



## Draft of Answers To Committee for Reforms in Criminal Laws Second Consultation on Substantive Criminal Law

### Part - A I. Abetment

**Q.1.** Should the abetting, of offences committed by the classes of individuals specified in ss. 82, 83, 84, and 85 of the Code as well as Juveniles under the Juvenile Justice (Care and Protection of Children) Act, 2015, be criminalised as an aggravated form of Abetment?

[Illustration- A, an adult, instigates B, a child under 7 years of age, to poison C]

Yes, along with this it should also comply with the JJ Act and ensure that it does not contradict/bypass/magnify the provisions of Chapter V of IPC.

### II. Criminal Conspiracy

**Q.2.** Should conspiracy to commit offences carrying the punishment of imprisonment for less than two years be decriminalised?

No! Going this way would mean a creating a bypass for habitual offenders to avoid the clutches of law.

### III. Attempts

**Q.3.** Should Attempt be expressly defined under the I.P.C.? If yes, what should be the test(s) for determination of Attempt?

Though 'attempt' should be defined and properly checked as per law, the hindrance in our country is that defining and including 'attempt' could lead to ambiguity as a resultant of the lack of proper scientific investigation. Without proper investigation and judicial system, it is

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capable of reaching the stage of rampant misuse and injustice to innocents.

## IV. Preparation

**Q.4.** Should Preparation be defined explicitly under the I.P.C? If yes, what should be the test(s) for determination of Preparation?

Yes! Determination factors of preparation can be:

1. Team building and managing
2. Spying, surveillance
3. Conspiring and setting narratives in advance
4. Previous criminal history

## Part B

### I. Offences By or Relating to Public Servants

**Q.1.** Should any offence under Chapter IX, such as ss. 168 and 169, be the sole prerogative of disciplinary proceedings, and therefore be decriminalised?

No! What needs to first determined here is the impact as to the public officer's dereliction of his duty with the act committed. Also, decriminalising these could lead to an even larger amount of malpractices & corruption, which we haven't been able to check even though we have anti-corruption laws!

**Q.2.** In light of the recommendations of the 277th Law Commission Report, what should be the definition, scope and liability for 'Wrongful Prosecution'?

Even though the issue of wrongful prosecution, incarceration, and conviction of an innocent person is deemed to be the 'miscarriage of justice'; ideally, 'wrongful prosecution' should be the touchstone of a miscarriage of justice, and not 'wrongful conviction' or 'wrongful incarceration'.

'Wrongful prosecution' should include:

1. Cases where the accused and not guilty of the offence, and the police and / or the prosecution engaged in some form of misconduct in investigating and / or prosecuting the person.
2. It should include both the cases where the person spent time in prison or otherwise;
3. Cases where the accused was found not guilty by the trial court

or where the accused was convicted by one or more courts but was ultimately found to be not guilty by the Higher Court or Supreme Court.

Liability of wrongful prosecution should be fixed on:

1. The complainant who initiated false report
2. All the investigating officers, and
3. Judicial officers

All aforesaid responsible people should be made liable to give make pecuniary compensatory assistance to the person innocent person who has been subjected to the ordeal of wrongful prosecution. Apart from that, the state should give non-pecuniary assistance to effectuate the rehabilitation of victims of wrongful prosecution into society.

While pecuniary assistance can be in terms of the monetary award as may be determined by the Special Court; non-pecuniary assistance can be awarded in the form of services such as counselling, mental health services, vocational/employment skills development, and such other similar services.

The factors to be taken into consideration while determining the amount of compensation can be broadly categorized as financial, the severity of the punishment, the length of incarceration, loss or damage to health, psychological and emotional harm along with the status of the victim in the society, harm to reputation, loss of opportunities (of education, livelihood), loss of income/earnings and lastly loss or damage to property.

**Q.3.** Notwithstanding general exceptions under ss. 76, 78, 79, 80 and *Exception 3* to s. 300 should offences committed by public servants, in the course of their official duties, be penalised as aggravated forms of those offences? Which offences should be considered for this purpose?

