

GOVERNMENT OF INDIA

LAW COMMISSION OF INDIA

Compounding of (IPC) Offences

Report No. 237

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Dear Hon. Minister Salman Khurshid ji,

I am forwarding herewith the report of the Law Commission of India, on “Compounding of (IPC) Offences”.

As regards this subject, the Supreme Court, in two decisions referred to at page 1 of the report, suggested that Law Commission should undertake the exercise of identifying more compoundable offences. The Department of Legal Affairs, in its OM F. No. A-60011/63/2010-Admn. III (L.A.) dated 2nd December, 2010, referred to the Order of Supreme Court and requested the Commission to take necessary action. Further, the Home Secretary, in his D.O. letter No. 3/2/2006-Judl. Cell dated 1st September, 2009. Addressed to the Member-Secretary of the Commission, requested the Law Commission to examine the question of misuse of Section 498-A IPC and to suggest remedial measures.

In Preeti Gupta Vs. State of Jharkhand [(2010) 8 SCC page 131), the Hon’ble Supreme Court observed that a serious re-look of the entire provision (section 498-A IPC) is warranted by a legislation. The Supreme Court deplored the tendency of several implications and exaggerated versions. The Court observed: “It is high-time that the Legislature must take into consideration the pragmatic reality and suitable changes in the existing laws”. A copy of the judgment was directed to be sent to the Law Commission of India and to the Union Law Secretary for taking appropriate steps in the larger interest of the Society. On receipt of this judgment, the Department of Legal Affairs, by its communication dated 2nd December, 2010, requested the Law Commission of India to take further necessary action in view of the observations in the said judgment.

Accordingly, the Commission has made an in-depth study and identified certain offences that can be added to the list

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of compoundable offences under Section 320 Cr.PC. In particular, the Commission has suggested that Section 498A IPC (husband or his relative subjecting a woman to cruelty) and Section 324 IPC (causing hurt by dangerous weapons or means), should be made compoundable with the permission of the Court.

Notwithstanding the observation of the Supreme Court in a short order passed in Ramgopal's case, (vide p. 1 of the report), the Commission has taken the view that Section 326 IPC should remain non-compoundable. The approach to be adopted vis-à-vis the compounding of offences has been discussed. The summary of recommendations are found in the last two pages.

It may be mentioned that the Commission had published a Consultation Paper-cum-Questionnaire on S. 498-A. A number of representations have been received which are analyzed in Annexure 1-A. In the Conferences with the judicial officers and lawyers also, this topic was discussed. The pros and cons have been considered after extensive deliberations and the conclusion has been reached that S. 498-A should be made compoundable as suggested by the Supreme Court, but with the permission of the Court. Certain safeguards have been suggested to dispel the apprehension that the wife will be coerced to enter into a compromise.

The other aspects relating to 498A viz., whether it should be made bailable and what steps are to be taken to minimize the alleged misuse and to facilitate reconciliation will be the subject matter of a separate report which is under preparation.

With regards and good wishes,

Sd. /

(P.V. Reddi)

Shri Salman Khurshid ji,
Hon'ble Union Minister for Law & Justice,
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COMPOUNDING OF (IPC) OFFENCES

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1. Introduction

1.1 The Supreme Court of India in the case of *Ramgopal vs. State of M.P.*¹ in a brief order, observed thus:

“There are several offences under the IPC that are currently non-compoundable. These include offences punishable under Section 498-A, Section 326, etc. of the IPC. Some of such offences can be made compoundable by introducing a suitable amendment in the statute. We are of the opinion that the Law Commission of India could examine whether a suitable proposal can be sent to the Union Government in this regard. Any such step would not only relieve the courts of the burden of deciding cases in which the aggrieved parties have themselves arrived at a settlement, but may also encourage the process of re-conciliation between them. We, accordingly, request the Law Commission and the Government of India to examine all these aspects and take such steps as may be considered feasible”.

Again, the same learned Judges in an Order² passed later in Crl. appeal No. 433 of 2004 (*Diwaker Singh vs. State of Bihar*) made similar observations which are extracted hereunder:

“Further, we are of the opinion that Section 324 IPC and many other offences should be made compoundable. We have already referred to the Law Commission of India and the Ministry of Law & Justice, Government of India our suggestion that suitable amendments should be made in the Code of Criminal Procedure for making several offences which are presently treated as non-compoundable under Section 320 CrPC as compoundable. This will greatly reduce the burden of the courts.

The Law Commission of India and the Ministry of Law & Justice, Government of India may also examine this suggestion. The Law Commission may also examine several other provisions of the Indian Penal Code and other statutes in order to recommend that they may also be made compoundable even if they are presently non-compoundable.”

Pursuant to these observations of the Supreme Court, the Law Commission of India embarked on the task of identifying appropriate offences which could be added to the list of compoundable offences under Section 320 of the CrPC. The present exercise is only confined to the offences made punishable under Indian Penal Code.

¹ 2010 (7) SCALE 711

² Dated 18th August 2010

1.2 Compounding in the context of criminal law means forbearance from the prosecution as a result of an amicable settlement between the parties. As observed by Calcutta High Court in a vintage decision in *Murray*³, compounding of an offence signifies “that the person against whom the offence has been committed has received some gratification, not necessarily of a pecuniary character, to act as an inducement of his desiring to abstain from a prosecution”. The victim may have received compensation from the offender or the attitude of the parties towards each other may have changed for good. The victim is prepared to condone the offensive conduct of the accused who became chastened and repentant. Criminal law needs to be attuned to take note of such situations and to provide a remedy to terminate the criminal proceedings in respect of certain types of offences. That is the rationale behind compounding of offences. Incidentally, the compounding scheme relieves the courts of the burden of accumulated cases. The listing of offences compoundable is something unique to the Indian Criminal Law. The State’s prosecuting agency is not involved in the process of compounding.

1.3 Which offences should or should not be made compoundable is always an enigma for the law-makers. The problem has to be considered from different perspectives and the pros and cons are to be weighed and a rational view has to be taken. Broadly speaking, the offences which affect the security of the State or having a serious impact on the society at large ought not to be permitted to be compounded. So also, crimes of grave nature shall not be the subject-matter of compounding. The policy of law on compoundability of offences is complex and no straightjacket formula is available to reach the decision. A holistic and not an isolated approach is called for in identifying the compoundable and non-compoundable offences. The interest of victims of crimes and the societal interest in the conviction of the offender often clash and this makes the job of law-makers more complex. That the Courts are flooded with cases and, therefore, more and more offences should be identified for compoundability is only a secondary consideration. Primarily, what needs to be taken into account is the nature, magnitude and consequences of the crime.

³ (1894)21 ILR 103 at 112

2. Scheme and Features of Compounding of Offences under the Code of Criminal Procedure, 1973

2.1 At present, there are 56 compoundable offences: 43 in the Table under sub-section (1) and 13 in the Table under sub-section (2) of Section 320. The compoundable offences dealt with by CrPC are confined to the offences punishable under Indian Penal Code. The offences under other laws are not touched by CrPC. The provisions of Section 320 CrPC are extracted below for ready reference:

Section 320. Compounding of offences. –

(1)The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table: -

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded

(2)The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the table next following may, with the permission of the Court (emphasis supplied) before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table: -

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded

(3)When an offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence when such attempt is itself an offence or where the accused is liable under section 34 or 149 of the Indian Penal Code may be compounded in like manner.

(4) (a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf, may, with the permission of the Court compound such offence.

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 of such person may, with the consent of the Court compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section.

2.2 An analysis of Section 320 reveals the following salient features:

No offence other than that specified in the Section can be compounded. The offence can only be compounded by the persons specified in Col.3 of the Table concerned and such person is the person directly aggrieved in the sense that she/he is the victim of the crime. As a result of composition of the offence under Section 320, the accused will stand acquitted of the offence of which he/she is charged and the Court loses its jurisdiction to proceed with the case. Unlike in some of the provisions of

special laws, no one on behalf of the State is empowered to compound the offences. However, the public prosecutor may withdraw from prosecution with the consent of the Court, as provided for in Section 321 CrPC.

2.3 Sub-section (3) of Section 320 lays down the rule that in respect of compoundable offences specified in the Section, the abetment or an attempt to commit the offence is also compoundable. So also the composition can be applied to the accused who is liable for the offence constructively by virtue of Section 34 or Section 149 of IPC. Then the composition of offence can be permitted by the High Court or a Sessions Court exercising revisional powers. Sub-section (5) provides that the composition can be allowed only with the leave of the Committal Court or Appellate Court during the pendency of committal or appellate proceedings.

