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COMMITTEE FOR REFORMS IN CRIMINAL LAWS

CENTRE FOR CRIMINOLOGY AND VICTIMOLOGY
NATIONAL LAW UNIVERSITY DELHI

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Former District and
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Delhi

Date: 30-06-2020

PUBLIC NOTICE

Sub: Invitation to participate in Expert Consultations.

The Ministry of Home Affairs, Government of India, vide its notification '1-2-19 Judicial Cell (Part I)' dated 04-05-2020 has constituted the National Level **Committee for Reforms in Criminal Laws** to undertake a review of criminal laws in India. The Committee endeavours to recommend reforms in a principled, effective, and efficient manner which ensures the safety and security of the individual, the community and the nation; and which prioritises the constitutional values of justice, dignity and the inherent worth of the individual.

Towards the fulfilment of its mandate, the Committee has developed a web-based mechanism for Expert Consultation which has been notified through a Public Notice dated 26-06-2020 on the official website of the Committee (<https://criminallawreforms.in/>). The Consultative process is scheduled to start from 04-07-2020. The Committee has initiated the process of inviting both subject-area experts and governmental/non-governmental organisations to contribute to the Consultations.

In addition to the above, if any person or organisation remains unreached, the Committee requests all professionals, functionaries and stakeholders involved with our Criminal Justice System to kindly register at <https://criminallawreforms.in/expert-consultation/> and participate in the aforementioned Consultations. The Committee shall be accommodative of all inputs and shall stand greatly benefited by such opinion, experience, and knowledge.

Regards,

Prof. (Dr.) Ranbir Singh
(Chairperson)

Notified vide its Notification 1-2-19 Judicial Cell (Part I) dated 4-5-2020 by Ministry of Home Affairs, Govt. of India

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Consultation

Instructions:

For Responding to the Questionnaire:

- Entries can be made in the dialogue boxes below the questions.
- Draft entries maybe saved by clicking on the save button at the bottom of the page.
- Returning/Registered users can access the saved progress by entering the unique code generated at the time of registration, and resume their entries.
- You may direct any queries to criminallawreforms@nludelhi.ac.in.
- You may send any audio/visual files or documents to info-criminallawreforms@nludelhi.ac.in

For Entries:

- Please provide reasoned responses.
- Please refrain from answering the questions simply with a yes/no.
- Please exercise self-restraint and limit your responses in the interest of brevity.

Links to the consultation questionnaires:

- To access "Substantive Criminal Law - II", click [here](#).
- To access "Procedural Criminal Law - I", click [here](#).

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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.]

For Sections 82 & 83; The answer has already been provided in reply to the 1st Consultation in Part B, Q6 as below

Sections 82 & 83 are not required in the IPC, Please refer to the JJ Act 2015 & to the Various Child Welfare Committees. It is pointless to have doubling up of the same matter repeatedly in various act. There is already the JJ Act, JJ rules, etc.

For Section 84, The answer has already been provided in reply to the 1st Consultation, Part B, Q7 as below

Suggestion: The section should make mandatory the opinion of expert medical professionals as the Court or the affected parties may decide, in arriving at any decision under this section.

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For Section 85, The answer has already been provided in reply to the 1st Consultation, Part B, Q1 as below

Club sections 85 & 86 since they mean almost the same thing. At the same time, the examples & circumstances could vary, what is the guarantee that the victim or the person who was fleeced/coerced to commit crime was fully informed about the consequences?

No, unless the abettor also puts life of abetted person in danger.

Reason is that it's judicial principle to give punishment according to crime committed or intended to be committed, so considering it as aggravated form of crime will be injustice. Provisions under Chapter V of IPC are also designed on same principle.

II. Criminal Conspiracy

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

No Specific Answer possible

It is not possible to make theoretical assumptions before tabulating all forms of crime online & seeking suggestions. In many sections, the punishment provided is disproportionate from the crime committed as well as the merits of the case. There is a serious variation between court to court & police station to police station. It requires a complete database of all forms of proven crime committed to arrive at any such general conclusion.

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Implementation procedure of Laws, codes, etc.

- a. Database of crimes recorded
- b. Draft Law framed
- c. Discussed in the public domain with citizens & experts' opinion
- d. Trial phase of implementation
- e. Report of results of implementation with public consultation
- f. Modifications of rules, laws & procedures, every year
- g. Before the law is formally implemented, it should be informed to the public and should go through sufficient trial phase before final modifications and formal implementation
- h. Compare the specific law, crime, reformative guidelines, etc. with other crimes & make a tabulated chart to arrive at the specific & comparative solution.

Yes. In fact when mere intention to commit crime is not punishable then why is mere agreement punishable. It is violative of fundamental rights of a person and Sections 120A and 120B become tool of harassment.

Severe crimes against State are duly taken care in Sections 121 and 121A IPC, which need not be changed.

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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?

In order for the Indian System to even check on attempts & test to prove attempts, one needs professional investigation systems, which India doesn't have.

If compared with a good medical hospital, or medical justice systems, which have a complete set of scientific labs, tools, specialized staff, etc., Indian Legal systems are probably 1000s of years behind. So please don't attempt to define such ambiguous terms which is beyond the capacity of the existing systems to attempt. First develop a robust justice system, then think about attempts, whether covert or overt or otherwise

However please have adequate manpower at the desolate stretches to prevent attempt to various crimes. It simply requires a bit of experience & common sense to prevent crime & attempts to commit crime.

No. The Attempt should be taken in its ordinary meaning as defining it may lead to various ambiguities. Also, since the law is well settled on the topic of Attempt and no ambiguity is there, so no need for any attempt to define it.

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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. Tests that should be considered include

1. Conspiracy or plotting
2. Solicitation or team building
3. Spying, Stalking or surveillance
4. Filing False Cases
5. Withdrawing the rights of a citizen. For example
 - a. Taking child away from father without sufficient cause
 - b. Stealing or Usurping the property, valuable items (valuable is not necessarily costly, such as certificates, papers, etc.) of unsuspecting citizens
 - c. Causing harm in the excuse of false aggravation
 - d. Spreading false rumours, or defaming the person, thereby demeaning & harming the person
 - e. Lies & Deceits to do something, while the unsuspecting citizen is harmed due to an uncalled for act.
6. Previous record of committing crime

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No. Reason is same as given in Answer 2 above. If a preparation infringes on private rights of an individual then that can be dealt under other Civil Laws.

However, preparations for crime against State, like waging war etc., should be separately defined for the sovereignty and integrity of India.

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?

1. A clear Section on Accountability as the first Section in Chapter IX is required. It's the responsibility of the Law & Justice provision agencies to maintain law & order in the country, hence Accountability of the Law officers (Judicial Magistrates, Advocates & Lawyers, Police Officials) is required & must. Without accountability no profession can function. Strict offences should be introduced within the I.P.C. based on the following criteria:

a. Intent: If a person commits an act with an intent even knowing the fact that such act is an offence under law. It should also include the act of a person with an intent of inaction even knowing the fact that such inaction will lead to an act of offence. In other words a crime has been committed due to "acting knowingly," "acting purposely," "acting with recklessness",

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and "acting with negligence". This act should include personnel working or involved with the law enforcement agencies and the judicial services.

If it is found that the law officers (judicial magistrates, advocates, police officials, etc.) have committed crime, then double the punishment should be given than what is prescribed.

b. Dereliction of duty: by judicial magistrate, police official, officer of law (advocate/lawyer)

c. Allowing false reporting & false charges : to be filed and continued for hearing in the magistrate's court or any court or police station or any law & justice related institution.

d. Penalty for repeat crime under jurisdiction of the officer in charge - As per ManuSmriti, if a repeat crime takes place in the society due to carelessness or ignorance or dereliction of duty or any other causes, then the judicial magistrate & the santri (Police official) shall be provided 1/3rd the punishment stipulated for the crime. For their associates – 1/3rd the punishment & for the abettors of crime – 1/3rd the punishment, along with full punishment for the criminal

2. Due to severe malpractice & corruption, in spite of anti-corruption laws, it is necessary to have Citizen driven Democratic, transparent, Accountable, Interactive Management systems, with proper Auditing Mechanism, for all justice & law institutions, to regulate the courts, police, and any other judicial / quasi judicial bodies - It is also necessary to have an independent citizens driven 3rd party audit, and rating agencies for the courts, police, and other judicial / quasi judicial bodies systems in the country. Without any accountability to the civil society, nothing can function effectively and efficiently.

