



## Daaman Welfare Society (Regd.)

Promoting Family Harmony

Dear Committee Members

We introduce ourselves as Daaman Welfare Society, a registered NGO in India, working against the prevailing gender bias in society and laws almost everywhere. We are in India but we have several members living in Australia, through them only we got to know about this government initiative in Australia.

We are writing to you with reference to discussions in regards to dowry abuse in Victoria to the Legal and Constitutional Reference Committee.

We are not only representing the Indians of masculine gender of all ages in Australia, but also their families for the reason that our experience about such gender biased laws in India states that at best what such biased laws can do is, just spoil the social fabric and slowly demolish the institution of marriage.

- **We strongly oppose the proposed idea of dowry abuse legislation.**
- **From our experience with the people of Australia, especially with those who are from Indian sub-continent, we believe that dowry is not an issue among the Indians living in Australia.**
- **Also since we've learned that The Australian Family Violence Act 1975 covers the issue of economic abuse/coercion.**

**Issue that actually need to be understood:**

By virtue of this dowry harassment argument being gender biased and always with an implied presumption that the woman is harassed to the maximum extent with inhuman behavior; it takes precedence over any other argument/conflict/issue prevailing between the couple and with our experience we can say that anything and everything culminates in an allegation of dowry harassment by husband and in-laws. It has hardly any use except being a tool for vengeance, extortion and blackmailing because it's whole philosophy is in absolute contrast to the normal jurisprudence, 'innocent until proven guilty'.

**We suggest that before moving further, a committee be setup to study the negative impacts of notorious IPC (Indian Penal Code) Section 498a and dowry laws in India**

In 1961, Government on India too criminalized the demand and acceptance of dowry by passing 'Dowry Prohibition Act' and in 1989, Government of India added **498a in Indian Penal Code**, supposedly for prosecuting the husband and his relatives who harasses the wife

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But the only use of these gender biased laws which were meant to safeguard and empower women, have just been 'misuse'!

Without going in any other arguments, we wish to bring to kind notice that even Hon'ble Supreme Court of India in a catena of cases have pointed the government repeatedly to amend the 498a IPC and check it's misuse. In this very regards we wish to draw your kind attention to the observations made by Hon'ble Supreme of India in following two cases:

1. **Sushil Kumar Sharma vs Union of India and Ors**  
[<https://www.daaman.org/references/b80e7802-e4f4-4986-b2a7-b219b042ca8f/498a-and-related-sections/Sushil-Kumar-Sharma-vs-Union-of-India-and-Ors>]

A case where the Hon'ble Supreme Court gone to the extent of calling the misuse of 498a IPC as 'Legal Terrorism'

*"The object of the provision is prevention of the dowry meance. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bonafide and have filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignomy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. As noted the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not assassins' weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any strait jacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre- conceived notion or view. It is strenuously*



*argued by the petitioner that the investigating agencies and the courts start with the presumption that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumption are drawn which again are reputable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that in innocent person is not made to suffer on account of unfounded, baseless and malicious allegations”*

## 2. Rajesh Sharma vs State of UP

[<https://www.daaman.org/references/1cf121b9-e5c1-4203-9188-244abd85cad3/498a-and-related-sections/Rajesh-Sharma-vs-State-of-UP>]

Extract from para 8 the judgment are as below:

*“Referring to Sushil Kumar Sharma versus Union of India<sup>1</sup> , Preeti Gupta versus State of Jharkhand<sup>2</sup> , Ramgopal versus State of Madhya Pradesh<sup>3</sup> , Savitri Devi versus Ramesh Chand<sup>4</sup> , it was submitted that misuse of the provision is judicially acknowledged and there is need to adopt measures to prevent such misuse. The Madras High Court in M.P. No.1 of 2008 in Cr. O.P. No.1089 of 2008 dated 4th August, 2008 directed issuance of following guidelines:*

*“It must also be borne in mind that the object behind the enactment of Section 498-A IPC and the Dowry Prohibition Act is to check and curb the menace of dowry and at the same time, to save the matrimonial homes from destruction. Our experience shows that, apart from the husband, all family members are implicated and dragged to the police stations. Though arrest of those persons is not at all necessary, in a number of cases, such harassment is made simply to satisfy the ego and anger of the complainant. By suitably dealing with such matters, the injury to innocents could be avoided to a considerable extent by the Magistrates, but, if the Magistrates themselves accede to the bare requests of the police without examining the actual state of affairs, it would create negative effects thereby, the very purpose of the legislation would be defeated and the doors of conciliation would be closed forever. The husband and his family members may have difference of opinion in the dispute, for which, arrest and judicial remand are not the*



*answers. The ultimate object of every legal system is to punish the guilty and protect the innocents.”*

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Also pertinent to mention here is that as per the National Crime Record Bureau of India, the rate of convictions in such cases negligible in comparison to the number of cases registered.

It is now pretty well known and admitted fact that the Indian laws related to dowry and harassment are among the most misused laws and this fact have surfaced in hundreds of court trials in India. This has led to emotional, psychological and financial strain of the innocent people undergoing stigmatization and hardship with a large number of falsely accused men committing suicide, just because of the harassment showered by such gender biased laws. Rate of suicide of husbands in India is twice in comparison to that of wives.

Also as per our understanding, Australian Family Violence Act already covers economic abuse by a person that is coercive, deceptive or unreasonably controls another person without the second person's consent. In a scenario when the family violence act precisely covers economic abuse, there is no need to redefine, amend or duplicate the legislation with more confusing clauses for a foreign issues specially for which legislation already exists in Australia.

**We strongly recommend:**

1. Orientation programs be organized specially for the newly arrived community regarding relevant Australian Laws particularly in regard to Family Violence and Healthy Relationships
2. Primary preventative measure for Family violence.
3. Ongoing education of the community regarding Family Violence.

Submitted by:

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(President)

Daaman Welfare Society

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