt of it. The 498A Wives have a soft corner for your mother and your sister (s). Prepare your mom and sister(s) for special treatment. They may very well see the inside of a prison.
- **Guilt:** She's done something wrong, may have committed adultery and got caught in the act. She wants to cover it up with a dowry harassment case to garner sympathy and to provide cover for her guilt. It also puts her in a good position to negotiate a fat settlement and gain custody of kids, if kids are involved. 498A will be filed when paternity is in question. Don't count on DNA evidence, as the courts are reluctant to allow it. Indian law is still ruled by the evidence act from 1872.
- **She Is Just Not Into You:** I'm sorry to hurt your pride, but she just doesn't like you and wants to get out of the marriage. The 498A is a convenient tool to do so.
- **She Is A Control Freak:** She wants to control you in every possible way. She may also want you to not support your parents and siblings in any fashion regardless of your ability to do so. She may want you to throw your parents out of your/their house. Her goal is to gain control of all aspects of your life, including finances and to break the bonds and responsibilities that tie you to your family. Her failure to do so will result in a 498A.

- **To Marry The Boyfriend:** This is a new trend whereby she will file a 498A just to force you into settling the divorce with a chunk of cash and then go on to marry her boyfriend. They will use your cash to set up their “Chota Sa Ghar”, or their “Premiyon Ka Mahal” if the settlement is large enough.

In most cases, the members of her family are the instigators. If her mother was the instigator, you’ve possibly married into a family where the mother is a dominatrix. The woman you married thinks that you should be under her control, because her mother wears the pants in her house. She will file the 498A in retaliation for her failure to dominate you. If her father is the instigator, the motivation is your money. This is a much easier case to handle. If the case backfires, he will have a 498A-filing daughter on his hands and marrying her off the second time round will be expensive. Potential matrimonial matches are always wary of these filers of 498A cases. If this situation applies to your case, once you withstand the initial onslaught and don’t give in to the threats and extortion, they will approach you for a compromise.

498A is the perfect tool for extortion and/or to wreak vengeance on you and your family. The main ingredients that go into making it an extortion racket are:

- The involvement of the corrupt, Indian police force in a domestic dispute.
- The involvement of the overburdened and unregulated lower courts and the convoluted and lengthy Indian justice delivery system.
- The non-enforcement of penalties (Section 182) for filing frivolous cases or for perjury.
- Political/police influence from the other side. If this is a factor in your case, I kid you not; you are in for an ordeal that will require extra doses of fortitude, courage and patience to overcome.

All these factors will be used to leverage money out of you or subject you and your family to the kind of harassment that can only be defined as torture. It is no wonder that the **Supreme Court** (Sushil Kumar Sharma Vs. Union of India Writ petition(C) no.141 of 2005) has condemned 498A as “**Legal Terrorism**”, though ruling 498A constitutional.

#### **Preparations:**

A 498A case does not happen overnight, signs begin to occur much before the FIR is filed. If you are being threatened with a 498A, here are a few things you can do:

- Begin to document daily events as away to gather evidence, in the form of letters, photos, and witnesses, to prepare for the defense.
- Contact senior police officers such as the SP/DIG/IG/DGP and give them in writing that you fear that a 498A will be filed against you. Make sure that you keep copies of the letters and also ensure that they have been stamped. These contacts can save you from arbitrary arrest especially when you show the letters written to senior officers to the officers in the police station for they will realize that the matter will go to the higher ups.
- Apply for anticipatory bail. Get it for all members of your family. Though it may cost you upfront, this cost is trifling when compared to the amount you may need to spend in the event of an arrest.
- This is a criminal case; get a criminal lawyer with a good reputation, not a divorce lawyer. Integrity of the lawyer is of paramount importance. Some lawyers have been selling out their clients in 498A cases.
- Talk to people. Call SIF volunteers. Get on the Internet and research.
- Have cash handy on you at all times. Rs 50,000.00 should be a minimum.
- If you don’t get anticipatory bail, move fast and get 3 applications ready for regular bail, one for the lower court, district court and the High Court of your state. This will be your plan B. Plan B needs to be activated in the event of an arrest and bail being denied by the lower courts.
- It is very important that you talk to people who have been through this so that you don’t repeat the mistakes made by others.
- Mental Preparation. You need to start treating your spouse like a formidable adversary. Any weakness on your side in dealing with your spouse with softness will cost you. Don’t feel responsible for her. This is a necessary ingredient if you want to succeed in this fight. The moment she files a 498A against you, the balance of power shifts decisively in her favor. She is no longer a “weak” woman, an “Abala Nari”, but an avenging angel who

has various corrupt branches of the government working on her side, all wanting to extort their pound of flesh from you.

Getting an **anticipatory bail** should be a priority. This is your first and last line of defense if you want to avoid being jailed. If you are out on AB, you've pretty much won the case as you've avoided the terror that the other side would've unleashed on you, by using the muscle of the Indian criminal justice system.

You can fight a 498A effectively, if you are informed about basic terms, your basic rights and what awaits you once you get entangled in the case.

### Some Basic Terms:

These are some of the terms you will hear all the time. You need to understand these terms.

- **FIR:** is the First Information Report. It is the information recorded by the police officer on duty, given either by the aggrieved person or any other person about the commission of an alleged cognizable offence. On the basis of the F.I.R. the police commences its investigation. If the officer in charge refuses to record the information, the information may be sent in writing and by post, to the Superintendent of Police who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him. The police are required to register every cognizable offence, such as 498A, by law.
- **Investigation:** An "investigation" means search for material and facts in order to find out whether or not an offence has been committed. In criminal proceedings, once a Police Officer receives information about the commission of a cognizable offence, he is entitled to start investigation of the matter. Investigation includes all the proceedings of collection of evidence conducted by a police officer or by any person who is authorized by the Magistrate in his behalf. The following information is from the website of the [AP CID](#).
  - No male under the age of fifteen years or woman shall be required to attend at any place other than where they reside.
  - The police officer shall orally examine the person supposed to be acquainted with the facts and circumstances of the case.
  - A person is not bound to answer those questions, which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.
  - No statement made by any person to a police officer in the course of investigation in writing shall be signed by the person making it.
  - No police officer shall prevent any person from making in the course of any investigation any statement, which he may be disposed to make of his own freewill.
  - Any police officer making an investigation may, by order in writing ask any person being within the local limits of his own or adjoining police station to come to the police station for questioning and it is the duty of the person called to report on the specified time and place.
  - Such person is bound to answer truly all questions relating to the case put to him by the officer.
  - No police officer or other person shall offer or make any such inducement, threat or promise to the person being questioned.
- **Charge sheet:** When a Police officer gives a Police report under section 173 Cr.P.C. recommending prosecution, it is called a charge sheet. After questioning the accused and hearing the arguments, the magistrate frames charges on the accused for which he is tried.
- **Arrest:** A person is considered to be under arrest if he or she is confined or kept in a police station or his movements are restricted to within the precincts of the police station.
- **Anticipatory Bail:** Anticipatory bail is a direction by a court of law to release a person on bail, issued even before the person is arrested.
- **Bail:** Bail is money that is put up for the suspect to allow him or her to remain free until the completion of the case. Bail basically creates a financial incentive for a suspect to appear in court. Failure to do so results in the loss of your bail money; you'll also get a warrant for your arrest, and you can add bail jumping to your criminal charge too.

Read on to understand the laws, judgments and your rights that will help you in fighting this extortion racket.

## CHAPTER I

### The Police, The Laws And Your Rights:

Until your case ends up in the trial court, the police will be your primary adversary. This is what the SSP of Haridwar, Abhinav Kumar IPS, has to say about the Indian Police force (<http://tinyurl.com/2zev8w>):

“Let me start with the police. They remain primarily an instrument of asserting state authority against whosoever is perceived by the Leviathan to be the most immediate threat. In return for servility and acceptance of the beast’s priorities, they are permitted to prey on the weakest and most helpless sections of society. A police station in India is a sordid monument to the worst in human nature. The squalor, the pressures, the often thankless nature of police work would all be bearable if one felt that the police were genuinely enabled to enforce the law and protect the weak and helpless.”

He uses the term leviathan; I would have used the phrase, “reigning political establishment”.

I hope you now understand the nature of the Indian police force.

You will be able to deal with them if you know your fundamental rights, the laws and judgments governing the Indian police and are informed about the process of Indian criminal justice.

Legal systems all over the world have been based upon the common maxim of “ignorantia juris non excusat”, which means that ignorance of the law is no excuse. The principle, had first originated in the Code of [Justinian the great](#) centuries ago. By the time you are done reading this section, you will know more about your rights and the limitations on the powers of the police than the police themselves. When the police feign ignorance of the laws, you should be telling the police, “ignorantia juris non excusat”.

The Supreme Court Of India is the final arbiter over and interpreter, of all laws. The interpretation of laws is done through judgments. Here are some Supreme Court judgments that detail your Fundamental Rights and some other laws that will be useful in fighting your 498A.

### The Doctrine Of Binding Precedent:

The Supreme Court of India (UNION OF INDIA & ANR.Vs RAGHUBIR SINGH (DEAD) BY LRS.DATE OF JUDGMENT 16/05/1989) says that Article 142 of the Constitution declares that any order of the Supreme Court is enforceable throughout the territory of India and article 144 mandates that all civil and judicial authorities shall act in aid of the Supreme Court.

Here is an excerpt from this judgment:

“The doctrine of binding precedent has the merit promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transaction forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a Court.”

This implies that all judgments, except for those marked for exception, passed by the Supreme Court, are considered to be the law of the land and all branches of the government need to abide by them.

### The Right To Due Process:

The Constitution Of India has given its citizens certain Fundamental Rights. A combination of these basic rights constitutes the right to due process. Due process is the idea that laws and legal proceedings must be fair and in accordance with the established lawful procedure. The Constitution guarantees that no government agency can violate these basic rights of a citizen.

The Supreme Court (E.g.: Citizen for Democracy through its, president Vs. State of Assam & Others: 1996 Cr.L.J. 3247) has repeatedly warned that:

“Any violation of any of the directions issued by us by any rank of police in the country or member of the jail establishment shall be summarily punishable under the Contempt of Courts Act apart from other penal consequences under law (emphasis supplied)”.

Some of these constitutionally bestowed basic rights are:

- **Article 14. Equality before law:** The State shall not deny to any person equality before the law or the equal protection of the law within the territory of India.

- **Article 20. Protection in respect of conviction for offenses:**
  1. No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, not be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
  2. No person shall be prosecuted and punished for the same offence more than once.
  3. No person accused of any offence shall be compelled to be a witness against himself.
- **Article 21. Protection of life and personal liberty:** No person shall be deprived of his life or personal liberty except according to procedure established by law.
- **Article 22. Protection against arrest and detention in certain cases:**
  1. No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.
  2. Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of **24 hours** of such arrest excluding the time necessary for the journey from the place of arrest to court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.
- **Article 32. Remedies for enforcement of rights conferred by this Part:**
  1. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.
  2. The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

Among all these rights, the police violate the right to life and liberty consistently.

If your fundamental rights are violated, you have the right to:

- Go straight to the High Court or even the Supreme Court of India.
- The Right to approach the Supreme Court in case of a violation is a fundamental right.

This link (<http://tinyurl.com/24gmex>) provides some details on how to approach the Supreme Court Legal Services Committee. The Supreme Court Legal Services Committee provides free legal service, though conditions apply.

### **The Magna Carta, Habeas Corpus And The Powers Of The Police To Arrest A Citizen:**

A classic example of Habeas Corpus is the Supreme Court judgment *Joginder Kumar Vs. State Of U.P.* 25/04/1994. This landmark judgment of the Supreme Court defined the powers of the police to arrest a citizen. In order to truly understand this judgment and the meaning of Habeas Corpus, a short history lesson is needed. Habeas Corpus (Latin: "We command that you have the body") is the name of a legal action, or writ, through which a person can seek relief from unlawful detention of any person including himself.

The Magna Carta was originally issued in 1215 and was written because of disagreements among Pope Innocent III, King John and the English barons, about the rights of the King. Magna Carta required the king to renounce certain rights, respect certain legal procedures and accept that his will could be bound by the law. It explicitly protected certain rights of the king's subjects, whether free or fettered - most notably the right of Habeas Corpus, meaning that they had rights against unlawful imprisonment. Since then, in every civilized nation, the writ of Habeas Corpus has been an important instrument for the safeguarding the freedom of an individual against arbitrary govt action.

On 7/Jan/1994, a 28 year old young man from UP, with an LLB degree, Joginder Kumar, was detained by the Ghaziabad police for a period of 5 days. Upon repeated inquiries over a period of 4 days not producing any answers from the police, the frantic relatives, fearing custodial murder, filed a writ of Habeas Corpus to the Supreme Court under article 32 of the Constitution. By the 5<sup>th</sup> day, the SSP (4<sup>th</sup> respondent) appeared before the honorable court and submitted that Joginder Kumar was released. Not satisfied with a wishy-washy explanation to the question of why a person was detained for 5 days, the court swung into action and this landmark judgment is the result.

The former [Chief Justice Of India, M.N. Venkatachalliah](#), in this landmark judgment (JOGINDER KUMAR Vs. STATE OF U.P, 25/04/1994), defined the powers of the police to arrest a person. This judgment especially applies in the case of a cognizable offence such as 498A. He stated that:

“No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person’s complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter.

There are significant other requirements that need to be fulfilled for an arrest. These are:

1. The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims.
2. The accused is likely to abscond and evade the processes of law.
3. The accused is given to violent behavior and is likely to commit further offences unless his movements are brought under restraint.
4. The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again. It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines.

In yet another judgment dated 22.8.2004 (Criminal Misc.Writ Petition No.4861 of 2000, Ajeet Singh alias Muraha Vs. State of U.P. and others), Supreme Court Justice Markandeya Katju, while serving as a judge on the Allahabad High Court, had the following to say:

"157. Procedure for investigation –

- (1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officer not being below such rank as the State Government may, by general or special order, prescribe in this behalf to proceed, to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender."

The above provision clearly shows that it is not necessary to arrest in every case wherever a FIR of cognizable offence has been registered. No doubt investigation has to be made in every case where a cognizable offence is disclosed but in our opinion investigation does not necessarily include arrest. Often the investigation can be done without arresting a person, and this legal position becomes clear from section 157(1) of the Cr.P.C. because that provision states that the Police Officer has to investigate the case, and, if necessary, to take measures for the arrest of the offender. The use of words 'if necessary' clearly indicates that the Police Officer does not have to arrest in every case wherever FIR has been lodged and this position has been clarified in Joginder Kumar's case (supra).

In our country unfortunately whenever an FIR of a cognizable offence is lodged the police immediately goes to arrest the accused. This practice in our opinion is illegal as it is against the decision of the Supreme Court in Joginder Kumar's case, and it is also in violation of Article 21 of the Constitution as well as section 157 (1) Cr.P.C. No doubt section 157(1) Cr.P.C. gives a police officer discretion to arrest or not, but this discretion cannot be exercised arbitrarily and it must be exercised in accordance with the principles laid down in Joginder Kumar's case (supra)."