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- a. This agency will directly work with the citizens & report to the society at large, including updates/changes in laws, procedures, guidelines.
- b. This agency will have sufficient powers to undertake auditing, management, accountability of the court, police, quasi judicial bodies & other systems to the citizens & society at large.
- c. This agency will have sufficient powers to rate all of these bodies & institutions through citizens inputs & put in disciplinary action against erring officers or promote the good ones, etc.
- d. There has to be a prominent “May I help You” systems in all courts, police, etc. which will prominently display
 - i. All Laws, Rules, Regulations to help the citizens
 - ii. Time required to resolve disputes, and their correct procedures
 - iii. Costs incurred in the litigations
 - iv. Any other information as may be required to help the citizens
 - v. Helpful & Professional Staff to help the citizens
 - vi. Complaints & suggestion section as well as Proper Grievance Redressal Mechanism on all types of complaints

No. These are the offences which require professional investigation by police. If removed from Code then government department would not be able to investigate it thoroughly.

As regard punishment, if no angle of corruption is involved then the punishment should be only Fine and not imprisonment, as the offence committed is neither criminal nor detrimental to any other person.

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

In continuation from the answer to the previous question

1. Judiciary is corrupt, opaque & with no accountability
2. Police is corrupt & with no accountability
3. Law makers are themselves insulated from the law
4. The entire system seems to be in a hangover of the colonial period designed to divide & rule the ordinary civil society
5. Many lives are lost due to these bodies, which require tremendous reforms

Hence it is necessary to have

1. Complete Transparency in the entire system
2. All procedures, laws, acts, list of officers, their duty, responsibilities, accountability, etc. should be displayed in public notice boards in all Police Stations, Courts, Quasi Judicial Bodies, Advocate fees, Court fees, Case timelines & costs, etc. shall be prominently displayed in the public notice boards as well as proper guide from the may I help you desk
3. All courts, police stations, quasi judicial bodies, etc. shall have
 - a. May I help you desk

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- b. Complete grievance & complaint redressal desk, which includes complaints against judges, advocates, bar council members, police officials, systems in place, etc.
- c. Information about all costs involved while fighting the cases which include court fees, advocate charges, standard operating procedures, etc..
4. Just like hospitals, preferential treatment shall be given to the litigants, etc, rather than to the police, lawyers, advocates, judges.
5. Complete definition of family & extended family is required for any personal law matter to have legal validity, otherwise, all family courts & their orders, can be declared null & void
6. Accountability of the Law officers (Judicial Magistrates, Advocates & Lawyers, Police Officials) is required & must. Without accountability no profession can function effectively and efficiently.
7. A 3rd Party Citizens driven accountability, management & rating system with powers.

Furthermore-

Any action by any officer of law (Judicial Magistrate, Advocate/Lawyer, Police Official, etc) government officer that leads to loss of life/lives or property or damage to health or any such loss to innocent civilians & their lives

1. Any action by any institution (including courts, police, judiciary, etc) that results in children's unnatural growth & violates child rights (Please refer UNCRC 1989 & the JJ Act 2015)

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2. Any lack of action due to ignorance or lackadaisical attitude of the court/police/etc that results in crime in the society (Please refer to the answer to the previous question Q1)
3. Matrimonial Disputes, Child Access & Custody
 - a. Not providing child access to biological parents irrespective of any disputes that may or may not arise (including matrimonial disputes), which is lesser than daily access within a week of application.
 - b. Accepting divorce petition without due diligence about where a child is already born or is being taken care of shall automatically subject the law officer, judicial magistrate, advocate or lawyer, police official as an offender U/s 75 of JJ Act 2015 along with other suitable sections of law.
 - c. Not taking suo moto cognizance of child access violation in matrimonial disputes & not restoring 100% child access rights within 1 week.
 - d. Not respecting privacy of the father, mother & child by the Officers of Law – Judicial Magistrate, Advocates / Lawyers, Police Officials
4. Not following citizens approved charter, law & order
5. Committing any crime or allowing crime to be committed or repeat crime committed due to dereliction of duty
6. Judicial and police over reaching which harms the life of ordinary citizens shall mean double punishment for these law officers as prescribed in the specific sections of law
7. Socio economic offences
 - a. Knowingly keeping the employees & citizens poor or unpaid, without sufficient cause

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- b. Knowingly providing inputs in the government policies and/or implementing them which make citizens poorer
- c. Knowingly interfering as a 3rd party in matrimonial or personal disputes which causes more friction & grievances than resolve the matter.
- d. Anyone who 'causes any poisonous, noxious or polluting matter to enter any controlled water' should be guilty of an offence, and should not escape conviction by showing that he/she exercised all reasonable care, in pursuing a legitimate activity, to prevent such pollution: liability should be thus legally strict, and should also morally strict if we agree that a defendant who exercised such reasonable care should not be blamed or condemned for the pollution. Please refer to the National Green Tribunal & Pollution board.

Wrongful Prosecution is when any of the Public Authority carry out their duties in a mechanical way (without application of mind) or with malafide intention which caused harassment to accused. This also includes the condition when complainant, who misused law for levelling false cases on accused person to bring disrepute/ extract money (which is normally happening with cases under 498A, 376, 354 IPC etc.) and based on this Public Authority took action without looking into the veracity of complaint.

It's scope should include all law enforcing agencies like police, and judiciary and also the complainant. It should cover the cases where:

- a. Accused is prosecuted mechanically, like Public Prosecutor keep on pressing for punishment when the facts do not call for that I.e he violates the duty bound on him as per BCI Rules for bringing forth truth and not fight for punishment only.
- b. Cases are lodged and prosecuted without good faith.

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c. Cases are prosecuted with malafide intention.

There may be situation when police will keep on filing appeal due to the fear of Compensation, even though there is no case, in that case Compensation amount should go on increasing as the case moves to higher courts.

Also, Wrongful Prosecution should include cases where acquittal is done on the grounds of lack of evidence or on technical grounds as otherwise the purpose of this scheme will get defeated because then Judicial Officers will tend to avoid stating that acquittal is done as accused was innocent.

Liability should be fixed on all the erring Public Officers (including police and judicial officers) and the complainant. All should be made to pay compensation for damages caused. This will be an effective tool in stemming out false cases.

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?

Remove Sections 76, 78, 79, 80,

Instead bring accountability clauses as explained in the answers to the previous questions. No judge can play demi-God by claiming that he/she acted judicially. No judge without accountability to his/her actions and orders can claim to be acting justly. There is too much delay in cases, judicial apathy, insensitivity, police brutality is there, many lives get

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lost, hence there is a need to delete these clauses and have a 3rd party citizens driven accountability mechanism with complete transparency. Already answered in the previous questions

Yes. The offences which have direct implication on life and liberty of a person should be dealt severely like malicious investigation, malafide judicial orders, etc. These must include filing of chargesheet without proper investigation as the person accused has to face social, emotional, financial, and economic apathy from every corner of society.

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

Yes

Yes. Because there are many acts done by a private body which has direct implication on general public like giving of gifts by Pharma companies to doctors for promoting their drugs which may not be good or cost effective.

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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?

Who will define if public authority has done something wrong. Need proper guidelines before making comments for removal. Accountability of each authority should be defined first.

Need clear law on accountability of the officers.

Rights of accused should be defined and officers should follow the law.

Before Implementation of law, the law needed to be tested.

1. A clear Section on Accountability as the first Section in Chapter IX is required. It's the responsibility of the Law & Justice provision agencies to maintain law & order in the country, hence Accountability of the Law officers (Judicial Magistrates, Advocates & Lawyers, Police Officials) is required & must. Without accountability no profession can function. Strict laws should be introduced within the I.P.C. based on the following criteria:

a. Intent: If a person commits an act with an intent even knowing the fact that such act is an offence under law. It should also include the act of a person with an intent of inaction even knowing the fact that such inaction will lead to an act of offence. In other words a crime has been committed due to "acting knowingly," "acting purposely," "acting with recklessness", and "acting with negligence". This act should include personnel working or involved with the law enforcement agencies and the judicial services.

