



The serious violation of human rights of men and their families by the draconian 'anti-rape' laws in India

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Most likely you have heard about cases of rape, molestation and oppression of women in India. According to these reports, India seems to be a very unsafe place for women. When I travel to Europe or abroad, I am repeatedly asked questions like how the women in India are handled. I try to clarify the issue about the rights of women in my home country, but most people have their mind set from what they were told by the main international media. These media selectively mention only atrocities on Indian women. So, I am immediately labelled to be another male chauvinist. It is not that Indian women feel like they are in heaven, but if women are (mis)handled as third class citizens in India, then Indian men belong to the forth class. When crime is committed against a woman the whole state, local police, laws and judiciary are with her. However, what about men? Especially, when the crime against men has been committed by a woman? With this article I do not intend to change your view about the situation of women in India, but I would like to inform you about the anti-human and anti-men laws in this country. Here a few laws (sections) that seriously violate the right of men:

Section 498A: Only a Wife can be a Victim

Section 498A^[1] is the most notorious and most abused section of the Indian Penal Code (IPC). It states: "Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be

punished with imprisonment for a term which may extend to three years and shall also be liable to fine." The word cruelty is defined as mental or physical. This definition has been misused to a degree that the Supreme Court in India has termed 498A as 'legal terrorism'^[2]. This section is mostly used by 'disgruntled wives'^[3]. The wife can simply go to a police station, file a trivial complaint, and immediately the police acts. Complaints can be issues like the husband or ex-husband asked me to take medicine or harassed me to bring dowry 10 years ago. Just after the complaint, everyone named in the complaint will be arrested and sent to police-custody. 498A is subject to cognizance obligations. This means that the police, as soon as they know, is duty bound to register and investigate the offence. It cannot be withdrawn by the petitioner. It is non-bailable and non-compoundable by the accused. Once you are in police-custody, only the magistrate can grant a bail. However, even if the magistrate is benign enough to grant this bail, it can be obstructed by the wife by adding more and more sections to the complaint.

There are three main aspects of section 498A that are so detrimental to men: First, the onus of proving innocence is on the accused. The man has to prove that the allegations made against him are false. This means he has to prove what never has happened. Second, the alleged person is considered guilty until proven to be innocent. Third, there is no provision of punishment for filing a false case. The judge just gets a charge sheet from the police which is like a check-list and one-by-one the husband has to prove innocence on each point.

In 2012, section 498A caused an arrest of

about 150,000 men (husbands, their male siblings or relatives) and 48,000 women (sisters and mothers of the husbands) ^[4]. The number includes 4500 elderly people (grandparents usually) and minors (about 450). Even infants are accused under section 498A. The youngest infant was only two months old ^[5]. The average conviction rate is 15% ^[4, 6] and in some states as low as 0% ^[7]. This data does not include cases which have been compounded or quashed.

Usually, following the threat of a 498A complaint, a heavy demand of money comes from the wife's family. Many husbands pay that money, because once the case goes to court, it cannot be taken back. Meanwhile, there are many gangs and families whose intention is to raise money and power by filing false complaints under section 498A ^[8]. In many cases, women marry a non-residence Indian (NRI) or a man with good financial status. Within days they file a 498A complaint against the husband and his family including accusations of rape/sexual molestation by relatives or impotence or 'unnatural' sex of the husband. According to some estimates, the 498A industry is more than 2 billion US dollar big ^[8]. If an accused NRI does not attend to the court, his passport is cancelled. If an accused NRI shows up at court, his passport is retained by the court as security for the bail until the case is resolved. And a case can take any time up to ten years. So, many men lose their job and their regular life. Cynically, the husband is asked to pay alimony even after having lost his job. There are NRIs stranded in the US and Europe who cannot visit India for years after 498A has been filed ^[9], because they fear to be arrested under 498a or to lose their job. They cannot even attend the cremation of their parents when they die. Some countries including Canada ^[10], Australia ^[11], and temporarily also the USA have issued travel warnings about the misuse of this law in India.