2.4 The Supreme Court made it clear in the case of *Surendra Nath Mohanty vs. State of Orissa*⁴ (a three judge bench decision) that '*For the compounding of the offences punishable under the Indian Penal Code, a complete scheme is provided under Section 320 of the Code of Criminal Procedure, 1973. Sub-section (1) of Section 320 provides that the offences mentioned in the table provided thereunder can be compounded by the persons mentioned in Column 3 of the said table. Further, sub-section (2) provides that the offences mentioned in the table could be compounded by the victim with the permission of the Court. As against this, sub-section (9) specifically provides that "no offence shall be compounded except as provided by this Section". In view of the aforesaid legislative mandate, only the offences which are covered by table 1 or 2 as stated above can be compounded and the rest of the offences punishable under Indian Penal Code could not be compounded*'.

⁴ AIR 1999 SC 2181

3. Related Reports of the Law Commission and the Legislative Changes Made

3.1 In the old Criminal Procedure Code of 1898, Section 345 dealt with the compounding of offences. Sub-section (1) thereof listed 22 offences under the IPC which could be compounded by the aggrieved party without the permission of the Court and Sub-section (2) enumerated 32 other offences which might also be compounded, but with the permission of the Court. The Law Commission, in its 41st Report, addressed the topic of compounding of offences in Chapter 24. According to the Commission, "...*The broad principle that forms the basis of the present scheme is that where the offence is essentially of a private nature and relatively not serious, it is compoundable*". The Commission was against the formulation of a general rule that all offences which are punishable with the maximum imprisonment of three years or so shall be compoundable. Though it had the virtue of definiteness, it would not be 'suitable', it was pointed out. The Commission rightly observed: "*It is, in our opinion, better to have clear and specific provisions such as those contained in section 345 than a general rule which is likely to lead to different interpretations*". The Commission then rejected a suggestion that the law should be simplified requiring permission of the Court in every case instead of maintaining two classifications. The Commission was not in favour of liberally enlarging the list of compoundable offences. The Commission rejected the suggestion to include the offences under Sections 143, 147, 209, 210, 279, 304A, 326, 347, 380, 456, 457 and 495 by observing that "*Public peace, order and security are matters in which society is vitally interested and offences which jeopardize them ought to be suitably punished by the courts.*" It is doubtful whether all those offences referred to by the Commission (vide paragraph 24.69) substantially affect public peace or security. The Commission then recommended that Section 354 of IPC (assault on woman with intent to outrage her modesty), Section 411 (dishonesty receiving stolen property), and Section 414 (assisting in the concealment or disposal of stolen property), should be compoundable provided the value of property in relation to Sections 411 and 414 was not more than Rs.250. However, the Commission expressed the view that the offence of unlawful compulsory labour punishable under Section 374 IPC should not be compoundable. The above recommendations of the Law Commission

i.e., the addition of three offences and the omission of Section 374 IPC from the list of compoundable offences were reflected in the Code of Criminal Procedure, 1973.

3.2 In the new Code of 1973, there were 21 offences in the first Table and in the second Table, there were 36 offences making up the total of the compoundable offences 57 as against 54 in the old Code. One offence i.e. Section 374 IPC, was omitted and three offences specified in Sections 354, 411 and 414 were added to the list of compoundable offences in the Code of 1973, based on the suggestions of Law Commission (41st Report). Further, in the new CrPC, Section 500 IPC finds place in both the sub-sections/Tables of Section 320. Defamation against the President, Vice-President, Governor or a Minister in respect of his conduct in the discharge of public duties, if instituted on the complaint made by Public Prosecutor, is compoundable only with the permission of Court. The other defamations are retained in Table I.

3.3 In the Code of Criminal Procedure (Amendment) Act of 2005 (Act No. 25 of 2005 effective from 23.06.2006), Section 324 IPC (causing hurt by dangerous weapons or means), which by all relevant standards qualify as a compoundable offence, was omitted. The Law Commission in its 154th Report (1996) had recommended that the said offence (along with others) might be shifted to the Table under sub-section (1) so that it could be compounded without the Court's permission. However, the law Commission in its 177th Report recommended its retention in the Table under Sub-Section (2). But, without any good reason, the said offence was altogether omitted from the list of compoundable offences. With the deletion of Section 324 IPC by the Amendment Act of 2005, the number of compoundable offences stood at 56 i.e. 21 in the first Table and 35 in the second Table as against 57 (21+36) earlier.

3.4 The next amendment Act relating to CrPC was of the year 2009 (Act 5 of 2009). The Tables forming part of Section 320 (1) and (2) underwent certain changes. In order to give effect to the recommendations of the Law Commission in its 154th Report as well as 177th Report, a number of offences in the second Table (falling under sub-section (2) of Section 320) were transferred to the first Table. Further, the value of property stolen etc. as specified in relation to Sections 379, 381, 406, 407, 408, 411 has

been omitted. Another important change that was made was the deletion of Section 354 IPC from the list of compoundable offences. Section 354 (assault of woman with intent to outrage her modesty) which was included in the Table under Section 320 (2) of the new Code pursuant to the recommendation in the 41st Report of the Law Commission was deleted by Act 5 of 2009. Presently, it is no longer a compoundable offence. Section 312 IPC (causing miscarriage) was included in the Table under Section 320(2) as per the recommendation made in the 154th Report. Thus, after the CrPC (Amendment) Act, 2008 (Act 5 of 2009) which came into effect on 31st December, 2009, the number of compoundable offences in CrPC, 1973 stands at 56 i.e. 43 in the Table under Section 320 (1) and 13 in the Table under Section 320 (2).

3.5 In the 154th Report, there was a recommendation of the Law Commission that the scope of sub-section (3) of Section 320 CrPC should be amplified so as to include the cases of the accused who are constructively liable under Section 34 or under Section 149 IPC. This had been accepted by the Legislature and sub-section (3) was amended. In this context, we are presently making the recommendation for making the offence of criminal conspiracy under Section 120-B IPC as compoundable provided it relates to other compoundable offences and to amend sub-section (3) of Section 320 accordingly.

3.6 There is one more important recommendation in the 154th report of the Law Commission which we would like to advert to. The Commission in para 11 of Chapter XII observed thus:

“It was also suggested by senior police officers at the various workshops that the Code of Criminal Procedure should empower the investigating officer to compound offences, which are compoundable, at the investigation stage and make a report to the magistrate who will give effect to the composition of such offences. This step will reduce the number of cases proceeding for trial at the threshold stage itself and relieve the court docket to a great extent. In fact the National Police Commission in its Fourth Report had suggested that it would help quicker disposal of cases in the compoundable category if the procedure is amended to empower the police officers to take note of the desire of the parties for the compounding of offences from the stage of investigation and thereupon close cases and report the matter to the Court which will have the authority to pass initial order from the police report as in every other case in which the police submit their report.”

The Law Commission felt that such a provision will have a salutary effect and will check abuse by the police.

3.7 In order to give effect to the recommendation of the National Police Commission, the 1994 (CrPC) Amendment Bill proposed adding of sub-section (3A) to Section 173 of CrPC in the following terms:

“If, however, in respect of offences enumerated in the Table in section 320, in the course of investigation, the person by whom the offence may be compounded under the said section gives a report in writing to the officer in charge of the police station expressing his desire to compound the offence as provided for in the said section, the officer shall mention this fact in the police report prescribed in sub-section 2(1) and forward the compounding report from the person concerned to the Magistrate who shall thereupon deal with the case under section 320 as though the prosecution for the offence concerned had been launched before the Magistrate.”

However, this proposed amendment did not take shape, though the Law Commission, in its 177th Report, reiterated the recommendation made in the 154th Report in this regard.

4. Approach of the Supreme Court in Certain Cases

4.1 As the offence under Section 326 IPC was not compoundable in law, the Supreme Court having regard to the long lapse of time and settlement of the dispute between the parties reduced the sentence to already undergone three months' imprisonment⁵. Yet another approach adopted by the apex Court in dealing with the situations arising from the amicable settlement arrived at between the complainant and the accused in respect of a non-compoundable offence was to quash the proceedings having regard to the facts and circumstances of the case. The cases of *B.S. Joshi vs. State of Haryana*⁶; *Nikhil Merchant vs. CBI*⁷ and *Manoj Sharma vs. State*⁸ are illustrative of this approach.

4.2 In the first case of *B.S. Joshi*, the accused were charged with offences under Sections 498A and 406 IPC. An affidavit was filed by the complainant wife that the disputes were finally settled and the accused and the victim prayed for quashing the FIR. The High Court declined to exercise its inherent power under Section 482 Cr.PC on the ground that power under the said Section cannot be exercised to quash the prosecution for non-compoundable offences even if the parties have settled the dispute. In appeal, the Supreme Court reversed the order of the High Court and held that the High Court in such cases can quash criminal proceedings/FIR/complaint in exercise of its inherent powers under Section 482. The Supreme Court laid down, after discussing the case law on the subject: "*We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing*". The Court, however, guardedly said: "*It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power*". In *B.S. Joshi's* case, the Supreme Court justified the exercise of power under Section 482 to quash the proceedings to secure the ends of justice in view of the special facts and circumstances of the case, even where the offences were non-compoundable.