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If it is found that the law officers (judicial magistrates, advocates, police officials, etc.) have committed crime, then double the punishment is provided than is prescribed.

b. Dereliction of duty: by judicial magistrate, police official, officer of law (advocate/lawyer)

c. Allowing false reporting & false charges : to be filed and continued for hearing in the magistrate's court or any court or police station or any law & justice related institution.

d. Penalty for repeat crime under jurisdiction of the officer in charge - As per ManuSmriti, if a repeat crime takes place in the society due to carelessness or ignorance or dereliction of duty or any other causes, then the judicial magistrate & the santri (Police official) shall be provided $1/3^{\text{rd}}$ the punishment stipulated for the crime. For their associates – $1/3^{\text{rd}}$ the punishment & for the abettors of crime – $1/3^{\text{rd}}$ the punishment, along with full punishment for the criminal

2. Due to severe malpractice & corruption, in spite of anti corruption laws, its necessary to have Citizens driven Democratic, transparent, Accountability, Audit, Management & Interactive systems for all justice & law institutions, to regulate the courts, police, and any other judicial / quasi judicial bodies - It is also necessary to have an independent citizens driven 3rd party audit, management & rating agencies for the courts, policing, law & justice systems in the country. Without any accountability to the civil society, nothing can function.

a. This agency will directly work with the citizens & report to the society at large, including updating of laws, procedures, guidelines.

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- b. This agency will have sufficient powers to undertake auditing, management, accountability of the court, police, quasi judicial bodies & other systems to the citizens & society at large.
- c. This agency will have sufficient powers to rate all of these bodies & institutions through citizens inputs & put in disciplinary action against erring officers or promote the good ones, etc.
- d. There has to be a prominent “May I help You” systems in all courts, police, etc. which will prominently display
 - i. All Laws, Rules, Regulations to help the citizens
 - ii. Time required to resolve disputes, and their correct procedures
 - iii. Costs incurred in the litigations
 - iv. Any other information as may be required to help the citizens
 - v. Helpful & Professional Staff to help the citizens
 - vi. Complaints & suggestion section as well as Proper Grievance Redressal Mechanism on all types of complaints

b) Should cognizability of s. 188 be modified?

No for both of above. When a public authority issues order which are not complied with then it is best judged by same authority or its higher authority to what was the risk and what further action should be taken. Court by itself is not in a position to see the after effects of non-compliance.

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Further if any untoward incident happens then that is always covered under different Sections of Code or other Acts.

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

1. The Punishment u/s 182, 193, 211 shall be
 - a. Please club sections 182, 193 & 211 under a single comprehensive section.
 - b. For the person knowingly providing false information - Punishment shall be as prescribed as if the crime has been committed
 - c. If it is found that the Officials of Law (judicial magistrate, advocate, police officer, etc.) with knowledge or due to his/her inefficiency, ignorance, slackness used false information, then punishment shall be termination from duty & double that prescribed as if crime has happened for the Officials of Law (judicial magistrate, his/her team, advocates, police, etc).
 - d. For example - more than 90% of Matrimonial disputes including DV, 498A, CrPc 125 cases have been found to be false, however the courts have hardly taken any steps to remove the unnecessary harassment of the innocent law abiding citizens, who are threatened under pre arrest. Under these circumstances, the advocates, police officials, judicial magistrates, court staff, etc. who are guilty of abetment to false charges, shall be terminated from service and shall be punished, with double the punishment as if the crime u/s 498A, DV, etc., has happened.

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2. Punishment u/s 186 it needs to be modified, but needs sub classifications. Shall depend on

- a. the nature, circumstances of crime,
- b. the position of the person obstructing a public servant of discharging duties.
More powerful the person, more shall be the punishment
- c. For example - A Politician takes out a rally in an area where public congregation has been disallowed. He/She/They is/are also blocking the police officials from discharging their duty. Under such circumstances, they shall be punished for damage to public law & order and damaging of property, live, etc. as may be applicable under those circumstances.

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?

Depends on the circumstances

1. Only if the court order has been confirmed to done under just circumstances so that justice prevails, instead of arbitrary or interim order
2. If it is a property of person of proven crime records & there is no reform possible,
3. Definitely NO in matrimonial disputes, as this clause is more used than misused.

Only if such steps provide justice to all parties.

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4. If it is a public property (property paid for by the citizens taxes) and has been misused as a private political office, or of antisocial activities, or has been taken away with wrong court or police order, or has been taken away by collusion of various parties which violates the genuine rights of the citizens or the public at large, then the property shall be lawfully attached and action taken.
5. If it is a private/public property and is being used for anti-social and anti-national activities and has been attached.
6. Hyper Generalisation of any court order is not possible as everything depends upon circumstances. It is based on the assumption that Indian courts are a perfect place for justice./ In fact the reverse is true.

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

1. The Punishment u/s 182, 193, 211 shall be
 - a. Please club sections 182, 193 & 211 under a single comprehensive section.
 - b. For the person knowingly providing false information - Punishment shall be as prescribed as if the crime has been committed
 - c. If it is found that the Officials of Law (judicial magistrate, advocate, police officer, etc.) with knowledge or due to his/her inefficiency, ignorance, slackness used false information, then punishment shall be termination from duty & double that prescribed as if crime has happened for the Officials of Law (judicial magistrate, his/her team, advocates, police, etc).

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- d. For example - more than 90% of Matrimonial disputes including DV, 498A, CrPc 125 cases have been found to be false, however the courts have hardly taken any steps to remove the unnecessary harassment of the innocent law abiding citizens, who are threatened under pre arrest. Under these circumstances, the advocates, police officials, judicial magistrates, court staff, etc. who are guilty of abetment to false charges, shall be terminated from service and shall be punished, with double the punishment as if the crime u/s 498A, DV, etc., has happened.

Part C

I. Offences Relating to Public Tranquillity

Q.1. Should the “preparation to commit rioting” be penalised as a separate offence?

Yes

The contents of preparation can be categorised as hiring persons for rioting, unlawful assembling, provocations to instigate rioting. All these are already covered under Chapter VIII. So no need to make separate offence as the more we complicate laws more are it's chances of misuse.

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

Section 153 is Ok

Section 153A- Please include

1. Matrimonial disputes

- a. Whosoever found to be trying to or having been successful in splitting or breaking up a family especially if there are minor children in the family, or causing unwarranted friction between husband & wife, especially if they already have children shall be subjected to criminal offence with 3 years of Jail, 3 lakh Rs penalty & other sections of law as per the JJ Act 2015
- b. If the Officials of Law (Judges, Court Staff, Advocates, Lawyers, Police Officials, etc.) are found guilty, then they should be provided double the punishment as prescribed in the JJ Act 2015
- c. All Police, Court, Quasi Judicial, Family Court matters if abated shall be subjected to section 75 of JJ Act 2015, in which the court staff, judicial magistrate, advocates, police officials can be tried with immediate arrest & jail terms along with double the punishment as prescribed in the Section 75 of JJ Act 2015
- d. Please link this Section 153-A with the section 75 of JJ Act 2015

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For Sec-153, punishment should be enhanced and made double of what it's now along with fixing liability to compensate for the loss of public property. If there is loss of life in such rioting then the charge of culpable homicide should also be imposed along with S-153.

For S-153A, a careful balance needs to be maintained between Fundamental Right to express under Art.-19 and speeches or expressions resulting in offence under this section. This provision is very likely to be misused for political rivalry. So, the quantum of punishment should be reduced if there is no rioting.

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 As already explained above in Q2

Section 153A- Please include Matrimonial disputes. Details mentioned in the answer to the previous question

No. The purpose of this Chapter is to maintain Public Tranquility. Covering other grounds will make base for misuse and thus violates Fundamental Right to speech n expression. In present scenario the major divide lines should be seen which require remedial action, so only Ethnicity may be considered for addition in this Section.

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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 As already explained above in Q2

Section 153A- Please include Matrimonial disputes. Details mentioned in the answer to the previous question

However we need as a mandatory check on accountability of the systems (As explained in answer to Q1, Part B)-

Due to severe malpractice & corruption, in spite of anti corruption laws, its necessary to have Citizens driven Democratic, transparent, Accountability, Audit, Management & Interactive systems for all justice & law institutions, to regulate the courts, police, and any other judicial / quasi judicial bodies - It is also necessary to have an independent citizens driven 3rd party audit, management & rating agencies for the courts, policing, law & justice systems in the country. Without any accountability to the civil society, nothing can function.

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?

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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?

Club Sections 153A, 153B & 295A in a single comprehensive section

For Section 153A, already answered in the previous question

For Section 153B & 295A Please include

1. Making or proposing or enacting of Law by any member of Parliament or state legislature which can cause favouritism to a certain section of community or cause serious societal friction on the grounds of gender, age, religion, race, colour, creed, etc.
2. Compelling members of certain community to behave like other community, Through enactment of Acts, Laws, etc.
 - a. For example there is nothing Hindu about the Hindu Marriage Act, rather it abets family separations of minor children and can be termed as a Child Abuse Act & whosoever made it & implemented it shall be subjected to criminal offence under the JJ Act 2015.
 - b. In all the so called Hindu Personal Laws, no one from the civil society have been consulted, there have been protests against them. They seem to be copied pasted from some other country or time.
3. Implementing laws, acts, procedures by any person in power or deemed to be in power which does not have the approval of the civil society or all the affected parties.