The police will say that 498A is a cognizable offence. By cognizable, it means they have to REGISTER an FIR and INVESTIGATE, not arrest the accused immediately. Think about it. If a king has been stripped of his power to arrest without cause 800 years ago, how can the police in a democracy claim to have that power?

Keeping these judgments in mind, I am interested in seeing how a grandmother or a grandfather, young nieces and nephews, married and unmarried sisters and parents, without a prior criminal record, can fall into any of the categories described by Justice M.N. Venkatachalliah.

To summarize, the police have discretionary powers to arrest, but they need to justify the arrest and Supreme Court and High Courts judgments have established that some investigation must be done before an arrest is made and even then, only if necessary.

The Late Justice AN Mulla (A former Judge of the Allahabad HC and author of the Mulla Committee on prison reform) said:

“I say it with all sense of responsibility that there is not a single lawless group in the whole country whose record of crime is anywhere near the record of that organized unit which is known as the Indian Police Force.”

Keeping the words of Justice AN Mulla in mind, and knowing that the police have been granted wide discretionary powers to arrest, be prepared for an arrest by the police.

If they do arrest you, they need to respect your rights and treat you professionally and with courtesy. Later on, you may seek redress in the form of contempt of court, writ mandamus, Habeas Corpus, compensation for illegal detention, etc.

Read on to understand what other safeguards the hon'ble courts of the country have set in place to protect you from the excesses of the police.

### **Procedures To Be Followed Upon The Arrest Of A Person:**

The Supreme Court (D.K. Basu Vs State of W.B: (1997) 1 SCC 426) directed all state agencies to follow these procedures upon arresting a person. This judgment is a landmark judgment and is sometimes referred to as the Miranda Rights Of India. It defines the rights of detainees and the procedures the police need to follow upon affecting an arrest. This judgment came into being due to the custodial deaths happening all over the country (<http://tinyurl.com/2b8rvb>). This judgment holds any officer at any rank to be in contempt of court if these directions are disobeyed. Here are the directions from the Supreme Court:

“It is, therefore appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
2. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made it shall also be countersigned by the arrestee and shall contain the time and date of arrest.
3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest. The person arrested must be made aware as soon as he is out under arrest or is detained.

5. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
6. The arrestee should, where he so requests, to be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
7. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.
8. Copies of all the documents including the memo of arrest, referred to above should be sent to the Illaqa Magistrate for his record.
9. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
10. A police control room should be provided at all district and State head quarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

Failure to comply with the requirements herein above mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter."

### The Right To Bail:

In the context of 498A, I am quoting Sushil Kumar Singh in providing an explanation of bail:

"Section 437 of the Code provides for release on bail in cases of non-bailable offences (498A). In such cases, bail is not a matter of right. Court has sufficient discretion to deny or to grant bail. First Schedule to the Code provides the list of bailable and non-bailable offences."

Here is an excerpt of a Supreme Court judgment (Krishna Iyer, J. in Narasimhulu and Others v Public Prosecutor, High Court of A.P., AIR 1978 SUPREME COURT 429.) that provides guidelines for releasing a person on bail:

"Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognized under Article 21 that the crucial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorize impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of 'procedure established by law'. The last four words of Article 21 are the life of that human right."

The Supreme Court also said that (Moti Ram and Others v State of M.P. (AIR 1978 SC 1594)):

"Fixing an excessively high amount of bond, keeping in consideration the facts and circumstances of the case and economic condition of the accused, violates the constitutional norms."

Here is an explanation of Anticipatory bail given by the Supreme Court (Gurbaksh Singh Sibbia v The State of Punjab AIR 1980 SUPREME COURT 1632). A person can apply for AB even after the FIR is filed, but not if the person has been arrested. Read the excerpts to get an understanding of AB:

"35. Section 438 (1) of the Code lays down a condition, which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has 'reason to believe' that he may be arrested for a non-bailable offence. The use of the expression 'reason to believe' shows that the belief that the applicant may be so arrested must be founded on reasonable grounds.

Thirdly, the filing of a First Information Report is not a condition precedent to the exercise of the power under S. 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an FIR is not yet file.

Fourthly, anticipatory bail can be granted even after in FIR is filed, so long as the applicant has not been arrested.

After arrest, the accused must seek his remedy under S. 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested.”

### **The Definition Of An Arrest:**

The Supreme Court (Kultej Singh Vs. Circle Inspector of Police & others: 1992 Cr.L.J 1173 (Karnataka)) has defined an arrest as:

“From a reading of sub-section (1) of Section 46 of the Cr.P.C. If a person is confined or kept in the police station or his movements are restricted within the precincts of a police station, it would undoubtedly be a case of arrest. In the instant case, the FIR specifically states that Hardeep Singh was kept in the police station from the morning of 27.09.1990. Section 57 of the Cr.P.C provides that no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not in the absence of a special order of a Magistrate under Section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s court. Thus respondents 1 and 2 were required to produce Hardeep Singh within 24 hrs from the time he was kept in the police station as Savanur.”

### **The Right Against Self Incrimination:**

This right is conferred by article 20 of The Constitution and this right was upheld by the Supreme Court (Nandini Satpathy V P.L Dani Air 1978 Sc 1025). The background of this story is that Nandini Satpathy - former Chief Minister of Orissa - against whom a case had been registered under the Prevention of Corruption Act, was asked to appear before the Deputy Superintendent of Police [Vigilance] for questioning. The police wanted to interrogate her by giving her a string of questions in writing. She refused to answer the questionnaire, on the grounds that it was a violation of her fundamental right against self-incrimination. The police insisted that she must answer their questions and booked her under Section 179 of the Indian Penal Code, 1860, which prescribes punishment for refusing to answer any question asked by a public servant authorized to ask that question.

The issue before the Supreme Court was whether Nandini Satpathy had a right to silence and whether people can refuse to answer questions during investigation that would point towards their guilt. The Supreme Court issued the following directives in the resulting judgments:

1. An accused person cannot be coerced or influenced into giving a statement pointing to her/his guilt.
2. The accused person must be informed of her/his right to remain silent and also of the right against self incrimination.
3. The person being interrogated has the right to have a lawyer by her/his side if she/he so wishes.
4. An accused person must be informed of the right to consult a lawyer at the time of questioning, irrespective of the fact whether s/he is under arrest or in detention.
5. Women should not be summoned to the police station for questioning in breach of Section 160 (1) CrPC. Children below 15 and women should not be summoned to the police station or to any other place by an investigating officer. They should only be questioned at their place of residence.

An essential element of a fair trial is that the accused cannot be forced to give evidence against her/himself. Forcing suspects to sign statements admitting their guilt violates the constitutional guarantee against self-incrimination and breaches provisions of the Code of Criminal Procedure, 1973 [CrPC]. It is also inadmissible as evidence in a court of law. In addition, causing hurt to get a confession is punishable by imprisonment up to seven years. (I Pulled all this from a document hosted here <http://tinyurl.com/3y95my>).

### **The Right To Be Treated With Dignity By The police:**

The Supreme Court (Ravikant Patil Vs. The State of Maharashtra & Others: 1991:

“A Division Bench of the High Court of Bombay having exonerated the Superintendent of Police and other respondents, held that respondent 4 Shri Prakash Chavan, Inspector of Police, who is one of the appellants before us, has subjected the under trial prisoner to an unwarranted humiliation and indignity which cannot be done to any citizen of Indian and accordingly directed him to pay the compensation and he was also censured as mentioned above”.

It is implicit in this judgment that the police do not have the right to subject any citizen to indignities or humiliation such as unwarranted handcuffing, verbal or physical abuse, or indulge in intimidation as life, liberty of a citizen quarantined under article 2, includes life with dignity and liberty with dignity. Liberty must mean freedom from humiliation and indignities at the hands of the authorities to whom the custody of a person may pass temporarily or otherwise under the law of the land.

### **The Police Cannot Torture You Or Resort To 3<sup>rd</sup> Degree Methods:**

The Supreme Court (Bhagwan Singh vs State of Punjab: 1999 Cr.L.J. 2201( *Bombay*)) has held that:

“It may be a legitimate right of any Officer to interrogate or arrest any suspect on some credible material but such an arrest must be in accordance with the law and the interrogation does not mean inflicting injuries. It should be in its true sense purposeful, namely, to make the investigation effective. Torturing a person and using third degree methods are of medieval nature and they are barbaric and contrary to law. The Police would be accomplishing behind their closed doors precisely what the demands of our legal order forbid. They must adopt some scientific methods than resorting to physical torture. If the custodians of law themselves indulge in committing crimes then no member of the society is safe and secure. If Police Officers who have to provide security and protection to the citizens indulge in such methods they are creating a sense of insecurity in the minds of the citizens. It is more heinous than a game-keeper becoming a poacher.”

### **The Definition Of Torture And Compensation For Illegal Detention:**

How does the Supreme Court define torture? Is it limited to physical violence only?

What if a citizen was detained illegally to extract a confession by torture?

Is there no provision to compensate the person for the illegal detention?

The answers to these questions lie in several judgments of the Supreme Court, a couple of which are sufficient to answer these questions.

Here is a definition of torture by the Supreme Court (D.K. BASU,ASHOK K. JOHRI Vs.STATE OF WEST BENGAL,STATE OF U.P: DATE:18/12/1996 BENCH: KULDIP SINGH, A.S. ANAND):

“Torture” has not been defined in Constitution or in other penal laws. ‘Torture’ of a human being by another human being is essentially an instrument to impose the will of the ‘strong’ over the ‘weak’ by suffering. The word torture today has become synonymous with the darker side of human civilization. Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is not way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself.” Adriana P. Bartow “No violation of any one of the human rights has been the subject of so many Conventions and Declarations as ‘torture’- all aiming at total banning of it in all forms, but inspite of the commitments made to eliminate torture, the fact remains that torture is more widespread not that ever before, “Custodial torture” is a naked violation of human dignity and degradation with destroys, to a very large extent, the individual personality.”

In yet another judgment, the Supreme Court (Arvinder Singh Bagga v. State of U.P, 1994) expanded the definition of torture to include mental torture and also provided a provision for compensation in the event of illegal detention and torture. This judgment takes on greater relevance in light of the murder of Rizwanur Rehman as this case involved the elopement of a young woman, Nidhi. The police detained Nidhi and applied the usual formula of attempting to get Nidhi to implicate her husband in a case of abduction and forcible marriage. In a response to a writ of Habeas Corpus, the Supreme Court passed this judgment, even after Nidhi was released and brought this sorry episode to a logical conclusion.

The Supreme Court described the way the police treated Nidhi, the victim, in the following manner:

“On a careful consideration of all the evidence on record in the light of the surrounding circumstances I accept the claim of Nidhi that she was tortured by the police officers on 24th, 25th and 26th July, 1993. On 24.7.93 she was pressurised by J.C. Upadhyaya S.H.O., Sukhpal Singh, S.S.I, and Narendrapal Singh S.I. and threatened and commanded to implicate her husband and his family in a case of abduction and forcible marriage thereafter. She was threatened with physical violence to her husband and to herself in case of her default and when she refused her family members were brought in to pressurise her into implicating them. On 25th July 1993 she was jolted out of sleep by Sukhpal Singh S.S.I. and made to remain standing for a long time. She was abused and jostled and threatened by J.C. Upadhyay, Sukhpal Singh and Narendrapal Singh with injury to her body if she did not write down the dictated note. Sukhpal Singh SSI even assaulted her on her leg with Danda and poked it in her stomach. She did not yield to the pressure.”

The Hon'ble judge then went on to define torture in the following manner:

“Torture is not merely physical, there may be mental torture and psychological torture calculated to create fright and submission to the demands or commands. When the threats proceed from a person in Authority and that too by a police officer the mental torture caused by it is even more grave”

From this judgment, it is very clear that each time our families are threatened by the police with the old threat of “Pay up, or else...”, or “confess or else...” they are subjecting them to torture.

The court then went on to pass the following orders:

- The State of Uttar Pradesh will take immediate steps to launch prosecution against all the police officers involved in this sordid affair.
- The State shall pay a compensation of Rs. 10,000 to Nidhi, Rs. 10,000 to Charanjit Singh Bagga and Rs. 5,000 to each of the other persons who were illegally detained and humiliated for no fault of theirs. Time for making payment will be three months from the date of this judgment. Upon such payment it will be open to the State to recover personally the amount of compensation from the concerned police officers.

This judgment makes it clear that a citizen can claim compensation for illegal detention and torture by the police. The icing on the cake will be if the state recovers the compensation amount from the salary of the guilty officers.

#### **When to File For Compensation For Illegal Detention:**

Justice Shiv Narain Dhingra (Delhi HC, WP (Crl.) No. 988/2007, 10.10.2007) says:

“When a criminal case is registered against somebody, the Court cannot jump to conclusion, merely on the basis of FIR, whether the case was a false case or a truthful case and whether the petitioner has been malafidely arrested or has been rightly arrested. FIR is merely first information given to the police so as to bring machinery of criminal law in motion. FIR is not considered as an encyclopedia of facts. It is only after challan is filed, the Court can form an opinion, at the time of framing of charge, whether a case was made out against the accused worth trial or not. If the evidence collected by the prosecution does not disclose commission of any offence, by the accused even prima facie, the Court has to discharge the accused. The accused at that stage can lay a claim that the case was got registered against him malafidely and police also acted malafidely. Even after charge is framed, on conclusion of trial if a Court finds that no case was made out against the accused and he was falsely implicated, the Court is bound to acquit the accused and that will be the second stage whether accused gets a right to claim that he was falsely implicated. The present Writ Petition filed by the petitioner has not been filed after discharge of the petitioner or after acquittal of the petitioner. In a Writ Petition this Court cannot declare if the arrest of the petitioner in a criminal case was illegal, unless on the face of it, it appears that it was a case where no arrest could have been made.”

#### **Inordinate Delay In Police Investigation May Lead To A Quashed FIR:**

If you are amongst those against whom an FIR has been filed but no further action has been taken, then you may be able to get the FIR quashed as per this judgment. Here is the ruling by the SC (State of Andhra Pradesh vs P.V. Pavithran, 1990), which held that:

“A lethargic and lackadaisical manner of investigation over a prolonged period makes an accused in a criminal proceeding to live every moment under extreme emotional and mental stress and strain and to remain always

under a fear psychosis. Therefore, it is imperative that if investigation of a criminal proceeding staggers on with tardy pace due to the indolence and inefficiency of the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused, the Court as the protector of the right and personal liberty of the citizen will step in and resort to the drastic remedy of quashing further proceedings in such investigation. However, there are offences of grave magnitude, which would necessarily involve considerable time for unearthing the crimes and bringing the culprits to book. Therefore, it is not possible to formulate inflexible guidelines or rigid principles of uniform application for speedy investigation or to stipulate any arbitrary period of limitation within which investigation in a criminal case should be completed.”