Some courageous men defend themselves. In some cases, these people regain their rights ultimately. However, how helpful is it really? After your time-consuming and money-consuming struggle for your rights, you have lost everything you owned. Moreover, there is no legal punishment for the person who is responsible for all this. The wife can file a case from anywhere in India (usually cases are filed at the region of the wife's parents). So, the husband and all other accused have to spend an enormous amount of travelling for each and every court appointment for a period of up to ten years ^[12]. Moreover, government employees in India lose their job immediately after they

spend more than 48 hours in custody. The police usually make arrests on Fridays to ensure that you spend at least a weekend in custody. So, before the case even goes to the court, many men have already lost their job.

Every week, three husbands that were accused under section 498A commit suicide. India is the top country with respect to suicidal rate of married men. In 2013, about 64,000 married men killed themselves ^[4]. This suicide rate is more than double than that of married women (about 29,000) ^[4]. In recent years, suicide rates of wives remained stable or have even decreased, but suicide rates of husbands have substantially increased ^[4, 13, 14]. Most suicides by men in India are motivated by section 498A ^[15]. In India, every nine minutes a married man commits suicide ^[16, 17]. These suicides are the consequence of family problems. Many men kill themselves even before the case goes to the police. Noteworthy, suicide does not solve the problem as relatives of the person who committed suicide may also be named under section 498A.

Section 304B: Death of the Wife is Murder by the Husband

Section 304B ^[18] states that if the wife dies of unnatural death within seven years of marriage, it is automatically considered a dowry death. This means that the husband is considered to have murdered her, because he demanded money that she could not deliver. If the wife commits suicide, it is considered murder by the husband ^[19]. Also, if the wife dies of a road accident within seven years, it is considered murder by the husband unless he can prove that it was an accident. The National Crime Records Bureau (NCRB) reports many of these deaths as crimes against women. However, even if some of these cases are 'dowry death' according to this law, the actual number is much lower than reported. The NCRB does not correct for the many cases that were proven to be wrong (e.g., woman died of accident). Moreover, in many cases it is extremely difficult to prove that the accusation is wrong. For instance, if there was a dispute between the couple or between the in-laws and the husband, then proving innocence is almost impossible. The only way out of this dilemma is to fulfil the financial demands made by the in-laws, so they will go to the police and provide statements that there was no argument between both.

Section 376: Consensual Sex is Rape by the Man

Section 376 ^[20] is about punishing rapists. Although laws against rape exist all over the world, the definition of 'rape' in India makes this an anti-men law. Section 497 (see below) defines consensual sex of a man with a married woman is adultery. The man, married or not, can be punished by a five year sentence. Section 497 does not apply for the wife. She may not be punished. Consensual sex on pretext of marriage or doing some favour is also rape ^[21]. So, my girlfriend can go to the police station and file a complaint by claiming that I am not marrying her. According to Indian law this would make me a rapist. However, if my girlfriend denies marrying me, it is not rape. Recently, in December 2014, a man was sentenced to rigorous punishment for breaking his engagement ^[22]. Just like with section 498A, the woman is supported by the state power and prosecution. Only her statement matters, whereas the statement of the man is worthless. In 2012, the conviction rate under section 376 was 24% ^[23]. The Mumbai police comments that 90% of the (convicted) rape cases are based on consensual sex ^[24]. Here again, once a man is accused, his career is gone, his job is gone, and the family carries a social stigma for the whole life. The misuse of section 376 is rampant. For instance, a woman, who filed a rape case against her brother-in-law mixed with 498A and domestic violence act, was found to have filed 100 rape complaints in only a few years ^[25]. In some villages, section 376 is used to take revenge against opposing gangs ^[26]. Similarly, there are organized gangs catching prey and extorting money ^[27]. In the last few years, a number of gang-rape complaints have been proven hoax ^[28-32].

