

**A COMPREHENSIVE STUDY
ON THE EFFICACY OF
SECTION 498-A IPC**

IN THE STATE OF UTTAR PRADESH

By: HUMSAFAR-Support Centre for Women, Lucknow

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1. Violence Against Women: International Perspective

Violence against women is systemic, pervasive and has assumed epidemic proportions in our societies. Intimate partner violence is the most common form of violence in the private domain.

Violence has been used as a tool to keep women in a position of subordination/inequality. In the Indian context, patriarchy and religious, traditional and cultural practices are more commonly used as instruments to justify and perpetrate violence against women in family settings.¹ Social structure and cultural norms are the key determinant of women's role and their position in society. Religious beliefs, traditional and cultural norms antithetical to women's empowerment, have limited the scope of their full and equal participation in the society and the achievement of their full potential.² Violence against women is also linked to inequalities based on factors like economic position of women in society. Women's subjugation is the result of the hierarchies that are maintained by or reflected in the institutions and structures involved in creating, maintaining, and normalizing violence against women.³

Violence against women has been identified as a major public health problem, which can result in a wide range of physical, mental, sexual, reproductive, and maternal health problems. It is an undisputed fact that women lacking health care and medical treatment due to economic, social, political and geographic barriers are at greater risk of chronic, and possibly fatal, effects of violence.⁴

Violence occurring in a private setting is broadly covered within the scope of **Domestic Violence**. Domestic violence is one of the most prevalent forms of gender-based violence. According to crime statistics in India, cruelty by husband and relatives accounts for 44% of the total crime committed against women.⁵

The recognition of domestic violence as a violation of human rights is a recent advance in international law. The Convention of Elimination of Discrimination against Women (CEDAW), which was formulated as an international bill of rights for women in 1979, did not explicitly address the issue of Violence against Women. The World Plan of Action adopted by the first World Conference on Women in Mexico in 1975 did not refer explicitly to violence, but drew

¹Ertürk, Yakin, "15 years of the United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences(1994- 2009)- Critical Review"

²'Guidelines on Women's Empowerment' – prepared by the Secretariat of the United Nations Inter-Agency Task Force on the Implementation of the ICPD Programme of Action

³ Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo; A/HRC/17/26

⁴ ibid

⁵ National Crime Record Bureau 2012

attention to the need for the family to ensure dignity, equality and security of each of its members. The 1980 Conference in Copenhagen, which marked the middle of the United Nations Decade for Women, adopted a resolution on "battered women and violence in the family" and referred to violence in the home in its final report. In 1986, an Expert Group Meeting on Violence in the Family was held which for the first time, adopted concrete recommendations with regard to legal reform, police, prosecutor and health sector training, social and resource support for victims. It also made clear that domestic violence was a global phenomenon, which was significantly underreported.

From 1986, the next major step in recognition of Violence against Women, particularly domestic violence, as a human rights issue was taken by the CEDAW Committee through its General Recommendations 12, 14 and 19. It was the General Recommendation 19 and the Declaration on the Elimination of Violence against Women (DEVAW) in the year 1992 that for the first time, provided a comprehensive definition of "violence against women" by recognizing that "violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men".⁶

2. Brief History of Domestic Violence in India

Until the year 1983, domestic violence against wives was not punishable in India; although husbands or in-laws could be charged under the general penal provisions under the Indian Penal Code pertaining to murder, abetment to suicide, causing grievous hurt and wrongful confinement

Since these provisions applied equally to strangers, the specifics of the domestic situation of the women were ignored. Women, therefore, found it extremely difficult to prove violence "beyond reasonable doubt" or produce witnesses to corroborate their story, as required by the law.

⁶ Declaration on Elimination on Violence Against Women, A/RES/48/104; 85th plenary meeting, 20 December 1993

In addition, the patriarchal attitude of law enforcement agencies such as the police further circumvented the women from taking legal course of action. Police would often refuse to register a complaint of the wife against her husband on the widely held belief that the husband had the right to beat his wife. Unfortunately, this attitude still persists today on account of it being deeply rooted in our male chauvinistic culture.

Any critical analysis of the legislations in place to curb the menace of *dowry and domestic violence* would be incomplete without understanding the history of criminal law reform in India. The demand for criminal law reform came about largely because of the large number of women that were dying in their matrimonial homes due to dowry-related harassment. In the 1980s, women's rights organizations across the country pressurized the *Criminal Law Amendment Committee* (1982) and urged the government to provide legislative protection to women against domestic violence and dowry, so that the victim could get justice while she was still alive. As a result of the intense campaigning and lobbying, significant amendments were made in the Indian Penal Code, the Indian Evidence Act and the Dowry Prohibition Act, with the intention of protecting women from marital violence, abuse and dowry demands. The most important amendment came in the form of the introduction of Sec.498-A in the Indian Penal Code (IPC) in 1983, closely followed by Sec.304-B in 1986, which defined the special offence of dowry-related death of a woman. It is believed that Sec.498-A and Sec.304-B were introduced to complement each other and be part of a scheme, since Sec.304-B addresses the particular offence of dowry death and Sec.498-A sought to address the wide-scale violence against married women for dowry. This was the first time that an attempt was made to consider domestic violence against women a criminal offence. The insertion of Sec.498-A IPC with allied provisions was specifically meant for imparting an element of deterrence against dowry deaths in India.

Subsequent to the Criminal Law Amendments, the women's rights organisations realised that only a judicious mix of the civil and criminal law will bring solutions to the problem of domestic violence. They campaigned for a civil law on domestic violence which will enable court to pass 'stop violence' orders and will ensure the right to reside in the matrimonial home. Their efforts resulted in the enactment of the Protection of Women from Domestic Violence Act, 2005, almost two decades after the introduction of Sec. 498-A IPC.

3. Sec.498-A of the Indian Penal Code

Under this section, offenders are liable for imprisonment as well as a fine and the offence is non-bailable, non-compoundable and cognizable on a complaint made to the police officer by the victim or by designated relatives.

Sec.498-A passed by Indian Parliament in 1983, is a criminal law which is defined as follows:-

"Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The offence is Cognizable, non-compoundable and non-bailable.

The section provides an explanation that elaborates the meaning of cruelty as follows:

a) Any wilful conduct which is of a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb, or health (whether physical or mental) of the woman; or

b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

3.1 Protection only for Married Women:

Sec. 498-A can only be invoked by a wife, a daughter-in-law or their relatives. This section is non-bailable (which means one has to appear in court and get bail from the judge), non-compoundable (the complaint cannot be withdrawn) and cognizable (arrests can be made without investigation or warrants).