⁵ Ibid. Also see *Gulab Das vs. State of M. P.*, 2011 (12) SCALE 625

⁶ (2003) 4 SCC 675

⁷ (2008) 9 SCC 677

⁸ 2008 (14) SCALE 44

4.3 The principle laid down in *B.S. Joshi's* case was cited with approval in the case of *Nikhil Merchant vs. CBI (supra)*. That was a case in which charge-sheet was filed against the accused under Section 120-B read with Sections 420, 467, 468 and 471 IPC. Whereas the offence under Section 420 is compoundable, the offence of forgery was not compoundable. The filing of charge-sheet by the CBI was preceded by a suit between the delinquent Company and the Bank in which a compromise was arrived at. Pursuant to that compromise, the appellant-accused who was one of the Directors of the company, filed an application for discharge from the criminal case. That application was rejected by the High Court. The Supreme Court held: "*On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S. Joshi's case and the compromise arrived at between the Company and the Bank as also Clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise*". The Supreme Court thus quashed the proceedings by relying on the ratio of the decision in *B.S. Joshi's* case. The following pertinent observations were made at para 29: "*Despite the ingredients and the factual content of an offence of cheating punishable under Section 420 IPC, the same has been made compoundable under sub-section(2) of Section 320 CrPC with the leave of the Court. Of course, forgery has not been included as one of the compoundable offences, but it is in such cases that the principle enunciated in B.S. Joshi case becomes relevant*".

The same course of action was adopted in *Manoj Sharma's* case.⁹ Very recently, the Supreme Court in *Shiji @ Pappu vs. Radhika*¹⁰ held that simply because an offence is not compoundable under Section 320 CrPC is by itself no reason for the High Court to refuse exercise of its power under Section 482 to quash the prosecution.

⁹ Ibid

¹⁰ 2010 (12) SCALE 588

5. Compoundability of Certain Offences

5.1 Now, we shall consider the question of compoundability of certain **specific offences**.

Section 498A, IPC

5.2 Whether the offence specified in Section 498A should be made compoundable, and, if yes, whether it should be compoundable without or with the permission of the Court, is the two-fold question.

5.3 Section 498A penalizes the husband or the relatives of the husband for subjecting a woman to cruelty. The definition of cruelty as given in the Section is in two parts: 1) Willful conduct of such a nature that is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (mental or physical), 2) Harassment of the woman with a view to coercing her or her relatives to meet an unlawful demand for any property or valuable security. Thus the dowry related harassment as well as violent conduct on the part of the husband or his relations by causing injury or danger to her life, limb or health, are comprehended within the scope of Section 498A. Quite often, the prosecution under Section 498A IPC is coupled with prosecution under Sections 3 and 4 of Dowry Prohibition Act, 1961 as well.

5.4 Normally, if the wife is prepared to condone the ill-treatment and harassment meted out to her either by reason of change in the attitude or repentance on the part of the husband or reparation for the injury caused to her, the law should not stand in the way of terminating the criminal proceedings. However, the argument that is mainly advanced against the compoundability is that the dowry is a social evil and the law designed to punish those who harass the wives with demand of dowry should be allowed to take its full course instead of putting its seal of approval on the private compromises. The social consciousness and the societal interest demands that such offences should be kept outside the domain of out-of-court settlement, it is argued. There can be no doubt that in dealing with this aspect, the impact of the crime on the society and the degree of social harm that might result, should be duly considered. At the same time, undesirable consequences that follow if compounding is not allowed,

ought to be kept in view because the social harm or societal interest cannot be considered in vacuum. A holistic and rational view has to be taken. While no impediments shall be placed against the effective operation of law enacted to curb a social evil, it should not be forgotten that the society is equally interested in promoting marital harmony and the welfare of the aggrieved women. A rational and balanced approach is all the more necessary for the reason that other avenues are open to the reconciled couple to put an end to the criminal proceedings. One such course is to file a 'quash' petition under Section 482 of CrPC in the High Court. Whether it is necessary to drive them to go through this time consuming and costly process is one pertinent question. If a wife who suffered in the hands of the husband is prepared to forget the past and agreeable to live amicably with the husband or separate honourably without rancor or revenge, the society would seldom condemn such move nor can it be said that the legal recognition of amicable settlement in such cases would encourage the forbidden evil i.e. the dowry. Section 498A should not be allowed to become counter-productive. In matters relating to family life and marital relationship, the advantages and beneficent results that follow from allowing the discontinuance of legal proceedings to give effect to a compromise or reconciliation would outweigh the degree of social harm that may be caused by non-prosecution. If the proceedings are allowed to go on despite the compromise arrived at by both sides, either there will be little scope for conviction or the life of the victim would become more miserable. In what way the social good is achieved thereby? We repeat that a doctrinaire and isolated approach cannot be adopted in dealing with this issue. The sensitivity of a family dispute and the individual facts and circumstances cannot be ignored. Hence, the Commission is not inclined to countenance the view that dowry being a social evil, compounding should not be allowed under any circumstances. Incidentally, it may be mentioned that many offences having the potentiality of social harm, not merely individual harm, are classified as compoundable offences. Further, the gravamen of the charge under Section 498-A need not necessarily be dowry-related harassment. It may be 'cruelty' falling only within clause (a) of the Explanation and the demand of dowry is not an integral part of that clause.

5.5 Another argument against compoundability is that the permission to compound would amount to legal recognition of violence against women and that the factum of reconciliation cannot be a justifiable ground to legally condone the violence. The acceptance of such an argument would imply that the priority of law should be to take the criminal proceedings to their logical end and to inflict punishment on the husband irrespective of the mutual desire to patch up the differences. It means – reconciliation or no reconciliation, the husband should not be spared of the impending prosecution and the punishment if any; then only Section 498A would achieve its objective. We do not think that the objective of Section 498A will be better achieved by allowing the prosecution to take its own course without regard to the rapprochement that has taken place between the couple in conflict. As observed earlier, a balanced and holistic approach is called for in handling a sensitive issue affecting the family and social relations. Reconciliation without compounding will not be practically possible and the law should not ignore the important event of reconciliation. The emphasis should not be merely on the punitive aspect of the law. In matters of this nature, the law should not come in the way of genuine reconciliation or revival of harmonious relations between the husband and estranged wife. Wisdom behind all prosecutions and punishments is to explore a judicious mix of deterrence, deprivation of liberty and repentance and reformation. Any emphasis on one aspect alone, as has been found in the working of harsh and cruel punishment regimes, may become a pigeonhole model.

5.6 The other argument which is put forward against compounding is that hapless women especially those who are not much educated and who do not have independent means of livelihood, may be pressurized and coerced to withdraw the proceeding and the victim woman will be left with no option but to purchase peace though her grievance remains unsolved. However, this argument may not be very substantial. The same argument can be put forward in respect of compoundable offences wherever the victims are women. The safeguard of Court's permission would, by and large, be a sufficient check against the possible tactics that may be adopted by the husband and his relations/friends. The function of the Court in this matter is not a mere formality. The Judicial Magistrate or Family Court Judge is expected to be extra-cautious and play an active role. In this regard, the judge can take the assistance of a woman lawyer or a

professional counselor or a representative of Legal Services Authority and the woman concerned can be examined in his/her chambers in the presence of one of them. Alternatively, the assistance of a lady colleague can also be sought for examining a woman victim in the chambers. Normally the trial Magistrates/Judges are sensitized in gender- related issues in the course of training at the Judicial Academies. In cities like Delhi, Bangalore, Chennai etc. competent and trained mediators are involved in the process of bringing about an amicable settlement in marital disputes. Though the Court is expected to act with due care and caution in dealing with the application for compounding the offence under Section 498A, we are of the view that it is desirable to introduce an additional safeguard as follows:-

After the application for compounding an offence under S.498A of Indian Penal Code is filed and on interviewing the aggrieved woman, preferably in the Chamber in the presence of a lady judicial officer or a representative of District Legal Services Authority or a counselor or a close relation, if the Magistrate is satisfied that there was prima facie a voluntary and genuine settlement between the parties, the Magistrate shall make a record to that effect and the hearing of application shall be adjourned by three months or such other earlier date which the Magistrate may fix in the interests of Justice. On the adjourned date, the Magistrate shall again interview the victim woman in the like manner and then pass the final order permitting or refusing to compound the offence after giving opportunity of hearing to the accused. In the interregnum, it shall be open to the aggrieved woman to file an application revoking her earlier offer to compound the offence on sufficient grounds.