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4. Keeping laws, acts, procedures incomplete without periodically checking on the ground realities regularly
5. Misconduct of the court against ordinary citizens
6. Character assassination abetted by the court, advocates, police, etc.
7. Misconduct by the MPs. MLAs, etc against ordinary citizens
8. Not just religious places, but also all public places, including the police stations, courts, judicial bodies, quasi judicial bodies, etc. should come under this section.
9. Similar to Section 153A, it is mandatory to have -
 - a. Check on accountability of the entire law and justice systems (As explained in answer to Q1, Part B)-
 - b. Due to severe malpractice & corruption, in spite of anti corruption laws, its necessary to have Citizens driven Democratic, transparent, Accountability, Audit, Management & Interactive systems for all justice & law institutions, to regulate the courts, police, and any other judicial / quasi judicial bodies - It is also necessary to have an independent citizens driven 3rd party audit, management & rating agencies for the courts, policing, law & justice systems in the country. Without any accountability to the civil society, nothing can function.

Indian Constitution has given Fundamental Right to speech with some restrictions. Till those restrictions are followed the freedom to express should not be curtailed. No modification in existing laws is required as excess of laws will lead to lawlessness as is happening with 498A IPC, DV, 125 CrPC, DP Act, HMA. None are followed for sake of justice or saving families. All are used to arm twist men to succumb to demands of wife or shell out money to advocates, police, wife and all.

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Existing provision can be modified to include hate speech. Just the minimum imprisonment to be 6 months and no fine amount component

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. WRT Sections 268, 269, 270, 290, 291

- Please Add Parental Alienation Syndrome as one of the diseases that is caused due to divorce of parents of minor children. The hippocampus of the brain starts secreting hormones which may in the longer term damage the brains of children.
- Any one applying for divorce, especially when there are minor children involved may be subjected to this section
- Any Official of law (Judiciary, Advocate/Lawyer, Police officer, etc), without sufficient investigation and cause accepting such litigation may be subjected to this section & terminated from their services along with double the punishment as prescribed in the section
- Due to severe malpractice & corruption, its necessary to have Citizens driven Democratic, transparent, Accountability, Audit, Management & Interactive systems for all justice & law institutions, to regulate the courts, police, and any other judicial / quasi judicial bodies - It is also necessary to have an independent citizens driven 3rd party audit, management & rating agencies for the courts,

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policing, law & justice systems in the country. Without any accountability to civil society, nothing can function.

yes, combine and grade them.

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, as answered in previous question Q6

Yes. WRT Sections 268, 269, 270, 290, 291

- Please Add Parental Alienation Syndrome as one of the diseases that is caused due to divorce of parents of minor children. The hippocampus of the brain starts secreting hormones which may in the longer term damage the brains of children.
- Any one applying for divorce, especially when there are minor children involved may be subjected to this section
- Any Official of law (Judiciary, Advocate/Lawyer, Police officer, etc), without sufficient investigation and cause accepting such litigation may be subjected to this section & terminated from their services along with double the punishment as prescribed in the section
- Due to severe malpractice & corruption, its necessary to have Citizens driven Democratic, transparent, Accountability, Audit, Management & Interactive systems for all justice & law institutions, to regulate the courts, police, and any other judicial / quasi judicial bodies - It is also necessary to have an independent citizens driven 3rd party audit, management & rating agencies for the courts, policing, law & justice systems in the country. Without any accountability to civil society, nothing can function.

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Yes, if these offences are sufficiently covered under FSSA and compensation for loss incurred is judiciously granted

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

Yes, as answered in previous question Q6

Yes. WRT Sections 268, 269, 270, 290, 291

- Please Add Parental Alienation Syndrome as one of the diseases that is caused due to divorce of parents of minor children. The hippocampus of the brain starts secreting hormones which may in the longer term damage the brains of children.
- Any one applying for divorce, especially when there are minor children involved may be subjected to this section
- Any Official of law (Judiciary, Advocate/Lawyer, Police officer, etc), without sufficient investigation and cause accepting such litigation may be subjected to this section & terminated from their services along with double the punishment as prescribed in the section
- Due to severe malpractice & corruption, its necessary to have Citizens driven Democratic, transparent, Accountability, Audit, Management & Interactive systems for all justice & law institutions, to regulate the courts, police, and any other judicial / quasi judicial bodies - It is also necessary to have an independent citizens driven 3rd party audit, management & rating agencies for the courts, policing, law & justice systems in the country. Without any accountability to civil society, nothing can function.

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

Yes, as answered in previous question Q6

In the changed scenario and opening up of Indian culture to western influence these Acts have become obsolete and so highly prone to misuse. The only limitation here should be that no one should expose or cause to expose minors to such material.

Modify minimum imprisonment to 3 years not exceeding 5 years and Increase the minimum fine amount to 10000 (1st instance) not exceeding 20000 and 50000 (subsequence instance) not exceeding 100000 in 292(2),

Modify minimum imprisonment to 4 years not exceeding 5 years and Increase the minimum fine amount to 20000 (1st instance) not exceeding 40000 and 50000 (subsequence instance) not exceeding 100000 in 293

Modify minimum imprisonment to 6 months not exceeding 1 year and set the minimum fine amount to 10000 (1st instance) not exceeding 20000 and 50000 (subsequence instance) not exceeding 100000 in 294

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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?

No. Any Deliberate and malicious attempt should be punished. However, the proof of malicious intent should be of high level.

Just implement the law to all religions as laid in Article 14 of Constitution. Take away the fine part. Since the penal punishment has upper cutoff as 3 years, Magistrate has sufficient discretion on quantum of punishment

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?

NA.

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

NA.

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

For all offences, there should be

- A central server with publicly accessible data (without divulging private details of affected parties) with all crime committed,
- Time taken to commit crime, to investigate, establish & resolve crime,
- Detailed processes involved,
- Magnitude, seriousness of crime,
- Relative table as compared with other crimes mentioning the circumstances & details under which the crime has been committed,
- Costs involved in committing the crime & resolving the dispute to all parties involved, including how much of private as well as taxpayers money has been used in the entire process.
- Punishment or reformative treatment or reformation or recourse taken.
- Results or benefits/harm to the society at large due to the implementation

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Only after this complete exercise, shall the cognizability & balability be discussed. All of these have to be on merits, rather than just discretion of the court. This record has to be cross checked bi-yearly & yearly as per the data and updated & new recommendations be set in place.

Please club Sections 405 to 409 into a single comprehensive section which includes all crimes under the “Criminal Breach of Trust” & please include the following persons also -

1. Officials of Law (Judicial Magistrates, Police Officials, Advocates, Lawyers, etc.)
2. MPs, MLAs, etc.
3. Persons in power or appointed in positions of power

Please club Sections 411 to 414 into a single comprehensive section which includes all crimes under the “Dishonestly Receiving Stolen Property” & please include the following persons also -

4. Officials of Law (Judicial Magistrates, Police Officials, Advocates, Lawyers, etc.)
5. MPs, MLAs, etc.
6. Persons in power or appointed in positions of power

For Section 440 please include the following also

1. Any court procedure, police procedure, or any action by the legal system, including making or implementing laws, that causes serious harm to ordinary citizens by -
 - a. Officials of Law (Judicial Magistrates, Police Officials, Advocates, Lawyers, Court staff, police staff, etc.)
 - b. MPs, MLAs, etc.

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- c. Persons in power or appointed in positions of power
- d. Any other persons involved in the action resulting in mischief

Please club Sections 441 to 461 into a single comprehensive section which includes all crimes under the “Trespassing on Property” & please include the following factors

1. Trespassing on husband’s or his family members or his associates property in the excuse of matrimonial disputes
2. Trespassing on father’s property in the excuse of personal disputes
3. Passing orders or procedures by Officials of Law (Judicial Magistrates, Police Officials, Advocates, Lawyers, etc.) to trespass property of husband/associates/family members in the excuse of matrimonial disputes
4. Ceasing property of husband & family members or associates in the excuse of maintenance matters by either court order or police abetment or any other person or institution
5. Protracted legal battles to compel a person to give up his or her property which is abated by the court proceedings or by police pressure.
6. Use of force by a person in power through various means to usurp the property of a weaker person through so called legal means, but which is not legal or rightful.
7. Double the punishment plus punishment due to misuse of other sections of law including dereliction of duty for the following persons
 - a. MPs, MLAs, etc.
 - b. Persons in power or appointed in positions of power
 - c. Officials of Law (Judicial Magistrates, Police Officials, Advocates, Lawyers, etc.)