Yes! The offences that have a direct implication on the life and liberty of a person where he is made to face the social, financial, emotional apathy from the society should be dealt with severely. Offences such as malicious investigation, malafide judicial orders (with undue protection of Judicial Officers Protection Act) should be dealt with harsh penalties.

**Q.4.** Should 'corruption'/bribery/illegal gratification in the private sector be criminalised?

Yes

## II. Contempts of the Lawful Authority of Public Servants

- Q.5.** a) Should s. 188 I.P.C. be removed from the ambit of s. 195 CrPC?, or,  
b) Should cognizability of s. 188 be modified?

Yes! Also a proper accountable and transparent mechanism need to be created so that any dereliction of duty by any public officer is checked.

- Q.6.** Should the punishment for offences under ss. 182, 186 and 188 be modified?

Yes, the punishment for the offences u/s 182, 186, 188 should be modified and made harsher so that it acts as a deterrence.

## III. False Evidence and Offences Against Public Justice

- Q.7.** Should the removal of, or interference with, any property lawfully attached by a Court of Justice, be criminalised?

Can be criminalised, but the determining factors have to be based on circumstances of the individual case.

- Q.8.** Should punishment for offences under ss. 193, and 211 be modified?

Yes, the punishment for the offences u/s 193 and 211 should be modified and made harsher so that it acts as a deterrence.

## Part C

### I. Offences Relating to Public Tranquillity

- Q.1.** Should the "preparation to commit rioting" be penalised as a separate offence?

Yes, hiring persons for rioting, unlawful assembling, provocations to instigate rioting, all needs to be taken as preparation to commit rioting and needs to be defined as a separate offence.

- Q.2.** Should the punishments prescribed under ss. 153 and 153A of the I.P.C. be modified?

Offences categorised u/s 153 and 153A of IPC are the ones which only someone having deliberate ill-intent would commit, so the prescribed punishment should be modified to stronger one.

**Q.3.** Should s. 153A be amended to expressly include additional categories (e.g., sex, gender identity, sexual orientation, disability, ethnicity etc.) to the grounds mentioned under the provision?

Yes, hope by 'gender identity' the intention is not to name it for a specific gender. All laws necessarily have to be gender-neutral.

**Q.4.** Should ss. 153 and 153A be amended to explicitly address the commission of these offences through electronic means (e.g., social media and other internet-based intermediaries)?

Yes

**Q.5.** Should the act colloquially referred to as “hate speech” be criminalised as a separate offence under the IPC?

a) If yes, what should be the defining elements/ingredients of the offence?

b) If not, should the scope of other offences (such as ss. 153A, 153B, 295A etc.) be modified to include aspects of “hate speech” missing therein?

No, instead of making “hate speech” a separate criminal offence, the scope of ss. 153A, 153B, 295A can be modified to include aspects of “hate speech”.

## **II. Offences Affecting the Public Health, Safety, Convenience, Decency and Morals**

**Q.6.** Should s. 269 and 270 be combined to provide for graded punishment for “negligent” and “intentional” acts?

Yes

**Q.7.** Are there any offences under Chapter XIV that should be deleted or modified (e.g., ss. 272 and 273 in light of the provisions under the Food Safety and Standards Act)?

Yes, they need to be modified, not deleted, as the Food Safety and Standards Act covers only the concerned related part but do not

penalise the intent behind the wrong done, which could be much larger.

**Q.8.** Should the punishments for any of the offences under Chapter XIV be modified?

Yes

**Q.9.** Do you have any suggestions with regards to addition/ omission/ modification of provisions dealing with obscenity (ss. 292, 293 and 294)?

Yes, with the increasing western influence society, especially among the youngsters, the acts of obscenity has increased, but by and large, the implementation of the laws concerned is discriminatory. It's only the male who is penalised and the woman is let free without any action, almost every time. We suggest that the implementation of these laws should also be gender-neutral.

### **III. Offences Relating to Religion**

**Q.10.** In light of the international discourse as well the repeal/ restriction of Blasphemy laws in other jurisdictions should s. 295A be repealed or modified?

Yes! In the name of freedom of speech and expression provided under our constitution, everything is said as normal, without considering the fact that it could be offensive to someone else which should be checked. To discourage the hate-speech it's necessary to modify blasphemy laws.

