

**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**I.A. NO. \_\_\_\_\_ OF 2018**

**IN**

**WRIT PETITION (CRIMINAL) NO. 156 OF 2017**

**IN THE MATTER OF:**

Nyayadhar

...Petitioners

**VERSUS**

Union of India &Ors.

...Respondents

TATA Institute of Social Sciences

Through Ms. Trupti Panchal,

Having its office at:

TATA Institute of Social Sciences,

V.N. Purav Marg, Deonar,

Mumbai – 400 088

Applicant No. 1

Ms. Sandhya Gokhale, founder member of

Forum Against Oppression of Women,

Having office at:

29, Bhatia Bhuvan, Babrekar Marg, Gokhale Road,

Dadar, West

Mumbai, 400028

Applicant No.

Awaaz-e-Niswaan

Through Ms. Aisha Abdul Hamid khan,

Having office at:

47/1, Sarabai Hasan Ali Roopwala, Moreshwar Patankar Marg,

Near Moreshwar Patankar Municipal School,

Kurla (W), Mumbai,

Maharashtra 400070

Applicant No. 3

SNEHA

Through Ms. Nayreen Daruwala, Program Director

Having office at:

310, Urban Health center,

60 feet road, Dharavi, Mumbai,

Maharashtra 400017

Applicant No.

4

Stree Mukti Sanghatana

Through Ms. Shobha Kokitkar, Co-ordinator,

Having office at:

31, Shramik, Royal Crest, 1st Floor,

Lokamanya Tilak Vasahat Road No. 3,

Dadar (East), Mumbai

Maharashtra, – 400 014

Applicant No. 5

Akshara through Urmila Salunkhe, Senior Program Officer,

Having office at:

5th Floor, nilambari building,

Gokhale road, dadar west

Mumbai 400028

Applicant No. 6

**...Applicant/Intervenor**

**WITH**  
**I.A. NO. \_\_\_\_\_ OF 2018**

**APPLICATION FOR INTERVENTION**

**PAPER BOOK**

***(FOR INDEX KINDLY SEE INSIDE)***

**ADVOCATE FOR THE APPLICANT:**

**I N D E X**

<b>SL.NO.</b>	<b>PARTICULARS</b>	<b>PAGE NO.</b>
	<b>I.A. NO. _____ OF 2018</b>  Application for Intervention with Affidavit	

**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**I.A. NO. \_\_\_\_\_ OF 2018**

**IN**

**WRIT PETITION (CRIMINAL) NO. 156 OF 2017**

**IN THE MATTER OF:**

Nyayadhar

...Petitioners

**VERSUS**

Union of India & Ors.

...Respondents

**...Applicants/Intervenors**

## **APPLICATION FOR INTERVENTION**

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS LORDSHIP'S COMPANION  
JUSTICES OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF  
THE APPLICANT ABOVE NAMED

### **MOST RESPECTFULLY SHOWETH:-**

That the aforementioned Writ Petition bearing W.P (Civil) No. 156 of 2017 pending before this Hon'ble Court, has been filed by the Petitioner under Article 32 of the Constitution of India, drawing this Hon'ble Court's attention towards the judgment rendered by a division bench of this Hon'ble Court in ***Rajesh Sharma & Ors. v. State of UP & Anr.*** on 27<sup>th</sup> July 2017 and its effect in undermining Section 498A of the Indian Penal Code [hereinafter, 'IPC'], and hence undermining the rule of law in as much as it denies women access to the criminal justice system when faced with cruelty and harassment, at the hands of their husband and his relatives - and praying for amendments to the directions issued by the Court therein and their consequent implementation. The contents of the aforesaid Writ Petition may be referred to and relied upon for the purposes of adjudicating the present Application and the same are not being repeated herein.

That the Applicants are Women's organizations which are campaign groups running counselling and educational centers for women. They have been working with survivors of domestic violence for more than 30 years providing them counselling, mediation services, legal aid and other support. Some of them have been part of the campaign that asked for changes in the law and for a special provision in the IPC to address domestic violence in the 1980s, as well as the Protection of Women from Domestic Violence Act, 2005 [hereinafter, 'PWDVA'].

Till date, they continue to work, with communities, police stations and at ground level in supporting individual survivors, monitoring the implementation of the law as well as campaigns.