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Add section 462 as a subsection to the above (combined section of 441 to 461). Please note that Section 462 is a general section on repeat offenders & can be generalized as a subsection on all the sections. Structure all the sections in subsections that include first time offenders, repeat offenders, accidental cases, cold blooded planned cases, etc.

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

NA.

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

NA.

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

Already Answered in Q3 Above

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Part E

I. Criminal Breach of Contracts of Service

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

No. However it should include the conduct of the following while on duty

1. Officials of Law (Judicial Magistrates, Lawyers/Advocates, Police Officials)
2. MPs, MLAs, elected representatives, etc.
3. Non Elected Persons in Power

Also the meaning of "wants" must be very precisely defined with two provisos incorporated : that such wants have to be reasonable as are essential for the well-being of the concerned person and secondly that the alleged offender should be capable of providing such wants failing which he should be absolved of the offence.

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?

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- Section 498 should include punishment for a woman who has wilfully and voluntarily had intercourse with any person other than her husband.
- Section 498 should need to be made gender neutral.
- A person should be punished under Section 498 if a person entices or takes away or detains with criminal intent a spouse of another person with intent that the spouse of another person may have illicit intercourse with the person.
- Section 498 should need to be made gender neutral
- Section 498 should include punishment for a person if the person cohabitates with another person deceitfully by inducing a belief of lawful marriage between them.
- Section 498 should include punishment for a person if the person has sexually intercourse with another person deceitfully by inducing a belief of lawful marriage between them.
- The imprisonment term under Section 498 should not be more than 3 years.

The Entire Section of the Marriage related laws, should first have the following

1. Clear Definition of a Biological - Family & Extended Family - upto 4th generation up & below
 - a. What is a biological family tree
 - b. Who are the members of this family
 - c. What is their relationship with each other
 - d. What are their indicative rights & responsibilities
2. Clear Definition of Non biological - Family & Extended Family - upto 4th generation up & below

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- a. What is a non biological family relationship (relationship of acquaintance - that is not directly related by blood)
 - b. Who are the members of this family & family tree
 - c. What is their relationship with each other
 - d. What are their indicative rights & responsibilities
3. Currently the laws are negative laws & are dedicated to breaking down the family of minor children. The practice & procedures automatically withdraw rights father-child access.
 4. All grievance redressal laws should be made comprehensive with rights & responsibilities of all parties
 5. All such grievance redressal laws should be made gender neutral
 6. Child Access should be mandatorily granted in the first instance as a suo moto cognizance as per the UNCRC 1989 & JJ Act 2015. Under no circumstances should the Child Access be denied to any parent without proper investigation.
 7. All the current marriage laws are based on superstitious presumptions and assumptions that a certain kind of crime happens everywhere in which an able bodied educated woman is always the victim & the husband (even if he is paralysed from top to bottom) is the criminal. This is a complete lack of common sense & speaks very lowly of the framers of the law & the implementers of the law. There is no such section of the constitution which says that common sense should be thrown out of the court or police.

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8. Hence all marriage laws should come under a single section and sub sections with suitable application of common sense without any presumptions or assumptions.
9. Sections like 498A, CrPc 125, DV, etc., should come under a single gender neutral matrimonial dispute & grievance redressal section.
10. At the same time, there should be sections dedicated to FAMILY STRENGTHENING LAWS, PROCEDURES, GUIDELINES, etc. in all courts, police stations & any related institution or organisation.
11. All the Family Laws should be in sync with the society.
12. Please refer to Ancient Indian Judicial systems by Justice Shri SS Dhawan of Allahabad High Court
http://www.allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhawan.pdf

Quote- “The institution of family judges is noteworthy. The unit of society was the joint family which might consist of four generations. Consequently, the number of the member of a joint family at any given time could be very large and it was necessary to settle their disputes with firmness combined with sympathy and tact. It was also desirable that disputes should be decided in the first instance by an arbitrator within the family. Modern Japan has a somewhat similar system of family Courts. The significance of the family courts was that the judicial system had its roots in the social system which explains its success.”

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Sec-493 should be repealed as making sex under deceit is already covered as Rape in this Code. However, definition of Rape should be made gender neutral. As regard to cohabit under deceit, it can be at best termed as Cheating.

S-498 has the same premise as S-497 where women were treated as property of men. As this notion has no base so it should also be repealed because enticing has no relevance and taking with deceit can be categorised as Abduction.

493/498 IPC need to be gender-neutral. Fraud can be done by either gender and especially because 417/420 IPC does not cover this offence sufficiently.

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

Illegal cohabitation or cohabitation for sexual intercourse with someone other than its own spouse should attract punishment under this section. It should be considered as an act of bigamy. However, under this law there should be an exception for the unmarried person and also, for the person who is subject to judicial separation.

While the section may sound holier than thou however considering the inefficiency & insensitivity of the courts and police apathy & the extremely poor track record of both the courts and the police, it is best to

1. first Constitute a Family Commission and Family Committee considering that Indian Families have a deep cultural traditions and history. Till the post independence half-

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baked laws came, the Indian family was not broken. Our culture and civilisation grew even during the tough times, come war come famine. Hence this section is relevant only when a proper traditional cultural yet going with the modern times, Family Commission & Family Welfare Committee is set up.

2. Mere Court Orders or Police intervention may not hold ground as the systems are fractured from inside out.

No. In every religion, there is an agreed custom via which marriages take place. Even same sex marriages are also allowed. Since marriage is given wide enough liberal interpretation, live-in relationship cannot take the legal definition of a marriage. Considering there are Compulsory Registration of Marriages Acts in almost all state, allowing Live-in a status similar/equal to that of a legally valid marriage is incorrect and should be held illegal

These laws were made with concept that Hindu marriage is sacrosanct. But these very same laws have destroyed the fabric of family and thrown concept of marriage being sacrosanct in dustbin. So, when Supreme Court has decriminalized sexual relation between two consenting adults, then the consensual relation outside marriage should also be decriminalized, as if there is happy marriage then no one will make extra marital affairs but if there is nothing like marriage between two people then why to make one's life hell because of other person. But for other spouse this will always be the ground for divorce.

Everything cannot be covered by making laws, in personal matters morals should be allowed to play the role and let society decide on it.

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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?

1. Why is 498A not legal?

- a. 498A is a sub part of Family Laws. However there is no definition of Family, Biological Family, Extended Family, - these definitions were part of legal codified practices till the English came to India. These clear terms existed in legal practice for 1000s of years. However 72 years post independence no one seems to have looked into this common sense terminology. Since the Indian definitions of family have been very cynically erased, hence 498A can't be a legal practice.
- b. 498A is mostly misused with complete support of the police, judiciary, etc to
 - i. Usurp the groom's & his family's properties
 - ii. Destroys the Fatherhood of father & his extended families
 - iii. Forces the children to grow up fatherless.
 - iv. Destroy a happy Family atmosphere of minor children who are growing up
 - v. There is no record to show that misuse as well as actual crimes for which it was intended, have ended or reduced.

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- vi. It's more of a business proposition which destroys complete families of minor children, which itself is a non-pardonable criminal offence
- vii. There is no scientific & professional method followed in 498A. It is more of a paper work of the archaic bureaucratic systems that the British set in place, rather than efficient justice mechanism
- c. There is no tracking of cases & problem solving done since it has been put in place where lakhs of fathers, husbands, little children lost their lives. Any law which doesn't have comprehensive study done over 6 monthly periods, fails the legality test. 498A, due to gross misuse & no proper studies done on 6 monthly periods, & no corrections done fails the legality test of law.
- d. Putting honest law abiding citizens in false threats abated by the courts, goes against the interest of the country. Which is why 498A is anti-national. It clearly gives the message. "Once you are powerful, get into anti national activities". 498A allows crime to be legalised. At the same time, due to overload in courts with false cases, genuine victims don't get justice.
- e. The Law Commission's 243rd report, only faintly touches on the illegality as well as misuse of the law. Unless the litigants who have been falsely implicated since 1984, have been asked their opinion, 498A can't be considered legal
- f. Dowry is paid from the Bride's side & Dower from the Groom's side. Hence If Dowry is illegal, Dower should also be also illegal.