So far as the Indian Penal Code is concerned, Sec. 498-A of IPC was introduced wherein if a woman was subjected to cruelty by her husband or his relative(s), he/they could be convicted under this penal provision. The law underwent further change with the introduction of S. 304-B in the Penal Code⁷ and S. 113B in the Evidence Act, 1872⁸ by the

⁷ [304-B. Dowry death.—

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be

Dowry Prohibition (Amendment) Act, 1986. By way of introducing Sections 113A and 113B in the Evidence Act, the legislature has tried to permit a presumption to be raised if certain facts are established.

3.2Cruelty:

Cruelty has not been defined in any other section or any other statute other than S.498-A of IPC. The definition of cruelty consists of two parts. Subsection (b) concerns itself with the harassment on account of dowry demand, while subsection (a) takes care of cruelty for reasons other than dowry demands. Under subsection (a) of section 498-A, in order to constitute cruelty, it is not enough that the conduct of the accused is wilful and is offensively unjust to the woman, but it is also necessary that the degree of such conduct on the part of the accused is such as is likely to drive the woman to commit suicide, or such conduct is likely to cause grave injury or danger to her life or limb or to her mental or physical health. A reasonable apprehension of such conduct or the intention on the part of one to injure another is also an essential element of cruelty.

In *Krishna Lal & Ors. v. Union of India & Ors.*⁹, the Hon'ble High Court of Punjab and Haryana had to consider the proposition whether the classification of the husband and his relatives for the purposes of Sec.498-A was discriminatory and violates Article 14 of the Constitution of India or not? It was further contended that the definition of the word "cruelty" in Sec.498-A was vague. The Court came to the conclusion that the husband and his relatives form a distinct class by themselves and that it amounted to reasonable classification, especially when the married woman was treated with cruelty within the four walls of the house of her husband and when there was no likelihood of any evidence available. Consequently, Sec.498-A was held to be non-violating of Article 14 of the Constitution. Similarly, it was held that there was no vagueness in the definition of the word "cruelty" appearing in Sec.498-A having regard to the two clauses dealing with 'wilful conduct' of the husband and/or harassment to the married woman. As

deemed to have caused her death. Explanation.—For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

⁸ 113B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death." Explanation.—For the purposes of this section, "dowry death" shall have the same meaning as in section 304-B, of the Indian Penal Code, (45 of 1860).]

⁹1994Cri LJ 3472

cruelty had not been defined either in any Indian or in English law, and thus all the law on cruelty was judge made law, its scope was kept open as the type and manner of cruelty changed with time.¹⁰

Chiding a woman occasionally for a mistake made by her may not per se amount to cruelty, but continuous taunting, insulting and scolding a woman on a false/flimsy pretext clearly falls within the definition of cruelty as specified under Sec. 498-A. Cruelty is not restricted to physical cruelty; mental cruelty is also within its fold. In *State of West Bengal v. Orilal Jaiswal and Another*¹¹, the deceased was called a woman of evil luck as her father-in-law died shortly after the marriage. Her husband would also beat her whenever he would come home drunk. She was also told at times that items she had brought in dowry were of inferior quality. The Court ruled that all these amounted to mental cruelty. That is to say that Sec. 498-A is not restricted to dowry harassment alone. It also includes other forms of cruelty as defined under the Section although one may be overlapped by another.

It is not necessary that the husband or his relatives must be present at the time when the housewife is subjected to cruelty. If their act or conduct, omission or commission is of such a nature which results in mental and physical harassment, it will amount to an act of cruelty to a woman whether at her matrimonial or at her natal family home. As seen in the case of *Jagdish v. State of Rajasthan*¹², the offence under Sec. 498-A is a continuing offence and if the act of cruelty continues even while the woman is living with her natal family, the offence can be tried by both the Courts in whose territorial jurisdiction the act of continuing offence of cruelty has been committed, be it at her matrimonial home or her parents' house.¹³

Sec. 498-A has given a new facet to the concept of "cruelty" in matrimonial matters. If no evidence is available for a conviction under an offence under Sec.304-B of IPC, it is not an impediment for conviction under Sec. 498-A, provided that cruelty is established. In the case of *State of Karnataka v. Balappa*¹⁴, the court has dealt with in great detail that even if the charge under Sec.304-B IPC is not made out, the conviction under Sec.498-A IPC can be recorded. This has been reiterated in the case of *State of U.P. vs. Santosh Kumar and Ors*¹⁵, where the Supreme Court has stated that Sections 304-B and 498-A IPC are both distinct and separate offences where 'cruelty' is a common essential ingredient of both the offences. Under Sec.304-B, it is the 'dowry death' that is punishable and death of the wife should take

¹⁰ Id.

¹¹ AIR 1991 SC 1226

¹² 1998 Cri LJ 554

¹³ 1998 Cri LJ 554 at 555, 556

¹⁴ 1999 Cri LJ 3064

¹⁵ (2009) 9 SCC 626

place within seven years of the marriage. In the statute, the timeframe of seven years is not a prerequisite in Sec. 498-A IPC; the husband or his relative would be punished for subjecting the woman to 'cruelty' any time after the marriage.

4. Section 498-A and Section 304-B of IPC- Mutually Inclusive

In *Smt. Shanti & Anr. vs. State of Haryana*¹⁶, the Hon'ble Supreme Court was dealing with a conviction for dowry death under Sec.304-B of IPC. The question that arose was whether the provisions of Sections 304-B and 498-A of IPC were mutually exclusive and whether the acquittal of the appellants of the offence punishable under Sec. 498-A made any difference whatsoever? In para 4 of the judgment, the Apex Court discussed the said provisions since there was acquittal under Sec.498-A of IPC. However, the court also observed as under:

"The mere acquittal of the appellants under Sec.498-A, IPC in these circumstances makes no difference for the purpose of this case. However, we want to point out that this view of the High Court is not correct and Sections 304-B and 498-A cannot be held to be mutually exclusive. These provisions deal with the two distinct offences. It is true that "cruelty" is a common essential to both the sections and that has to be proved. The Explanation to Sec.498-A gives the meaning of "cruelty". In Sec.304-B there is no such explanation about the meaning of "cruelty" but having regard to the common background to these offences we have to take that the meaning of "cruelty or harassment" will be the same as we find in the explanation to Sec.498-A under which "cruelty" by itself amounts to an offence and is punishable. Under Sec.304-B as already noted, it is the "dowry death" that is punishable and such death should have occurred within seven years of the marriage. No such period is mentioned in Sec.498-A and the husband or his relative would be liable for subjecting the woman to "cruelty" any time after the marriage. Further it must also be borne in mind that a person charged and acquitted under Sec.304-B can be convicted under Sec.498-A without charge being there, if such a case is made out. But from the point of view of practice and procedure and to avoid technical defects it is necessary in such cases to frame charges under both the sections and if the case is established they can be convicted