That the Tata Institute of Social Sciences, Mumbai [hereinafter, 'TISS'], is a centrally-sponsored Public University, deemed by the University Grants Commission (Government of India), also registered as a Society under the Bombay Public Trusts Act. School of Social Work, TISS, Mumbai anchors multiple field action projects (FAPs). The Special Cell for Women and Children [hereinafter, 'Special Cell'] is one such effort aimed at responding to and eliminating Violence Against Women [hereinafter, 'VAW']. It is a service provided to women survivors by trained professional social workers, located in the police system with a clear understanding that VAW is a crime and that it is the responsibility of the State to prevent and counter it. The First Special Cell for Women and Children was established in 1984 as a collaboration between Bombay Police and the TISS. Since then, the Institute, in collaboration with State & Central Government agencies (National Commission for Women, State Departments & Central Ministries of Home Affairs and Women & Child Development, State Police systems), civil society (women's movements groups, NGOs, Schools of Social Work) and select funding agencies (including, UNDP, UN Women/UNIFEM, Oxfam India), has expanded across the country. At present, the Institute directly operates 29 Cells (24 districts/6 States), and coordinates work of 79 Cells in all (incl. 29 directly-implemented Cells) across 6 States (Maharashtra, Meghalaya, Bihar, Assam, Punjab, M.P.) & U.T. of Delhi. 2 to 5 more Cells to be directly operated by the Institute with NCW support in Odisha & Tamil Nadu, respectively, are to be established in February-May 2018; 20 more to be operationalized by Delhi Police in February 2018. Thus, there are 296 Special Cells for Women operational in India (13 States) at present, and 27 more will be operationalized within next 4 months.

That Applicant No. 2, Ms. Sandhya Gokhale, who is the founding member of Forum Against Oppression of Women [hereinafter, 'FAOW'], which is an autonomous, voluntary women's campaign group. Formed in January 1980, FAOW functions as a discussion and campaign group, actively networking and campaigning around all issues concerning discrimination and violence against women. FAOW is a part of the National Network of Autonomous Women's Groups and was one of the organizations which campaigned for laws recognizing



domestic violence.

That Applicant No. 3, Awaaz-e-Niswaan (Voice of Women) is a feminist organization and a registered society under the Bombay Public Trust Act. It started in 1986 as an informal space for women survivors of violence to meet and share their experiences and gradually grew into an organization working on issues of violence, education and advocacy. Every woman who approaches the organization receives the support through counseling and legal help that women living in violent situations desperately need.

That Applicant No. 4 SNEHA, Society for Nutrition Education and Health Action is registered under the Bombay Public Trust Act, which works at the community level where several women approach them for assistance in situations of violence. They are also registered with the Women and Child Department of the Government of Maharashtra, as service providers. They were service providers from 1<sup>st</sup> August 2010 to 30<sup>th</sup> September 2013. They subsequently applied for renewal of their registration as service providers under PWDVA, and the same is pending till date.

That Applicant No. 5, Stree Mukti Sanghatana, is a woman's organization registered under the Bombay Public Trust Act, which is working to create a conducive atmosphere to achieve gender equality through large scale campaign. The organization is working for eradication of poverty and violence and works as instruments of change for women especially in the field of law enforcement.

That Applicant No. 6 is Akshara, a resource center for women, registered under the Bombay Public Trust Act, which has been working for the past 20 years to empower girls and women and prevent violence against them. It trains grassroots women as para- counsellors to support neighborhood women facing violence. Young women are empowered through educational support, life skills, livelihood and gender equality trainings. Young men are encouraged to be equality supporters and prevent violence. The organizations can hereinafter be referred as

**“Applicants”.**

It is submitted that this Hon’ble Court in ***Rajesh Sharma & Ors. v. State of UP & Anr.*** on 27<sup>th</sup> July 2017, relying on the statistics from the Crime Records Bureau [hereinafter, ‘CRB’], the 243<sup>rd</sup> Report of the Law Commission dated 30<sup>th</sup> August, 2012, 140<sup>th</sup> Report of Rajya Sabha Committee on Petitions (September 2011) and earlier decisions of this Hon’ble Court - observed that Section 498A of the IPC is being ‘misused’ and rendered a judgment which has the effect of undermining Section 498A and making it ineffective for women by directing that all cases be first referred to Family Welfare Committees. The excerpt from the judgment is reproduced below for reference:

*“It is a matter of serious concern that large number of cases continue to be led under Section 498A alleging harassment of married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are led in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant.”*

It is submitted, with respect, that the above statement to the effect that the complaints are made “in the heat of the moment over trivial issues” - is not based on any data, but in fact flies in the face of available data, as will be seen below. Similarly, the statement - “Many such complaints are not bona fide” - is not based on data or established facts. It is submitted that *mala fide* is a question of fact to be decided from case to case and no judicial notice can be taken of *mala fide* intention of women in general, as has been done in the statement above.