Section 354: Only Women can be Molested

Section 354 ^[33] is a law against sexual molestation. Only women can be molested. This law is already misused to a high degree and may even become number one of the abused laws in India. The law is defined only by a few lines with no restrictions for its misuse. In December 2014, a case of sexual assault has been filed against a five year old boy by the Mumbai police based on a complaint filed by his classmate ^[34]. Maybe you have heard about the story of the 'Rohtak Sisters' in India ^[35]. Two sisters beat two guys in a bus. The two sisters went to the police, submitted a video, and filed

a case under section 354. The guys were immediately arrested, lost their job at the army, and the sisters were honoured by two women commissions of Rohtak state and another state. However, after the whole video clip was shown on TV, the passengers travelling that day on the bus came forward and told a completely different story. An argument for a seat turned ugly, when the two sisters started beating the men. Another video of the two sisters beating a different guy in a park emerged. Just like the first video, there was no molestation throughout the scene. Even though the truth came out ultimately, it was/is useless, because the case has been registered, and the police was duty bound and arrested the two men prior to an investigation. According to the people of their village, the sisters are serial molestation case filers.

Irreversible Breakdown of Marriage (IrBM): Wife has Right on Property of the Husband and his Family after and before Marriage

This bill is considered in the Indian Parliament for the Winter Session of 2014/15. If passed, this bill will break all records of alimony laws which exist in the world. According to this new law, the woman on divorce will have her share of the husband's acquired property (before or after marriage), at least 40% of his salary, his parent's property (before or after marriage) and ancestral property inherited or inheritable. Husbands can file a divorce, but the wife can oppose it. However, if the wife files a divorce, then the husband cannot oppose it. All the assets are transferred irrespective of whose fault it really was. The law asks Indian men not to take any money from the wife when they marry, but to share with her all assets when she walks away by filing divorce.

Section 125: Maintenance Duties to Men - Rights to Women

Section 125 together with section 24 of the Hindu Marriage Act (HMA24) regulates maintenance. Section 125 ^[36] assigns maintenance to the wife even when the marriage lasted only for one minute. If the husband refuses it, he ends up in jail. A wife who lives separate from his husband can file a divorce under this section. She just has to refer to section 498A, which states that separation is a cruelty of the husband. Note that there is no punishment to women for making wrong claims

under section 498A (see above). Immediately after the divorce is filed, she can claim interim maintenance without any further investigation. Later on she may file final alimony. Although the final alimony also considers the salary of the wife, the interim alimony does not. Since the Indian jurisdiction is slow the time between interim and final alimony decisions may take years. So, the wife is advised by the lawyers to delay the final decision by not appearing at each court appointment. For the final maintenance and alimony, the salary of the wife is considered. However, the onus of proving that the wife is working is upon the husband. The state does not help. So, many men end up sharing a substantial part of their salary and half of the property they acquired before marriage for a marriage that lasted only a few days. Such short-term marriages are becoming more and more common. Many families of women in India are misusing this law. A similar law in China was called off in 2011 due to the massive misuse.

Child Custody and Maintenance

A shared-parenting concept does not exist in India. Sole custody of the child is given to the mother. A husband may file visitation rights but it is up to the mother whether she lets the father see the children or not. Every year many cases are filed by the husband for getting child custody. It is very common that the husband may not see the child for two, three, or four years while still paying monthly alimony for the child. Usually, a bundle of cases are filed against the husband when the marriage becomes sour. These are 498A accompanied with a number of sections like 406, 506, 354 (against relatives) and 376 (against close relatives) along with the domestic violence (DV) act or with section 125 or HMA24. Noteworthy, that the husband has to pay maintenance for the child even if it is not his own, because the adultery act (section 497, see below) does not apply to men.