¹⁶(1991) 1 SCC 371

under both the sections but no separate sentence need be awarded under Sec.498-A in view of the substantive sentence being awarded for the major offence under Sec.304-B."¹⁷

Once again this question came into consideration in the case of *Arun Garg vs. State of Punjab*¹⁸ reported much later in which the Hon'ble Court held that "Sections 304-B and 498-A of IPC are not mutually exclusive. They deal with different and distinct offences. In both the sections, "cruelty" is a common element. Under Sec. 498-A however, cruelty by itself amounts to an offence and is punishable. Under Sec. 304-B, it is the dowry death that is punishable and such death must have occurred within seven years of the marriage. No such period is mentioned in Sec. 498-A. Moreover, a person charged and acquitted under Sec. 304-B can be convicted under Sec. 498-A without a specific charge being there, if such a case is made out."

In the instant case, the learned Session Judge apart from sentencing the accused to an imprisonment of up to 10 years under Sec. 304-B, also imposed a fine to the tune of Rs. 2,000/-. The Hon'ble Supreme Court came out strongly on the order of the lower court, clarifying that it was not empowered to impose fine as a punishment under Sec. 304-B.

5. Misuse of the Provision

The Indian judiciary, right from the trial court upto the apex level has expressed concern over the matter of misuse of Sec. 498-A I.P.C in its recent judgments. In their judicial observations and remarks, the courts have expressed deep anguish over this law. However, there is neither reliable data nor empirical study to prove the extent of the alleged misuse, nor have the judiciary through their judgments offered any data to support this conclusion. In all, the institutional response to Sec. 498-A I.P.C has been that women are "misusing the law". In the case of *Savitri Devi vs. Ramesh Chand*¹⁹, the Hon'ble Delhi High Court had categorically stated that the provision has been misused to "...such an extent that it is hitting at the foundation of marriage itself and has proved to be not so good for the health of the society at large". In the same judgment, the court had recommended to the authorities to review Sec. 498-A, that

¹⁷(1991) 1 SCC 371 @para 6

¹⁸ 2004 (8) SCC 251

¹⁹ + CRL. R 462/2002

court was of opinion that “thousands of marriages have been sacrificed at the altar of this provision”. In *Sushil Kumar Sharma vs. Union of India*²⁰, the Hon’ble Supreme Court stated that “...it is necessary for the Legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with”. Similarly, in the case of *Preeti Gupta vs. State of Jharkhand*²¹, the Hon’ble Supreme Court observed that “It is a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over-implication is also reflected in a very large number of cases”. As already stated, no data has been collected nor evaluated to warrant that most complaints are made on frivolous grounds. Surveys such as the National Family Health Survey foreground the seriousness and impact of domestic violence on women. The study indicates that most women are not open to reporting cases of domestic violence to police. This only reinforces that women are compelled to file a formal complaint only when the violence committed by their spouse or their family takes a turn of event, becoming far graver and intolerable for the women to no longer stay in an abusive relationship. Secondly, one does not factor in that the overwhelming increase of complaints over the years may be attributed to growing awareness among women about the law. Statements such as these reflect institutional bias that exists within the criminal justice system. Instead, they turn a blind eye to the shortfall that exists within the system in dealing with cases of violence against women.

Then again, in many occasions, the Apex Court and lower courts have acknowledged that dowry harassment and domestic violence is rampant in our society. In some cases, the judiciary has also questioned the failure of the criminal justice system in dealing with cases of violence against women. The inability of the law enforcement officials to investigate and build a case with material evidences and strong witnesses which are the prime reasons for acquittal, perhaps leaves an impression among many that the provision of Sec. 498-A is being misused. The below-mentioned study also indicates that in many instances, cases have resulted in acquittal due to compromise between the parties. Enforcement agencies, magistrates to mediators, at every stage inadvertently make their own efforts to bring about a settlement between the women and the perpetrators with the intention to “unite families”, overlooking at times the safety and best interest of the women, who with passing time are subjected to more violence. The Hon’ble Supreme Court in the case of *Chhotan Sao and Anr. vs. State of Bihar*²², observed that “...lapse on the part of the prosecutors and enforcement agencies.... is bound to jeopardize the prosecution case resulting in avoidable acquittals. Inefficiency and callousness on their part is bound to shake the faith of the society in the system of administration of criminal justice in this country which, in our opinion, has reached considerably lower level than desirable.”

²⁰ AIR 2005 SC 3100

²¹ AIR 2010 SC 3363

²² 2013 (15) SCALE 338

6. Committees' setup to review the Legal Provision

While the Courts in India view the provision in the above light, the Parliament of India has also started reviewing the whole matter, mostly based on judicial verdicts, and also petitions filed by the public.

In 1996, the Law Commission of India in its 154th Report recommended the inclusion of Sec. 498-A under the list of compoundable offences. The recommendation of the Law Commission in the 154th Report was reiterated in the 177th Report in 2001. Furthermore, in 2003, to add meat to its argument to make the provision compoundable, *Dr. Justice V.S. Malimath Committee Report* or the *Committee on Reforms of Criminal Justice System* noted that there is a “general complaint” that Sec 498-A IPC is subject to gross misuse. It used this as justification to suggest an amendment to the provision, but provided no data to indicate how frequently the section was being misused. In 2012, the 237th Report of the Law Commission, headed by Justice PV Reddi, had once again recommended to the government that Sec. 498-A be made a compoundable offence. The latest 243rd Report of the Law Commission which specifically dealt with Sec. 498-A strongly recommended that the offence remain non-bailable, however reiterated that it should be made compoundable as recommended by the Commission in its previous reports including the 237th Report.²³

In 2013, the Supreme Court in the case of *K. Srinivas Rao vs D.A. Deepa*²⁴, had also re-opened the discussion on whether offences under Sec. 498-A be made compoundable or bailable. The ruling stated that, “...though offence punishable under Sec.498-A... is not compoundable, in appropriate cases if the parties are willing and if it appears to the criminal court that there exist elements of settlement, it should direct the parties to explore the possibility of settlement through mediation.”