2. Hence what to do in 498A

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- a. Have a complete definition of Family & Extended Family rights
- b. Fathers & Husband's & their extended right to life & survival shall have to be completely guaranteed by the court & police as long as investigation is on.
Any misuse or foul play shall be prosecutable
- c. DVA, 498A, CrPc 125, etc should be clubbed under a simplified single law..
And should comply to the above mentioned parameters
- d. 498A should be completely decriminalized and should only be accepted after professional Investigation.
- e. Make 498A gender neutral, there should be lie detector test on every 498A complaints.
- f. Till that time, declare all procedures null and void & compensate all affected parties
- g. Declare data on the deaths in the husband's house due to false 498A, DV, CrPc125, and any marriage sections etc.
- h. Those who drafted & enacted 498A shall be subjected to severe prosecution & immediately arrested
- i. Those who have misused 498A shall also be subjected to severe punishment
- j. Those judicial magistrates, advocates, police officials who have misused 498A shall be subjected to sever criminal prosecution

The Section 498A of IPC needs the following amendment:

1. Make 498A compoundable offence.

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2. No arrest till a person is proven guilty.
3. Proper investigation needs to be performed on each allegation of the complaint that makes an offence under section 498A.
4. This law should give the scope of amicable settlement of family disputes because this offence is very much related to marriage and family.
5. False allegations under Section 498A should invite punishment.
6. Husband and his family should also have rights to file a case on his wife for her cruelty under section 498A. In other words make this law gender neutral.
7. Suicide of a husband due to cruelty of wife should attract punishment under this section.
8. Cruelty on a husband should include: demanding an exorbitant amount of money from husband, intimidating husband for false cases, passing derogatory comments on husband or on his family, physical violence on husband and on his family, mental cruelty, creating atmosphere of fear in home, giving suicide threats, Demanding the 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, To extract money from husband and her in-laws, etc.
9. It should have several guidelines to protect the liberty of the citizens and harassment of innocent persons in the hands of unscrupulous litigants.
10. Trivial disputes between husband and wife or wife and in-laws should need to be settled amicably at family level not by case of 498A.

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11. This law should be made stringent in the sense of saving the institution of marriage and to punish those women who are trying to misguide the court by filing false reports just to make the life of men miserable and 'justice should not only be done but manifestly and undoubtedly be seen to be done'.
12. Penalty for making false accusation: Whenever, any court comes to the conclusion that the allegations made regarding commission of offence under Section 498A IPC are unfounded, stringent action should be taken against the person making the allegations. This, according to the petitioner, would discourage persons from coming to courts with unclean hands and ulterior motives.
13. That the Investigating Officer be required to state in court the basis or evidence for their reasonable belief that a crime has been committed; that the accuser be required to state her allegations on oath or an affirmation under penalty of perjury before an entire innocent family is subjected to indefinite and non-bailable custody;
14. That the Judiciary should guide accused how, when and by whom perjury charges for a false 498A report can be brought about.
15. Marital offences should be made non-criminal in nature
16. Marital offences should be made bailable.
17. Marital offences should be made compoundable.
18. Marital offences should be investigated by civil authorities rather than police.
19. Minor children not to be arrested.
20. A Liberal and Human approach towards Accused is needed.
21. Provisions should be where quashing of Proceedings possible after amicable settlement is arrived.

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22. Provisions for compensation should be made if a person is found to be innocent.
23. Time bound Investigation and Trial: There is a need for speedy trial in order to provide justice to the innocent victims of false charges. This will also help in reducing the burden on the Judiciary. A time limit should be framed for all matrimonial cases.
24. In order to create deterrence and to discourage misuse of this provision there must be imposition of some strict penal measures.
25. Definition of Mental Cruelty: The wide scope of mental cruelty leaves a ground for misuse of Section-498A by the women. Thus, there's a need for defining the scope of cruelty by the legislature under this provision.
26. Court Proceedings: Physical appearance of the accused on hearing should be waived or kept low to avoid hassles in appearing to the court, especially for NRIs. The court should not ask to surrender the passport of the husband and his family which could cost the job of the husband and his family members.
27. Registration of Marriage and Gifts Exchanged: The registration of marriages should be made compulsory along with the requirement that the couple make a joint declaration regarding the gifts exchanged during marriage.
28. Punish Dowry Givers: If the complainant admits giving dowry in the complaint, the courts should take cognizance of the same and initiate proceedings against them under the relevant sections of the Dowry Prohibition Act.
29. Penalize corrupt Investigation Officers: If it is apparent to the court that a fair investigation has not been conducted by the investigation officer, and that the husband and his family have been charge-sheeted without proper verification of

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the complaint, the investigation officer should be penalized for gross negligence of duty.

30.NRI Issues : Unless they are proven to be guilty after the due judicial process, NRIs should be given a fair chance to justice by assuring them of the following -a) Permission to return to country of employment b) No impoundment/revocation of passport and no Interpol Red Corner Notices. c) No unnecessary arrests d) Expeditious investigation and trial.

31.Gender Neutral: Everyone should have equal rights and responsibilities, irrespective of gender. In the current social context, there should be similar laws to protect a harassed husband and his family members from an unscrupulous wife.

32.The misuser of this law should be made liable to compensate the financial loss suffered by the falsely accused in the process.

33.Scrap S. 498-A I.P.C.

34.Decriminalize marriage disputes and put an end to involvement of police in counseling or monetary settlement of marital disputes.

35.Stop the use of Crime against Women (CAW) cells as Marriage Counseling Centers.

36.Refer marriage disputes to Family Courts.

If a woman misuses Section 498A of Indian Penal Code, 1860 she is committing following crimes:

- Crimes against her husband and his family members.
- Crime against her children, who will suffer due to their separation and tension.

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- Crime against the religious vows that she took during marriage.
- Crime against the sanctity of court.
- Crime against police and public administration who has supported her as a victimized woman.
- Crime against society, social system and values.
- Crime against the womanhood which is in question due to her.

Result of misuse: The number of convictions under this section between 2006 and 2017 varied between 6000 and 8000 a year except in 2016. The year 2018 has reported the least number of convictions under 498A between 2006 & 2018. Only 4982 convictions were reported in 2018.

Up to 2016, the number of acquittals under this section witnessed an increase of 60% compared to 2006. Since then, the number acquitted dropped to 34,153 in 2017 and to the lowest in the decade which is 31,691 in 2018.

During the same period, the number of cases withdrawn has gradually increased. Between 2006 and 2018, the number of cases withdrawn (or compromised) has increased by 70%.