Section 497: Only a Man can do Adultery

Section 497^[37] states that consensual sex between a man and a woman is considered rape of the woman, if the man knew that the woman with whom he had sex with was already married. The man is punishable for a term extending up to five years. The last line of this section reads: "In such case the wife shall not

be punishable as an abettor." So, the act of adultery is applicable only to a man while the woman walks away. Adultery is considered as a cruelty to a woman. If a married man sleeps with another woman, the wife can file divorce, bring the man to jail, and will receive alimony by the man. But guess what, if the wife sleeps with another man? The husband is helpless. Even if he knows that the kids born after the marriage are not his, he still has to pay alimony for these kids and for the wife after she filed divorce. Getting a DNA test of children is almost impossible. You may have to move to the Supreme Court (SC) of India, which may take years and extract all money for moving from lower to district to high court to the Supreme Court^[38]. And then the test cannot be done without the permission of the mother.

Prosecution: National and International

Note that anti-men laws may be filed from any place where the wife lives temporarily. In the worst case, the husband, his aged parents, nephews, nieces, siblings living within India or abroad end up in travelling from one part of India to another in order to attend a single appointment in court. Indians living abroad are most vulnerable targets, because once the case is filed against such a husband, the Indian government is bound to bring back the NRI. Accordingly, the Indian government has issued thousands of red-corner notices to Interpol. Meanwhile, seeing the non-seriousness of these complaints Interpol has stopped pursuing such arrest warrants^[39, 40]. However, due to strong diplomatic relationships we never know when the horror will start again that a husband in matrimonial dispute will be treated as NRI against whom international arrest warrants will be issued.

Help: Lack of Support

Overall there are 45 draconian laws in India against men and against their families. Most of these laws hold men guilty prior to trial and bring men into jail (sometimes by judicial-custody or police-custody) for a period from three days to years even before the trial starts.

There are non-governmental organizations (NGO) and several online forums that are giving free consultancy and running suicide hotlines in India (e.g., 498A^[41], Save Indian Family^[42], Confidare India^[43], Family Harmony^[44]). However, instead of receiving support by the

state or companies, these human rights organizations are obstructed. For instance, the famous 498A forum ^[41] was banned by many Indian telecommunication operators. Similarly, the international news coverage of human rights violations in India is biased towards women rights.

Now, make your mind free from what the main international media tells you. Do you still think that only the rights of women need attention and protection? Please, do not ignore anymore the rights of Indian men and their families!

This article is a letter by the Indian human rights activist Ravi Kumar. In order to protect the activist from state prosecution, this name is a pseudonym. A German translation is provided by Frank Mago (www.jg-nf.de).