5.7 Accordingly, it is proposed to add sub-section (2A) to Section 320 CrPC. The proposed provision will ensure that the offer to compound the offence is voluntary and free from pressures and the wife has not been subjected to ill-treatment subsequent to the offer of compounding. Incidentally, it underscores the need for the Court playing an active role while dealing with the application for compounding the offence under Section 498-A.

5.8 The other points which deserve notice in answering the issue whether the offence under Section 498A should be made compoundable, are the following:–

5.8.1 The Law Commission of India in its 154th report (1996) recommended inclusion of S. 498A in the Table appended to Section 320(2) so that it can be compounded with the permission of the Court. The related extracts from the Report are as follows:

“Of late, various High Courts have quashed criminal proceedings in respect of non-cognizable offences because of settlement between the parties to achieve harmony and peace in the society. For instance, criminal proceedings in respect of offences under Section 406, IPC, relating to criminal breach of trust of dowry articles or Istridhan and offences under section 498A, IPC relating to cruelty on woman by husband or relatives of husband were quashed in Arun Kumar Vohra v. Ritu Vohra, Nirlap Singh v. State of Punjab.”

5.8.2 In continuation of what was said in the 154th Report, we may point out that the apex court, in the case of *B.S. Joshi vs. State of Haryana*¹¹, has firmly laid down the proposition that in order to subserve the ends of justice, the inherent power under Section 482 CrPC can be exercised by the High Court to quash the criminal proceedings at the instance of husband and wife who have amicably settled the matter and are desirous of putting end to the acrimony. The principle laid down in this case was cited with approval in *Nikhil Merchant vs. CBI*¹². However, a coordinate Bench¹³ doubted the correctness of these decisions and referred the matter for consideration by a larger Bench. According to the referring Bench, the Court cannot indirectly permit compounding of non-compoundable offences.

5.8.3 The recommendation of the Law Commission in the 154th Report regarding Section 498A was reiterated in the 177th Report (2001). The Commission noted that over the last several years, a number of

¹¹ Supra note 6

¹² Supra Note 7

¹³ *Gian Singh vs. State of Punjab* [2010(12) SCALE 461]

representations had been received by the Law Commission from individuals and organizations to make the said offence compoundable.

5.8.4 Further, Justice Malimath Committee's Report on Reforms of Criminal Justice System strongly supported the plea to make Section 498 A a compoundable offence. The Committee observed:

“A less tolerant and impulsive woman may lodge an FIR even on a trivial act. The result is that the husband and his family may be immediately arrested and there may be a suspension or loss of job. The offence alleged being non-bailable, innocent persons languish in custody. There may be a claim for maintenance adding fuel to fire, especially if the husband cannot pay. Now the woman may change her mind and get into the mood to forget and forgive. The husband may also realize the mistakes committed and come forward to turn over a new leaf for a loving and cordial relationship. The woman may like to seek reconciliation. But this may not be possible due to the legal obstacles. Even if she wishes to make amends by withdrawing the complaint, she cannot do so as the offence is non-compoundable. The doors for returning to family life stand closed. She is thus left at the mercy of her natal family...

This section, therefore, helps neither the wife nor the husband. The offence being non-bailable and non-compoundable makes an innocent person undergo stigmatization and hardship. Heartless provisions that make the offence non-bailable and non-compoundable operate against reconciliations. It is therefore necessary to make this offence (a) bailable and (b) compoundable to give a chance to the spouses to come together.”

Though this Commission is not inclined to endorse the entirety of observations made in the above passage, some of them reinforce our conclusion to make it compoundable.

5.8.5 The views of Malimath Committee as well as the recommendations in the 154th Report of Law commission were referred to with approval by the Department-Related Parliamentary Standing Committee on

Home Affairs in its 111th Report on the Criminal Law (Amendment) Bill 2003 (August 2005). The Standing Committee observed thus:

“It is desirable to provide a chance to the estranged spouses to come together and therefore it is proposed to make the offence u/s 498A IPC, a compoundable one by inserting this Section in the Table under sub-section(2) of Section 320 of CrPC”.

5.8.6 The 128th Report of the said Standing Committee (2008) on the Code of Criminal Procedure (Amendment) Bill, 2006 reiterated the recommendation made in the 111th Report.

5.8.7 The views of Supreme Court and High Courts provide yet another justification to treat the offence under Section 498A compoundable.

The Supreme Court in a brief order passed in *Ramgopal vs. State of M.P.* observed that the offences under Section 498A, among others, can be made compoundable by introducing suitable amendment to law. The Bombay High Court¹⁴, as long back as in 1992, made a strong suggestion to amend Section 320 of CrPC in order to include Section 498A within that Section.

In the case of *Preeti Gupta vs. State of Jharkhand*¹⁵, the Supreme Court, speaking through Dalvir Bhandari, J. exhorted the members of the Bar to treat every complaint under Section 498A as a basic human problem and to make a serious endeavour to help the parties in arriving at amicable resolution of that human problem. The Supreme Court then observed that the Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration. Further, it was observed: *“Before parting with the case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a*

¹⁴ *Suresh Nathmal Rathi vs. State of Maharashtra* (1992) CrI.L.J. 2106

¹⁵ AIR 2010 SC 3363

very large number of cases". The Supreme Court then made these observations: "It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society".

5.9 Yet another factor that should be taken note of is the policy of law in laying stress on effecting conciliation between the warring couples. The provisions in Section 9 of the Family Courts Act, 1984 Section 23 (2) of the Hindu Marriage Act, 1955 and Section 34(2) of the Special Marriage Act, 1954 impose an obligation on the court to take necessary steps to facilitate re-conciliation or amicable settlement.

5.10 It is worthy of note that in Andhra Pradesh, the State Legislature made an amendment to Section 320(2) of CrPC by inserting the following in the 2nd Table.

Husband or relative of husband of a woman subjecting her to cruelty	498A	The woman subjected to cruelty: Provided that a minimum period of three months shall elapse from the date of request or application for compromise before a Court and the Court can accept a request for compounding an offence under Section 498A of the Indian Penal Code provided none of the parties withdraw the case in the intervening period.
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The observations made by the High Court in various cases were taken into account while making this amendment. The amendment came into force on 1.8.2003.

Our recommendation is substantially on the same lines.

5.11 The overwhelming views reflected in the responses received by the Law Commission and the inputs the Commission has got in the course of deliberations with the members of District and Subordinate Judiciary, the members of the Bar and the law students is yet another reason persuading us to recommend the amendment of law to make the offence under 498A compoundable with the permission of Court. The list of respondents from whom views have been received by the Commission is at Annexure 1-B. An analysis of such views touching on the point of compoundability is furnished at Annexure 1-A. The Consultation Paper-cum-Questionnaire on various aspects of Section 498-A published by the Commission is attached hereto as Annexure-2

5.12 At the Conference with judicial officers including lady officers, there was almost unanimous opinion in favour of making the offence compoundable. The lady lawyers who were present at the Conferences held in Visakhapatnam, Chennai and Aurangabad did not oppose the move. At a recent Conference held with about 35 Judicial Officers of various ranks at Delhi Judicial Academy, there was unanimity on the point of compoundability. However, some Judges expressed reservation about allowing 3 months gestation period for passing a final order of compounding under Section 320(2) Cr PC. It was suggested that there should be some flexibility in this regard and the 3 months' period need not be strictly adhered to especially where there is a package of settlement concerning civil disputes as well. Keeping this suggestion in view, the Commission has provided that in the interests of justice, the Magistrate can pass orders within a lesser time.

5.13 The Law Commission is therefore of the considered view that the offence under Section 498A IPC should be made compoundable with the permission of the Court. Accordingly, in Table-2 forming part of Section 320(2) of the Code of Criminal Procedure, the following shall be inserted after the entry referring to Section 494 and before the entry relating to Section 500:

Husband or relative of husband of woman subjecting her to cruelty	a	498A	The woman subjected to cruelty.
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Sub-section (2A) shall be added to Section 320 CrPC, as set out in paragraph 5.6, page 17 *supra*.