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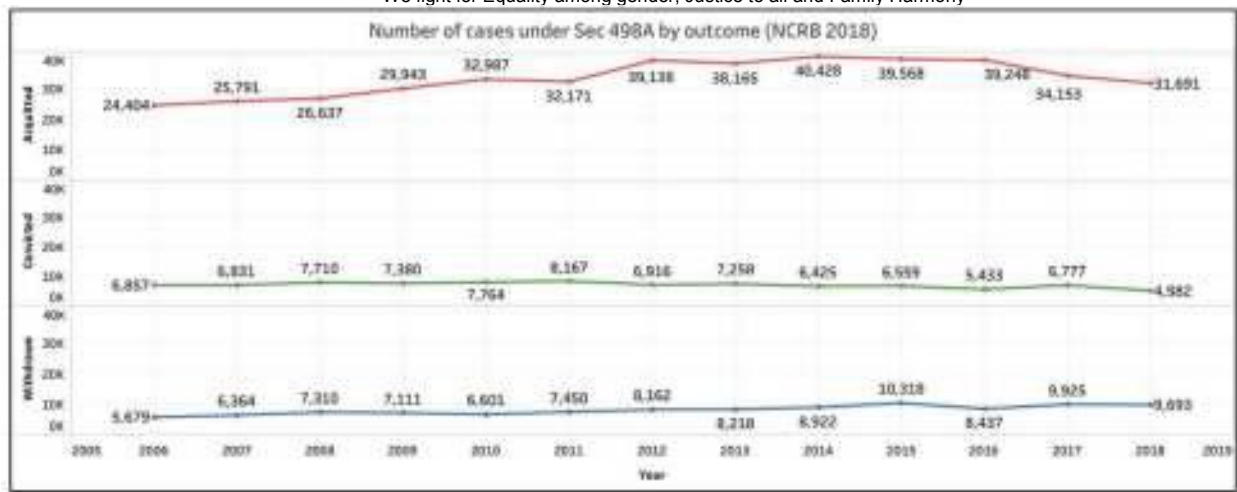
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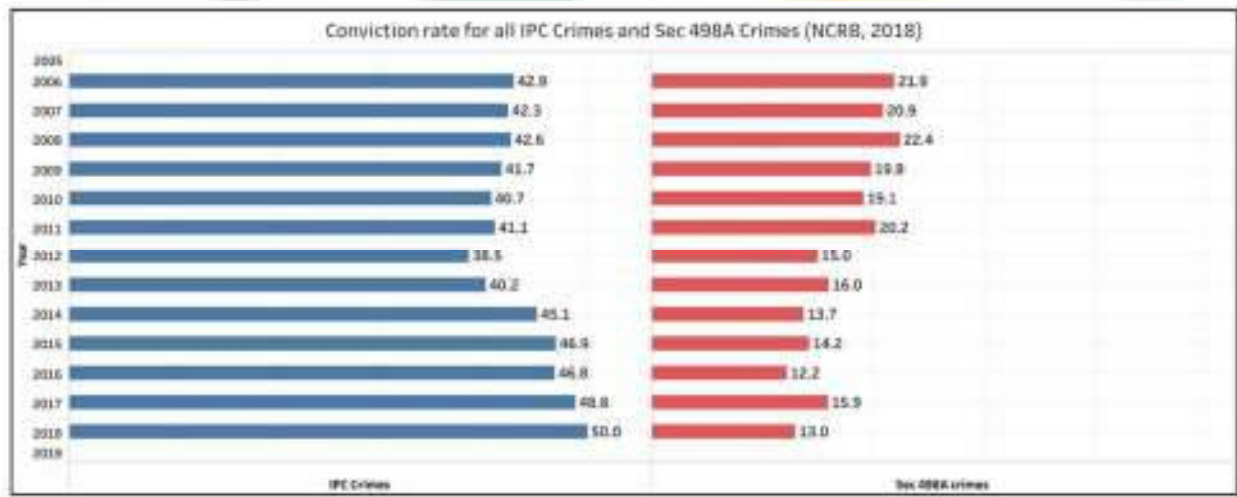


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The conviction rate of the cases under 498A has continuously reduced. the conviction rate of cases under 498A has drastically reduced from 21.9% in 2006 to 13% in 2018. Conviction rate of 498A cases in 2018 is almost a quarter of the conviction rate of all IPC crimes. Only 1 out of 7 cases under Sec 498A resulted in a conviction in 2018.



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| Year | Ranking of 498A (Highest conviction ranked 1) | Total number of categories (IPC Crimes) |
|------|---|--|
| 2006 | 21 | 23 |
| 2007 | 20 | 23 |
| 2008 | 21 | 23 |
| 2009 | 22 | 23 |
| 2010 | 23 | 23 |
| 2011 | 21 | 23 |
| 2012 | 23 | 23 |
| 2013 | 23 | 23 |
| 2014 | 33 | 34 |
| 2015 | 33 | 34 |
| 2016 | 32 | 32 |
| 2017 | 46 | 52* (Conviction is zero for four categories) |
| 2018 | 54 | 55 |

Data indicates that while the highest number of FIRs are filed under Section 498A, the conviction rate is one of the lowest which indicates an increase in the number of false cases per year.

The World Health Organization (WHO), in its Report of India clearly cited Section 498A as one of the major reasons for growing Elder Abuse in India

498A was framed to safeguard women but many SC judgments have shown that this single law is so much misused by wives to get their unlawful demands met and is also breaking families.

1. "Relatives of husband" should be clearly defined.
2. Explanation (b) of cruelty is so wide and ambiguous that even an altercation between husband and wife can get covered under this, so this should be removed

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all together. Explanation (a) will suffice the object of this law and prevent its misuse.

3. 498A should be made non-cognizable, compoundable, and bailable. The present condition and prevalence of its misuse needs it. SC has also disallowed automatic arrest, allowed quashing of cases if mutual agreement has reached, and have made rule that bail is rule and jail is exception. Now only legislature has to induct these in Code.
4. There must be a law for reporting the cruelty on men by their wives and their relatives.
5. 498A, DV, 125 CrPC all should be clubbed as one Code.
6. There must be automatic equal and strict punishment for filing false cases on wives and their relatives.
7. These cases should have speedy trial and police chargesheet should show that alleged crime was investigated and it should not be submitted in mechanical way without application of mind.
8. The concept of harassment go dowry has been adequately taken care of in DP Act. Dowry giving is also punishable, so parallely action should be taken on wife and her relative for allegedly giving of dowry. This also calls for scrapping of Explanation (b) of cruelty from this Section.
9. It has become a tool to arm twist men. Judges also delay the matter in hope that parties themselves come to agreement. So fear of law should also be there in party filing false complaint to maintain Rule of Law.

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10. In last, it is well known that courts are overflowing with cases, so laws should be made neutral and simple and straightforward so that real justice is done and that too on time.

11. There should be 498B or replace husband/wife word to spouse in all matrimonial disputes/cases/laws.

Detailed Prayer and Petition on Matrimonial disputes can be found here for further reference : <https://mynation.net/rs/rspweb.pdf>

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?

1. On a mere complaint, without proper investigation, Pre Arrest shall be declared as illegal & inefficiency of the police & judiciary. Any officer of law (police, judiciary, advocate, etc.) found threatening anyone with pre arrest or arbitrary arrest without any sufficient cause or crime committed, shall be terminated from service & shall be meted out the same punishment as if the crime has been committed.
2. Have Professional investigation agencies to investigate whether crime has taken place or not
3. Pre Arrest is misuse of police & judicial powers. In fact Pre Arrest should attract double the term of arrest of the concerned judicial magistrate & police official.

yes.

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1. No pre arrest is required.
2. All offences under section 498A should be bailable.
3. That the Investigating Officer be required to state in court the basis or evidence for their reasonable belief that a crime has been committed; that the accuser be required to state her allegations on oath or an affirmation under penalty of perjury before an entire innocent family is subjected to indefinite and non bailable custody.
4. Unless they are proven to be guilty after the due judicial process, NRIs should be a given a fair chance to justice by assuring them of the following: a) Permission to return to country of employment b) No impoundment/revocation of passport and no Interpol Red Corner Notices. c) No unnecessary arrests d) Expeditious investigation and trial.
5. Preliminary enquiry required for pre arrest.
6. Accountability of police officers in case he/she arrests a person. Should state proper reason in court with evidence of pre arrest. It should not be mechanical.
7. Mechanism of reporting public servant mischief.

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

Trial through video conferencing should be allowed for accused living in other city or are NRI.

For speedy trial, maximum two chance be given to complainant at every stage like in examination in chief or cross examination, as mostly wives do not appear as State is fighting on their behalf and they know case is weak. This is done to delay the justice delivery. Also there must be provision of penalising complainant if they play delay tactics.

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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?

Freedom of speech is accepted as one of the fundamental liberties by the Constitution of India. Under the Constitution of India this fundamental right is provided as freedom of expression and opinion. However, the right to free expression under the constitution is not an absolute right. A citizen shall be responsible for abuses of the freedom of communication of ideas and opinions. Clause-2 of Article 10 of the European Convention on Human Rights (ECHR) also states that “the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

Thus, one of the common limitations on the right to freedom of expression under the constitution is either protection of the respect for others or defamation. Thus 'defamation' is recognized as one of the limitations on the right to free expression. The main objective of the law of defamation is protection of the reputation of people and the main issue between defamation and freedom of speech is how to reconcile the objective of defamation with the purposes of free speech.

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What should be criminalized?

Defamatory or libelous expression was one of such classes of speech which should not be protected under the constitution. Resort to epithets or personal abuse is not in any proper sense communication of information or opinion and should be liable to punishment under law. Using lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words- those which, by their very utterance, inflict injury or tend to incite an immediate breach of the peace should attract punishment under the law.

What should not be criminalized?

- Defamation against Government bodies, and public authorities: Government bodies, and public authorities of all kinds should be prevented from bringing defamation actions. Government bodies, and public authorities of all kinds should bear the burden of proving the falsity of any statements of facts or matters of public concern; and there should be no liability under defamation law for expression of an opinion.
- Defamation against the public authorities and public officials and public figures: The public authorities and public officials and public figures are required to accept a greater degree of criticism compared to private individuals should be included in the statutes on defamation reflecting the importance of open debate about the matters of public importance and concern.