#### **The Police Do Not Have A Right To Handcuff You:**

The Supreme Court (Citizen for Democracy through its, president Vs. State of Assam & Others: 1996 Cr.L.J. 3247) has held that:

“As a rule it shall be the rule that handcuffs or other fetters shall not be forced on a prisoner – convicted or under –trial – while transporting or in transit from one jail to another or from jail to Court and back. The police and the jail authorities on their own, shall have no authority without obtaining order from Magistrate to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and track. The relevant considerations for putting a prisoner in fetters are the character antecedents and propensities of the prisoner. The peculiar and special characteristics of each individual prisoner have to be taken into consideration. The nature or length of sentence or the number of convictions or the gruesome character of the crime the prisoner is alleged to have committed are not by themselves relevant considerations.”

#### **Arrest And Custody Of Women:**

The Supreme Court (Christian Community Welfare Council of India and another Vs. Government of Maharashtra & another: 1995 Cr.L.J. 4223 (Bombay)) has laid out procedure for the arrest and detention of women. Here is an excerpt:

“The State Government should issue instructions immediately in unequivocal and unambiguous terms to all concerned that no female person shall be detained or arrested without the presence of lady constable and in no case, after sun set and before sun-rise”

#### **The Police Cannot Detain A Citizen For The Purpose Of An Inquiry/Interrogation:**

The Bombay High Court (Ashak Hussain Allah Detha, alias Siddique and another Vs. Assistant Collector of Customs (P) Bombay and another: 1999 Cr.L.J. 2201(Bombay)) has held that:

“The investigating Officers may lawfully detain a suspect for an offence. But detention in custody for interrogation is not authorized by law. The investigating Officers may detain for an offence only. Any restraint on a person’s liberty except for an offence is illegal. There is no authority in the investigating Officers to detain a person for the purpose of interrogation or helping them in the enquiry.”

#### **The Police Must Register A Cognizable Offence:**

The Supreme Court (Lallan Chaudhary & Ors Vs State of Bihar & Anr. DATE: 12/10/2006. BENCH: H.K.SEMA & P.K.BALASUBRAMANYAN) has held that the police must register a cognizable complaint. If you wondered why the case was registered, though the complaint was flimsy, this is the reason. But the law also says that upon investigation, if the complaint was proved to be false, then the officer can recommend criminal proceedings under section 182. Here is the excerpt:

“Section 154 of the Code thus casts a statutory duty upon police officer to register the case, as disclosed in the complaint, and then to proceed with the investigation. The mandate of Section 154 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no other option except to register the case on the basis of such information.”

The Delhi HC (Priya Gupta Vs The State. Date Of Decision: 20.04.2007. Hon'ble Justice Reva Khetrpal) has held that:

“It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

The Hon'ble judge also goes on to say that:

"Indisputably, if as a result of the investigation, if it was subsequently found that the allegations made in the complaint could not be substantiated or were false, the investigating agency would have been at liberty to recommend initiation of criminal proceedings against the complainant in terms of Section 182 I.P.C."

#### **An FIR Is A Public Document:**

In quite a few cases, the police do not provide a copy of the FIR to the accused. The reality is that an FIR is a public document. Here is an excerpt from a judgment from the Gujarat High Court (JAYANTIBHAI LALUBHAI PATEL VS THE STATE OF GUJARAT, JUDGE: B C PATEL, DATE: 13/03/19):

“Whenever FIR is registered against the accused, a copy of it is forwarded to the Court under provisions of the Code; thus it becomes a public document. Considering (1) the provisions of Art. 21 of the Constitution of India, (2) First Information Report is a public document in view of S. 74 of the Evidence Act; (3) Accused gets right as allegations are made against him under provisions of S. 76 of the Indian Evidence Act, and (4) FIR is a document to which S. 162 of the Code does not apply and is of considerable value as on that basis investigation commenced and that is the first version of the prosecution, as and when application is made by accused for a certified copy of the complaint, the Court to which it is forwarded should give certified copy of the FIR, if the application and legal fees thereof have been tendered for the same in the Court of law.”

#### **The Right To A Speedy Trial:**

The Supreme Court has ruled that the Right to a speedy trial is a Fundamental Right. Here are two cases where they have done so:

- Hussainara Khatoon & Ors.Vs.Home Secretary, State Of Bihar Date Of Judgment12/02/1979
- Raj Deo Sharma Vs.The State Of Bihar Date Of Judgment: 08/10/1998

The Supreme Court has held that:

“The accused in these cases might have been on bail - but the injustice of pendency of trial for long periods is the uncertainty and the concomitant anxiety suffered by the under-trial. The under-trial is inhibited in making future plans for his life or executing present ones due to the uncertainty which pendency of trial brings. His confidence starts to erode and at the end of the trial, even if he is honorably acquitted, the scars of the long trial remain. He feels condemned despite the acquittal.”

#### **The Right To Information:**

The Supreme Court has held that the right to information is a fundamental right. In its judgment (People's Union for Civil Liberties and another Vs Union of India and others. Justice S. B. Sinha. Date:06 Jan 2004) the Supreme Court has said that:

“Right of information is a fundamental right under Article 19(1)(a) of the Constitution. The State under Clause (2) of Article 19 of the Constitution, however, is entitled to impose reasonable restrictions inter alia in the interest of the State.”

The govt authority needs to provide information within 48Hrs if rights under life and liberty are affected. An RTI is a useful weapon if the police are holding members of your family.

#### **The Right To Be Given A Reason:**

The Supreme Court (Daya Ram Vs Raghunath & Ors DATE: 15/06/2007) has stated that the failure to give reasons is denial of justice. This is a recent judgment and is very useful if the magistrate is denying your bail application and no reason is given. Here is an excerpt:

“Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function

or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

### **The Right To Residence Under The Domestic Violence Act:**

This judgment of the Supreme Court (Batra Vs Batra. Mar 2007) is of paramount importance to your parents. This judgment defines the right to shared household and defines the meaning of a shared household. If your parents or siblings own the house you live in, then, the right of your spouse to reside in the same house, under the DV Act, does not apply. I am including this judgment here, as the right to residence under the DV is being used for extortion. The economy is booming and in every city, real estate prices are going up. By claiming residence under the DV Act, an attempt is made to grab or lock down the property to extort money. Think about it; the parents are facing a 498A and to top it, the accuser files a right to residence to harass them and worse, the protection officer grants it because he doesn't know the rules. How long will these senior citizens and retirees last in these circumstances, if they are denied the right to live in peace in their own homes and their rightfully earned property is being denied to them?

The Supreme Court in this judgment says:

"19. Learned Counsel for the respondent Smt. Taruna Batra stated that the definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. He contended that since admittedly the respondent had lived in the property in question in the past, hence the said property is her shared household We cannot agree with this submission.

20. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grand parents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces etc. If the interpretation canvassed by the learned Counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in the all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.. It is well settled that any interpretation which leads to absurdity should not be accepted.

21. Learned Counsel for the respondent Smt. Taruna Batra has relied upon Section 19(1)(f) of the Act and claimed that she should be given an alternative accommodation. In our opinion, the claim for alternative accommodation can only be made against the husband and not against the husband's in-laws or other relatives.

22. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a 'shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member, it is the exclusive property of appellant No. 2, mother of Amit Batra. Hence it cannot be called a 'shared household'."

### **DV Act Can Only Be Filed Against An Adult Male Person:**

In yet another blessing in the form of a High Court judgment, the MP High Court (Miscellaneous Criminal Case No.1266/07), ruled that:

"Thus, it is clear by the definition of respondent that for obtaining any relief under this 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."

I am just thankful that the tyranny of the DV Act will be limited to the adult male members of the family and the women will be spared.

### **Compliance With The Dowry Prohibition Act:**

If you find that the 498A wife has charged that you had huge sums of money at the time of marriage in the FIR, and you are wondering how to prove your innocence, then thank god for the judgments of Justice Shiv Narain Dhingra. Justice Dhingra, (Smt Neera Singh Vs State Of Delhi, Delhi HC, Feb 2007) had given a landmark judgment that deals with this issue:

“Now-a-days, exorbitant claims are made about the amount spent on marriage and other ceremonies and on dowry and gifts. In some cases claim is made of spending crores of rupees on dowry without disclosing the source of income and how funds flowed. I consider time has come that courts should insist upon disclosing source of such funds and verification of income from tax returns and police should insist upon the compliance of the Rules under Dowry Prohibition Act and should not entertain any complaint, if the rules have not been complied with.

If huge cash amounts are alleged to be given at the time of marriage which are not accounted anywhere, such cash transactions should be brought to the notice of the Income Tax Department by the Court so that source of income is verified and the person is brought to law. It is only because the Courts are not insisting upon compliance with the relevant provisions of law while entertaining such complaints and action is taken merely on the statement of the complainant, without any verification that a large number of false complaints are pouring in.”

Justice Dhingra also ruled in this judgment that taunting, though a despicable act by itself, does not fall under the purview of mental cruelty under 498A.

### **CAW Cell Proceedings Are Voluntary:**

The Delhi HC in two consecutive ruling has held that the proceedings of the CAW cells are voluntary. They have no power to enforce an appearance. I quote:

“It is made clear that CAW Cell has no authority to secure the presence of any person either by coercion or by threat. CAW Cell is only a conciliatory body where efforts are made for conciliation with the free will of the parties. If any person is not willing to go to CAW Cell, he cannot be compelled. It is also directed that CAW Cell, in future, instead of issuing summons to the parties shall send request letters asking them to appear for the purpose of conciliation and not for the purpose of investigation. The petitioner is at liberty not to appear before CAW Cell. No threat or coercive steps shall be taken by the CAW Cell.”

The link to the judgment/order is given here: (<http://tinyurl.com/2gf5wo>)

### **Issues Of Jurisdiction:**

Lately, the lovely 498A wives have been filing cases against their hubbies and in-laws in a different city just to harass them. Not to worry. The Supreme Court, (Y.Abraham Ajith and Ors. Vs. Inspector of Police, Chennai 2004), ruled on the issue of jurisdiction. This was a 498A case:

“Under Section 177 of the Code of Criminal procedure, 1973 an offence shall ordinarily be enquired into and tried by a court within whose local jurisdiction offence was committed. In the decision reported as 2004 (2) CC Cases (SC) 289, Y.Abraham Ajith and Ors. Vs. Inspector of Police, Chennai, it was held that where no part of cause of action arose within the jurisdiction of a concerned court, proceedings before the Magistrate had to be quashed.”

I quote the above explanation from a judgment of Justice Pradeep Nandrajog of the Delhi High Court. I have enclosed a link to the judgment/order (<http://tinyurl.com/yvudc7>).

Please read the contents of this link <http://tinyurl.com/2mbsxz> to clearly understand issues of jurisdiction.

### **NBW's And Arrest Warrants:**

It is a matter of debate that there has been a decline in the quality of the magistrates in the lower courts. The most recent illustration of this occurred when the Delhi HC sent a magistrate back to the Judicial Academy for an act of stupidity. There has also been a tendency to issue Non Bailable Warrants without adequate justification, a practice the Supreme Court (Appeal (crl.) 1392 of 2007, 09/10/2007) decried. Here is an excerpt of that ruling:

**“When non-bailable warrants should be issued:**

Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or
- the police authorities are unable to find the person to serve him with a summons; or
- it is considered that the person could harm someone if not placed into custody immediately.

As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.

In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable- warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court s proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.

The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

The Court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant.”

**The Definition Of Mental Cruelty:**

In most cases, a 498A complaint will consist of a few lines alleging a single or maybe a few instances of mental cruelty. That’s all it takes for the police to literally run after the accused to arrest them. The reality is that a stray act does not constitute mental cruelty. There are many judgments dealing with mental cruelty. In the most recent case, while pronouncing a judgment on divorce on the grounds of cruelty, the Supreme Court (Appeal (civil) 151 of 2004 Samar Ghosh Vs Jaya Ghosh DATE OF JUDGMENT: 26/03/2007) has said that the behavior patterns so mentioned must persist over a period of time to warrant the conclusion that the marriage between the parties had irretrievably broken down and qualified to be the ground for divorce.:

“Mental cruelty is a state of mind; the feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of the other for a long time might constitute mental cruelty. So would a sustained course of abusive and humiliating treatment calculated to torture or render miserable the life of the spouse, and sustained unjustifiable conduct and behavior of one spouse actually affecting physical and mental health of the other”.

In another judgment, the Supreme Court (GVN Kameswara Rao Vs. G. Jabilli- (2002) 2 SCC 296) taking note of its earlier decision in the case of (1994) 1 SCC 337, V. Bhagat Vs. D. Bhagat, observed that: -

"Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that

case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."

The reason I added this judgment here is that the police swing into action based on a complaint detailing a single act of mental cruelty and calling it dowry harassment. People go to the Supreme Court to get divorced on the basis of mental cruelty. It is tough to get divorced, even if there is a sustained pattern of abuse by either spouse. Why do the police act with such haste to arrest people on complaints based on allegations, which are flimsy at best?

#### **A Direction On Granting Bail:**

The following direction was given by Chief Justice of Jharkhand Mr V. K. Gupta on 11.07.2001 against a case "Birendra Jha v/s The State of Jharkhand , A.B.A No. 4654 of 2001".

"On the question of grant of bail to accused I may also observe that there is another category of offences where normally bail should be granted and refusal should be an exception. I'm talking of offences under Section 498A I.P.C. and Section 4 of the Dowry Provision Act, 1961.... In those cases where it is manifestly clear, on a plain reading of the police report or the contents of the private complaint that neither any grievous injury has been inflicted upon the alleged victim nor is there any other clear proof of the alleged victim having physically suffered and that there is also no serious allegation supported with positive proof of dowry having been demanded in the immediate proximity of the marriage or thereabout, the bail should be granted. It happens quite often that in ordinary matrimonial disputes or where there is some discordant note in a matrimonial relationship, the woman as an alleged victim sets in motion 498A."

**NOTE:** I have been unable to find the complete judgment. If anyone has it, please inform a SIF volunteer.

**An Explanation Of Writ Mandamus:** This is a judgment from 1970. The case is S.M. Sharma Vs. Bipen Kumar Tiwari. Here is an excerpt:

"It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal power"

#### **Officers With Authority To Investigate 498A Cases:**

It is a myth that officers of the rank of DSP are the only ones empowered to investigate 498A cases. Here is a ruling from the Chennai High Court (Crl.OP.No. 32871 of 2004 And CRL.M.P.NO.10462 OF 2004 AND 544 OF 2005) which states who can investigate a 498A case:

"The further contention of the learned counsel for the petitioners that the investigation should have been done only by the Deputy Superintendent of Police who is defined as police officer under the Rules and not by the Inspector of Police, cannot be countenanced. The Rule is a subordinate legislation and the provisions under the Criminal Procedure Code give full power on the Inspector of Police to proceed with the matter and apart from that, the definition for Police officer would clearly reveal as submitted by the learned Public Prosecutor that nowhere there is a prohibition that below the rank of Deputy Superintendent of Police shall not exercise the power to investigate the case and hence the contention of the learned counsel for the petitioners in this regard cannot be countenanced."