Section 324 IPC

5.14 In our considered view, the offence under Section 324 IPC (voluntarily causing hurt by dangerous weapons or means) should be made compoundable. The offence is punishable with imprisonment extending to three years and fine. Both in the old Code as well as the new Code of 1973, the said offence as well as the more serious offence in Section 325 were treated as offences compoundable with the permission of the court. The Law Commission in its 154th and 177th Reports recommended that these two offences together with several other offences may be shifted to the Table appended to Section 320 (1) so that it can be compounded without the permission of the Court. However, Sec. 324 was deleted from the list of compoundable offences by the Code of Criminal Procedure (Amendment) Act of 2005. The Commission has probed into the background in which this offence was deleted. At first blush, it appeared that it was deleted by reason of an inadvertent error. But, it does not appear to be so. In the CrPC (Amendment) Bill of 1994, it was proposed that Section 324 IPC should be omitted from the Table under sub-section (2) of Section 320 CrPC. The apparent reason for such proposal was that the provision was likely to be misused by the accused by exerting pressure on the complainant to agree for composition. However, this reasoning is quite fallacious. For most of the compoundable offences, the same argument can be advanced. The proposal which was initiated by the Home Ministry during 1990s came to fruition in 2005 and by the CrPC (Amendment) Act of 2005, Section 324 was omitted from the list of compoundable offences. What was sought to be done in the year 1994 or before, was thus accomplished in 2005. It is interesting to note that within a year thereafter, in the Code of Criminal Procedure (Amendment) Bill, 2006, Section 324 was sought to be reinducted into Section 320. It appears that what weighed with the Ministry in proposing the said amendment was the recommendation of the Law Commission to

include Section 324 in the Table under Section 320 (1) CrPC by transferring it from the Table under Section 320(2). Accordingly, Clause 30 of the Bill provided for this change. However, the CrPC (Amendment) Act, 2008 (Act No.5 of 2009) shows that the said change was not approved by Parliament, and Section 324 continues to be a non-compoundable offence. Such a step was taken pursuant to the opinion expressed by one of the Members of Rajya Sabha in the course of discussion.

5.15.1 It is evident from the discussions in Rajya Sabha on the aforesaid CrPC (Amendment) Bill 2006 on 18th December, 2008 that the proposal was dropped at the instance of a distinguished lady Member of Parliament. We quote what the Hon'ble M.P said while participating in the discussion:

‘I have moved amendments on some of these aspects. The first one is this. It is a very very important one. It deals with section 324: voluntarily causing hurt by dangerous weapons or means. It says, *‘Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance...’* Now, we have had such cases. Everybody knows this whole phenomenon of death by burning. If you are going to bring section 324, which is often used in such cases, into a compoundable offence – - you are introducing it in the first table - - I think, it is going to be extremely unjustifiable. Therefore, I urge upon the hon. Home Minister, please don't do this and please remove this from the compoundable crimes’.

5.15.2 This suggestion was agreed to by the Hon'ble Home Minister. Accordingly, the move of the Government to re-introduce section 324 within the ambit of section 320 CrPC failed.

5.15.3 Perhaps, the argument of Hon'ble Member was concerned with the cases of bride burning. Causing hurt by means of fire or heated substance is one of the components of Section 324. In view of the increased incidence of crime

of causing injury by means of burning wives, the offence should not be permitted to be compounded. It could very well be that a case which would have otherwise resulted in death had ended up in the infliction of simple hurt. But the degree of cruelty and the severity of the crime should be duly taken into account and therefore the offender should suffer adequate punishment. Further, the result of inclusion in Table 1 would be that even in cases where pressure is exerted on the victim woman to compromise, the prosecution will abate. This, in substance, seems to be the rationale behind the remark of the Hon'ble M. P.

5.16 We have given anxious consideration to this line of argument irrespective of the observation of the Supreme Court in *Diwaker Singh's* case cited in para 1.1 above. Still the Commission does not find a good and substantial reason for excluding Section 324 IPC from the list of compoundable offences, though we find merit in the plea that it should find place in Table 2 under Section 320(2) but not Table 1 under Section 320(1) Cr PC. Cases of causing death or bodily injury to women by cruel husbands and their kith and kin almost invariably trigger prosecutions for the more serious offences under Sections 304-B, 307, 326 or Section 326 read with Section 509 IPC. Section 324 IPC is hardly invoked in such cases. Even if there are few prosecutions under Section 324 concerning women- complainants, that would hardly afford justification to deviate from the general scheme and purpose of Section 320 CrPC. When there is justification to make it compoundable in a vast majority of cases, the rare situations should not make a difference. Further, in order to take care of the apprehension which may hold good, if at all, in a few cases, it is desirable and appropriate to retain its original position in Table 2. Irrespective of the cases of causing harm to women by means of burning or otherwise, taking an overall view, it is a fit case where the permission of the Court should be insisted upon. In cases of causing hurt to woman by burning, the court is expected to exercise restraint in granting permission. The safeguard of the Court's permission needs to be maintained in an offence of this nature.

5.17 Accordingly, we recommend that Section 324 IPC should be reinducted into the ambit of section 320 CrPC and it should retain its original position in Table 2 appended to sub-section (2) thereof. Section 324 can remain in the company of Section 325 in Table 2 rather than being shifted to Table 1 as per the recommendation contained in 154th Report of the Law Commission. The implications of shifting it to Table 1 have not been considered by the Commission in that Report. The observation of the Supreme Court in *Diwakar Singh's* case to make the offence under Section 324 compoundable is, in our view, rests on a sound basis.

Section 326 IPC

5.18 Voluntarily causing grievous hurt by dangerous weapons or means is punishable under Section 326 and Sections 320 and 326 are extracted below for convenience of reference:

320. Grievous hurt. – The following kinds of hurt only are designated as “grievous”:-

- First - Emasculation
- Secondly - Permanent privation of the sight of either eye.
- Thirdly - Permanent privation of the hearing of either ear,
- Fourthly - Privation of any member or joint.
- Fifthly - Destruction or permanent impairing of the powers of any member or joint.
- Sixthly - Permanent disfiguration of the head or face.
- Seventhly - Fracture or dislocation of a bone or tooth.
- Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

326. Voluntarily causing grievous hurt by dangerous weapons or means. -

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or

by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

5.19 The offence under Section 326 is punishable with imprisonment for life or with imprisonment for a term which may extend to 10 years and fine. Voluntarily causing grievous hurt without using dangerous weapons or means has been a compoundable offence in the old Penal Code and this is so in the new Code as well. The offence under Section 325 IPC carries with it punishment of 7 years or less. None of the offences in the IPC which carries imprisonment above 7 years is made compoundable. The cardinal principle is that the gravity of crime should be duly taken into account. The accused covered by Section 326 has not only caused grievous hurt but acted in a cruel manner with a dangerous weapon without regard to the life and liberty of the victims. The offence under Section 326 falls on the borderline of the offence of attempting to commit murder (Section 307) or the offence under Section 304. Violent acts such as causing disfiguration of head or face (by throwing acid, etc.), emasculation, permanent privation of the eye sight or hearing and destruction of the powers of any member or joint are within the fold of Section 326. It is a very serious crime and the compromise between the victim and accused should not be recognized in law. There are so many related offences following Section 326 i.e. Section 327 (causing hurt to extort property), Section 328 (causing hurt by means of poison) and Sections 329, 330 and 331 (causing hurt or grievous hurt to extort property/confession), which are punishable with imprisonment for life or imprisonment extending up to 10 years. None of these offences is made compoundable. The legislative policy is clear that such grave offences should not be made compoundable. It is not desirable to unduly stretch the net of compounding. The mere fact that some pendency in the Courts will be reduced if the offences are allowed to be compounded, is not a valid argument to justify enlargement of the list of compoundable offences so as to include even offences of very serious and grave nature which imperil the law and

order. As said earlier, the law should have a cautious and balanced approach to the problem of compounding.

5.20 We have said so much on Section 326 because of the solitary observation of the Supreme Court in the case of *Ramgopal vs. State of M.P.* that the offences like Section 326 ought to be made compoundable. There is no further discussion as the Law Commission and Law Ministry are required by the Court to give attention to the aspect of including more offences in the list of compoundable offences. Obviously, no law has been laid down and it is only a *prima facie* view expressed in passing. The Supreme Court has appropriately left it to the decision of the Government and the recommendation of the Law Commission. Incidentally, it may also be apt to refer to an earlier decision of the Supreme Court in *Manoj Sharma Vs. State*¹⁶. It was observed as follows:

“There can be no doubt that a case under Section 302 IPC or other serious offences like those under Sections 395, 307 or 304B cannot be compounded and hence proceedings in those provisions cannot be quashed by the High Court in exercise of its power under Section 482 Cr. P.C. or in writ jurisdiction on the basis of compromise. However, in some other cases, (like those akin to a civil nature) the proceedings can be quashed by the High Court if the parties have come to an amicable settlement even though the provisions are not compoundable. Where a line is to be drawn will have to be decided in some later decisions of this Court, preferably by a larger bench (so as to make it more authoritative).”

5.21 The Commission is not inclined to disturb the well laid-out scheme of compoundable offences substantially and be guided primarily by the consideration to get rid of the cases on the Court’s docket.

Other Offences under IPC

5.22.1.1 **Section 147** (rioting) punishable with imprisonment which may extend to 2 years or with fine or with both: Rioting is defined in Section 146. Using force or

¹⁶ 2008 (14) SCALE 44

violence by an unlawful assembly or by a member thereof, in prosecution of the common object of such assembly, constitutes the offence of rioting. In Madhya Pradesh, there was an amendment in the year 1999 by which Section 147(rioting) has been brought under Section 320(2) read with the Table appended thereto with a proviso: “*provided that the accused is not charged with other offence which is not compoundable*”. The person against whom the force or violence is used at the time of committing an offence is the person competent to compound.