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References

1. Central Government Act Section 498A in The Indian Penal Code. <http://indiankanoon.org/doc/538436/>.
2. Law Commission of India (2012, August) Report No. 243.
3. Namita Bhandare (2014, July 07) The problem with section 498A. Live Mint, <http://www.livemint.com/Politics/V1SIYdZu2IjzHgxRiLNpEJ/The-problem-with-section-498A.html>.
4. Save Family Foundation (2014, July 6) Reality of male suicide w.r.t. IPC 498A. <http://sfdelhitrainingsessions.blogspot.de/2014/07/NCRBArnes-hSupremeCourt.html>.
5. Kranti Vibhute (2009, June 21) Baby got bail. Mid Day, <http://archive.mid-day.com/news/2009/jun/210609-Zoya-two-month-old-girl-anticipatory-bail-dowry-harrasment-case-youngest-accused-Mumbai-news.htm>.
6. The Judgment Information System (2014, July 2) CRIMINAL APPEAL NO. 1277 OF 2014. The Judgment Information System, <http://judis.nic.in/supremecourt/imgs1.aspx?filename=41736>.
7. National Crime Records Bureau (2011) Table 4.12: Conviction Rate Of IPC Crimes During 2011. <http://ncrb.nic.in/CD-CII2011/cii-2011/Table%204.12.pdf>.
8. The Male Factor (2014, July 5) The false dowry complaint industry in India. <http://themalefactor.com/2014/07/05/the-false-dowry-complaint-industry-in-india/>.
9. The Economic Times (2015, January 20) Marital blues make many NRIs dread visiting India. The Economic Times, http://articles.economictimes.indiatimes.com/2015-01-20/news/58268180_1_nris-indian-diaspora-anindya-chatterjee.
10. Government of Canada (2015, February 18) Travel advice and advisories for India. <http://travel.gc.ca/destinations/india>.
11. Australian Government Refugee Review Tribunal (2010, November 12) Country Advice India. UNHCR - The UN Refugee Agency.
12. Akash Vashishtha (2012, March 2) Ten-year nightmare of groom falsely accused of demanding dowry finally comes to an end. Mail Online, <http://www.dailymail.co.uk/indiahome/indianews/article-2108929/Mans-year-dowry-nightmare-jail-finally-ends.html>.
13. Confidare India (2011, October 29) Husbands committing suicide 4 times faster than wives. <http://www.confidareindia.com/husbands-committing-suicides>.
14. Vicky Nanjappa (2011, October 28) NCRB stats show more married men committing suicide. Rediff News, <http://www.rediff.com/news/report/ncrb-stats-show-more-married-men-committing-suicide/20111028.htm>.
15. The Telegraph (2010, July 24) A septuagenarian father has taken his own life to "save" his son and other tortured husbands. The Telegraph, see: <http://www.lawyersclubindia.com/forum/Suicide-is-the-Only-Solution-to-Get-Away-from-False-498A-22129.asp>.
16. Daijiworld Media (2013, October 3) Cases of married men committing suicide on the rise: Report. Daijiworld Media, http://www.daijiworld.com/news/news_disp.asp?n_id=192622.
17. Rediff News (2013, October 3) 1 married man ends life every 9 minutes in India! Rediff News, <http://www.rediff.com/news/slide-show/slide-show-1-1-married-man-ends-life-every-9-minutes-in-india/20131003.htm>.
18. Central Government Act Section 304B in The Indian Penal Code. <http://indiankanoon.org/doc/653797/>.
19. Daily Bhaskar (2013, July 26) Suhaib Ilyasi: From the host of 'India's most wanted' to 'Most wanted man' after his wife Anju's 'death'. Daily Bhaskar, <http://daily.bhaskar.com/news/DEL-suhaib-ilyasi-from-the-host-of-indias-most-wanted-to-most-wanted-man-after-his-w-4330374-PHO.html>.
20. Central Government Act Section 376 in The Indian Penal Code. <http://indiankanoon.org/doc/1279834/>.
21. The Hindu (2014, July 29) The many shades of rape cases in Delhi. The Hindu, <http://www.thehindu.com/data/the-many-shades-of-rape-cases-in-delhi/article6261042.ece>.
22. Deccan Chronicle (2014) Man gets 5 yrs rigorous imprisonment for breaking engagement. cited by Arul, P. (2014, December 3) Vinayak Wordpress, <http://vinayak.wordpress.com/2014/12/03/forget-arrest-after-marriage-now-you-can-get-5-years-r-i-just-after-engagement/>.
23. Sana Shakil (2014, February 22) Tougher rape law leading to increase in false cases? The Times of India. <http://timesofindia.indiatimes.com/city/delhi/Tougher-rape-law-leading-to-increase-in-falsecases/articleshow/30807940.cms>.
24. Radhika Ramaswamy (2014, June 24) 43% rise in rape cases in Mumbai but the police claims more than 90% "consensual". DNA. <http://www.dnaindia.com/mumbai/report-43-rise-in-rape-cases-in-mumbai-but-the-police-claims-more-than-90-consensual-1997422>.
25. Avantika Mehta (2014, Nov. 18) Court cracks down on woman who made 100 fake calls alleging rape. Hindustan Times. <http://www.indiaeveryday.in/fullnews-court-cracks-down-on-woman-who-made-100-fake-calls-alleging-1478-7798273.htm>.
26. Dwaipayan Ghosh (2014, June 29) Detectives to probe slew of fake gang-rape claims. The Times of India. <http://timesofindia.indiatimes.com/city/kolkata/Detectives-to-probe-slew-of-fake-gang-rapeclaims/articleshow/37413802.cms>.
27. HT Correspondent (2014, November 3) Gang filing false rape cases to extort money busted. Hindustan Times, <http://www.hindustantimes.com/punjab/ludhiana/gang-filing-false-rape-cases-to-extort-money-busted/article1-1282026.aspx>.
28. ABP News Bureau (2014, October 13) Meerut 'love jihad' case: Meerut girl takes U-turn, denies rape and forced conversion. ABP Live. <http://www.abplive.in/india/2014/10/13/article418967.ece/Meerut-%E2%80%98love-jihad%E2%80%99-case-Meerut-girl-takes-U-turn-says-she-ran-out-on-her-own-will>.
29. dna webdesk (2014, October 13) Meerut girl denies rape and forceful conversion, 'love jihad' theory jolted. DNA, <http://www.dnaindia.com/india/report-meerut-girl-denies-rape-and-forceful-conversion-love-jihad-theory-jolted-2025688>.