#### **Some Relevant Sections Of the Indian Penal Code (IPC):**

##### **An Explanation Of Section 182 IPC (6 Months+ Jail For Filing False Complaints):**

Here is an explanation of Section 182 from the Punjab And Haryana High Court (Harbhajan Singh Bajwa Vs Senior Superintendent of Police, Patiala Criminal Misc. No. 9841-M of 2000, dated April 18, 2000):

"Whenever any information is given to the authorities and when the said authority found that the averments made in the complaint were false, it is for the said authority to initiate action under Section 182 I.P.C. The offence under Section 182 I.P.C. is punishable with imprisonment for a period of six months or with fine or with both. When the authorities themselves found in the years 1996 and 1997

after due investigation that the averments made by Ashwani Kumar in his complaint were false, it is for them to initiate proceedings immediately or within the prescribed period as provided under Section 468 Code of Criminal Procedure. The acceptance of the cancellation report by the Court is immaterial. It does not save the limitation under Section 468 Cr.P.C., which prescribes the period of one year for taking cognizance if offence is punishable, with imprisonment for a term not exceeding one year. Since the offence under Section 182 I.P.C. is punishable with imprisonment for a period of six months only, the authority should file the complaint under Section 182 I.P.C. within one year from the date when that authority found that the allegations made in the complaint were false. Since more than four years lapsed from the date when the authority found the allegations were false, no question of filing any complaint under Section 182 I.P.C. at this belated stage arises.”

Section 182 is the offence of giving false information to a public servant. This section is important as it allows the acquitted to press for criminal charges against the filers of the false 498A. Section 182 is a non-cognizable offence. To pursue a case under Section 182, an application under section 155 of CrPC needs to be made to a magistrate, whose consent is required to investigate non-cognizable offences. The best example of Section 182 is in the Rahul Mahajan case when the police went after the doctors of Apollo hospital for faking the toxicology report.

There are a couple of other sections of the IPC, sections 211 and 358 of IPC. Section 211 provides punishment for making a wrong complaint and false charges of offence. Similarly Section 358 of Cr. P.C. deals with cases of groundless arrests.

### **Section 330 Of The IPC (Protection From Extortion Of Confession By The Police):**

Section 330 of the IPC is meant to protect you from the police who extract a confession by extra legal means.

This is what the section says:

Voluntarily causing hurt to extort confession, or to compel restoration of property:

Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information, which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations:

- (a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.
- (b) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.
- (c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.
- (d) A, a Zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

### **The Process Of Indian Criminal Justice:**

This is the outline of the process of criminal justice. I got this from [CHRI](#). It has the following steps:

1. Registration of the First Information Report (FIR). The process of criminal justice is initiated with the registration of the First Information Report. The FIR is a written document prepared by the police when they receive information about the commission of a cognizable offence. You have the right to see the FIR.
2. The police officer proceeds to the scene of crime and investigates the facts of the case. Police investigation mainly includes:
  - Examination of the scene of crime.
  - Examination of witnesses and suspects.
  - Recording of statements.

- Conducting searches.
  - Seizing property.
  - Collecting fingerprint, footprint and other scientific evidence.
  - Consulting records and making entries in the prescribed records, like case diary, daily diary, station diary etc.
  - Making arrests and detentions (Justifications need to be provided).
  - Interrogation of the accused
3. After completion of investigation, the officer in charge of the police station sends a report to the area magistrate. The report sent by the investigating officer is in the form of a charge sheet, if there is sufficient evidence to prosecute the accused. If sufficient evidence is not available, such a report is called the final report.
  4. On receiving the charge sheet, the court takes cognizance and initiates the trial of the case.
  5. The charges are framed. The procedure requires the prosecution to prove the charges against the accused beyond a shadow of doubt. The accused is given a full opportunity to defend himself.
  6. If the trial ends in conviction, the court may award any of the following punishments:
    - Fine.
    - Forfeiture of property.
    - Simple imprisonment.
    - Rigorous imprisonment.
    - Imprisonment for life.
    - Death Sentence.
    - The Death Penalty

#### **Code Of Conduct For The Police In India:**

The guidelines for the code of conduct for the police were issued by the Ministry of Home Affairs and communicated to Chief Secretaries of all States/ Union Territories and Heads of Central Police Organizations on July 4, 1985. I sourced this from CHRI. A guideline is a statement or other indication of policy or procedure by which to determine a course of action, in other words, this is binding policy.

1. The police must bear faithful allegiance to the Constitution of India and respect and uphold the rights of the citizens as guaranteed by it.
2. The police should not question the propriety or necessity of any law duly enacted. They should enforce the law firmly and impartially, without fear or favor, malice or vindictiveness.
3. The police should recognize and respect the limitations of their powers and functions. They should not usurp or even seem to usurp the functions of the judiciary and sit in judgment on cases to avenge individuals and punish the guilty.
4. In securing the observance of law or in maintaining order, the police should as far as practicable, use the methods of persuasion, advice and warning. When the application of force becomes inevitable, only the irreducible minimum of force required in the circumstances should be used.
5. The prime duty of the police is to prevent crime and disorder and the police must recognize that the test of their efficiency is the absence of both and not the visible evidence of police action in dealing with them.
6. The police must recognize that they are members of the public, with the only difference that in the interest of the society and on its behalf they are employed to give full time attention to duties, which are normally incumbent on every citizen to perform.
7. The police should realize that the efficient performance of their duties would be dependent on the extent of ready cooperation that they receive from the public. This, in turn, will depend on their ability to secure public approval of their conduct and actions and to earn and retain public respect and confidence.
8. The police should always keep the welfare of the people in mind and be sympathetic and considerate towards them. They should always be ready to offer individual service and friendship and render necessary assistance to all without regard to their wealth and / or social standing.

9. The police should always place duty before self, should maintain calm in the face of danger, scorn or ridicule and should be ready to sacrifice their lives in protecting those of others.
10. The police should always be courteous and well mannered; they should be dependable and impartial; they should possess dignity and courage; and should cultivate character and the trust of the people. \* Issued by the Ministry of Home Affairs and communicated to Chief Secretaries of all States/ Union Territories and Heads of Central Police Organizations on July 4, 1985 48
11. Integrity of the highest order is the fundamental basis of the prestige of the police. Recognizing this, the police must keep their private lives scrupulously clean, develop self-restraint and be truthful and honest in thought and deed, in both personal and official life, so that the public may regard them as exemplary citizens.
12. The police should recognize that their full utility to the State is best ensured only by maintaining a high standard of discipline, faithful performance of duties in accordance with law and implicit obedience to the lawful directions of commanding ranks and absolute loyalty to the force and by keeping themselves in the state of constant training and preparedness.
13. As members of a secular, democratic state, the police should strive continually to rise above personal prejudices and promote harmony and the spirit of common brotherhood amongst all the people of India, transcending religious, linguistic or sectional diversities and to renounce practices derogatory to the dignity of women and disadvantaged sections of society.

### **The Handcuffed School Teacher:**

The Mumbai Mirror, in an article posted on Friday, June 22, 2007, ran the story of Baban Dhus, 52, a teacher in a BMC school. The Kalachowki police arrested him on December 3, 2006 after his daughter-in-law Vaishali filed a complaint that her husband and his family were harassing her for dowry. Vaishali's husband Nivrutti, her mother-in-law Alka, Nivrutti's elder brother Dyaneshwar and his wife Jyoti were also held. All five were given bail two days later on the condition that they would return the Sthreedhan that Vaishali had brought along at the time of her marriage in May 2006. When the police took Dhus to his Sewri home so that he could hand over the Sthreedhan, they parked the police vehicle well outside his colony. Dhus was handcuffed and paraded all the way to his house, and the other four were made to walk behind him, hands folded. You can read the full story here (<http://tinyurl.com/2u9pbp>).

Here is a question for you. Which one of the Supreme Court judgments did the police violate? Do you think this would have happened if this teacher knew his Fundamental Rights?

I believe that you need to know your rights, as you may under go the same persecution as this school teacher. The educational qualifications for a constable are 10th or 12th pass, depending upon the state, and The Fifth Pay Commission classified a constable as a semi-skilled laborer for the purpose of pay fixation. Can you expect a semi skilled laborer to know and respect your rights?

Can you imagine Union Minister Arjun Singh or members of his family handcuffed? Why not? Aren't we all equal in the eyes of the law?

I wish to thank the AP CID. They had an excellent [website](http://www.cidap.gov.in/) (<http://www.cidap.gov.in/>) containing stats, judgments and other information. I've sourced many of my judgments from their website (<http://tinyurl.com/3ab4rf>), and I wanted to acknowledge that. Unfortunately, the website is no longer functioning. Anyway, I discovered that they sourced all this from a document from the BPRD called "[Path Breaking Judgements on Police](http://tinyurl.com/29m6ms)". Here is the link: <http://tinyurl.com/29m6ms>.

It amazes me that with so many laws, judgments and guidelines in place, the police continue to conduct themselves as goons for hire than a force to enforce and uphold the law. It also amazes me that this information was never widely disseminated by the central or state governments.

Keep a copy of this document with you for reference. This may turn out to be the shield you need when facing the Indian police.

Read on to understand what your interaction with the Indian police may be like. I detailed the experience of my family, as this is what we had to endure.

# A GUIDE TO SURVIVING IPC 498A

## CHAPTER II

Please understand this; 498A is a criminal case. This is very different from a civil case such as divorce. In a 498A case, though you are entitled to due process, your rights are tossed aside and you are presumed to be guilty until proven innocent. You will be treated on par with criminals. I am not joking about this.

In reality, there doesn't appear to be a set process the police follow when a 498A is filed. How the police treat you is dependent upon your social standing and the perception the police have of you. This is the unvarnished truth. In some cases, the police appear and summon people for counseling. If the counseling fails, the next round leads to arrest. There is absolutely no investigation done by the police to verify the accusations. In some cases, there is a lag between the counseling session and the arrest. In other cases, the arrest is made first. A young man was pulled out of a class and was arrested and held in remand for several weeks. What kind of a process was followed here? In the event that you are called in for counseling and are asked to return to the police station in a few days or weeks, you may want to file for anticipatory bail immediately. You can file for anticipatory bail after the FIR is filed, but before you are arrested. Once you are arrested, you are the mercy of the magistrate. If you get anticipatory bail, the game is over for the cops and the in laws.

The next section describes the common scenario where the police approach you in the name of counseling, which is invariably a demand to settle the issue monetarily, failing which this leads to arrest when you are unable to obtain bail.

### **Your First Meeting With The Police:**

In most cases, the police will arrive at your door in the early hours of the morning while all of you are half asleep, and will attempt to take you, and members of your family to the police station. Friday mornings or the day before public/court holidays are another favorite time the police choose to get you. They do this, as they can prevent you from being presented before a magistrate, depriving you of a chance to apply for bail on the same day. This will allow them to hold you in custody over the weekend and really tighten the screws. Be assured, the police have been bribed to their gills and this is the norm, rather than the exception. The police personnel who show up at the door will give you their word and tell you that they will lay down their life to protect you and that you must accompany them. Believe them at your peril. They will say they need to arrest you if you don't accompany them. They will do what ever it takes to get you to the police station.

Depending upon your social standing, the police may also resort to coercive tactics, which means you may very well be beaten up.

Be calm when dealing with the police. Do not show any fear or confusion. They are the Indian Police and not the Gestapo or the KGB. They have no right to hurt you or assault you in anyway. You are protected by the constitution. At that time and place, this may sound unrealistic. Trust me, you are protected and the police know it. All the same, they will intimidate and threaten you. If they assault you, make sure that you record the proof of it on a cell phone camera, at the least. The police can be nailed for abusing their power. Do your best to maintain the upper hand. Don't think in terms of human rights. They mean nothing. You need to think and speak in terms of Fundamental Rights. Your Fundamental Rights are guaranteed.

It takes confidence, courage, and quick wittedness to confound the police. You can do it.

The policemen who show up at your door will be underlings. Wait till you meet the Police Inspector (SHO). The main drama will take place in the Station House. I am checking up on the code of criminal procedures that need to be followed for cognizable offenses like 498A. I will post them when I have more information.

Initially, the police will say that they want to take you in for counseling to the police station. If you get to the police station, you will possibly find your spouse and her relatives there. Invariably, the demands will be along the lines of reconciliation or they will ask you to pay up a sum of money to settle the issue. The police will attempt to mediate a settlement. If this fails, you will be taken into custody along with most or all the members of your family who have been accused. If all your efforts to stand off an arrest fail, then you will need to go to the police station. It may be in the city or in the districts.

Regardless, the arrestee has rights that the police must respect. The Supreme Court has issued a set of directives (Shri Dilip K. Basu Etc. Ashok K. Johari Vs. State Of West Bengal & Ors Date Of Judgment: 01/08/1997) that need to be

followed and obeyed by the arresting officer, failing which the arresting officer can be held accountable through departmental action and contempt of court.

#### **Preparing For Arrest Or Detention:**

- Take some snacks and water with you.
- Take your cell phone and its charger. Make sure you have the number of your lawyer stored. If it is a prepaid phone, ensure that it is charged to the max extent. Pay off the cops to do these minor things.
- Mosquito repellent. The police station will be infested with them ☺.
- Keep some cash with you, but don't take any valuables like jewellery. Don't have anything flashy on you.
- If any member of your family is on medication, ensure that you take these along.
- Pack a set of clothes handy to be delivered fast if needed. Pack for 5 days if approached on a Friday.
- Take a book. The Bhagavad-Gita, Bible or the Koran, or anything else of interest to keep you engaged. You will grow close to your god in these trying times.
- Take a notepad and pen to list your feelings with timelines. It will come in useful if you need to recollect the facts in a courtroom or several years down the line when you get to nail her under Section 182 of IPC.
- Inform a trusted friend.
- Get the name of the police inspector and his contact info such as cell, phone # in the station.
- Get the police station address and phone numbers that you are being taken to. It is your right to know.
- Get the names of the SP, ASP and any other superior officer and their contact info.
- Try to get a copy of the FIR. You have the right to know what you are being charged with.
- Keep a copy of this document with you. It will be a useful reference, especially with regard to your rights.

It is in your interest to ensure that you do not accompany the police to the station, at least, not without being escorted by your lawyer.