That Section 498A was introduced with a view to bring within the purview of law, instances of domestic violence against married women and to check unconscionable demands for dowry by husband and their families which, at

times, has resulted in the woman's suicide. The demand and need for a separate provision to deal with the offence of cruelty faced by married women was due to the fact that the general provisions of the IPC were not being used to help women in such cases. This was precisely because they were always seen as 'family matters' and were not taken seriously by the criminal justice system. The said provision was introduced to give legal recognition to the offence of domestic violence within a marriage which was, and still is, widely prevalent. The provision was introduced in the IPC by the Criminal Law (Amendment) Act, 1983 (Act 46 of 1983). By the same Act, Section 113A was added to the Indian Evidence Act, 1872 to raise presumption regarding abetment of suicide of a married woman. The main objective of section 498A of IPC is to protect a woman who is harassed by her husband or his relatives. By this judgement, the Hon'ble Court has taken women back to the days prior to the enactment of Section 498A, when domestic violence was seen as a 'family matter', and not an offence. It is submitted that Family welfare committees as directed by this court have no role to play in criminal law, which is exclusively the domain of the police.

That this Hon'ble Court in *Rajesh Sharma & Ors. v. State of U.P. and Anr.* passed the following directions in para 19 of the judgment dated 27<sup>th</sup> July, 2017:

*19. Thus, after careful consideration of the whole issue, we consider it to give following directions: -*

*i) (a) In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and Sessions Judge of the district who is also the Chairman of the District Legal Services Authority.*

*(b) The Committees may be constituted out of para legal volunteers/social*

*workers/retired persons/wives of working officers/other citizens who may be found suitable and willing.*

*(c) The Committee members will not be called as witnesses.*

*(d) Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee. Such committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication.*

*(e) Report of such committee be given to the Authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.*

*(f) The committee may give its brief report about the factual aspects and its opinion in the matter.*

*(g) Till report of the committee is received, no arrest should normally be elected.*

*(h) The report may be then considered by the Investigating Officer or the Magistrate on its own merit.*

*(i) Members of the committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.*

*(j) The Members of the committee may be given such honorarium as may be considered viable.*

*(k) It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper.*

ii) *Complaints under Section 498A and other connected offences may be investigated only by a designated Investigating Officer of the area. Such designations may be made within one month from today. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from today;*

iii) *In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior Judicial Officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord;*

iv) *If a bail application is led with at least one clear day's notice to the Public Prosecutor/complainant, the same may be decided as far as possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife/ minor children can otherwise be protected. Needless to say that in dealing with bail matters, individual roles, prima facie truth of the allegations, requirement of further arrest/ custody and interest of justice must be carefully weighed;*

v) *In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine;*

vi) *It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the Court to whom all such cases are entrusted; and*

vii) *Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to grant*

*exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trial;*

*viii) These directions will not apply to the offences involving tangible physical injuries or death.*

It is submitted that, in any event, the above directions are misplaced and found on incorrect understanding of data and law in as-much-as not only the data is incomplete, it also does not lead to the conclusion that women are misusing the law.

That this Hon'ble Court, after considering the statistical difference between the rate of charge sheets filed and conviction under Section 498A as provided by the CRB, concluded that most complaints under this section are filed in the heat of the moment and over trivial issues. This Hon'ble Court considered data for the years 2005, 2012 and 2013. The statistics relied upon by the Court are not only incomprehensive, but also not sufficient to arrive at the conclusion of misuse that the Hon'ble Court has arrived at. A careful study of the data for the said period does not lead one to the conclusion of misuse. The statistics of the government as well as of the applicants, in fact, indicates under-use of Section 498A and suggests hesitation on the part of women to initiate criminal proceedings against their husband and/or his family members. Moreover, one of the obvious reasons for the mismatch between the rate of charge sheet and conviction in all criminal cases is the quality of investigation in these cases. This disparity is not unknown in other crimes unrelated to Section 498A. The latest 2016 NCRB report states that chargesheeting rate for murder is 85.2% whereas the conviction rate for murder is 38.5% only. Similarly, the chargesheeting rate for rioting is 87.4% while the conviction rate for rioting is a low 16.1%. If we look at the Special statutes, the chargesheeting rate under SC/ST (Prevention of Atrocities Act), 1989 is 77% while the conviction rate is 15.4%.