5.22.1.2 The Commission is of the view that on the same lines, the offence of rioting under Section 147 of IPC can be made compoundable and it can be brought under the purview of Section 320(2).

5.22.1.3 It may be pointed out that the Law Commission in its 41st Report (1969) did not accept the suggestion to make certain offences including the one under Section 147 IPC compoundable on the ground that in any matter affecting public peace, order and security, the person directly aggrieved by the offence should not be left with the option to compound the offence. This view expressed long back needs a relook. Rioting may not always disturb the public peace or order. It may be the result of a private dispute resulting in a scuffle or the said offence may have been committed in the course of some agitation by a motley crowd. We are of the view that there is no harm in including Section 147 IPC within the ambit of Section 320(2) CrPC with the addition of the proviso. The proviso will restrain compounding of the offence under Section 147, if some other serious crime is also committed.

5.22.2 **Section 380:** Theft in dwelling house – maximum punishment is 7 years’ imprisonment and fine. This offence may be made compoundable subject to the proviso that the value of property stolen is not more than fifty thousand rupees.

5.22.3 **Section 384:** Extortion – maximum punishment is 3 years of imprisonment or fine or both.

5.22.4 **Section 385:** Putting a person in fear of injury (or attempting to do so) in order to commit extortion – maximum punishment is 2 years or fine or both.

5.22.5 **Section 461:** Dishonestly breaking open receptacle containing property – maximum punishment is 2 years’ imprisonment or fine or both.

5.22.6 **Section 489:** Tampering with property mark with intent to cause injury – maximum punishment 1 years’ imprisonment or fine or both.

5.22.7 **Section 507:** Criminal intimidation by an anonymous communication – maximum punishment is 2 years’ imprisonment in addition to the punishment provided for the offence by the preceding Section i.e. Section 506. Section 506 consists of 2 parts. For intimidation falling within the first part, the maximum punishment is 2 years’ imprisonment or fine or both. The compounding under Section 507 can be allowed in respect of criminal intimidation which falls within the first part. Threat to cause death or grievous hurt is covered by second part – punishable with 7 years of imprisonment and it is a serious offence which is a source of considerable harassment to the person affected. Hence, the Commission feels that it should remain non-compoundable. At present, Sections 506 and 508 are compoundable under Section 320(1) read with Table 1. Section 507 can be made compoundable under section 320 (1) to the extent it relates to the offence falling under the first part of Section 506.

5.22.8 Having regard to the nature of offences already included within the ambit of Section 320 CrPC, there is no harm in classifying the above-mentioned 7 offences also as compoundable offences. They can be included in Table-1 except Section 380 for which the permission of the Court should be required. The Court’s permission is desirable in view of the fact that quite a number of those who commit the said crime are habitual offenders.

5.22.9 It needs to be mentioned that the prosecutions in respect of seven offences enumerated *supra* may not be many, excepting perhaps the one under Section 380. Not many cases can be disposed of by the Courts if those offences are made compoundable. However, as stated earlier, reducing the pendency of cases is a secondary consideration.

5.23.1 Before we part with the subject, we may recall what was said in paragraph 3.5. Accordingly, we suggest that sub-section (3) of Section 320 Cr.PC may be amended so as to include the offence under Section 120-B IPC. The amended provision will, then,

read thus: “*when an offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) **or a criminal conspiracy to commit such offence** or where the accused is liable under section 34 or 149 of the Indian Penal Code, may be compounded in like manner*”. (the added words are shown in bold letters)

5.23.2 It may be pointed out that criminal conspiracy is an independent offence punishable under Section 120-B. There are two sub-sections. The second sub-section speaks of criminal conspiracy other than the conspiracy to commit an offence punishable under sub-section (1). The punishment provided under sub-section (2) is imprisonment for a maximum period of 6 months or fine or both. Sub-section (1) refers to criminal conspiracy to commit the offence punishable with death or imprisonment for life or rigorous imprisonment for a term of 2 years or more. The offender shall be punished in the same manner as if he had abetted such offence. The benefit of proposed amendment will not be available if the main offence is not otherwise compoundable.

6. Recommendations

6.1 Broadly speaking, the offences which affect the security of the State or have a serious impact on the society at large ought not to be permitted to be compounded. So also, crimes of grave nature should not be the subject matter of compounding. The policy of law on compoundability of offences is complex and no straightjacket formula is available to reach the decision. A holistic and not an isolated approach is called for in identifying the compoundable and non-compoundable offences.

6.2 That the Courts are flooded with cases and, therefore, more and more offences should be identified for compoundability is only a secondary consideration.

6.3 In sub-section (3) of Section 320 CrPC after the bracketed words and before the words “or where the accused is liable”, the following words shall be added:

“or a criminal conspiracy to commit such offence”.

6.4 **Section 498A** IPC should be made compoundable under Section 320(2) of CrPC so that it may be compounded with the permission of the Court. However, in order to ensure that the offer of composition is voluntary and free from pressures, it is proposed to introduce sub-section (2A) in Section 320 laying down the procedure for dealing with an application for compounding of an offence under Section 498A. The said sub-section (2A) is set out in paragraph 5.6 *supra*.

6.5 **Section 324** IPC should be made compoundable subject to the permission of Court. Accordingly, it shall be brought within the ambit of Section 320(2) CrPC.

6.6 **Section 326** IPC (causing grievous hurt by dangerous weapons) should not be made compoundable.

6.7 The offence of rioting under **Section 147** IPC should be made compoundable by including the same in the Table appended to Section 320 (2) Cr PC subject to the addition of proviso: “provided that the accused is not charged with other offence which is not compoundable”.

6.8 The following six offences in IPC may be made compoundable: Section **380** (theft in dwelling house) subject to the proviso that the value of property stolen is not more than Rs.50,000/-; Section **384** (extortion); Section **385** (extortion by putting a person in fear of injury); Section **461** (dishonestly breaking open receptacle containing property); Section **489** (tampering with property mark with intent to cause injury); Section **507** (criminal intimidation by an anonymous communication) subject to the rider that compounding shall be confined to criminal intimidation falling within the first part of Section 506.

(Justice P.V. Reddi)
Chairman

(Justice Shiv Kumar Sharma)
Member

(Amarjit Singh)
Member

(Dr Brahm Agrawal)
Member-Secretary

Annexure I- A

The analysis of 338 replies to the Questionnaire on section 498A IPC regarding compoundability is as under:

	Individuals	Organisations	Officials/Judicial Officers
Compoundable	52(7 women)	6(3 women orgn)	123 (9 women)
Non-compoundable	21(4 women)	10 (6 women orgn)	6
Non-compoundable and bailable	11(1 woman)	6(2 women orgn)	0

Note:

1. Individuals/organizations/officials talking of repeal and at the same time non-compoundability are 86 in number, implying thereby that instead of making it compoundable, it should be repealed altogether. Otherwise, the two ideas are not in harmony with each other.
2. Regarding compoundability, individuals/organizations/officials who have not given any comments on this aspect are 33(4 women) in number
3. Only Repeal-1

Annexure 1 – B**List of respondents to the Questionnaire regarding Section 498A,IPC**
(Compoundability)**Individuals:**

S/Shri/Ms

1. Ms.Swati Goyal, Ahmedabad
2. Neeraj Gupta, Delhi
3. Vivek Srivastav, vivek_srivastav_in@yahoo.co.in
4. Sateesh K. Mishra, Delhi
5. Kalpak shah, Ahmedabad
6. Samir Jha, sk_jha95@yahoo.co.in
7. Kharak Mehra, Nainital
8. Saurabh Grover, sgrover1973@gmail.com
9. Komal Singh, New Delhi
10. Kaushalraj Bhatt, Ahmedabad
11. Alka Shah, Ahmedabad
12. Saumil Shah, Ahmedabad
13. Trilok Shah, Ahmedabad
14. Alpak Shah, Ahmedabad
15. Bhavna Shah Ahmedabad
16. Kaushal Kishor & 27 other residents of Visakhapatnam.
17. iamamit, iamamitb1976@rediffmail.com
18. Vishnuvardhana Velagala, vvrvelagala@gmail.com
19. Hari Om Sondhi, New Delhi
20. Kharak Singh Mehra, Nainital
21. Virag R. Dhulia, Bangalore
22. Ms Kumkum Vikas Sirpurkar, New Delhi
23. Gaurav Bandi, Indore.