#### **Dealing With The Shock:**

The first thing you need to deal with is the shock you will experience when the police show up at your door. Sheer terror and disbelief is what you will feel. This is accompanied by a sense of betrayal. The woman, with whom you've shared your most intimate moments, the mother of your children (if kids are involved), has filed false criminal charges against you and members of your family. The shock is followed by panic and a sense of helplessness. You will feel rage when your parents/siblings are arrested. There will be a scramble to call relations and friends and find a lawyer to arrange for bail. There will be an absolute sense of bewilderment. There may also be temptation to run out of the back door. That's fine. Hold on. Don't give in to panic. Think.

When the police arrive at your doorstep, there will be a tendency to look to them for help, information or reassurance. Don't look to the police for this. They are not there to comfort or reassure you. Try to remain calm. Delay. Sit in the potty to compose yourself. Call your neighbors as witnesses. Don't worry about your prestige; you will gain greater respect if you are able to avoid getting caught up in this extortion racket. There has been an instance when the neighbors convinced the police leave without an arrest. Video record the situation to the extent possible. Use a cell phone or a digital camera. Try to record as much as the conversation with the police as possible. Keep your wits about you. Be fearless. Stick to your ground and resist accompanying the police to the station on a Friday. Use the judgments of the Supreme Court. Do your best to ensure that you go to the station on a Monday and accompanied by your lawyers. Do not go there alone. Try to fight on your turf, which is your home and neighborhood. Don't surrender this advantage easily. How they deal with you will depend upon your social and economic status. Procedures and policies get thrown to the wind in the frenzy to get you to the station. If their intimidation gets out of hand, gently tell them that you are a citizen and that you have rights and any excesses on their side will be reported to the Home Secretary of the state or the DGP. The Home Secretary is an IAS officer and their ultimate boss, above the DGP. Once they understand that you will stand and fight, they may treat you with respect and with a little luck, you may avoid arrest. If for any reason, you are unable to dissuade the police from forcing you to accompany them, then accompany them with the copies of the Supreme Court judgments. You may be able to nail them on charges of contempt of court later. Tell them that it is no idle threat. The police are under intense pressure to get you and as many members of your family to the station as they can get their hands on. They've been paid to do so and there is

more money to be made from arresting all of you. Try your best to keep members of your family out of it. They will use your family as a pawn in this game. Do your best to protect the women and children. They have arrested over 300 children in 498A cases. Breast-feeding mothers, children, grandparents have been arrested. The statistics from the Home Ministry speak for themselves.

If are you compelled to accompany them, do so, but, first, activate plan B. Get your lawyer to prepare to file a bail applications in the lower courts and the High Courts.

### **The FIR:**

In most cases, the FIRs are shoddy pieces of after thought or well-crafted documents that can never withstand an impartial and thorough scrutiny. They are crafted by either a lawyer or by the police. Here is what the Allahabad HC (Allahabad HC, Writ Petition MB 528 of 2005, 10/01/2006) had to say:

“At the very outset, it may be observed that the eleven long pages First Information Report which had resulted in launch of criminal proceedings against the petitioners is so well-worded and neatly woven that it does not leave any room for doubt that it is a well-deliberated draft by a legal expert.”

### **Jurisdiction:**

On some cases, the complainant alleges that the harassment took place in on place and files the complaint in another district/city or state. They get away with this, as there is no enforcement of penalties for perjury, nor is there sufficient oversight. I was also led to believe that a woman could file a case in any part of India against you. If she does that, the harassment factor goes up by 10 times. Imagine running around the courts and police stations in an unfamiliar place. Imagine the intimidation you can be subjected to if you need to fight on a turf of her choosing. Think about the expenses involved in travel and lodging and having to lug your lawyers around with you.

Fortunately, if this happens, this becomes the grounds for a quash petition. Please read the document on “Understanding Issues Of Jurisdiction”. There is a judgment by the Supreme Court (CASE NO: Appeal (crl.) 904 of 2004. Y. Abraham Ajith & Ors vs Inspector of Police, Chennai & Anr. 17/08/2004), which may help in your situation as it deals with issues of jurisdiction. Here is a link (<http://tinyurl.com/yo2bh7>) to the judgment and a bail order explaining this. Please read the contents of this link <http://tinyurl.com/2mbsxz> to clearly understand issues of jurisdiction. And yes, a woman can file a complaint anywhere, but the case needs to be transferred and tried in the jurisdiction of the court where the alleged offence took place. Finally, read this judgment from the Allahabad/Lucknow High Court to understand how it all ties together (<http://tinyurl.com/2obp74>).

### **The Police Station:**

Let me give you an idea of what you are walking into. The conditions vary, as there is no uniformity or a set standard. The Indian Police force was structured to enforce the will of the white sahibs on the natives. The only change, the police force has undergone in these years of independence, is in the color of the sahibs. The white ones are long gone; the brown ones have taken over.

The Police Station will be an intimidating place and walking into it will be a humiliating experience. It was designed to humiliate you. It may be dimly lit, dirty, with riff raff floating in and out and staring at you. You will see a dark room whose door is made of steel bars. Yes! That may very well be your abode for the weekend. You and the members of your family will be seated on an old bench or made to stand if it gets too crowded. You will be made to wait for hours. Lechers will stare at your sister and the younger women of your family. As men, we are biologically and culturally built, to be the providers and protectors of our families. This will be one of the most difficult aspects of this situation to bear. Bear it in silence. Don't lose your temper and don't do anything to jeopardize your situation by shooting your mouth off. Think as calmly as possible. Your day will come.

The Police know that all of you are accused in a 498A case. They make an average of Rs.10,000 for each 498A case, and that is a very low estimate. They will also get a cut if their mediation leads to a settlement. In the station, do not expect any kind of a courtesy from the police. No one will listen to you. Your lawyer, if you have one with you, may or may not be effective. You can forget about bathroom facilities. The women will be the hardest hit. You may be fed some food from the roadside food stall. I just hope that you won't end up feeling sick from eating it. Expect to spend around 8 hrs in the station. Rely on the snacks and water you have, or have more delivered through a friend.

### **The Police Constables:**

The constables will be your first point of contact with the police. They are ill treated, uneducated people who will behave in a manner that suits your social status. They work in inhumane conditions and have no idea about the finer points of living in a civilized society. Some of them will be genuinely nice to you. You need to respect their uniform and be polite to them, but you may need to educate them about your rights, as they would have no clue. In most cases, the constables are just looking to make a fast buck. Don't waste your money on them if they demand bribes from you. They have absolutely no power to do anything for you, except to try to fleece you.

### **The Police Inspector:**

After making you wait for a sufficient amount of time to show his importance, his Highness, the Inspector of Police will condescend to talk to you. He is the investigating officer and the person with the most power to settle your case. He will be your primary adversary. He is the intimidator, the goon and the bounty hunter rolled into one. He will be rude and uncouth. If you have connections you may want to get connected and try to get some pressure applied on him. He may ask you a few questions. Actually, these won't be questions, but more along the lines of asking you to own up to taking dowry. If the Inspector perceives that you are easy pickings, he will try to arrest you after performing a semblance of counseling. Try to appear tough. Put on an act. Show him the SC judgments and assert your rights. While this is going, your lawyer should be making every attempt to get all of you out on bail. You can get anticipatory bail until you are arrested.

There will be some attempts made at "counseling". There is a chance that all of you may end up being let go at this point since 'counseling' has been done. Consider this to be round one. Round two will definitely lead to arrest. Even at this stage, you may be able to apply for anticipatory bail. Check with your lawyer and do your best to get it. Again, do your best to get your parents out. This is your fight. Try your best to protect your family.

If you fail at any stage or keep facing set backs, do not give into despondency or indulge in self-recrimination. Focus on the task at hand. All this will play out and eventually things will be back on an even keel. Just keep your spirits up and shake off any despondency due to setbacks.

The police will play many tricks on you. One favorite, is the good cop, bad cop routine. Here is a comment from a visitor to my blog:

"What makes you think the cops in Chennai are different from their counterparts elsewhere? The more innocent you are, the more bribe you will have to pay. If you are from a respectable family and earning well, then it's a goldmine for them. The first thing they want to verify is your social status. This gives them a good idea of how much they can swindle from you. They have rather sophisticated ways of swindling. They play the good cop/bad cop drama quite well. They will make sure you make several rounds the police station in the name of inquiry/counseling...etc and tacitly ask you to pay them something during every visit. Did you know in most cases the cops demand around Rs. 5000 to register a false dowry complaint case? The cops are well aware that the case is false and they see a great opportunity to fleece both sides for money. In most cases it is the husband's side that has to shell out huge sums of money."

The more the harassment the Inspector subjects you to, the better the chances are that if you complain against him, he will be nailed.

### **The Road To Arrest And Remand:**

In the event of an arrest, the chances are that you've been picked up on a Friday and since you've been made to wait all day, it will almost be evening and the courts will be closing so you won't have time to apply for bail. You and the men of your family will be held over the weekend, but the women of your family may be allowed to leave. If you try to reason with the police, they will brush you aside and threaten to subject you to third degree treatment. The Inspector will do his best not to arrest all of you. Here is the reason why. If he arrests all of you, then there won't be any one to negotiate a settlement with. He needs one of you outside. Try not to be intimidated. He is a law enforcement officer. Not a goon. Remind him of it. Be firm. You may be quaking inside, but try not to show it. All of you will feel exposed and helpless and to a certain extent, you will feel violated. This is normal. You are in the hands of the Indian Criminal Justice System, which was designed by the 'Firangis' to intimidate the coolies. Don't dwell on the moment and instead look into the future when you will be free. It may be the same day or in a few weeks. But free, you will be. Stay STRONG!!

I also suggest that you DON'T bribe the police to settle the case. Approximately 58,000 498A cases filed each year. More than a lakh of people get arrested. This scene is being played out across the country. So act differently. Surprise them. If the police want to hold you, let them. It is a jail not a concentration camp. Make all kinds of demands. Throw the law book at them. You may feel rage but never resort to foul language or give in to your anger. Be non-cooperative in a non-confrontational manner and by asserting your rights. Try to be calm and friendly and earn their respect with your behavior. Alleviate the stress by joking with your parents and siblings. Try to stay in command of the situation. Above all, remember that you have rights. And heck, this is just a police station and you can confound the police with your arguments.

The police may make a halfhearted attempt to investigate, if that. They are just trying to make a fast buck. So play on their greed, but don't give them anything. Keep your cool. Be polite and arrange to have a lawyer with you ASAP! You have the right to remain silent. Exercise this right. Be stubborn. Don't admit to anything if you are being intimidated. SMILE! Exchange pleasantries and keep your mouth shut. Do what ever it takes to hold firm.

This is the time when the first demands for cash will be put forward. It will be substantial depending upon the assets you have. I expect that it will be twice what you can afford. The police will attempt to "settle" the case right there in the police station. The police will bargain and attempt to mediate. Be assured, the police will get a cut. Just don't give in. Don't admit to anything. You have the right to remain silent to avoid self-incrimination. The less you say the better. Whether you are guilty or not is for the trial court to decide. Expect the police to subject you and your family to severe intimidation. All of you may be subjected to verbal abuse and threats of physical injury. There have been cases of people, women too, being strip-searched. My sister was threatened with being charged with all sorts of crimes, unless she revealed my whereabouts. She stood firm and bore the brunt of the harassment for me. Expect your mother and sister(s) to be addressed as sluts and whores. Bear it with patience. Do not lose your temper. Your day will come.

The police will subject you to this pattern of threats and intimidation to terrorize you into submission. This is a racket where the police, the spouse, the in laws, and the lawyers get a cut. The other side will spend money and they are expecting to recoup their investment from you. In most cases it's the police who hire themselves out to do the intimidation and mediation and they will be harsh in their dealings. The system is designed to break your will and terrify you and your family into submission. You are promised that if you cough up the cash, they will let your family go and the case will be withdrawn. It will then follow up with the threat that if you do not agree to these terms and the case ends up in the courts, your family will need to trudge to the court for years to come. Threats will be made about jail time if the conviction takes place.

IPC498A is non-compoundable. That means it cannot be withdrawn except in the High Court of the state of Andhra Pradesh.

The courts allow the withdrawal of a 498A case with a noble outlook, but their leniency is leading to the propagation of this extortion racket. Here is an explanation by Justice Shiv Narain Dhingra of the Delhi HC (Rajinder Kumar Sharma and Another v State and Another CASE NO: Crl.M.C. 1216-17 of 2006):

"The Courts have been allowing quashing of proceedings under Section 498A /406 Indian Penal Code, 1860 because in such cases the FIRs are result of matrimonial discord and more often the effort of the Court is that either the parties should settle for a compromise for living together or they should part their company peacefully, so that, there is peace and amity in the society. In cases resulting from matrimonial discord, the Court is not dealing with criminal but dealing with broken marriages and broken homes where resort is more often made to Sections 498A/406 Indian Penal Code, 1860 to teach lessons to the family of husband or to take revenge"

### **Bail And Deception:**

If you haven't gotten bail and are arrested, the cops will play all sorts of tricks to keep you locked up. There is a chance that all of you may be remanded if produced in the court. This is a part I am not clear about No definitive procedures anywhere. They can legally hold you in jail for 60+ days without trial. But they won't do so. They need to justify why they are depriving a citizen of their right to freedom. But expect to be held for a period of more than two weeks at the least. People have been held for longer periods.

To know the whereabouts of the person arrested, you can file an RTI. They police are required to give an answer within 48 hours. The basics of filing an RTI are given here, along with some templates (<http://tinyurl.com/32pa5p>).

You will be given excuses and told that they will hold you and/or members of your family for 24 hours and then yet another 24 hours and then another 24 hours and the next thing you know, they will be transferred to a jail. A jail is different from the lock up in the police station. Once in the jail, the cell phone will be taken away. Communications will be cut. Before you know it a week passes. And it will be the start of the weekend. There is nothing more you can do except wait for Monday. A lot of bribing goes on in the background to prevent you from getting out on bail. This is because, being incarcerated is a horrible experience and the longer a person is held, the more the pressure to pay up and get them out. Legally, the police can hold a person in jail for 60 days, but they still need to justify it. I believe that a good criminal lawyer knows the tricks of this trade and will be the most helpful in securing bail.

Once you are taken to a jail, you will be hitting a brick wall. The courts are the only place you can go to get bail and get out. It is almost guaranteed that you will be taken into custody on a day before a court holiday. It will be an agonizing experience as for the first time; you will realize what you have gotten yourself into. There is nothing anyone can do. If you are in jail, your family will bear the brunt of it. If you are outside and your family is inside, both of you will bear the brunt of this. This is a horrifying experience and rage will take over. There are many who are going through this as you read this document. Stay calm. Your day will come. In the meantime, THINK!