In light of the above, it is important therefore that such notions of “misuse” put forth by several institutions and individuals are responded to, by giving a clearer picture of the present position of the effect of Sec. 498-A enacted with the intent to protect women. Despite the institutionalization of law and policy in relation to domestic violence, the use and impact of this provision on victims of violence has not been adequately evaluated at all by the government. On the contrary, there has been a consistent endeavor to underplay the importance of the provision by the judiciary, legislature and other players at various levels and in multiple contexts. Therefore, there is a need for sound and

²³243rd Report of the Law Commission of India on Section 498A IPC, August 2012

²⁴(2013) 5 SCC 226

detailed research to advance the current state of knowledge on the effects of legal sanctions on cruelty. It is widely recognized that cruelty on women in marital homes by their husbands and their (husband's) family members are complex situations. More often than not, the social organization of trial courts, the police and prosecution systematically tend to underplay domestic violence cases.

7. Objectives of this Study:

The present study is designed for the purpose of exploring the legal effectiveness of Sec. 498-A of Indian Penal Code in its current form. In particular, the study has been carried out for the following reasons:

- To understand the level of awareness among the users about the implication of this provision.
- To understand the nature of support derived and the role of major stakeholders such as the police, prosecution and the judiciary.
- To build an evidence-based knowledge concerning the level of use of this particular provision by women.
- Lastly, to understand whether these cases have reached a logical conclusion and whether or not women have received the justice that they rightfully deserve.

It is hoped that the study serves as a reliable assessment of the Sec. 498-A of Indian Penal Code, to academicians, scholars and jurists and is purported to be used as evidence-based knowledge for demystifying the pre-conceived notion of the law being misused.

8. Methodology adopted for this Study

Research findings are mainly based on methodological interaction with women petitioners who have filed cases in court relating to cruelty as envisaged under Sec. 498-A of IPC along with systematic review of their case files and records placed in court. A total number of 105 such cases had been identified from 12 districts in Uttar Pradesh, some of which were either pending in court, some were at the stage of framing of charges or some had resulted in compromise. The details on the districts chosen and the number of cases analyzed from each district have been

annexed for ready reference.²⁵ It is required to be noted that while every case has been lodged under Sec. 498-A of IPC, there is no case where Sec. 498-A has been used independently of other provisions. The allied provisions are varied, covering a wide range of Sections of IPC such as Sec. 34 relating to 'acts done by several person in furtherance of common intention', Sec. 506 relating to 'Punishment for criminal intimidation', along with the Dowry Prohibition Act.

The case studies have been selected from cases dealt by Humsafar and other voluntary organizations from Uttar Pradesh which are Vanagana from districts Chitrakoot and Banda, Astitva from Muzaffarnagar, Shayog from Allahabad, AIDWA from Kanpur, Disha from Saharanpur, SRSP from Azamgarh, Pragatesheel Jansanghtan and Sambhunath organization from Varanasi, Adv Mukul from Sitapur, Asha from Unnao and Sakaar from Bareilly district.

The periodicity of these cases stretches from year 2003 to 2013. In all cases, review interactions with the petitioners had been undertaken. The interactions were held through the 'key informant interview' method following a structured questionnaire. The questionnaire administered to the interviewees was designed and finalized by the research team in Humsafar²⁶. The views of the petitioners were corroborated with the certified court records, particularly the information provided in the FIR. In order to know the progress of each particular case, wherever possible, discussions were held with the prosecutors involved, NGOs supporting the petitioners and the family members of the petitioners. Towards this end, the collection of data through verification of records in the concerned courts and interviews of stakeholders had been made through visits to each of the districts selected. Accordingly, the research team from Humsafar had to feed in the data collected during the survey on the data tabulation matrix. Finally, the data tabulation matrixes along with relevant documents were sent to a consultant for analysis and report writing.

²⁵Please refer to Annexure 1: Districts chosen for the Study

²⁶Please refer to Annexure 2- Questionnaire administered to the Interviewees

9. Findings from the National Crime Records Bureau (NCRB) & the National Family Health Survey

Table 1: No. of cases under Section 498A

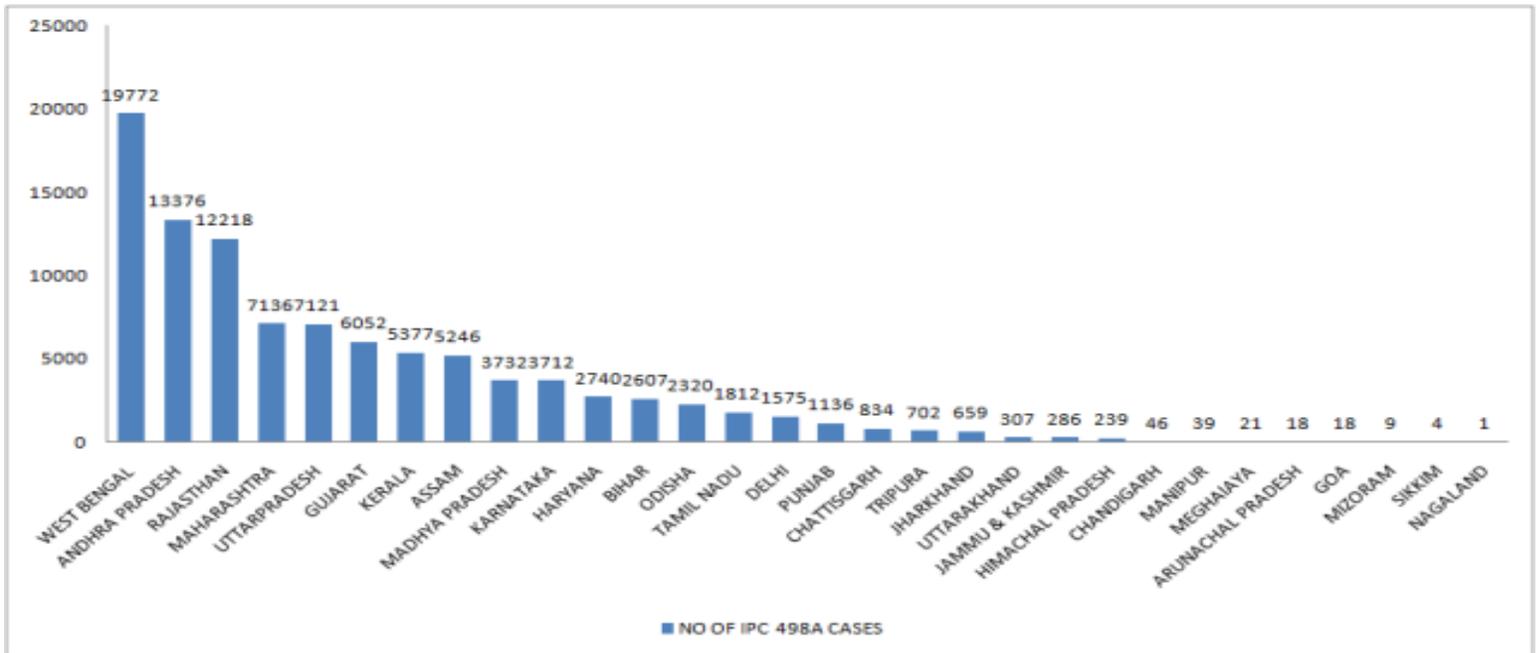


Table 2: Incidence and Rate of Crime under Sec. 498-A IPC and Percentage Changes during 2012 (*NCRB 2012)

