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Sl. No. 79 (1)

By SPEED POST

2/1/12

No.3/5/2008-Judl.Cell
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya

Jaisalmer House
Man Singh Road
New Delhi - 110 011

16 January 2012

To

The Chief Secretaries of State Governments/Union Territory Administrations
(As per list attached)

Subject: Advisory on measures to be taken by States/UTs to curb of misuse of section 498A of IPC - regarding.

-:0:-

Sir,

An advisory was issued by this Ministry on 20th October, 2009 to all State Governments/Union Territory Administrations for taking effective measure to put to rest the allegations of misuse of Section 498A of Indian Penal Code (IPC) (copy enclosed). Subsequently, a petition by Dr. Anupama Singh, New Delhi praying for amendment in Section 498A of Indian Penal Code, 1860 was admitted by the Hon'ble Chairman, Rajya Sabha on 11th November, 2010 under the provisions of Chapter X of the Rules of Procedure and Conduct of Business in the Council of States. The petition was reported to the Council of States on 15th November, 2010 by the Secretary-General, after which it stood referred to the Committee on Petitions for examination and report. The Hon'ble Committee on Petitions of Rajya Sabha deliberated on the issue and presented its 140th Report on the said petition on 7th September, 2011. A copy of the said Report is enclosed.

2. The Hon'ble Committee, in its above mentioned Report, has, inter alia, recommended for effective measures to be taken by the State Governments to curb misuse of Section 498A of IPC. The observations/recommendations made by the Committee, inter alia, include:

Ministry of Home Affairs
ISSUED
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Signature: *[Signature]*

The powers of the arrest on complaints relating to offence under Section 498A of IPC are to be exercised carefully
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and cautiously. The Committee notes that the advisories have been issued by the Ministry of Home Affairs to all State Governments/UT Administrations for preventing the misuse of Section 498A of IPC. The Committee would like these guidelines to be followed and implemented strictly in letter and spirit by the State Governments/UT Administrations. These guidelines should be adequately published by the State Governments/UT Administrations and displayed publicly in the Police Stations so that the public is aware of their rights/liabilities and is not harassed on account of ignorance of law.

- ii) Arrest under Section 498A of IPC should be done only with written order of the police officer of the level of DCP or equivalent and for acceptable reasons. The State Government may issue necessary direction in this regard. In this context, it is further recommended that the State Governments/UT Administrations may also keep an eye on the number of complaints registered under Section 498A of IPC and the arrest made as follow up, by calling for periodic data from their police Department, for monitoring whether the provisions of the law are not being misused.
- iii) The Committee further advocates that professional and trained family counselors should do the counseling in the Women's Cell so that frivolous cases are screened at the initial stage itself and Section 498A of IPC is invoked in rare cases. The report of the counseling process may be submitted to the concerned DCP or equivalent rank officer and only when the concerned officer is not satisfied with the result the counseling, provision of Section 498A of IPC may be invoked. The process of counseling, which is being handled by the Police Department, should be developed professionally by involving qualified counselors and reputed NGOs so that people have more confidence in the mechanism and they could be approached for timely intervention and arrive at some settlement without reaching the stage of complaint under Section 498A IPC. The Committee hopes that a professionally managed counseling system would definitely be able to curtail the number of complaints under Section 498A of IPC.
- iv) The service of professional trained family counselors may be utilized in the Crime Against Women/Mahila Desk at every Police Station for mediation, conciliation of conflicts arising out of matrimonial relationship between warring spouses which would also take care of custody, care and protection of their children. The Committee reiterates that the recourse to Section 498A of IPC or arrest thereunder should not be taken before making an attempt

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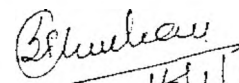
for reconciliation through the assistance of professional family counselors.

- v) There is a need to ensure that the provision of Section 498A of IPC should not be invoked in case of juveniles. However, in case of any aberrations, the police must ensure that the children are put under the care of Child Welfare Committee which would arrange for counseling and interim care of the children in the child friendly environment.

3. 'Criminal Law' and 'Criminal Code' are in the Concurrent List (List-III) under Entry-1 and 2 of the Seventh Schedule of the Constitution of India. The Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 are implemented by the respective State Governments. In continuance of this Ministry's advisory dated 20.9.2009, all the State Governments/UT Administrations are, therefore, requested to take effective measures in the light of the observations/recommendations made by the Hon'ble Committee of Petition of Rajya Sabha in its 140th Report to curb the misuse of Section 498A of IPC.

4. The receipt of this letter may please be acknowledged.

Yours faithfully



(Satpal Chouhan)

Joint Secretary (C&PG)

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