Here are some tricks that are being played:

- I've heard that in some cases the public prosecutors (PP) are hand in glove with the police. The way the system works is you and/or members of your family are held in a jail. The PP won't show up for the bail petition hearing or he will oppose it. The next thing he will do is he will have the date of hearing postponed as far into the future as possible. During this time, all of you will be in a state of panic. So the police will come out with a formula. It will involve money. Miraculously, the PP will no longer be an obstacle. Be prepared for this.
- There is another trick that is being played. The husband, conventionally referred to as A1, is arrested and some magistrates do not grant bail unless the parents and the accused siblings surrender.
- I have heard that some magistrates defer orders till the next day and then deny bail at the end of the next day. Before you know it, a week goes by. Watch out for this. I do not know of any remedies except to file in the High Court once the bail petition is dismissed. But that is a battle for your lawyer to fight and this is what plan B entails. Bail from the High Court may take 10 days.

I hope your lawyer is executing plan B and filing away bail applications in all the courts. The procedures differ by state.

### **The Process Of Remand And Life In Remand:**

A quick digression to describe the process of remand and life in remand. Once you are arrested, the police may produce you before a magistrate, or send you to the district/city jail. I haven't been able to establish a clear procedure. If they produce you before a magistrate, he will be sitting inside a huge hall on an elevated platform. On both his sides, on the ground level will be a steno and the bench clerk. The steno records the proceedings and the bench clerk is the guy who will schedule appearances before the magistrate. You will need to wait outside the court till your case is called. It may take all day. A bailiff will announce the name of your lawyer and your name at the door of the courthouse in a loud voice. The bailiff will be the guy who will be in white with a red sash. There is a break in the court proceedings every 45mins and these proceedings will go on all day. If your lawyer bribes the bench clerk, your case may come up for hearing faster.

Once you appear before the magistrate he may or may not look at you. He has the power to grant or refuse bail, as this is a non-bailable offence. If he decides to grant you bail, you may complete the formalities and get on with your life. Don't forget to thank your gods.

In the event he decides to remand you, he will make an entry in the appropriate diary and the court constable will take you into custody and escort you out. No one will be handcuffed or chained. The Supreme Court is very clear about this and by now you should know which judgment I am referring to. The court constable will process you by making notes of the birthmarks on your body and enter a description of you in his register. He will be rude and he will offer you unsolicited advice and jibes. When I mean you, I mean any and all members of your family who were unfortunately remanded. There are two kinds of remands judicial and police. You will be remanded to judicial custody and this means you will be taken to a district or city jail. The difference between jailed and remanded is that

people are jailed after they have been found guilty. This automatically implies that you are innocent. Don't feel humiliated or dejected. There is nothing to be ashamed off. You are just being put through the process of the Indian criminal justice system. It is a process and needs to run its course. It will run its course.

The men and the women will be separated and taken to different jails. Once you reach the jail in a police van or jeep, you will be meeting the jailor, his staff and the judicial warden. They will take away all your belongings, including medicines, Mangalsutra and cell phones for safekeeping. They will account for everything that they have taken from you. You will be given a plate, a mug, a mat and a thin sheet. You will be assigned an Identification number. You will be taken to large halls where 20 or so inmates will be held. These halls will have bars and no windows. Life will be difficult for those of you who have to endure this in the winter or summer.

Among the inmates will be people charged with all sorts of crimes. In the women's wing, most of the inmates will be charged with 498A, bigamy and prostitution. Life in remand will be regimented and there will be a routine that is followed. Tea will be given early in the morning. Lunch will be served late in the morning and dinner in the early evening. You will form a Q and stand in line with the rest to get your meals. Depending upon the region, meals consist of rice OR roti, not both, dal, a vegetarian dish and a glass of buttermilk. You will be served non-vegetarian meals on Sundays. Lactating and pregnant women will be given bread in the mornings. After dinner, all of you will be herded into these large halls and locked up. Initially, you may not be able to eat much, if at all, but you will get used to the routine.

The bathrooms will have no latches and there will be no running water. You will need to carry water to the bathrooms.

You will be assigned specific duties. A doctor visits you every day in the morning to ensure that you are doing well. In the event of any serious illness, the jail staff will immediately shift the sick person to a local hospital and guard will be assigned to watch you in the hospital. Otherwise, you will be sitting around all day doing nothing. My advice to you is to treat this as a forced vacation.

Your experiences in remand may differ as it depends upon the decency of your warden. You will be allowed to meet with visitors at set times. The jailor has set visiting hours and the warden will make flying visits to inspect and check. The doctor will visit everyday and I have heard that proselytizing groups also visit on occasion to spread the word of Christ.

At set hours of the day, the jail staff will announce the names of people who have been granted bail. Generally, it is in the late morning and in the evening around 5pm. While in remand, your routine will come down to waiting to see if you were granted bail or not. Your life will turn into a long wait with anticipation, followed by a feeling of being let down. The cycle repeats itself until the day your name is announced and you are told that you would be released.

Once you are granted bail and are set to be released, you will be checked by a doctor to ensure that you are doing fine. Your belongings will be accounted for and given back to you. The warden and the judicial warden will inform you of the terms of your bail and repeatedly warn you about being on time for court appearances. Failing to appear for a court hearing, even being late, can result in you landing in this jail again. They will also inform you about the conditions of your bail if there are any. You will be released into the custody of your lawyer and the ride home will be an exhilarating experience.

While in remand/custody/district jail, take each day at a time. Treat it like a forced vacation. Get into a routine. Befriend the people around. Stay cheerful. Have prayer meetings in the evenings. Generate good will as it pays dividends. Be polite and don't let anyone see your anguish. Remember this, you are in the custody of the Indian state. Should anything happen to you, heads will roll. Make sure that someone or the other stops by, to keep your morale up. Try to read books. Note down your feelings in a time line. The food will be okay and your routine will be regimented. It will be a harrowing experience. You will be under intense pressure to give in and may want to pay up. It's all right. Just hang on to yourself and this will pass. Once you get out, you will feel stronger and more determined to fight this case. This experience will rekindle the fire in you to fight back

A word of caution. Like most things in life, your experience will differ and your experience may be a lot worse.

Judicial remand and police remand are two different things. Police remand is a completely different ball game. I will provide more information in time.

### **The Trial Court:**

Once you get home after this horrendous experience, more attempts will be made to ensure a settlement. When this doesn't work, the police officer will file a charge sheet and the matter then ends up in a court. Things will move very slowly, if at all. It may be two years before your case comes up for examination in a trial court. After that you may need to run around the courts for a while. The important thing to note is that the police will be out of the picture and can no longer harass you. You can forget about a conviction and even if the lower court convicts you, you have the appeals process and you may be able to continue appealing all the way to the Supreme Court.

### **Coping With Your Emotions:**

Through this whole process, be prepared for a roller coaster ride of emotions of hope and despair. You need to handle the situation calmly and patiently. Think of the victims of the concentration camps. What ever it takes, just hang on. Stay strong. Do not despair.

While in remand, the state is responsible for your safety and well being. The pressure on you to give up will be intense and your ability to think will diminish considerably. This is the intended effect of the whole process. Relax. Start thinking. Ask questions. Get details. Keep notes. Stay sharp. Focus.

Here is the reality. You were all easy targets. The police didn't need to do a lot. All they needed was an address to swing by and pick up people who had no warning about what was going to hit them. The police have been feasting on the rich pickings that are victims of a 498A. The police didn't need to expend any energy to capture some moms, grandmas, aunts, dads, brothers, sisters, uncles or children, in the quiet of their home, oblivious to the ordeal that awaits them. They have done their worst to you and you've survived. I am sure that you never believed that you or your family would see the inside of a jail. Well, thanks to the 498A Wife, it's happened. One of the most difficult things you will ever do, will be getting a grip over yourself and making sense of what had happened.

Don't try to make sense of what had happened. This is a vendetta and the failure of the state to legislate effective laws and nothing more.

As soon as you are out on bail, get back to work, don't dwell on this traumatic experience and try to pull your family together. Make sure that each and every member of your family gets busy and does something to occupy themselves.

Be cheerful about what you underwent. Don't let her think that she has you beaten. Take care of your parents and put on an appearance of being strong and unflappable to them. A period of unease and a sense of being violated will ensue for months. Be strong, slowly but surely, this feeling will dissipate and life will be as normal as it can be and you will learn to live with a criminal case hanging over your head. As time goes by, you will get stronger, the worst is over.

In reality, post arrest, you will feel like you've been reduced to nothing, that your life has no significance and that you have achieved nothing. Your confidence and self-esteem take a huge hit and there will be an urge to curl up in a corner. Don't give into this. The intended effect is to bring you to your knees, wear you out and get your money. Rise UP above all this. Pull yourself together and fight back. If you see them, SMILE! Don't give them the joy of seeing you suffer or getting a reaction out of you. Don't ever lose your temper and never let them see your tears. You are not the first person to face a 498A, though I do hope that you will be the last.

A huge benefit of getting implicated in a false 498A and seeing the inside of a prison, is the change in your mental psyche. For some people, seeing the inside of a prison will be a humiliating experience which they would rather not talk about and the experience will leave scars forever. For many others, if you don't succumb to the pressure and put up a fight, this experience will boost your mental strength. They have done the worst they can. What else can they do? The courts will require evidence beyond reasonable doubt for conviction. There are so many false 498A cases being filed across the country, that even the real perpetrators of the crime of dowry harassment won't get convicted. The process just takes way too long. If the lower court does convict you, you can always appeal at the next level and continue to live your life. I agree that it is a hassle. But then, we all pay for our mistakes and bringing a 498A wife into the house is such a mistake. This was an act of fate and you have to live with it. I've come to believe that life is about how you answer the questions it asks you. You'll do better if you start considering your 498A case to be one such question that life threw at you.

What is the best thing you can do to deal with the situation you in? Forgive. Forgive your wife, but don't forget what she put you through. Channel your anger into a cause or your profession and let it drive you till it dissipates.

Your time will come. Till then prepare the groundwork for retaliation and do the things you love to do. The judges and the courts know that the law is being abused. In time, the tide will turn in the favor of those who have been falsely implicated in this extortion racket.

### **The Effects On Your Professional Life:**

I've always been an achiever. I work hard and put my heart and soul into achieving whatever interests me. My primary motivation has always been the satisfaction one gets upon accomplishment of a goal. Failure is not an option. Professionally, I've always been considered an asset wherever I've been. Here is an example of the kind of letters of appreciation that I got, consistently. This was from the manager of the infrastructure team that supported the project I was working on.

Here is what he had to say to my manager:

"I just wanted to let you know, XXXX has down a great job with this project. He has been very professional and shown an above and beyond dedication."

Here is another one from another manager:

"Thank you, XXXX! I just want you to know that you have really stood out! You have taken ownership and have seen it through. You have taken a lot of stress off of me! The vendor has commented on this as well."

This was prior to the filing of the 498A.

Post 498A things changed a bit. Here is an email from my last manager:

"What I'm seeing today looks like you are just coming by to give me the latest excuse as to why you are taking too long. Just fix it, get it done and move on. You need to find a way to get things done in a reasonable amount of time. We need to be able to count on you to contribute and do your part."

In my defense, I found it painful to work for this guy as he could de-motivate anybody. I have the ability to turn a situation like this around. Except, this time, I couldn't. Something in me just gave out and I ended up resigning. I would rather resign than be considered a liability.

It is insulting and demeaning to have someone say such things about you professionally. But this is the reality that many men who get entangled in this mess, will experience.

How does one cope with this situation?

Hang on; take a break or try to do work that does not tax you. Know what has happened to you and don't let your self-esteem be affected negatively.

This phase will pass. Be patient.

Read on to understand what you can do fight back against this injustice.

# A GUIDE TO SURVIVING IPC 498A

## CHAPTER III

### The Turn Around:

Society at large considers the jailing of a family under false charges to be a low blow. The sympathy factor will now shift in your favor.

Initially, you will be urged, cajoled and threatened to accede to their demands. The police will advise you to settle and will attempt to mediate. There may be other intermediaries as well. Under no circumstances should you concede. They are turning up the heat for a reason and the reason is your money. They will hound you to get it. It is an ordeal and it may last a few hours to a few months. Just hang on. Like I said, they will do all they can to break your will, and this is for a reason.

Here is why. The beauty of a 498A lies in the fact that the police and the other party have a narrow window to get you to cough up the cash. And this window of time will last until you are out on bail and the case moves into the courts. There will be intense pressure to settle the case prior to this juncture. Withstand it. If you hold on now, then you will get the biggest prize for undergoing all this. You are now eligible for **divorce on the grounds of cruelty**. The Delhi High Court (FAO 67/2000 Smt. Pinki Jain Vs. Sh. Sanjay Jain DATE OF ORDER: 31-01-2005) has recognized that filing a false 498A is an act of cruelty. Ditching the 498A Wife has just gotten easier for you. There are other advantages. These are:

- The police will lose interest in your case. The other side will have to keep bribing them to keep them moving and they will eventually run out of the cash. These police are lazy and will only go a certain extent before they give up. The police will also run at the first sign of trouble.
- The other side will come to their senses. They will realize that the plan has backfired and they have a 498A daughter on their hands. No one will come forward to marry her again.
- The other side will realize that if you engage a smart lawyer, he can make them run around the courts for a while. They will feel the pressure to settle. There have been spates of judgments from the Delhi High Court that have dismissed such 498A cases.

Once you get out, you are through. There is a chance that you may get conditional bail. Be patient. The conditions can be relaxed in time. From here on, it's your lawyers' job to guide you. Hope you get a good one.

Don't feel disheartened. A 498A can be beaten with patience and planning. In most cases the charges filed will be blatant lies. Lies don't stand up to hard scrutiny. You will prevail and I know many guys who have beaten these 498A Wives back, having them beg for a compromise within a year of filing the 498A.

### When Do People Give in? :

IPC 498A is an extortion racket. It's called an extortion racket because the official machinery is used to extort money from you by exploiting your weaknesses. The weakest links are the parents and young siblings. The age group of men facing a 498A will range from 25 to 35 on the average. This means that parents, whose ages range from 45 to 70+, are the ones who are affected the most. These are retirees. If they need to travel for court appearances frequently, it imposes a considerable amount of strain on them. Not to mention the stress caused by getting entangled in a criminal case. Parents literally age in a span of a few years. The cases don't move as the courts are clogged and there is the social stigma of being caught up in a criminal case. Some parents may never be acquitted in what is left of their lifetime.

A 498A sometimes breaks the bonds between siblings, especially the ones who are married as they are threatened with being implicated unless they stay out. Siblings are forced to stay out just to avoid the hassle.

Another weak link are young unmarried siblings, especially girls. Since cases take many years to resolve, the lives of these young girls are put on hold. No one wants to enter into a match with a girl facing a criminal case that can go on for years. It gets worse for married siblings and their spouses as they find themselves entangled in this mess. Their kids are impacted too as they have to undergo the trauma of watching their parents getting arrested. They need to deal with the daily grind of life as well as a criminal case. Some families are lucky in the sense that they have other daughters in law who support them in this ordeal.

Another factor is the muscle that political heavy weights from the other side can bring into the case. Redress under normal circumstances is difficult. It becomes impossible in these conditions. This is when people give in and pay up. It is just not worth continuing to fight.