24. Gaurav Sehrawat, gauravsehrawat@gmail.com
25. Ashish Mishra, Lucknow
26. Umang Gupta, Rampur, Balia
27. Avadesh Kumar Yadav, Nagpur
28. T.R. Padmaja, Secunderabad
29. T.C. Raghawan, Secunderabad
30. C. Shyam Sunder, Hyderabad
31. Ms. Shobha Devi, R. R Dt, Hyderabad
32. A Nageshwar Rao, Hyderabad
33. Praveen Chand, Hyderabad
34. R.B. Timma Ready, Hyderabad
35. A. Venu Gopal, kadapa, Hyderabad
36. Ms. Aditya, Hyderabad
37. B. Yudestel Lal, Hyderabad
38. Subramaniam Catari, Hyderabad
39. A Sai Kiran, Hyderabad
40. S. Jagannath, Bangalore
41. Prasad Chuilal, Pune
42. Biswadeep Paul, Pune
43. Avinash D. Gune, Pune
44. Damodar Varde, Indore
45. Kedar Ambedakar, Pune
46. Sandesh V. Chopdekar, Pune
47. Devkant Varde, Pune
48. Sanjeet Gupta, Pune
49. Cedric D'Souza, Pune
50. Amandeep Bhatia, Pune
51. Arjun Singh Rawat, Pune
52. N.K. Jain, Ujjain
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4. Abhai Kumar, Registrar, High Court of M.P, Jabalpur.
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5. Nungshitombi Athokpam, Dy. Legal Rememberancer, Govt.of Manipur.
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45. Chetna Singh, Metropolitan Magistrate, South- Saket Court, New Delhi.
46. Sandeep Garg, Metropolitan Magistrate, South- Saket Court, New Delhi.
47. Anu Aggarwal, Civil Judge, South- Saket Court, New Delhi.
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50. *District & Sessions Judge, Fatehbad.

51. *District & Sessions Judge, Rewari.
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55. * District & Sessions Judge, Jind.
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78. Ritu Garg, Addl. Distt. & Sessions Judge, Sonapat.

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3. Vigilant Women Munch, (Secretary, Ms Suman Jain), Delhi.
4. National Family Harmony Society, President, (Shri P. Suresh),
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5. Mothers and Sisters Initiative –MASI, (Mrs. Shalini Sharma),
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6. Bharat Bachao Sangthan, (Shri Vineet Ruia), President,
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7. Piritto Purush Porishad, NGO, Kolkata
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9. All India Forgotten Women’s Association, Hyderabad.
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12. Lawyers Collective, (Ms. Indira Jaising), Jangpura Extn., New
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LAW COMMISSION OF INDIA

**Consultation Paper-cum-Questionnaire regarding Section
498-A of Indian Penal Code**

1. Keeping in view the representations received from various quarters and observations made by the Supreme Court and the High Courts, the Home Ministry of the Government of India requested the Law Commission of India to consider whether any amendments to s.498A of Indian Penal Code or other measures are necessary to check the alleged misuse of the said provision especially by way of over-implication.
2. S.498A was introduced in the year 1983 to protect married women from being subjected to cruelty by the husband or his relatives. A punishment extending to 3 years and fine has been prescribed. The expression 'cruelty' has been defined in wide terms so as to include inflicting physical or mental harm to the body or health of the woman and indulging in acts of harassment with a view to coerce her or her relations to meet any unlawful demand for any property or valuable security. Harassment for dowry falls within the sweep of latter limb of the section. Creating a situation driving the woman to commit suicide is also one of the ingredients of 'cruelty'. The offence under s.498A is cognizable, non-compoundable and non-bailable.
3. In a recent case of Preeti Gupta v. State of Jharkhand, the Supreme Court observed that a serious relook of the provision is warranted by the

Legislature. “It is a matter of common knowledge that exaggerated versions of the incidents are reflected in a large number of complaints. The tendency of over-implication is also reflected in a very large number of cases”. The Court took note of the common tendency to implicate husband and all his immediate relations. In an earlier case also - Sushil Kumar Sharma v. UOI (2005), the Supreme Court lamented that in many instances, complaints under s.498A were being filed with an oblique motive to wreck personal vendetta. “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”, it was observed. It was also observed that “by misuse of the provision, a new legal terrorism can be unleashed”.

4. The factum of over-implication is borne out by the statistical data of the cases under s.498A. Such implication of the relatives of husband was found to be unjustified in a large number of decided cases. While so, it appears that the women especially from the poor strata of the society living in rural areas rarely take resort to the provision.

5. The conviction rate in respect of the cases under s.498A is quite low. It is learnt that on account of subsequent events such as amicable settlement, the complainant women do not evince interest in taking the prosecution to its logical conclusion.

6. The arguments for relieving the rigour of s.498A by suitable amendments (which find support from the observations in the Court judgments and Justice Malimath Committee’s report on Reforms of

Criminal Justice System) are: Once a complaint (FIR) is lodged with the Police under s.498A/406 IPC, it becomes an easy tool in the hands of the Police to arrest or threaten to arrest the husband and other relatives named in the FIR without even considering the intrinsic worth of the allegations and making a preliminary investigation. When the members of a family are arrested and sent to jail without even the immediate prospect of bail, the chances of amicable re-conciliation or salvaging the marriage, will be lost once and for all. The possibility of reconciliation, it is pointed out, cannot be ruled out and it should be fully explored. The imminent arrest by the Police will thus be counter-productive. The long and protracted criminal trials lead to acrimony and bitterness in the relationship among the kith and kin of the family. Pragmatic realities have to be taken into consideration while dealing with matrimonial matters with due regard to the fact that it is a sensitive family problem which shall not be allowed to be aggravated by over-zealous/callous actions on the part of the Police by taking advantage of the harsh provisions of s.498A of IPC together with its related provisions in CrPC. It is pointed out that the sting is not in s.498A as such, but in the provisions of CrPC making the offence non-compoundable and non-bailable.

7. The arguments, on the other hand, in support of maintaining the status quo are briefly:

S.498A and other legislations like Protection of Women from Domestic Violence Act have been specifically enacted to protect a vulnerable section of the society who have been the victims of cruelty and

harassment. The social purpose behind it will be lost if the rigour of the provision is diluted. The abuse or misuse of law is not peculiar to this provision. The misuse can however be curtailed within the existing framework of law. For instance, the Ministry of Home Affairs can issue 'advisories' to State Governments to avoid unnecessary arrests and to strictly observe the procedures laid down in the law governing arrests. The power to arrest should only be exercised after a reasonable satisfaction is reached as to the bona fides of a complaint and the complicity of those against whom accusations are made. Further, the first recourse should be to effect conciliation and mediation between the warring spouses and the recourse to filing of a chargesheet under s.498A shall be had only in cases where such efforts fail and there appears to be a prima facie case. Counselling of parties should be done by professionally qualified counsellors and not by the Police.

7.1 These views have been echoed among others by the Ministry of Women and Child Development.

7.2 Further, it is pointed out that a married woman ventures to go to the Police station to make a complaint against her husband and other close relations only out of despair and being left with no other remedy against cruelty and harassment. In such a situation, the existing law should be allowed to take its own course rather than over-reacting to the misuse in some cases.

7.3 There is also a view expressed that when once the offending family members get the scent of the complaint, there may be further torture of

the complainant and her life and liberty may be endangered if the Police do not act swiftly and sternly. It is contended that in the wake of ever increasing crimes leading to unnatural deaths of women in marital homes, any dilution of Section 498-A is not warranted. Secondly, during the long-drawn process of mediation also, she is vulnerable to threats and torture. Such situations too need to be taken care of.

8. There is preponderance of opinion in favour of making the said offence compoundable with the permission of the court. Some States, for e.g., Andhra Pradesh have already made it compoundable. The Supreme Court, in a recent case of --*---, observed that it should be made compoundable. However, there is sharp divergence of views on the point whether it should be made a bailable offence. It is pleaded by some that the offence under s.498A should be made bailable at least with regard to husband's relations.*Ramgopal v. State of M. P. in SLP (Crl.) No. 6494 of 2010 (Order dt. July 30, 2010).

8.1 Those against compoundability contend that the women especially from the rural areas will be pressurized to enter into an unfair compromise and further the deterrent effect of the provision will be lost.

9. The Commission is of the view that the Section together with its allied CrPC provisions shall not act as an instrument of oppression and counter-harassment and become a tool of indiscreet and arbitrary actions on the part of the Police. The fact that s.498A deals with a family problem and a situation of marital discord unlike the other crimes against society at large, cannot be forgotten. It does not however mean that the Police

should not appreciate the grievance of the complainant woman with empathy and understanding or that the Police should play a passive role.

10. S.498A has a lofty social purpose and it should remain on the Statute book to intervene whenever the occasion arises. Its object and purpose cannot be stultified by overemphasizing its potentiality for abuse or misuse. Misuse by itself cannot be a ground to repeal it or to take away its teeth wholesale.