30. Ritesh K. Srivastava (2014, November 28) Badaun case: No evidence of rape and murder, says CBI; Mayawati dissatisfied. Zee News. http://zeenews.india.com/news/uttar-pradesh/badaun-case-no-evidence-of-rape-and-murder-says-cbi-mayawati-dissatisfied_1505502.html.
31. Day and Night News (2013, January 6) Bathinda Police: Case of rape turns false. Day and Night News. <http://www.dayandnightnews.com/2013/01/bathinda-police-case-of-rape-turns-false/>.
32. UPI (2013, January 21) Latest India gang-rape claim false. UPI. http://www.upi.com/Top_News/World-News/2013/01/21/Latest-India-gang-rape-claimfalse/UPI-8961135877398/.
33. Central Government Act Section 354 in The Indian Penal Code. <http://indiankanoon.org/doc/203036/>.
34. Mumbai Mirror (2014, December 13) Five-year-old girl identifies classmate as her 'molester'. Mumbai Mirror. <http://www.mumbaimirror.com/mumbai/crime/Five-year-old-girl-identifies-classmate-as-her-molester/articleshow/45500637.cms>.
35. Deepika Bhardwaj (2014, December 3) Other side of Rohtak Bravehearts. Youtube, https://www.youtube.com/watch?v=VWzWsql94_Q.
36. Central Government Act Section 125 in The Code of Criminal Procedure, 1973. <http://indiankanoon.org/doc/1056396/>.
37. Central Government Act Section 497 in The Indian Penal Code. <http://indiankanoon.org/doc/1833006/>.
38. Utkarsh Anand (2014, October 16) DNA test can be used to prove infidelity: Supreme Court. The Indian Express. <http://indianexpress.com/article/india/india-others/dna-test-can-be-used-to-prove-infidelity-supreme-court/>.
39. Arnab Ganguly (2009, April 24) Abuse of 498A Interpol notices ends. Meri News. <http://www.merineews.com/article/abuse-of-498A-interpol-notices-ends/15767016.shtml>.
40. Rahul Tripathi (2011, June 30) No red notices in dowry cases: Interpol. The Indian Express. <http://archive.indianexpress.com/news/no-red-noticesin-dowry-cases-interpol/810611/>.
41. 498A Forum. <http://www.498A.org/forum/>.
42. Save Indian Family. <http://www.saveindianfamily.in>.
43. Confidare India. <http://www.confidareindia.com>.
44. Family Harmony. <http://www.family-harmony.org>.