Crime Head	2002	2007	2008	2009	2010	2011
Cruelty by Husband or his Relatives (Sec. 498-A IPC)	49237 (4.7)	75930 (6.7)	81344 (7.1)	89546 (7.7)	94041 (7.9)	99135 (8.2)

Table 3: Incidence (I) & Rate (R) Of Cognizable Crimes (IPC) Under Different Crime Heads during 2012 in Uttar Pradesh (*NCRB 2012)

State	Cruelty by Husband or his Relatives	Dowry Deaths (Sec.304-B IPC)	Assault on Women with Intent to outrage	Insult to the modesty of Women
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	(Sec. 498-A IPC)				her modesty (Sec.354 IPC)		(Sec.509 IPC)	
	I	R	I	R	I	R	I	R
UTTAR PRADESH	7661	3.7	2244	1.1	3247	1.6	8	0.0

Table 4: Percentage of Sec. 498-A IPC cases disposed by Courts during 2012 (*NCRB 2012)

Crime Head	Withdrawn By Govt.	Percentage Of Cases To Total Cases For Trial				Conviction Rate {(5)/(7) × 100}
		Compounded Or Withdrawn	In Which Trials Were Completed		Pending Trial at the end of the year	
Sec. 498-A IPC			Convicted	Acquitted Or Discharged	Total {(5) + (6)}	
	0.1	1.9	1.6	9.2	10.8	87.3
						15.0

Table 5: Conviction Rate of IPC Crimes in Uttar Pradesh during 2012 (*NCRB 2012)

State	Cruelty by Husband or his Relatives (Sec. 498-A IPC)	Dowry Deaths (Sec.304-B IPC)	Assault on Women with Intent to outrage her modesty (Sec.354 IPC)	Insult to the modesty of Women (Sec.509 IPC)
UTTAR PRADESH	49.3	48.9	64.0	56.9

In India, a look at the available data relating to Violence against Women presents an alarming picture. According to official data source like the National Family Health Survey 3 (2007), nearly 2 in 5 married women have experienced some form of physical or sexual violence by their husband. The survey further reveals that most women do not seek help when they are abused. Only 1 in 4 abused women have ever sought help to try to end the violence. Out of this, only 2% of abused women have ever sought help from the police.²⁷

The National Crime Records Bureau (NCRB) data shows that the incidence of Violence against Women (VAW) in the country is increasing.²⁸ A total of 2,44,270 cases of VAW were reported in 2012 (an increase of 6.4% over 2011); a 7.1% increase was reported in cases filed under Sec.498-A alone.²⁹

NCRB Reports in regard to crime statistics for the State of Uttar Pradesh also show that incidence of crimes against women have been on the rise over the years. In Uttar Pradesh, the number of cases reported under Sec. 498-A IPC has increased from 7121 to 7661 showing a variation of 7.6% from 2011 to 2012.³⁰

What is more worrying is the consistently low rate of conviction in cases of violence against women. An analysis of the NCRB data for 2010-2012 also shows that the conviction rate for all major IPC crimes against women has declined. The conviction rate in respect of the cases under Sec. 498-A is quite low – which is about 15%. Most cases have resulted to acquittal or have been discharged. It is learnt that on account of subsequent events such as out-of-court settlements, the complainant women do not evince interest in taking the prosecution to its logical conclusion. Further, ineffective investigation is also known to be one of the reasons for low conviction rate.

10. Findings of the Analysis

Table 1: District wise status of Section 498-A cases analyzed for the Study.

	Districts	Cases received	Pending	Conviction	Compromised	Acquittal or Discharge
1.	Lucknow	50	25	1	15	8

²⁷ National Family Health Survey 3; Refer to link: <http://www.rchiips.org/nfhs/nfhs3.shtml>

²⁸ NCRB 'Crimes in India' (2012)

²⁹ Id.

³⁰ Id.

2.	Allahabad	7	7			
3.	Azamgarh	3	3			
4.	Banda	7	5	1		1
5.	Bareilly	2	1		1	
6.	Chitrakut	10	9		1	
7.	Kanpur	5	5			
8.	Muzaffarnagar	2	1		1	
9.	Saharanpur	3	2		1	
10.	Sitapur	8	6		1	1
11.	Unnao	1	1			
12.	Varanasi	7	5		2	
	Total	105	69	2	22	10