The Applicants submit that there is scientific data available that does not indicate that women misuse the law. Women do not institute legal proceedings

on trivial disputes. On the contrary, women endure violence and harassment for years before taking any action. Figure 1 below is a report of Mumbai based crisis center Dilasa which was set up in the year 2001 at the K.B. Bhabha Hospital, Bandra as a collaboration between Municipal Corporation Greater Mumbai (MCGM) and Center For Enquiry into Health and Allied Themes (CEHAT). It shows statistical data from year 2001 – 2012 of various actions pertaining to women facing violence which goes on to show that 2545 women had registered with Dilasa during the period 2001 to 2012, out of which 1991 women were considered for the Study. The result of this report showed that only 2% of women registered an FIR and 80% of women, despite facing violence, did not resort to filing an FIR.

Figure- 1

That, further, the data of Applicant No. 1 (Special Cell, TISS), given in table 1 and table 2, itself shows that women are very hesitant to file complaints under Section 498A and strive to preserve the marriage despite several instances of violence. The following data from the year 2012-2016, needs to be considered:

Total number of women complainants: 32227

Total number of cases referred for 498A to the police: 4204

Total number of 498A cases Registered by Police: 1792

Total number cases referred for PWDVA: 3220

Total number of cases registered by police under PWDVA:1738

Total number of cases filed under both 498A and PWDVA: 696

Year	T o t a l w o m e n c o m p l a i n a n t s	4 9 8 A r e f e r r e d	4 9 8 A r e g i s t e r e d b y p o l i c e	P W D V A r e f e r r e d	P W D V A r e g i s t e r e d b y p o l i c e	4 9 8 A a n d P W D V A b o t h f i l e d

2012-201						
6	32227	4204	1792	3220	1738	696

Table – 1

It may be mentioned that the role of the Special Cell established in Police Stations is as stated herein:

*The Special Cells' mission is to work towards ensuring that women are recognized as individuals, with equal rights and opportunities in society, including the opportunity to live a peaceful, violence-free life. The strategic location of the Special Cell within the police system facilitates the State to counter VAW, based on the belief that the legitimate power and authority inherent in the latter can be constructively used to curb VAW in society. This enables the programme to say “no to violence” at the individual & societal levels.*

*The collaboration of the Special Cell (as an FAP of the TISS) and the Police, resulting in synergy from their differential strengths and contributions, enriches systemic response into a coordinated, multi-agency response to the issue of VAW. This enables the needs of the violated woman to be addressed holistically. The Special Cell also links the police system with women’s organizations & other social service groups, thereby enhancing coordinated response to the violated woman’s needs. Special Cell conducts training sessions that serve to build the capacity and sensitivity of police personnel to understand and respond to women's realities in the context of the family and domestic violence.*

*Hence, to summarise, the Special Cell’s interventions at the level of the individual woman and at the level of systems, enable a multi-faceted response to the complex issue of VAW in the interests of the violated woman. **Interventions are made, within the social work practice framework and with a pro-woman***



*perspective, for providing emotional support & strengthening the psychological self of the violated woman, negotiating for non-violence with various stakeholders, building support systems for violated women, engaging police help in the interest of violated women, arranging shelter for violated women, working with men in the interests of violated women, the re-establishment of women's relationships with their economic assets, advocacy for group entitlement in the interests of violated women, development counselling with violated women, and Legal Aid to facilitate the violated woman's journey through the criminal justice system.*

Hence the role of the proposed Family Welfare Committees is being carried out by various already existing facilities.

Percentage of cases referred to police by special cell	13%
Percentage of cases filed under Section 498A by police	5.5 %

Table – 2

Further the data in Table 2 points out the percentage of women victims referred to the police officials under 498A and PWDVA, which shows that around 13% of total women reporting domestic violence are referred to the police for 498A. Whereas, only 5.5 % domestic violence women victims register a case under Section 498A. It must therefore be noted, that this Hon'ble Court, while relying upon the NCRB data, concluded that the law under Section 498A is being misused, while the above mentioned data clearly shows that the law is not even used by most women subjected to domestic violence.