## **Part D**

### **I. Offences Against Property**

**Q.1.** Should aggravated forms of theft & criminal breach of trust include acts committed by those other than clerks and servants (s. 380, 409) and in places and situations other than dwelling house, tent etc. (s. 380)? If yes, which types of persons, places and situations could be covered?

No, it's sufficient in our opinion.

**Q.2.** Should the 'harm' under s. 415 be extended to person(s) other than the person(s) who has been deceived?

No, it's sufficient in our opinion.

**Q.3.** Should the cognizability, bailability and punishment for any of the following offences against property be modified:

(a) s. 380; (b) S. 382; (c) s. 394; (d) s. 397; (e) s. 409; (f) ss. 411 - 414; (g) ss. 426 - 432; (h) s. 440; (i) ss. 447 - 448; (j) s. 453

No, it's sufficient in our opinion.

**Q.4.** In light of contemporary animal rights jurisprudence, should the offence of mischief under ss. 428 and 429 be conceptualised independently of the valuation of the animal(s) in question? If not, how should the valuation of animals contained therein be modified?

No, it's sufficient in our opinion.

**Q.5.** Should aggravated forms of mischief given in ss. 427 - 440 be modified? If yes, what should be the basis of such modification?

No, it's sufficient in our opinion.

**Q.6.** Should the aggravated forms of offences given in ss. 442 and s. 445 be repealed or modified?

No, it's sufficient in our opinion.

## **Part E**

### **I. Criminal Breach of Contracts of Service**

**Q.1.** Should breach of contract in Chapter XIX be modified or decriminalised?

No, it's sufficient in our opinion.

### **II. Offences Relating to Marriage**

**Q.2.** In the light of contemporary discourse on constitutional morality, individual autonomy and gender neutrality in-laws, should ss. 493 and 498 be repealed or modified?

In the light of contemporary discourse on constitutional morality, individual autonomy and gender neutrality in-laws, should ss. 493 and 498 be repealed or modified?

Both 493 and 498 should be modified and made gender-neutral. In the changing society, we should do away the theory that it's only a man who can do wrong and only woman can be a victim.

**Q.3.** Should live-in relationships be deemed to be a relationship in the nature of marriage for the purpose of s. 494?

Yes. Any illegal cohabitation just for sexual intercourse with someone other than its own spouse should be considered as bigamy and should be punishable under this section.

### **III. Cruelty by Husband and Relatives of Husband**

**Q.4.** In light of the Law Commission's 243rd Report, should s. 498A be amended with respect to its scope, punishment, cognizability, bailability and compoundability?

Marriage in life used to be a long journey of adjustments, compromises and sacrifices, and this used to apply to both the spouses. But in the times of 498A, adjusting, compromising and sacrificing are all the duties of the husband only and wife has all the rights.

It is only 498A that has threatened the whole institution of marriage! If it's not checked and is made to continue the way it is, whenever the history will ask "who demolished the institution of marriage?" the answer will only be 'government' and 'judiciary'. As the government failed to provide proper laws and judiciary failed to deliver justice.

With 498A of IPC, our country stands alone where even matrimonial offences of civil nature have been criminalized. And it is just this undesired criminal nature of matrimonial issues that 498A of IPC stands as the most misused law in the country.

With all the ambiguity in 498A, it's scope should be defined in terms of:

1. Defining a family for the purpose of 498A, as to who can be implicated
2. Defining the rights of the family as well as the extended family.
3. The term 'mental cruelty' needs to be defined separately for the sake of 498A is a must.
4. It should be defined what can and what cannot be complained under 498A.
5. It should be ensured that trivial disputes between husband and wife or wife and in-laws should be settled amicably and not entertained under 498A.