11. While the Commission is appreciative of the need to discourage unjustified and frivolous complaints and the scourge of over-implication, it is not inclined to take a view that dilutes the efficacy of s.498A to the extent of defeating its purpose especially having regard to the fact that atrocities against women are on the increase. A balanced and holistic view has to be taken on weighing the pros and cons. There is no doubt a need to address the misuse situations and arrive at a rational solution – legislative or otherwise.

12. There is also a need to create awareness of the provisions especially among the poor and illiterate living in rural areas who face quite often the problems of drunken misbehavior and harassment of women folk. More than the women, the men should be apprised of the penal provisions of law protecting the women against harassment at home. The easy access of aggrieved women to the Taluka and District level Legal Service Authorities and/or credible NGOs with professional counsellors should be ensured by appropriate measures. There should be an extensive and well-planned campaign to spread awareness. Presently, the endeavour in this direction

is quite minimal. Visits to few villages once in a way by the representatives of LSAs, law students and social workers is the present scenario.

13. There is an all-round view that the lawyers whom the aggrieved women or their relations approach in the first instance should act with a clear sense of responsibility and objectivity and give suitable advice consistent with the real problem diagnosed. Exaggerated and tutored versions and unnecessary implication of husband's relations should be scrupulously avoided. The correct advice of the legal professionals and the sensitivity of the Police officials dealing with the cases are very important, and if these are in place, undoubtedly, the law will not take a devious course. Unfortunately, there is a strong feeling that some lawyers and police personnel have failed to act and approach the problem in a manner morally and legally expected of them.

14. Thus, the triple problems that have cropped up in the course of implementation of the provision are:(a) the police straightaway rushing to arrest the husband and even his other family members (named in the FIR), (b) tendency to implicate, with little or no justification, the in-laws and other relations residing in the marital home and even outside the home, overtaken by feelings of emotion and vengeance or on account of wrong advice, and (c) lack of professional, sensitive and empathetic approach on the part of the police to the problem of woman under distress.

15. In the context of the issue under consideration, a reference to the provisions of Protection of Women from Domestic Violence Act, 2005 (for short PDV Act) which is an allied and complementary law, is quite apposite.

The said Act was enacted with a view to provide for more effective protection of rights of women who are victims of violence of any kind occurring within the family. Those rights are essentially of civil nature with a mix of penal provisions. Section 3 of the Act defines domestic violence in very wide terms. It encompasses the situations set out in the definition of 'cruelty' under Section 498A. The Act has devised an elaborate machinery to safeguard the interests of women subjected to domestic violence. The Act enjoins the appointment of Protection Officers who will be under the control and supervision of a Judicial Magistrate of First Class. The said officer shall send a domestic incident report to the Magistrate, the police station and service providers. The Protection Officers are required to effectively assist and guide the complainant victim and provide shelter, medical facilities, legal aid etc. and also act on her behalf to present an application to the Magistrate for one or more reliefs under the Act. The Magistrate is required to hear the application ordinarily within 3 days from the date of its receipt. The Magistrate may at any stage of the proceedings direct the respondent and/or the aggrieved person to undergo counseling with a service provider. 'Service Providers' are those who conform to the requirements of Section 10 of the Act. The Magistrate can also secure the services of a welfare expert preferably a woman for the purpose of assisting him. Under Section 18, the Magistrate, after giving an opportunity of hearing to the Respondent and on being prima facie satisfied that domestic violence has taken place or is likely to take place, is empowered to pass a protection order prohibiting the Respondent from committing any act of domestic violence and/or aiding or abetting all acts of domestic violence.

There are other powers vested in the Magistrate including granting residence orders and monetary reliefs. Section 23 further empowers the Magistrate to pass such interim order as he deems just and proper including an ex-parte order. The breach of protection order by the respondent is regarded as an offence which is cognizable and non-bailable and punishable with imprisonment extending to one year (vide Section 31). By the same Section, the Magistrate is also empowered to frame charges under Section 498A of IPC and/or Dowry Prohibition Act. A Protection Officer who fails or neglects to discharge his duty as per the protection order is liable to be punished with imprisonment (vide Section 33). The provisions of the Act are supplemental to the provisions of any other law in force. A right to file a complaint under Section 498A is specifically preserved under Section 5 of the Act.

15.1 An interplay of the provisions of this Act and the proceedings under s.498A assumes some relevance on two aspects: (1) Seeking Magistrate's expeditious intervention by way of passing a protective interim order to prevent secondary victimization of a complainant who has lodged FIR under s.498A. (2) Paving the way for the process of counselling under the supervision of Magistrate at the earliest opportunity.

16. With the above analysis and the broad outline of the approach indicated supra, the Commission invites the views of the public/NGOs/institutions/Bar Associations etc. on the following points, before preparing and forwarding to the Government the final report:

Questionnaire

1) a) What according to you is ideally expected of Police, on receiving the FIR alleging an offence u/s 498A of IPC? What should be their approach and plan of action?

b) Do you think that justice will be better meted out to the aggrieved woman by the immediate arrest and custodial interrogation of the husband and his relations named in the FIR? Would the objective of s.498A be better served thereby?

2) a) The Supreme Court laid down in D.K. Basu (1996) and other cases that the power of arrest without warrant ought not to be resorted to in a routine manner and that the Police officer should be reasonably satisfied about a person's complicity as well as the need to effect arrest. Don't you agree that this rule applies with greater force in a situation of matrimonial discord and the police are expected to act more discreetly and cautiously before taking the drastic step of arrest?

b) What steps should be taken to check indiscriminate and unwarranted arrests?

3) Do you think that making the offence bailable is the proper solution to the problem? Will it be counter-productive?

4) There is a view point supported by certain observations in the courts' judgments that before effecting arrest in cases of this nature, the proper course would be to try the process of reconciliation by counselling both sides. In other words, the

possibility of exploring reconciliation at the outset should precede punitive measures. Do you agree that the conciliation should be the first step, having regard to the nature and dimension of the problem? If so, how best the conciliation process could be completed with utmost expedition? Should there be a time-limit beyond which the police shall be free to act without waiting for the outcome of conciliation process?

5) Though the Police may tender appropriate advice initially and facilitate reconciliation process, the preponderance of view is that the Police should not get involved in the actual process and their role should be that of observer at that stage? Do you have a different view?

6) a) In the absence of consensus as to mediators, who will be ideally suited to act as mediators/conciliators – the friends or elders known to both the parties or professional counsellors (who may be part of NGOs), lady and men lawyers who volunteer to act in such matters, a Committee of respected/retired persons of the locality or the Legal Services Authority of the District?

b) How to ensure that the officers in charge of police stations can easily identify and contact those who are well suited to conciliate or mediate, especially having regard to the fact that professional and competent counsellors may not be available at all places and any delay in initiating the process will lead to further complications?

7) a) Do you think that on receipt of complaint under S.498A, immediate steps should be taken by the Police to facilitate an application being filed before the Judicial Magistrate under the PDV Act so that the Magistrate can set in motion the process of counselling/conciliation, apart from according interim protection?

b) Should the Police in the meanwhile be left free to arrest the accused without the permission of the Magistrate?

c) Should the investigation be kept in abeyance till the conciliation process initiated by the Magistrate is completed?

8) Do you think that the offence should be made compoundable (with the permission of court)?

Are there any particular reasons not to make it compoundable?

9) Do you consider it just and proper to differentiate the husband from the other accused in providing for bail?

10) a) Do you envisage a better and more extensive role to be played by Legal Services Authorities (LSAs) at Taluka and District levels in relation to s.498A cases and for facilitating amicable settlement? Is there a need for better coordination between LSAs and police stations?

b) Do you think that aggrieved women have easy access to LSAs at the grassroot level and get proper guidance and help from them at the pre-complaint and subsequent stages?

c) Are the Mediation Centres in some States well equipped and better suited to attend to the cases related to S,498-A?

11) What measures do you suggest to spread awareness of the protective penal provisions and civil rights available to women in rural areas especially among the poorer sections of people?

12) Do you have any information about the number of and conditions in shelter homes which are required to be set up under PDV Act to help the aggrieved women who after lodging the complaint do not wish to stay at marital home or there is none to look after them?

13) What according to you is the main reason for low conviction rate in the prosecutions u/s 498A?

14)(a) Is it desirable to have a Crime Against Women Cell (CWC) in every district to deal exclusively with the crimes such as S.498A? If so, what should be its composition and the qualifications of women police deployed in such a cell?

(b) As the present experience shows, it is likely that wherever a CWC is set up, there may be substantial number of unfilled vacancies and the personnel may not have undergone the requisite training. In this situation, whether it would be advisable to entrust the investigation etc. to CWC to the exclusion of the jurisdictional Police Station?