In these circumstances, to suggest that women are misusing the law or that complaints are not *bonafide* is, to say the least, baseless. As mentioned above rate of conviction does not

depend only on the *bonafide* or *malafide* of the complaint, but rather on the quality of the investigation and the evidence gathered. Very often, very serious allegations made by women are not proved, partly because of lack of documentary evidence, failure of the appropriate authority to record complaints on the relevant time, failure to lodge/register the complaint, poor documentation, and incomplete records. In addition, the inherent bias as pointed out above, that women misuse the law also leads to Courts placing less reliance on the oral testimony of the women. Adding to the above problems faced by women victims of violence, is the fact that law enforcement agencies believe that matrimonial disputes should not be litigated but settled out of court. Often a woman who has been through the entire process of attempting reconciliation at the Special Cells, is once again made to go through the process during the pendency of the trial by the presiding officer of the Court.

At times when reconciliation is achieved during the pendency of a trial, the parties are directed to file a Petition to quash the FIR on grounds of compromise - often, these cases also add to the statistics of a low quality conviction rate.

That in a country where marriage is considered as inevitable as life and death, criminal complaints, despite repeated and continuous violence over years, are not filed as shown by the statistics. Contrary to the conclusions of the Court, a comparison between the National Family Health Survey on the number of women who are subjected to domestic violence and the number who actually file complaints under Section 498A, clearly demonstrates that the number of women who approach the Court is miniscule. Based on the data provided by the National Health Survey, in the year 2005, 37.5% women were subjected to domestic violence - of which only 0.052973608% women filed cases under Section 498A. In the year 2015, 28.8% women were subjected to domestic violence of which only 0.108808377% filed cases under Section 498A. It is amply clear from applicants own experience as well as the data of the government that Section 498A, rather than being misused, is in reality underused by women.

That further, the Hon'ble Court has also concluded the possibility of misuse on the observation of low conviction rate. The Petitioner would like to humbly submit that such low conviction rates are due to reasons other than cases being

false. Reasons for low conviction rates are shoddy investigations, out of court settlements, prolonged litigation, and lack of support structure for women to continue with the litigation. Instances of amicable settlement can be seen even in the reported cases of *Mrs. Hima Vishal Ramani v. State of Maharashtra*, *Mohiddin Abdul Rehman v. State of Maharashtra*, *Bhavin Bhupatrai Kanakiya v. Riddhi Bhavin Kanakiya*, *Jagdish Ganpat Budha v. Janvi Jagdish Budha*, *Mr. Rahil Aftab Shaikh v. The State of Maharashtra*, *Mr. Shashikant Bhimrao Bavishkar v. The State of Maharashtra*, *Nasir Yakub Mukadam v. The State of Maharashtra*, wherein the parties came to an amicable settlement with the intervention of friends and family and resolved the dispute outside the court, leading to the case under Section 498A being quashed by the High court - in line with the Supreme Court's decision in *B.S Joshi v. State of Haryana* (AIR 2003 SC 1386). In some cases, when the parties obtain a divorce during the course of litigation, proceedings under Section 498A are quashed and set aside such as in the matter of *Saurav K. Singhal v. State of Maharashtra*. Thus, the low conviction rate in cases under Section 498A does not necessarily mean that the cases filed were false.

That further, conviction rate under several other provisions too is extremely low. However, this has never been a ground to undermine the said provisions. This can be demonstrated by comparing the number of cases filed under Section 420 of the IPC (Cheating) with the same under Section 498A, over a period of time. According to government data (*available on data.gov.in*), for the years 2012, 2013 and 2014, the number of cases where error of facts or law were found are significantly more in cases of offence under Section 420, than under Section 498A. Tables below shows the total no. of cases reported (table 3) and the cases which ended as mistake of facts or law under the two sections (table 4):

Year	2012	2013	2014
Total No. of cases reported under section 420, IPC	94203	107330	109345
Total No. of cases reported under section 498A, IPC	106527	118866	122877

Table 3

Year	2012	2013	2014
No. of cases closed as mistake of facts or law under section 498A, IPC	10235	10864	4125
No. of cases which ended as mistake of facts of law under section 420, IPC	23492	26479	11907
Total IPC	144539	154798	96858

Table 4

The above tables show that even though a larger number of cases are reported under Section 498A, instances of “mistake of fact or law” have been more common in cases registered under Section 420.