6. It is high time now; our law must accept the fact that even can be victims of harassment in matrimonial relations. 498A should be made gender-neutral. A husband should also be given an option to file a complaint when he is harassed with cruel behaviour by his wife or in-laws.
7. The instances of harassment or cruelty towards husband can include, but not limited to demanding an exorbitant amount of money from husband, intimidating husband for false cases, passing derogatory comments on the husband or his family, physical violence on the husband or his family members, mental cruelty, creating an atmosphere of fear in-home, giving suicide threats, demanding separation of husband from his old parents, abusing the parents, sisters and brothers of her husband with filthy words, demanding transfer of property and assets just after marriage to her name, aborting the child without informing husbands or his parents, extorting money from the husband.
8. 498A must have a specific misuse clause, because it's misuse not only ruins the family life if the couple, but also damages the whole family of the husband. So, false allegations under Section 498A should invite punishment.
9. Laws like Domestic Violence and maintenance (125 CrPC) should be clubbed with 498A IPC to avoid multiple litigations between the same parties on the same issues and evidence.
10. All investigations in 498A must be scientific, i.e. including lie detector test etc.
11. Suicide by a husband due to cruelty of wife should attract punishment under this section.
12. In case of NRIs, it should be ensured that he is allowed permission to return to the country of employment, the passport should not be impounded or revoked at the drop of hat, cases should be decided expeditiously.

498A should be made non-cognizable, bailable and compoundable.

Sec 7 [2 (3)] of Dowry Prohibition Act which renders it self-contradictory, should be scrapped to check the misuse of 498A as a tool to extort large amount of money.

**Q.5.** In light of the Law Commission's 243rd Report, should any pre-arrest or other procedural safeguards be added specifically with reference to s. 498A?

Yes! Considering the fact that 498A covers matrimonial disputes which ideally should be civil in nature, and taking into account the rampant misuse of 498A, any provision of arrest just on a complainant should be removed.

## IV. Defamation

**Q.6.** Should defamation under s. 499 be decriminalised? If not, how should it be amended to balance the need to protect the privacy and reputation of people with the right to free speech and expression?

Gandhi Ji once said, "Freedom is not worth having if it does not include the freedom to make mistakes"! But, we feel that any deliberation or attempt verbally or written should be punishable if it crosses the limitation of the right to speech and expression. The objective of the defamation law is to protect the reputation of people.

Any defamatory expression, false claim not protected under the law or constitution, any epithets or personal abuse against any person should be liable to punishment under the law.

**Q.7.** Should defamation against public servants be expressly included in s. 499, having due regard to the Second Exception?

No, as it would prevent the public at large from expressing any opinion in good faith against the conduct of a public servant in the exercise of his public duties. Public servants are required to accept a greater degree of criticism compared to private individuals.

**Q.8.** Should defamation by public servants in the course of their public functions be treated as an aggravated offence?

Yes, a public servant is supposed to be acting on behalf of the public and therefore any misuse of official position in any manner whatsoever should be punishable.

**Q.9.** Should provisions enabling the 'right to reply' and 'take-down notices' against defamation be added to ss. 499 and 500?

Yes, even though the provisions of the 'right to reply' and 'take-down notices' are more of civil in nature, but still such provisions could be of help in reducing unnecessary litigation in the court.

## V. Criminal Intimidation, Insult and Annoyance

**Q.10.** Should s. 505 be amended to explicitly address the commission of these offences through electronic means (e.g., social media and other internet-based intermediaries)?

No, there is no requirement to explicitly include only electronic means only, they may be added to the existing provisions.

**Q.11.** Should the scope of s. 505 be amended to include creating and/ or disseminating 'fake news'/false news/ mis-information etc.?

Yes, creating and/ or disseminating 'fake news'/false news/ mis-information etc. should be a punishable offence.

## **VI. Misc.**

**Q.12.** In the determination of liability and other aspects of adjudication (such as sentencing, bail, compensation etc.), should a gradation be created on the basis of an explicit consideration of the type of injury (as defined in s. 44) caused by the offence?

Yes.

**Q.13.** Should the classification of offences as cognisable and non-cognisable be modified? If so, on what basis?

Yes, there is a requirement to remove the classification of offences as cognizable and non- cognizable offences. Apart from this, the classification of offences should be based on limitation as to when should the offence be reported:

1. Offences which should be reported immediately where there are chances of manipulation or influencing important witness/evidence.
2. Offences which may not require immediately reporting the offence, where an investigating agency can first take up the preliminary investigation before registration of the offence.