

U1/18390/12/PHQ

Police Headquarters, Kerala

Thiruvananthapuram-695 010

Dated: 02/10/2012

CIRCULAR No: 28/2012

Sub: Misuse of Sec. 498A of IPC - Advisory issued by Ministry of Home Affairs, Govt. of India - Instructions issued - Reg.

Read: Lr. No. 3/5/2008 – Judl. Cell dated 16/01/2012 of the MHA, Govt. of India.

The Ministry of Home Affairs, Government of India, vide the reference read above, have issued an Advisory on measures to be taken to curb the misuse of Sec. 498A of IPC.

Sec. 498A of IPC relates to the punishment for any cruelty inflicted on married women by the husband and relatives. But in many instances of marital discord, provisions of Sec. 498A of IPC are seen misused. In the light of the above Advisory of Government of India, the following instructions are issued.

(1) The powers of the arrest on complaints relating to offence under Sec. 498A of IPC are to be exercised carefully and cautiously, since it is laid down that the power of arrest without a warrant should be exercised only after a reasonable satisfaction is reached, after some investigation, as to the genuineness and bonafides of a complaint and a reasonable belief as to both the person's complicity as well as the need to effect arrest. In matrimonial disputes, it may not be necessary in all cases to immediately exercise the powers of arrest. Recourse may be initially taken to dispute settlement mechanism such as conciliation, mediation, counselling of the parties etc. In view of the above, arrest of the accused in Sec. 498A of IPC cases shall be done only with proper care and caution. Arrest under Sec. 498A of IPC on the basis of a complaint should be done only with written order of the Police officer of the level of District Police Chief or equivalent and it should be ensured that there is sufficient material for arresting the accused and charge sheeting the case. In short, arrest should be an exception, only in very deserving cases, and not done as a regular/routine exercise.

(2) The service of professionally trained family counselors shall be utilized for conciliation and mediation between the spouses and their families so that frivolous cases are screened at the initial stage itself and Sec. 498A of IPC is invoked in rare cases.

(3) The process of counselling by the Police Department should be made professional by involving qualified counselors and reputed NGO's so that people have more confidence in the mechanism and arrive at some settlement without the use of Sec. 498A of IPC. Even after the process of counseling, if the District Police Chief is not satisfied with the result, provision of Sec. 498A of IPC may be invoked. The District Police Chief may consider empanelling professional counselors with the Women cell working at district level.

(4) In case of juveniles, Sec. 498A of IPC should not be invoked. However, in case of any aberrations, the Police must ensure that the children are put under the care of Child Welfare Committee.

All District Police Chief's should furnish a quarterly statement to PHQ mentioning the number of complaints under Sec. 498A of IPC and the arrest made there under.

All are instructed to ensure that the above directions are carried out in dealing the offence under Sec. 498A of IPC.

Sd/-

**Director General of Police &
State Police Chief, Kerala**

To

All Officers in List 'B'

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