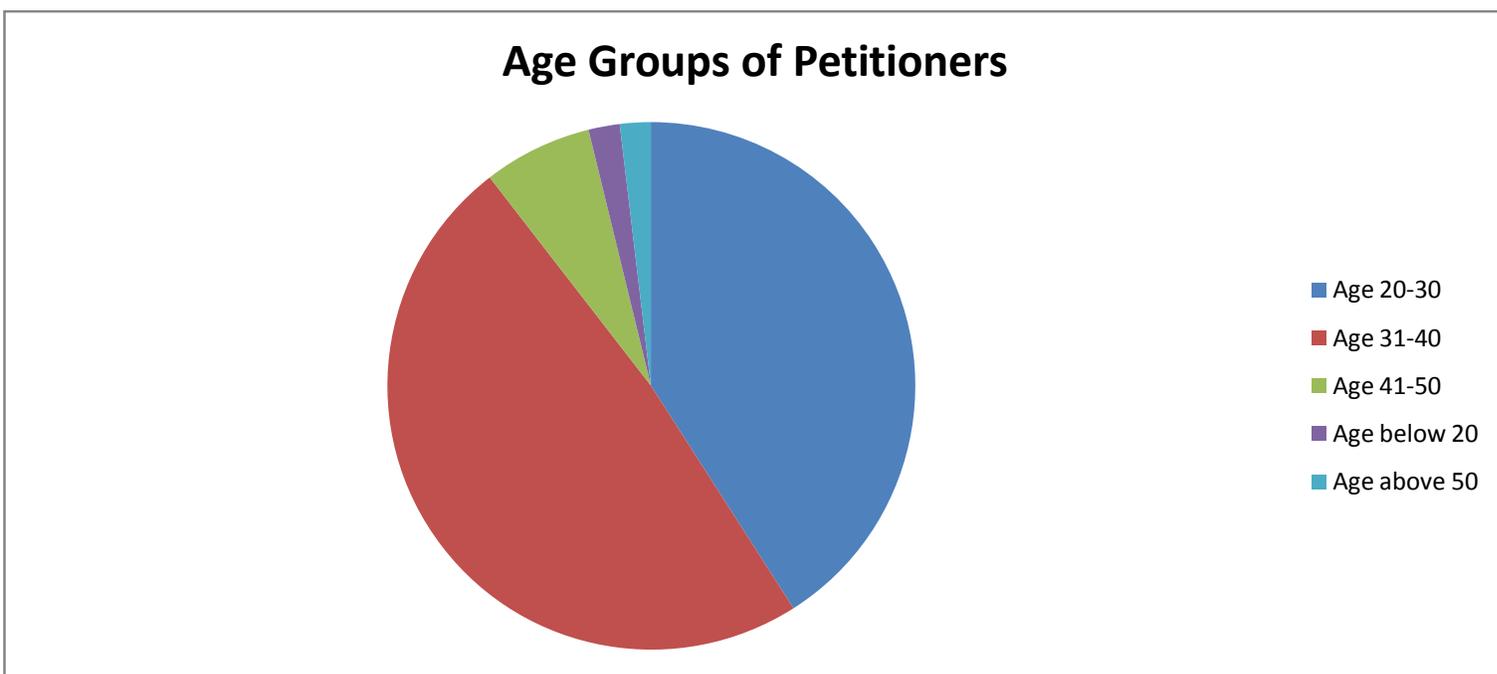
10.1 Profile of Married women accessing the Law:

Age Groups of women filing cases under Section 498-A: Most commonly, the complainant belongs to the age group of 31-40 years. The second most dominant age group is 20-30 years. It has been seen that most of these women have been succumbing to violence perpetrated by their husbands and in laws for years all together. In one such case, the complainant finally yielded and told her parents on 2009, after approx. 7 years and they gave in to the demand for

cash. Yet, the husband struck her with a TMT Bar and abandoned her. The complainant visited the in-laws' house but was denied entry without the demanded articles.

Most of the women go for litigation only after enduring long periods of abuse by their husbands. The data analyzed divulged that most complainants were suffering from continuous domestic violence and had filed complaints **after 2 years** of their marriage and in some cases, **after 10 years** of their nuptials. The domestic abuse perpetrated on the woman does not ease, and may even intensify with time. Because of family ties, economic apprehensions and social norms, women opt to stay in an abusive marriage and choose to continue living in that vicious relationship. In abject contrast, there are cases where women have also reported domestic violence just after a few months of marriage.

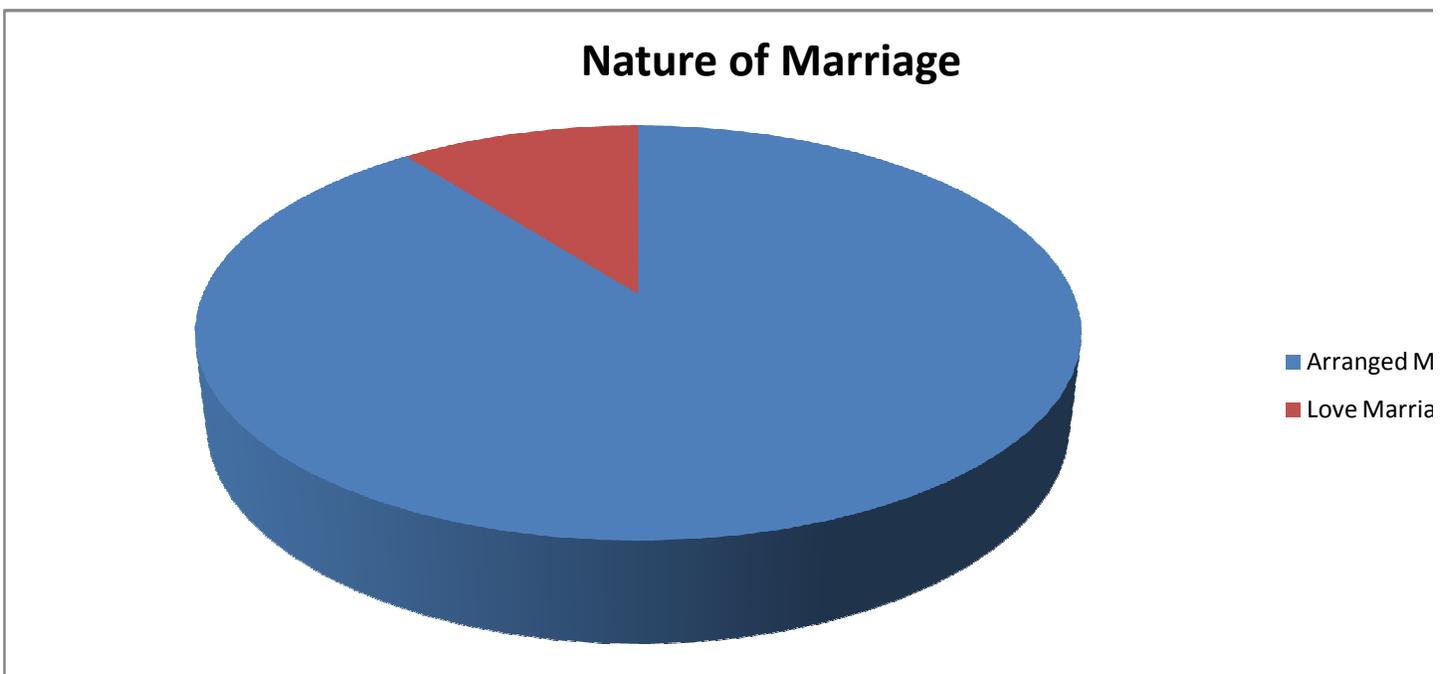
Illustration 1: Age Groups of Petitioners who have filed a complaint under Section 498-A



Opposite Parties: In most of the cases, the opposite parties/ defendants were both **husband and the in-laws**. In 9 cases, women filed a complaint only against their husbands and in 3 particular instances, cases were filed only against the in-laws and not the husband.