In the year 2014, a new category was included in the said source, where cases ending in final report as ‘false’ were noted. There is no explanation as to what is meant by “false” cases. The cases ending as ‘false’ under Section 498A, were 8.35% of the total cases registered while for Section 420, the figure was 17.31%.. It is therefore submitted that data available does not in any way justify a conclusion of misuse of the provision. There appears to be no rationale for undermining Section 498A on these grounds.

That further, despite the conviction rate under Section 420 being comparable, (as can be seen from Table 5 below), Section 498A has been the target for disrepute and has been unjustifiably labelled as a provision that is ‘misused’:

YEAR	2012	2013	2014
% Conviction 498A	15.01715378	15.97868921	13.71310268

% Conviction 420	24.27209108	24.286061	22.22644056
------------------	-------------	-----------	-------------

That the 243<sup>rd</sup> Law Commission Report, while looking at the low conviction rate, has also noted and reasoned, that the low conviction rate is due to out of court settlements, women losing interest in seeing prosecution reach its logical conclusion, and ineffective investigation. Both the 243<sup>rd</sup> Law Commission Report and 140<sup>th</sup> Rajya Sabha Committee which considered the working of Section 498A, concluded that, while the section may be made compoundable, it must remain non-bailable and cognizable. In addition, the 243<sup>rd</sup> Law Commission itself has concluded that allegation of misuse/abuse is not peculiar to 498A, and if the same exists, it can be curtailed within existing framework of law.

*Para 4.2. (243<sup>rd</sup> Law Commission Report) “The abuse or misuse of law is not peculiar to this provision. The misuse can however be curtailed within the existing framework of law.”*

*Para 4.3 (243<sup>rd</sup> Law Commission Report) “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. 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 process of mediation also, she is vulnerable to threats and harassment. Such situations too need to be taken care of.”*

*Para 19.6 (243<sup>rd</sup> Law Commission Report) “The offence should remain*

*non-bailable...*”

That the Applicants state that therefore there is no sufficient data before the Hon’ble Court to either conclude or give a finding that women are misusing or abusing the law by filing false cases. Therefore, there is no necessity to either dilute the provisions of law or passing the guidelines as done in the matter of *Rajesh Sharma and Ors. v. State of U.P. and Anr.* The guidelines of this Hon’ble Court in *Rajesh Sharma* amount to the Hon’ble Court legislating - and neither the facts of the case itself nor the statistics justify such an order from this Hon’ble Court.

That the other ground for the Hon’ble Court issuing guidelines to restrict access of Section 498A is the alleged uncalled implication of husband’s relatives including women and senior citizens. It is pertinent to note that the Statement of Objects and Reasons of the Criminal Law (Amendment) Bill, 1983 specifically states that the amendment was intended not only to effectively deal with cases of dowry deaths but also cases of cruelty to married women by their husbands and his relatives. The petitioners urge the Hon’ble Court to appreciate the fact that women do not unnecessarily or unreasonably make relatives, including senior citizens, parties to a complaint under Section 498A. It is pertinent to note the number of arrests made by the police in cases of dowry death and Section 498A. While the crime rate of dowry deaths as per the CRB 2015 Report is 1.3%, the percentage of number of arrests per case is 2.6%; whereas, for cruelty by husband and his relatives, while the crime rate is 18.7% the percentage of number of arrest per case is only 1.6%. Hence, the conclusion of the Court of uncalled implication of the husband’s relatives is unfounded.

That this Hon’ble Court in *Rajesh Sharma v. State of U.P* considered the plight of aging in-laws, but there have been times that the cruelty inflicted by the aging in-laws is such that women in their dying declarations, sometimes, only accuse the in-laws and not the husband such as in *Heera Lal and Anr. v. State of Rajasthan*, (2017) SCC OnLine SC 475. There have also been cases where this Hon’ble court has convicted the aging mother-in-law such as in the matter of *Satish Chandra*

*and Anr. v. State of MP*, (2014) 6 SCC 723, where this Hon'ble Court went into the nature of harassment which was meted out to the deceased woman by the mother-in-law, stating that mere unhappiness in marriage can not force a woman to commit suicide. However, the court only came to this conclusion once the deceased had taken the drastic step of committing suicide. Section 498A is a preventive provision but is invoked when harm is already done. Hence, merely because of the advanced age of the in-laws, it cannot be logically concluded that they do not harass women and/or ought not to be named in the complaint and/or action should not be taken against them.