My intention here is not to judge the people who give in or paint them in a negative light. The intent is to highlight what the state is inflicting on its citizens, especially the generation of our parents who had sacrificed so much, to get us to where we are.

If our country is booming today, it is on account of the sacrifices made by the generation of our parents, who piled us on to a Chetak scooter and took us to movies and parks, and gave us their best, in what they could afford. They dropped us in the early hours of the morning at coaching institutes for admission tests. It is this generation who ran around banks and mortgaged their savings and ended up in debt to up to their necks to send us abroad or pay donations to get us into professional colleges. Can any one of you forget their joy when you got your visa or how they hid their disappointment and consoled you when you didn't?

The plight of our parents, caught up in this extortion racket, exposes the moral bankruptcy of the political class beholden to a small coterie for whatever purpose that this coterie serves. Could they be playing to the "naari" vote bank?

### **Fighting Back:**

Once out on bail, you will be dealing with the judiciary. The police won't get near you, unless you let them. In some cases, I've heard of police harassment continuing, but that is akin to a dog barking. Ignore and focus on the task at hand. This is when the real battle starts. Think carefully on how you will defend yourself by fighting back. A lot depends upon the way you fight back.

498A is promoted as a law that shields women from the violence of men. In reality, 498A is a poorly drafted and implemented law. Women's groups prevent any kind of a civilized, factual debate from taking place as well as oppose any mention of amendments. If a man tries to fight a 498A, he has lost the fight before he starts, as the battle is framed as a man vs. woman fight. The best way to fight back is by taking a tactic from the Mahabharata and applying it here.

Bhishma was decimating the Pandava army. The only way to eliminate him was by placing Shikhandin in the front and letting Arjuna wield the bow. The groups that oppose amendments to 498A are neither as noble as Bhishma nor are they as powerful. They have gotten this far only due to the fact they are well organized, can mobilize large numbers at short notice, have the MPs cowed down, and are yet to face any organized opposition from ordinary women who have been tending to their families and their responsibilities, while these groups have hijacked a noble cause in their name. Your family collectively needs to play the role of Arjuna and the women of your family need to play Shikhandin. Rope in your grandma, mom, sister, niece's aunts and above all, your sisters-in-law into this fight. The establishment will not touch them or be able to retaliate against them.

You can do a lot from your home by using the Internet and by shooting letters of protest to the responsible ministries highlighting the indignities heaped upon you. I do advise you to be concise and factual in all your dealings with the govt if you want to be taken seriously. Watch the language. Make it as decent and unemotional as possible. Get your complaints proof read for errors of any kind.

Here are some other things you may want to do:

- Keep a copy of past judgments relevant to your case. You may just be able to escape by using them. There are tons of judgments at this site (<http://ipc498a.wordpress.com/>). Choose the ones applicable to your case.
- Apply for dispensation from personal appearance for the immediate family in the court. You may get it. The code of Criminal Procedure 1973 allows it. Section 115 says:  
**115. Power to dispense with personal attendance:** The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace or for good behavior and may permit him to appear by a pleader.
- Split the case from that of your family. If they are out, the opposition is no longer capable of pressing your hot buttons. You can do this by filing a Quash petition just for the members of your family. You stay out of it

and let your case go on. I repeat, make sure that you are not a party to the quash petition. The acquitted members of your family may be able to pursue section 182 against their false accusers.

- Get the women in your family to file complaints with the National Commission for Women. Here is the [link](http://ncw.nic.in/ncwcomplaint1/home.asp) (<http://ncw.nic.in/ncwcomplaint1/home.asp>). If the link is inactive, mail them a [letter](http://ncw.nic.in/contact.htm) (<http://ncw.nic.in/contact.htm>), CC the [Home Ministry](http://mha.gov.in/) (<http://mha.gov.in/>) and drop a note to the [PMO](http://pmindia.gov.in/write.htm) (<http://pmindia.gov.in/write.htm>). File your complaint with the PMO under the category of grievances and women's issues. You can also email the National Criminal Justice System Policy Drafting Committee about your 498A experience:

1. (<http://mha.gov.in/ncjsp.htm>)
2. ([cjspdc@yahoo.co.in](mailto:cjspdc@yahoo.co.in) <[cjspdc@yahoo.co.in](mailto:cjspdc@yahoo.co.in)>)

Please ensure that you submit the complaint on behalf of the women in your family who were victims of 498A. Address the letters to the heads or Chief Secretaries at each of these institutions. Follow up with an RTI about the status of your complaints.

- File an RTI with the office of the DGP of your state to know what investigation the police inspector has done before arresting you (if you have been arrested) or what investigation was done after the filing of the FIR. Trust me, they will quake when they get hit with a well-drafted RTI. The police don't like RTIs.
- Think about sending the Income Tax guys after your in-laws if they claim to have given you dowry or they call it Sthreedhan. Inform the Income Tax guys through a court order about the claims of money given to you. Here is a link to the [location of offices](http://tinyurl.com/2rpp7g) (<http://tinyurl.com/2rpp7g>) by state. If you file a complaint, follow up with an [RTI](http://tinyurl.com/32pa5p) (<http://tinyurl.com/32pa5p>). **Justice Dhingra** has given a judgment (Date of Decision: February 23, 2007 CRL.M.C.7262/2006 Smt. Neera Singh Vs THE STATE (GOVT. OF NCT OF DELHI) and ORS) about reporting these kinds of 498A cases to the Income Tax authorities. Here is an excerpt:

"If huge cash amounts are alleged to be given at the time of marriage which are not accounted anywhere, such cash transactions should be brought to the notice of the Income Tax Department by the Court so that source of income is verified and the person is brought to law. It is only because the Courts are not insisting upon compliance with the relevant provisions of law while entertaining such complaints and action is taken merely on the statement of the complainant, without any verification that a large number of false complaints are pouring in."

- Sections 182 and 211 of IPC provide punishment for making a wrong complaint and false charges of offence. Similarly Section 358 of Cr. P.C. deals with cases of groundless arrests.
- Get your lawyers to file complaints against the in-laws in the police station or a writ petition in the court for admitting to giving dowry. Giving dowry is also a crime. I am basing this on the same judgment by **Justice Dhingra**. If they admit to not giving you dowry under this pressure, then be assured you can nail them in a perjury case. Get a your lawyer to pursue this angle. If the police refuse to accept your complaint, get a court order for them to do so. Logic dictates that they will accept the complaint as they can extract bribes from the other side. This is one of the fastest ways to settle the case on your terms.
- Do not compromise as long as the 498A is on. Ask them to withdraw it before they make any attempts to negotiate a settlement. Be unyielding in your stand. They have more to lose than you do. With a 498A daughter on their hands, these morons are running out of time and options. They need to dump her on some pitiful man. They need your money to buy the other guy and recoup the investment made in the 498A case. As time goes by, the age of the 498A daughter will become a factor. It gets difficult to unload her.
- If she filed a 498A to force you into a divorce in order to take off with the boyfriend, file an RCR (Restitution Of Conjugal Rights) and refuse a divorce until this gets sorted out. You will have her on the defensive immediately. Talk to SIF volunteers about this.
- Never take the 498A Wife back again. Let her live her life in her parents' home. I assure you, she is a burden they will be unwilling to bear. In effect, she has condemned herself to a miserable existence.

- Get the women in your family to file complaints in the Mahila Thanas in the event that they are threatened by anyone, including the police. These women's protection cells are meant for women, not just for the 498A wives. This may help in warding off a DV Act later.
- Wish your 498A wife and her parents a long life. They need to repay your tears, with interest.

### **The Hesitation To Fight Back:**

In spite of the many tools available to fight back, you may be very hesitant to approach the different government agencies to file complaints or fight back through the courts. One of the things you can do is not look at this like a gigantic task, but to break it into a small series of steps to accomplish this task over a period of time. Like all Indians, you distrust the system. I completely understand that feeling. Let me throw some light at our system.

The Indian establishment is not meant for the common man. In India, you need to fight to avail yourself of basic services starting with water and electricity. That struggle extends to the services that any government of a civilized nation provides as a matter of right to its citizens, a prime example being security through the police. Through our lives, we are trained to believe that nothing moves unless palms are greased. The average Indian citizen is disgusted with the corruption within the bureaucracy, and will avoid contact with any government agency, leave alone the police. The distrust runs deep.

There is hope in the sense that this is a system and it needs things to be quiet. Initially, any attempts to ruffle the system will be met with indifference at best and intimidation at worst. Persist. The system would like to continue to go about its way and if you are persistent, it will respond just to get rid of you and get you off its back. Again, an RTI is a very effective tool to ruffle the system to get it to listen to you.

At this juncture, I would like to introduce you to Mrs JN Jayashree. She is wife of a senior IAS officer of Karnataka. Disgusted with the way the govt was treating her honest husband, she set up a website to fight corruption. Attempts have been made to intimidate her and her husband, but this courageous lady is on a rampage and is causing quite an embarrassment to the powers that be. She has been written about in the New York Times, The International Herald Tribune and the Indian Express. You can read about her at her blog, <http://fightcorruption.wikidot.com/>.

The primary reason for mentioning her here is that her blog has many examples of RTIs she has filed that you may want to use as templates.

### **The Indian Police:**

I start with an apology to the dedicated professionals of the Indian police force. What I have written can be construed as a PR disaster for the Indian Police force. But I also know that none can question the truthfulness of what I have written. Here is an excerpt from an article from the SVNPA (<http://tinyurl.com/3yuvfm>) on police corruption. I quote:

“Over the years, the corruption has spread to other areas of police as well. This was largely due to the steady expansion of the role of police in view of the enactment of a number of social and other legislations that are to be enforced by the police. The success of any social legislation depends on the effectiveness of its enforcement and police have a protective as well as promotional role to perform in this sphere”.

Section 498A is a social issue disguised as a criminal issue. 498A fosters corruption, as the very nature of it, due to its loopholes, exposes the police force to corruption.

My task is to raise awareness about this extortion racket and prepare the accused to be aware of what they may face. I needed to present the worse case scenario, which is what my family faced, so that innocent families know what to expect and can prepare for the worst.

The police force is an underpaid, ill equipped and ill treated organization. The personnel are constantly under pressure, and they are asked to accomplish a lot, while given meager resources to work with. I have a lot of respect for the men and women who do their best under these conditions. There is always a chance that you will meet an honest, upright police officer. I hope you do. There are cases where the officers and constables have walked away after a preliminary investigation and one meeting with the accused. You may meet decent police inspectors who will treat you with courtesy and do all they can to help you. All the same, be prepared for the worst.

The Indian Police Force has many outstanding officers. Among the tribe of the IPS (<http://tinyurl.com/3dhu8v>) officers, the chances of finding gentlemen are higher than in the lower ranks. Do your homework and approach them for help.

I harbor no animosity towards the Indian police force and its dedicated personnel, but I do wish that senior officers reign in corrupt officers who terrorize innocent civilians who get entangled in a criminal case due to idiotic laws. We have an army to be proud of. Why not a police force?

I've covered the Indian Police force extensively as the police play the primary role in this extortion racket. The intent of this extensive coverage is to ensure that you understand what is going on and so can stand up to your rights and be treated in accordance with the law.

Here is the [link \(http://tinyurl.com/2kf5az\)](http://tinyurl.com/2kf5az) to the website of an outstanding IPS officer, murdered by naxalites. A police officer I would like to meet is Mr. Abhinav Kumar, IPS. He writes for the Indian Express on occasion and was formerly a reporter with India Today. Here is a link (<http://tinyurl.com/2pf6k2>) to some of his writings and exploits. Here is another link (<http://tinyurl.com/37zvrg>) to an article by B Raman. Here are some stats on casualties (<http://tinyurl.com/2v6sap>) suffered by the police nationally.

At this juncture, I would like to thank Dr. Arvind Verma for the excellent and insightful articles he has written about the Indian police force. I have quoted extensively from his articles in Indiatogether and he has revealed a lot about the Indian Police force. I have collected his articles in one place and you can access them at this link (<http://tinyurl.com/383orp>).

### **Filing Complaints Against The Police:**

The police play a big part in this extortion racket. They are supposed to act as guards that determine eligibility of the accused, entry into the clogged criminal justice system. In reality, they never investigate. In the words of Justice Dhingra (Crl. Appeal No. 696/2004, 01. Nov. 2007):

“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.”

The good news is that these are ultimately government employees; they are subject to a lot of rules and regulations. In the words of the Home Ministry,

“The police must recognize that they are members of the public, with the only difference that in the interest of the society and on its behalf they are employed to give full time attention to duties, which are normally incumbent on every citizen to perform.”

In other words they are members of the public and they have a job to do. That job is not to harass or intimidate the public. If the harassment and intimidation get out of hand, you can complain about the concerned officer to the Home Secretary or the DGP of the state you live in. I agree that it is a little difficult to reach them, but try. Persist. You will be able to gain access to them. Once you get an appointment, be prepared to submit your complaint at the first meeting. These men are IAS and IPS officers and in most cases, they are capable, decent individuals. Make sure that you respect them and their time. They know about the abuse that is going on.

At the cost of contradicting myself, I would like to add a word of caution. I am a little disappointed with IPS officers too, but amongst their tribe you will have a better chance of finding decent, honest people than in subordinate ranks.

Again, get the women in your family to file the complaint, starting from the point when you seek an appointment with the Home Secretary. Also, doors open easily for women.

### **A Few Suggestions On Filing Complaints.**

- Be absolutely factual in your complaint. Do not add any masala to your complaint. Stick to the facts. This is a complaint, not a novel.
- Do not attempt to settle scores with officers who treated you decently, but were compelled to do their duty. If you do, in my eyes, you are no different than your 498A wife.
- Before you meet high-ranking officers, write up the complaint in a timeline or a sequence of events. Be as accurate as possible. Get it reviewed by your lawyer. There will be a temptation to introduce extraneous events into the complaint. Desist from doing so.
- When the machinery of the state moves to address your complaint, it will place the burden of proof on you. Be prepared for the stress that will follow. The inquiries can be taxing. Be patient. Action will be taken.

- Never put anything in your complaint that will damage your credibility. The state is listening to you; don't lie to it.
- If a complaint is investigated and found to be without basis, doors will close on your face. Keep this in mind.
- Request the authorities to let you know the outcome of their inquiry. Tell them you will exercise your right to information by filing an RTI in a few months if this is not done. The outcome of the inquiry may be helpful in winning your case.

### **The Courts On Police Powers:**

The Supreme Court of India, through its landmark judgments, has time and again signaled that the police are not above the law and that a citizen has the rights that need to be respected. Ensure that you have a copy of all these judgments with you in order to have your rights respected. The police can be nailed on contempt of court if they violate your Fundamental Rights. You can seek compensation for illegal detention and/or torture.