Socio Economic Background: In Lucknow, most complainants were educated and were either holding a graduate or post graduate degree. However, it appears that in other districts, complainants were mostly unemployed and received little to no education. It was found that most of these complainants were financially dependent husbands. Further analysis revealed that 76 out of 105 complainants were Hindus, majority of which belonged to backward class or castes of the sect.

Nature of Marriage: Out of 105 cases, in only 11 cases, the couples had married out of love. All the rest of the marriages were arranged through parents or relatives. So far, no studies have cited “arranged marriage” as a factor of violence against women within family nor has it been directly attributed as a factor undermining women’s empowerment. But when linked with dowry, on many occasions “arranged marriage” of such a nature has resulted to hardships for women who are unable to bring sufficient dowry for their husbands.



Sadly, the patriarchal nature of our family structure is proof enough that women’s lives are still very much controlled and dictated by the male members of their families, especially their fathers and once married husbands. While equal legal and political rights for women have been constituted on paper; in practice, the au

of women is still being undermined by the society and the institutions at large. Patriarchy has crept in newer forms, creating even more barriers for women in accessing their rights. Irrespective of whether they are earning a living, the relegation of women within the domestic sphere, due to their role as mothers and wives, has been considered as one of the major setbacks. Men are considered as the head of the family and control women's sexuality, expropriate their labour and curtail their mobility. The systemic deprivation of women has left them almost equally economically exploited, socially repressed and politically passive, than before.

10.2 Nature of Violence inflicted on Women:

Physical and verbal abuse is the most common form of violence. *The data reflects that women are filing cases only in cases of severe forms of physical abuse, after suffering for as long as a year of such violence.* Sexual assault by husband and in-laws was also found rampant. In a particular case, a woman was raped by her brother-in-law and was later sold off for by her in-laws for commercial sexual exploitation. On fleeing, the complainant with the assistance of her natal family approached the police authorities. The police's reluctance to register the FIR resulted in complainant approaching the High Court through a writ, following which the High Court directed the S.S.P. to do the needful. In yet another case, the complainant's family had sent her back to the husband's home after a compromise was arrived at the police station. On arrival at the matrimonial home, the defendant repeatedly assaulted her. Furthermore, the father-in-law of the complainant was accused of plotting her death.

The most common reason cited for inflicting violence is the **demand for dowry**. The next most common reason is suspicion of extra-marital affairs and illicit relationships. The complainants being more educated than the husband and alcoholism have also been cited as reasons for violence.

10.3 Delay in registration of FIR

In most cases, delay in registration of FIR has been for more than a year after the first instance of violence. In one such case, there was an unreasonable delay of 7 years in registering the FIR. In another such case, there was an unexplained delay of 14 years in registering F.I.R; the accused in this case had exploited the woman on demands of dowry not being fulfilled and turned her away from the house. He has allegedly entered into a second marriage without seeking divorce.

The analysis shows that there is resistance from family members of women and lack of support provided to them, due to societal pressure, not to file a complaint. Most of the women fear that their natal family will be harmed by their in-laws if they register an FIR. Some fear for their child's life especially for those residing with the husband and/or the in-laws.

During the interview of some women, it also emerged that they felt ashamed of being assaulted by their husbands; and had inhibitions approaching the police station for getting an FIR registered. These women were under tremendous pressure before taking the decision as they feared that the consequences of reporting could lead to rejection and ridicule from the family and the society as whole. Very few women got support from their natal family after the registration of cases under this provision. The natal family did allow them to reside for some time but after some time, they started building pressure upon these women to go back to their matrimonial houses.

The analysis also reveals the lack of support and assistance received from the police when a woman approaches them. Police and counselors placed at the police station discourage the woman from registering an FIR. **On an average, it takes about six months at the police station for any FIR to be registered, as during that period, the police attempt "reconciliation".**

In such instances, women were told to live in their present condition as they are duty bound to serve their husbands. A woman abandoned within 3 months of marriage received no support from the police even after several attempts were made to file a complaint against the husband and the in-laws. Owing to societal pressure, the woman's family pushed her to arrive at a mutual consent and tried to settle the issue to "secure her future". In another case, a woman informed her parents almost 3 months after the incident and her brother immediately escorted her back to the maternal house. Police authorities are said to have troubled the complainant a lot by pressurizing her to not file a

complaint stating that she will have to bear with the exploitation since she is "the wife". Furthermore, family counselors at the police station had advised her to deem her husband as god (*'pati parmashwar'*) and hence forced her to retract her complaint.

Preliminary inquiry were being conducted prior to registration of FIR to assess the genuineness of the complaint and to find out whether the FIR to be lodged has any substance of cruelty as defined in Sec 498-A. These preliminary inquiries are conducted to sift frivolous complaints at the threshold. The recent judgment of the Supreme Court of *Lalita Kumari v. State of Uttar Pradesh*³¹ enunciates preliminary inquiry as necessity in order to determine whether the offence is cognizable or non-cognizable in nature. This form of "Inquiry" has, however caused insurmountable delays in the registration of FIRs.

10.4 Grant/ Denial of Bail:

After registration of FIRs, police are not arresting the offenders and are purposefully giving time for the accused to move for bail. Out of 9 persons arrested, 8 persons were granted bail. The bail was granted approx. within a week of their arrest. It needs to be noted that in all these cases, women were subjected to extreme forms of domestic violence. In one such case, in addition to the husband sexually exploiting and physically molesting the complainant; brothers-in-law (elder & younger) and their sons sexually molested the complainant's 8 years old daughter. On filing a complaint, the complainant was referred for counseling by the police. Further, the court referred the two parties for mediation which resulted in compromise.

Only in one case, the court denied bail on the ground that a *prima facie* case was made-out against the accused. In this case, the police presented the final/ closure report to the court thrice, which was dismissed all three times, and the Magistrate after hearing the protest petition of the survivor took cognizance of the offence based on the material in the final report.

10.5 Delays at the Trial Stage:

³¹WP(Cri) No. 68 of 2008

Most of the cases analysed are still pending in court. These have been going on for over a year, in some cases for more than 7 - 10 years. Only 2 cases till date have resulted in conviction. The others cases have been mainly disposed of through compromise.

There are manifold causes and factors responsible for the delays in trial proceeding, some of which are:

Mediation: When the case is referred to mediation, the opposite party does not come on several occasions, resulting into adjournments and long duration of cases. If the case is unduly prolonged at the stage of mediation, the delay could act as a shield to protect the offenders from facing the penalty prescribed in the law.