That further, this Hon'ble Court has failed to notice that most marriages in India are arranged marriages, where the parents of the man meet the parents of the woman before marriage where negotiations for the marriage are made. This is usually the time when dowry demands are placed and promised simultaneously. When a woman enters the matrimonial house without fulfilling such 'promised' demands, she is more than often harassed which sometimes even results in dowry deaths. It is also pertinent to note that many women in India after marriage live in joint families. In such families the parents of husband are dominant due to age as well being in control of the family business and thereby the purse strings. In such a setup, the matrimonial house is also often registered under the name of the in-laws, which also puts them in a dominant position, which in turn, restricts the women's opposition to such harassment under the fear of being thrown out of the matrimonial house. In such a situation where there are every day interactions between the woman and the parents-in-law, there can emerge not only opportunities of harassment, but also instances of cruelty.

That it is pertinent to note that dowry demand and harassment related to dowry is still common and prevalent. As stated above the crime rate of dowry deaths as per the NCRB 2015 Report is 1.3% the percentage of number of arrest per case is 2.6%; where as, for cruelty by husband and his relatives, while the crime rate is 18.7% the percentage of number of arrest per case is only 1.6%. An analysis of this data reveals that police officials are quick to act when there is a death of woman due to cruelty but when the woman herself files a complaint, the police are not readily acting. This Hon'ble Court has not considered the number of

deaths of women within marriage which are caused by abuse and cruelty. These cases also reflect harassment meted out by parents and other family members on the woman. Hence, the conclusion that women without cause make other members of the family party to the complaint is not sustainable.

That further, the only exception made by the court for the application of the guidelines are cases of tangible physical injuries and death. In restricting domestic violence and abuse to physical injuries, the Hon'ble Court has failed to take into consideration cases where violence is inflicted in the form of mental, emotional and economic abuse. While no physical signs maybe visible, this form of violence can have devastating consequences for the woman, much in the way as physical abuse. This Hon'ble Court in *Rajesh Sharma v. State of U.P.* once again reiterates the general perception towards mental harassment by stating that the guidelines laid down by itself in judgment dated 27<sup>th</sup> July, 2017 will not apply to such cases. Neglecting to acknowledge mental, emotional and economic cruelty and restricting recourse only to physical injury can lead to grave injustice as a woman who is verbally, emotionally and mentally harassed would be unable to access the law. Minimizing and undervaluing the adverse effect and impact of mental violence on women would result in diminishing the gravity and consequences of such harassment. It is often the constant mental harassment of women for reasons of being unable to give birth to a male child, bringing insufficient dowry, being unable to cook to the taste of the marital family, that deeply impacts the woman's self-worth and confidence and has lasting adverse effect on women and her children. There are cases of women being deprived of food, not being given maintenance to her and her children, not being allowed to step out of the home, cutting off all social contact including with her natal family that have caused severe irreversible damage to women's emotional and mental state, much in the same way as (and sometimes, even more severe than) physical injury. Evidence of emotional and mental injury can be established only through investigation and leading evidence of experts.

That the Hon'ble Court in prioritizing tangible physical injury has completely ignored the devastating effect of sexual abuse that married women face which may not necessarily leave signs of tangible physical injury. Cases of non-consensual sexual intercourse, denial of sexual relationship, forcing the wife to



have sexual relations with persons other than the husband, sexual abuse of such nature as to humiliate and degrade the woman are not uncommon. Women in a majority of cases are hesitant to report sexual abuse, since the focus is on `beating' and `assault' alone. The present judgment only furthers this misplaced understanding of what constitutes domestic abuse.

That further, the Hon'ble Court, by its judgment, privileged the preservation of the institution of marriage and family at the expense of the lives of women. No institution can be protected over the life and rights of citizens. Such an attitude of ignoring the violence within the institution of marriage causes loss of life and liberty of the woman.

The data relied upon above already indicates that women are hesitant in using law as a recourse since they do not want to jeopardize their marriage. This approach of the Hon'ble Court is contrary to the aims of objectives of the provision which is to prevent and punish violence against married women. Unless there is strict implementation of the law, VAW will continue in the name of `saving the marriage and family'.