Another way to get the police from harassing you will be to file what is known as a **Writ Mandamus**. Here is an explanation of Writ Mandamus (S.M. Sharma Vs. Bipen Kumar Tiwari : (1970) 3 SCR 946), where in the Court observed:

"It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal power."

### **The Lawyers:**

Lawyers make the difference between winning and losing your case. You must look for a lawyer who is smart, competent and has integrity. Integrity is of primary importance. Some lawyers in India have been selling their clients out. Never go for one who advises you to compromise. I had two of my friends who were burned by this. If any of these lawyers say compromise, think about their motives. Try to find a lawyer who is an insider. Make sure that it is someone who knows the court system and its' internal workings. Do your research. Mynation.net has a list of good lawyers. Look it up for reference. Talk to others who have been through a 498A. Interview several of them. Don't hire the first lawyer who you meet. Here is a hint. Go with the one who gives you the brutal truth. You are looking for a lawyer, not a therapist.

My lawyers turned to be the brothers I never had. They fought to get my family out under very adverse conditions, which included harassment by the police, a corrupt magistrate who would ignore their pleadings and above all, physical discomfort. They wore the same clothing for a period of several days attempting to bail my family out. They knew the laws, they knew the loopholes and they finally succeeded in getting my family out. Yes, they were expensive, but they didn't betray us in spite of my father in law offering them monetary incentives to suspend their efforts to bail my family out. These are the kind of lawyers you would ideally want to be on your side.

### **Approaching The Courts:**

When a 498A is filed, the first impulse will be to run to the courts with a quash petition. You are convinced about your innocence and you are sure that the courts will exonerate you. The process is slow. Be prepared for disappointment. The courts do not like to quash cases in the investigation phase unless there are extenuating circumstances. All the same, be careful about how you draft the petition. Prepare a comprehensive and logical petition. Walk in with your eyes wide open. Know the attitude of the judge on the bench that deals with 498A. If you are heading to the court of a great judge like Justice Shiv Narain Dhingra, you will be fine. Otherwise, back off and think of alternatives. Judges in the lower judiciary are humans with the same failings though they are held to a higher standard in theory. The former Chief Justice P N Bhagwati had said:

"Judges should not use strong and carping language while criticizing the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognize that they are not infallible".

That is all I am willing to say. However, please check what the former President Of India, Dr APJ Abdul Kalam, has to say about the Judiciary:

“Our society is going through unique dynamics due to the shortage of leadership with nobility. The only hope the nation cherishes and looks to is the judiciary with its excellence and impeccable integrity... This casts a very heavy responsibility on the entire judicial system to live up to the expectations reposed in it and to maintain the sacred aura attached to it unsullied. Qualities of honesty and integrity are synonymous with each member of the judicial system”

The courts know about the abuse of this law. Here is a small sampling of what they have said in some judgments and bail orders:

- While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

-Supreme Court, Indian Oil Corporation Vs NEPC India Ltd., & Ors., 20/07/2006

- The criminal case against her in which she was accused was compounded by the petitioner on the basis of compromise. She is living with her husband. She wants to use criminal justice as a tool against the petitioners who are her sister-in-laws and mother-in-law. She wants to enjoy the company of the husband keeping other relatives on tenterhooks.

-Delhi HC, Crl. M.C. No. 8188-90/2006, 28.03.2007

- There is no reference to the dowry articles in the complaint. No particulars of dowry have been given. The complaint is full of character assassination of the husband and his family.

-Delhi HC, Bail Application No.1638/2005, 26/07/2005

### Consequences For Filing A False 498A:

There is a lot written about 498A, but nothing is said about the consequences for the filers of a false 498A. The filers of false 498As do so out of malice or bad advice, but they are not informed of the consequences.

When a person is married for the first time, there is an innocence that goes into the relationship. This innocence is the bedrock of trust in the relationship of being man and wife. The margin of error and security is greater in a first marriage, especially for women. There may be a mistaken belief that after filing a frivolous criminal case against the husband, the woman may get her revenge or settlement and move on to a divorce and a second marriage and live a “happy married life”. The fact of the matter is that the innocence is lost and with it will go a lot of other intangible things in life, such as trust, which can make a married life a blessing. Being burned once, the element of distrust in the second marriage will be greater. And in order to make things work, there will be a greater pressure to conform or adjust. The margin for error for the woman will also go down considerably in a second marriage.

I am not saying that a second chance at marriage is a bad thing nor am I attempting to judge people who get married the second time. I am talking about the situation that the dear 498A wives with their silly temperaments will potentially find themselves in if they take the path of frivolous lawsuits. This time, filing a 498A to get out will not work, as the woman will be branded an abuser of the law. There are always exceptions to what I have described. But the outline holds true.

The 498A wives, blinded by anger and greed, may want to think twice about what they want to put on their profiles at matrimonial sites, before filing frivolous cases. Would they be willing to mention that they filed a false 498A? Why not? How many men will respond to such ads if they do? What makes them think that they’ll succeed at a second marriage when they couldn’t make the first work? And have they considered the time a court case can take to complete?

The best source to know more about the consequences of filing a false case is the document by Madhu Purnima Kishwar (<http://tinyurl.com/2rbmxs>). She is a respected fighter for women’s rights, unlike the radical feminists of India, and I think you need to read what she has to say.

I've put together a few points of my own:

- Divorce after a 498A is guaranteed. 498A is a nuclear weapon for relationships. Once it is used, it ends everything good in a relationship. Lately, there has been a trend where women are coming back to their husbands after realizing the mistake they made by resorting to 498A.
- She won't get married again. The reason being our very conservative society. Feminism and standing up for women's rights may be a fashionable thing to bandy about, but no family, including the family of the false filer of a 498A or the staunchest feminist, would like to admit one of these false 498A filers into their homes. This is all about power politics in relationships and once it is known that a woman had filed a false 498A, she will be treated like radioactive material.
- Her sister(s) may eventually run off with the milkman or something along similar lines may happen as they risk remaining spinsters.
- Any sisters-in-law she may have will turn against her as time goes by. Her brothers may not get married again. Think about this. Would you be willing to send your sister/daughter into a home where there is woman who has quarreled with a decent husband and used the law to terrorize him and his family? How happy would your sister/daughter be in a home like that? How secure would a family feel, if the sister of the woman who filed a false 498A enters the house as a bride? It also says a lot about that family that they did not discourage her from doing so.
- The filer of a false 498A may face arrest under Section 182. The sentence may be range up to 6 months and a fine or both.
- If children are involved, their development will be threatened as fathers play a crucial role in the up bringing of a child. There is also a chance for the 498A filer to start having affairs and neglect the children. There are instances where this is happening.
- If the 498A is being filed at the instigation of close relatives and for no valid justification, be sure of this, once the relatives get what they want, they will abandon the 498A wife.
- In the case of a woman who files a 498A just to extort cash, or harass her husband and his family, there is a certain disdain with which she will be treated by her family and society, especially if the plan backfires.
- If the 498A is being filed at the instigation of close relatives, and if they do succeed in extorting money from the husband, once the lawyer, the parents and everyone else gets a cut, they are going to abandon the woman.
- The 498A wives may want to read this article from the LATimes (<http://tinyurl.com/2oqllg>) to understand how divorce affects the finances of women.
- None of us likes to be alone and even the strongest amongst us will feel pangs of loneliness. I believe that men are better equipped to deal with loneliness due to biological factors. It is a completely different issue for the 498A Wives. They are condemned to live alone. They had it all and they blew it and they know it.
- Keep an eye out on the matrimonial sites. You may just end up on the floor with laughter.

#### Some Statistics:

These are statistics are from a memorandum submitted by Rakshak to the MOIA on July 17<sup>th</sup> 2007. These stats were obtained by means of an RTI from the home ministry. As you can see, there are close to 5lakhs people who are undergoing trial and each year it just gets worse. The latest numbers are from 2005.

| Year | Total No. Of Persons under Trial Including those from previous year | Cases Compounded or Withdrawn | Trial Completed | Trial Pending | No. of Persons Convicted | % Trial remained Pending | Convicted To Trials Completed |
|------|---------------------------------------------------------------------|-------------------------------|-----------------|---------------|--------------------------|--------------------------|-------------------------------|
| 2005 | 573881                                                              | 13447                         | 74496           | 485938        | 14583                    | 84.7                     | 19.6                          |
| 2004 | 537137                                                              | 13717                         | 71192           | 452228        | 14706                    | 84.2                     | 20.7                          |
| 2003 | 500166                                                              | 11229                         | 70167           | 418770        | 12558                    | 83.7                     | 17.9                          |

### **Amendments To 498A:**

The statistics give you an idea about how widespread is the abuse of this law. SIF and other groups are pushing for the amendment to 498A. I don't see this happening for a while, as the entrenched interests are too powerful to stop this from happening. My personal belief is that the laws "to protect women" must be made more stringent and easier to abuse. A more people get entangled in this mess, the pain would bring the anger to boil. A good step in this direction would be to pass the sexual harassment bill in the form pushed by women's groups. The hormone driven BPO call centers will be the first place where trouble will start. This will cause more people to get entangled in gender-biased laws and the resulting anger and plunge in productivity will highlight the idiocy of these laws faster. The fun will start after the business community gets into the fight.

The moment the word "amendment" is uttered, there will be scores of radical feminist groups and other organizations such as CSR, AIDWA, etc, taking to the streets to prevent any kind of a discussion from taking place. The law making bodies must have the courage to face them down. These groups do not represent the true voice of the women of India. If 498A is to be amended, it must be made bailable to eliminate harassment by the police and end the jailing of innocents. It should never be made compoundable. If it is made compoundable and not bailable, the extortion racket will continue as before as nothing really changes as the courts are allowing the withdrawal of the cases anyway.

The brides of today will be the mothers in law of tomorrow. I wonder how many of these 498A abusing brides may suffer the same fate as their mothers in law if they are unfortunate enough to have a daughter in law who shares their temperament and attitude towards life. Would they still be opposed to the amendment to 498A then?

### **Conclusion:**

IPC 498A was introduced to protect women. It has morphed into an extortion racket. In the name of protecting women, the establishment sends semi skilled laborers in uniform into our homes to extort money, all on the basis of an allegation. Any attempt to amend the law is resisted by entrenched interests and radical feminists, whose existence is threatened if they are perceived as being soft on this issue. They need this misery to continue to justify their existence. 498A is now being used as a wedge between men and women for narrow political purposes. The division of our country along the lines of religion, caste and language is over. The division along the lines of gender has started. There is no civilized country on this planet that allows a blood relative of a male to be arrested on the basis of a complaint. The promoters and defenders of idiotic laws like 498A also need to understand that they will fail in their perverted purpose eventually. Radical feminism, as a movement has failed wherever it has raised its ugly head. It has succeeded in lowering the status of women in all the places it has been. I predict the same fate for it in India, though it will take time.

The women who are the real victims can't get justice as the courts are clogged with the false cases filed by the 498A wives and there are so many frivolous cases being filed, that the police don't take the real victims seriously. The police are so used to making money off 498A cases, that they won't even pursue the case unless they are bribed or promised a cut in the settlement.

Finally, in all this insanity, the question I would like to ask is, what does one hope to achieve by enacting a law like 498A? It has failed in its stated purpose.

Torture by the Indian police, be it mental or physical is ILLEGAL. They cannot extract a confession from you by force. That is ILLEGAL. Stand up to the corrupt officers of the Indian police! You are backed by the weight and might of the Supreme Court Of India. The judgments stand as testimony to this.

### **A Little About Me:**

I am just a regular guy that got entangled in this mess. I think you know me by now and there is not a lot to say.

I made a mistake and that was getting married to this Indian woman. I was divorced years ago and the 498A was filed years after my last meeting with her. I escaped arrest, as I was not at home. But the police got their hands on my family. They were terrorized to reveal my whereabouts, to confess and to pay up. The demand was 40Lakhs, put forth by the Indian police. After being subjected to sheer terror for months, my family acted and eliminated the police as a factor.

If I had known about our basic rights and the powers of the police, a lot of unnecessary suffering on their part could have been avoided. This remains my regret. The suffering undergone by my family drives me to educate you about your rights so that you can avoid what my family was put through. I've spent every spare hour of each one of my days,

since the day my family was arrested, reading, researching, and putting all this together so that you can understand what 498A is all about. I hope that you will avoid the terror that the police will unleash on you and come out a winner.

I can't counsel you or provide legal advice so don't ask. For that, you need to contact the volunteers of Save Indian Family or educate yourself like I did, or talk to a good lawyer.

Never forget this. This game is played to break you down and get you to give in. I experienced this first hand. I was in tears while they had my family in custody. My parents are 65+ and frail. There was nothing I could do except give in or hold firm and ensure that retribution follows. You know the choice I made. Stay strong and be calm. You will win. I dedicate this to my family. They willingly faced extraordinary hardship and sheer terror, but didn't surrender to the police. On account of their sacrifice, I didn't lose all that I've worked for.

I leave you with the 3<sup>rd</sup> sloka from the 2<sup>nd</sup> Chapter of the Bhagavad-Gita. To truly understand this sloka, please read the version of the Bhagavad-Gita authored by Swami Ranganathananda. It is in three volumes and worth owning.

*klaibyam masma gamah partha naitat tvayi upapadyate  
ksudram hridaya-daurbalyam tyaktvottistha parantapa*

### Supporting Material:

The supporting documentation and judgments that this document was based on is contained at this site.

<http://tinyurl.com/3dm4jc>

### Volunteer Helplines:

The numbers may change. Check the save India family website for the current list of volunteer numbers.

- All India Helpline Number: 91-09243473794 (24 Hours)
- Check <http://www.savefamily.org/>, <http://www.protectindianfamily.org/>, <http://mynation.net> and [www.498A.org](http://www.498A.org) for local help lines.

### Sources And References:

- Faith Belied: Prof Som K Shah. Unfortunately out of print and difficult to find.
- [Judis.nic.in](http://judis.nic.in): Court judgments can be obtained from here.
- The judgments of Justice Shiv Narain Dhingra, Delhi HC.
- The articles of Dr Arvind Verma, Associate Prof Of Criminal Justice, Indiana University.
- Commonwealth Human Rights Initiative (CHRI).
- CBI training manuals.
- <http://PWTN.org>. They have almost all the judgments detailed by the APCID and BPRD.
- Human Rights During Arrest And Detention: T. Murali Krishna, SP, AP CID.
- Corruption In India: N Vittal, the former CVC and technocrat who led the telecom revolution.
- The writings of journalist turned police officer, Abhinav Kumar, IPS, Uttaranchal Police.
- Websites, news articles, and numerous blogs on the net
- My experiences.

### Disclaimer:

The contents of this document do not purport to be any legal advice, but only a set of opinions and observations put together in a simple, understandable format. Any suggestions made in this document are based on observations and opinions only. Please consult your lawyer before deciding to take any action based. The writer disclaims all liabilities, legal or otherwise, that may arise in this regard for any reason whatsoever.

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