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No, the section should NOT be decriminalized as in the age of all pervasive social media platforms today, it has become very easy to defame anyone and furthermore the effects of such defamation are widespread and so even more damaging.

In fact, if anything the provisions should be made even more stringent as the effects on any person are devastating - not only his own life, livelihood and reputation are adversely impacted but that of his family members as well. Case in point is where so many men and their families have suffered tremendously after being falsely accused of rape, subjected to humiliating media trial and have then been found innocent - surely the persons responsible for such suffering deserve to be prosecuted in a Criminal Court.

The exceptions that have been provided are more than enough to ensure that right to free speech and expression are protected and are in fact always resorted to as a means of defense by any accused party. It must always be remembered that any right comes with a duty, in this case that any free speech and expression are to be exercised in a responsible, diligent and thoughtful manner.

Defamation should also include the following persons when acting negligently or apathetically or due to any other reasons on duty -

1. Officers of Law (Judicial Magistrates, Advocates/Lawyers, Police personnel, etc.) who on duty have repeatedly caused harm to ordinary citizens, due to their apathy, defaming court orders, sending innocent persons to jail, etc.
2. MPs, MLAs, elected persons, who have been entrusted responsibilities for public good, but have harmed the public or the society on duty
3. Persons in power who on duty have misused their positions in power to cause harm or damage to reputation of any ordinary citizen

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

No. Government bodies, and public authorities of all kinds should be prevented from bringing defamation actions. Government bodies, and public authorities of all kinds should bear the burden of proving the falsity of any statements of facts or matters of public concern; and there should be no liability under defamation law for expression of an opinion.

The public authorities and public officials and public figures are required to accept a greater degree of criticism compared to private individuals should be included in the statutes on defamation reflecting the importance of open debate about the matters of public importance and concern.

No, same should not be made an offence 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 - As the second exception applies only to public duties of such a person, hence the public are within their rights to justifiably criticize such conduct while the public servant on the other hand is also sufficiently protected as far as any private conduct or character or reputation are concerned.

This section is possible only after setting up a citizens driven accountability system. Which has been already explained as below in the answer to Part B Q1 :-

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Due to severe malpractice & corruption, in spite of anti corruption laws, its necessary to have Citizens driven Democratic, transparent, Accountability, Audit, Management & Interactive systems for all justice & law institutions, to regulate the courts, police, and any other judicial / quasi judicial bodies - It is also necessary to have an independent citizens driven 3rd party audit, management & rating agencies for the courts, policing, law & justice systems in the country. Without any accountability to the civil society, nothing can function.

- a. This agency will directly work with the citizens & report to the society at large, including updating of laws, procedures, guidelines.
- b. This agency will have sufficient powers to undertake auditing, management, accountability of the court, police, quasi judicial bodies & other systems to the citizens & society at large.
- c. This agency will have sufficient powers to rate all of these bodies & institutions through citizens inputs & put in disciplinary action against erring officers or promote the good ones, etc.
- d. There has to be a prominent “May I help You” systems in all courts, police, etc. which will prominently display
 - i. All Laws, Rules, Regulations to help the citizens
 - ii. Time required to resolve disputes, and their correct procedures
 - iii. Costs incurred in the litigations
 - iv. Any other information as may be required to help the citizens
 - v. Helpful & Professional Staff to help the citizens
 - vi. Complaints & suggestion section as well as Proper Grievance Redressal Mechanism on all types of complaints

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

YES! Defamation should also include the following persons when acting negligently or apathetically or due to any other reasons on duty -

1. Officers of Law (Judicial Magistrates, Advocates/Lawyers, Police personnel, etc.) who on duty have repeatedly caused harm to ordinary citizens, due to their apathy, defaming court orders, sending innocent persons to jail, etc.
2. MPs, MLAs, elected persons, who have been entrusted responsibilities for public good, but have harmed the public or the society on duty
3. Persons in power who on duty have misused their positions in power to cause harm or damage to reputation of any ordinary citizen

The aggravation should be considered normally double or more times than that of an ordinary citizen including termination from service of the public official

As any such public servant is acting for and on behalf of the public and so to misuse his/her official position in any manner whatsoever needs to be dealt with harshly.

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

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Yes: Such provisions appear to be more in line with the civil rather than criminal fields of law, hence they may be included so long as there is no dilution of the gravity of the offence nor of the punishment that is provided.

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 explicit requirement to include only electronic (press, media) only. It should also include court orders & action, police orders & action, should also include the following persons when acting negligently or apathetically or due to any other reasons on duty -

4. Officers of Law (Judicial Magistrates, Advocates/Lawyers, Police personnel, etc.) who on duty have repeatedly caused harm to ordinary citizens, due to their apathy, court orders, sending innocent persons to jail, etc.
5. MPs, MLAs, elected persons, who have been entrusted responsibilities for public good, but have harmed the public or the society on duty
6. Persons in power who on duty have misused their positions in power to cause harm of any ordinary citizen

The aggravation should be considered normally double or more times than that of an ordinary citizen including termination from service of the public official

Wife degrading image of husband in social media should be criminal offence;

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

YES! As Answered in the previous question, There is no explicit requirement to include only electronic (press, media) only. It should also include court orders & action, police orders & action, should also include the following persons when acting negligently or apathetically or due to any other reasons on duty -

7. Officers of Law (Judicial Magistrates, Advocates/Lawyers, Police personnel, etc.) who on duty have repeatedly caused harm to ordinary citizens, due to their apathy, court orders, sending innocent persons to jail, etc.
8. MPs, MLAs, elected persons, who have been entrusted responsibilities for public good, but have harmed the public or the society on duty
9. Persons in power who on duty have misused their positions in power to cause harm of any ordinary citizen

The aggravation should be considered normally double or more times than that of an ordinary citizen including termination from service of the public official

Only provided that the intent of such fake or false news or misinformation etc.. is to either cause or results in public mischief as is defined in the section. In cases where there is no clear criminal intent the same should not be deemed an offence.

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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?

As Answered in previous question Part D, Q3

For all offences, there should be

- A central server with publicly accessible data (without divulging private details of affected parties) with all crime committed,
- Time taken to commit crime, to investigate, establish & resolve crime,
- Detailed processes involved,
- Magnitude, seriousness of crime,
- Relative table as compared with other crimes mentioning the circumstances & details under which the crime has been committed,
- Costs involved in committing the crime & resolving the dispute to all parties involved, including how much of private as well as taxpayers money has been used in the entire process.
- Punishment or reformative treatment or reformation or recourse taken.
- Results or benefits/harm to the society at large due to the implementation

Only after this complete exercise, shall the cognizability & balability be discussed. All of these have to be on merits, rather than just discretion of the court. This record has to be

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cross checked bi-yearly & yearly as per the data and updated & new recommendations be set in place.

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

: A separate system is required for reporting a crime. It is observed that the police usually hesitate to file a First Information Report (FIR). Non-registration of crimes is a major problem of the Indian police system. There should be a separate body which helps the victims to register the crimes and after that the complaints should be passed to the police for further investigation. This body should be obliged to file all types of complaints. Even complaints of offenses for which no measures are currently available under the laws should be filed, this will help the government to enact new laws for those offenses. The formation of such a body will reduce the workload of the police department and will speed up the investigation of crimes. Depending on the nature of the crime, this body will send complaints to the departments concerned for investigation, for example online fraud complaints will be sent directly to the cybercrime division instead of going to the local police station.

There is also a need to remove the classification of offenses as cognizable and non-cognizable offenses.

Instead of defining crimes as cognizable and non-cognizable and acting accordingly, offenses can be defined as two types:

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1. Offenses for which FIRs should be filed immediately where there is a possibility of manipulation or removal of important evidence. For example murder, rape, robbery, etc.
2. Offenses for which no immediate FIR registration is required. Such offenses should be taken up in preliminary investigation before registration of the offense. For example domestic violence, sexual harassment, dowry harassment, etc.

Removing the difference between cognizable and non-cognizable offenses can increase the registration of offenses.

As Answered in previous question Part D, Q3

For all offences, there should be

- A central server with publicly accessible data (without divulging private details of affected parties) with all crime committed,
- Time taken to commit crime, to investigate, establish & resolve crime,
- Detailed processes involved,
- Magnitude, seriousness of crime,
- Relative table as compared with other crimes mentioning the circumstances & details under which the crime has been committed,
- Costs involved in committing the crime & resolving the dispute to all parties involved, including how much of private as well as taxpayers money has been used in the entire process.
- Punishment or reformative treatment or reformation or recourse taken.
- Results or benefits/harm to the society at large due to the implementation

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