That the Applicants urge this Hon'ble Court to take into consideration that, under the Indian set-up of families where women enter the matrimonial house after her marriage in a joint family, there is ample opportunity of interaction between the women and the in-laws which can lead to harassment. In such a set up, the matrimonial house is often registered under the name of the in-laws, which puts them in a dominant position, which in turn, restricts the women's opposition to such harassment under the fear of being thrown out of the matrimonial house.

It is submitted that there is a procedure established by law under the Code of Criminal Procedure for the investigation of a non-compoundable offence by the Police authorities. Section 498A also being a non-compoundable offence ought to be investigated by the procedure prescribed by the law. Hence, no Welfare Committee can take over the role of the police and replace it with civil institutions without the authority of law.

That, given the fact that the Applicants, as organizations working in field of women rights and given the larger public interest involved, are aggrieved by the judgment, and by means of the present Application, seek permission of this

Hon'ble Court to be allowed to intervene in the matter and assist this Hon'ble Court by placing all the relevant material on record and making detailed submissions at the appropriate stage, to ensure that the voices of women are heard in the matter.

That no prejudice would be caused to any of the parties if the present Applicant were allowed to intervene in the matter.

That, in view of above mentioned facts and circumstances the interest of justice would be served, if the Applicant herein were allowed to intervene in the matter.

The present application is being filed *bonafide* and in the interests of justice.

### **P R A Y E R**

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

Allow the Application for Intervention of the above named Applicants in the above said Writ Petition; and

Pass such further order or orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THE APPLICANT AS IN DUTY BOUND SHALL FOREVER PRAY.**

**SETTLED BY**

**..DRAWN BY AANCHAL SINGH**

MS. INDIRA JAISING,  
SENIOR ADVOCATE  
ADVOCATE FOR THE APPLICANT

**PLACE:** NEW DELHI

**FILED ON:** \_

*Available at* <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf> (Last visited on February 24<sup>th</sup>, 2018).  
Indira Jaising, *Concern for the Dead, Condemnation for the Living*, 49 (30) ECONOMIC AND POLITIC WEEKLY (2014).

*Available at* HYPERLINK "<http://www.tiss.edu/view/11/projects/all-projects/special-cell-for-women-and-children-maharashtra/>" <http://www.tiss.edu/view/11/projects/all-projects/special-cell-for-women-and-children-maharashtra/> (Last visited on February 24<sup>th</sup>, 2018).

*Available at* HYPERLINK "<http://rchiips.org/NFHS/pdf/India.pdf>" <http://rchiips.org/NFHS/pdf/India.pdf>  
*Available at* HYPERLINK "<http://rchiips.org/NFHS/pdf/India.pdf>" <http://rchiips.org/NFHS/pdf/India.pdf>

2015 SCC OnLineBom 7105  
2015 SCC OnLineBom 7172  
2015 SCC OnLineBom 7190  
2015 SCC OnLineBom 4088  
2015 SCC OnLineBom 1560  
2015 SCC OnLineBom 1562  
2016 SCC OnLineBom 4679  
2015 SCC OnLineBom 1612

*Available at* <https://data.gov.in/catalog/cases-registered-and-their-disposal-under-indian-penal-code-ipc-crimes> (Last visited on February 24<sup>th</sup>, 2018).

*Available at* HYPERLINK "<https://data.gov.in/resources/cases-registered-and-their-disposal-under-indian-penal-code-ipc-crimes-during-2012>" <https://data.gov.in/resources/cases-registered-and-their-disposal-under-indian-penal-code-ipc-crimes-during-2012> (Last visited on February 24<sup>th</sup>, 2018); *Available at* <https://data.gov.in/resources/cases-registered-and-their-disposal-under-indian-penal-code-ipc-crimes-during-2013> (Last visited on February 24<sup>th</sup>, 2018); *Available at* HYPERLINK "<https://data.gov.in/resources/cases->

registered-and-their-disposal-under-indian-penal-code-ipc-crimes-during-2014" <https://data.gov.in/resources/cases-registered-and-their-disposal-under-indian-penal-code-ipc-crimes-during-2014> (Last visited on February 24<sup>th</sup>, 2018).

*Available at* <http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/Compendium-15.11.16.pdf>, Page: 141 (Last visited on February 24<sup>th</sup>, 2018).  
HYPERLINK "<http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/Compendium-15.11.16.pdf>" <http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/Compendium-15.11.16.pdf>, Page: 141