Poor Investigation & prosecution: The woman has to provide evidence and witnesses to prove her case. Often, the police conduct the bare minimum investigation required for filing a police report. Large number of cases has ended up in acquittals partly because of half hearted efforts of the police to collect material for the prosecution. Another common reason for delay was that cases were being adjourned several times and by the time the complainant's statement had to be recorded, she almost forgets the actual incident through which she has passed. Over the years, most of the witnesses either turn hostile or pass away. The prosecutors do not provide any help to such women to prepare for evidence after such long adjournments.

Dropping out of cases during trial: Due to lack of timely result and the long drawn process, women stop attending courts on the dates of hearing. The criminal justice system tends to deter survivors of domestic violence from pursuing a case against the offenders. The complainants dropped out during the trial proceedings due to delays in the process and in many cases, resorted to out-of-court settlements. These factors are major barriers to successful completion of the process of justice and bring to the foreground the need for a committed response to the survivor's needs.

Lack of knowledge about the detail of the cases: Another cause of concern that arose was that on being interviewed, women stated that they were not aware of the present status of their cases. Nor were they aware of the legal procedure and the technicalities of the legal proceedings. They had no understanding of the words commonly used in their cases like 'charge-sheet', 'framing of charges' etc. and the step-by-step stages involved in such proceedings. The women had no way left except to have faith in the lawyers to have knowledge of all ins and outs of their cases.

Most of the women expressed that compared to the filing of FIR under Sec.498-A IPC, obtaining decree of divorce would have been far better. One of the victimized women interviewed for the study stated that, ***“I feel that if I had obtained divorce rather than filed this case, I would have attained a lot in my life but I find that I am still stuck up at the same place.”*** Long duration of the cases and expenses are a punishment to women. After filing of cases, most of the women lose faith in the judiciary; and in some of the cases, it takes such a long time that the opposite party gets re-married and starts leading a second life with all comforts while the women go on running to courts.

10.6 Acquittal:

Out of 105, 10 cases had resulted in acquittal. The reasons for acquittal of accused in these cases indicate that the prosecution could not establish the cases with adequate material evidences and witnesses. In *Vithal Tukaram More & Ors vs. State of Maharashtra*³², the Hon'ble Supreme Court observed that in a case where other members of the husband's family are charged with offences under Sec. 498-A of IPC among others and the case rests on circumstantial evidence, the circumstantial evidence must be of required standard if conviction has to be based on it.

Further, in some cases the complainants retracted their statement in court stating that there was no demand for dowry and no violence was inflicted on them. The court relied on these statements to acquit the offenders. The interviews revealed that most women were coerced or threatened by the accused once released on bail. The accused take all efforts to weaken the case by tampering the evidence or by luring witnesses to their favour through threat, bribe or duress.

Furthermore, the data shows that in some cases, the investigating agency submits the charge-sheet in the court after a year of filing of complaint. Such a span of delay weakens the prosecution. The prepared charge-sheets should be laid before the court within a reasonable time.

10.7 Compromise

Table: Total no. of cases referred for mediation and its outcome.

³² (2002) 7 SCC 20

	Districts	Cases received	Referred for Mediation	Compromised	Mediation had failed	Pending at the stage of Mediation
1.	Lucknow	50	18	14	5	
2.	Allahabad	7	1	-	-	-
3.	Azamgarh	3	1	-	-	1
4.	Banda	7	1	-	-	1
5.	Bareilly	2	2	1	-	1
6.	Chitrakut	10	4	1	3	-
7.	Kanpur	5	0	-	-	-
8.	Muzaffarnagar	2	1	1	-	-
9.	Saharanpur	3	3	1	-	2
10.	Sitapur	8	2	1	-	1
11.	Unnao	1	0	-	-	-
12.	Varanasi	7	2	2	-	-
	Total	105	35	21	8	6

As crime under Sec 498-A is a non-compoundable offence, both parties cannot compromise and compound the case legally. In *B. S Joshi vs. State of Haryana*³³, the parties reached a compromise but the High Court refused to quash the FIR, on the ground that the offence is non-compoundable. However, the Supreme Court in the said case held that such power could be exercised by the court either to prevent abuse of the process of any court or otherwise to secure the ends of justice; though it may not be possible to lay down any precise, clearly defined guidelines nor can the court give an exhaustive list of cases wherein such power should be exercised. It further observed that since because there was an amicable settlement between the two parties, there is no chance of conviction and in such a case the court has the power to quash the proceeding.

³³AIR 2003SC 1386

To keep up with the increasing number of registered complaints, courts and police have mediated or dealt with more cases outside of the judicial process; it may seem as though they have made a deliberate decision to resolve cases through mediation with fewer cases going to courts for prosecution.

Mediation referred by Court: Most cases examined have resulted in compromise. The analysis demonstrates that efforts were being made every step of the way for reconciliation through mediation before prosecuting the offenders. Even in cases where arrest was immediately necessary, attempts were first made by enforcement agencies for bringing about mediation between the two parties. On reaching a settlement, both the parties file a compromise petition before the court to compound the case as a legal remedy, stating that they have entered into compromise. Many complainants were ready to compromise as they were assured the return of their stridhan and other properties given to them as dowry. They entered into an agreement with the condition that the husband would grant them divorce, provide compensation for dissolution of marriage, or that there will be withdrawal of cases pending in other courts. Women have also been pressured from, both the accused and the natal family, for reaching a compromise. Prolonged trial proceedings have also been one of the factors for initiating a settlement.

The interviews of the complainants reveal that in most cases, the terms of compromise are violated by the husbands and their family members and the women rarely benefit at the end.

Mediation/ Counselling at the Police Stations: Majority of women interviewed are under extreme stress and are going through mental agony. They feel defeated repeatedly visiting the police stations and thereafter the Courts. Earlier the law was very strong as after the registration of the FIR, the husband and in-laws were immediately arrested. However, following the decision of Delhi High Court in *Chandra Bhan and Anr. vs. State*³⁴ and of the Madras High Court in the case of *Tr. Ramaiah Vs. State*³⁵, wherein the Court gave directions for regulating the power for arrest and initiating conciliation at the earliest, many states have issued notifications stating that police should refer women for mediation before registration of FIRs.³⁶

³⁴ Order dated 4.8.2008 in Bail application No.1627/2008

³⁵ Order dated 7.7.2008 and 4.8.2008 in MP No.1 of 2008 in CrI. O.P. No.10896 of 2008

³⁶ Refer to Annexure III- After the order in *Chander Bhan's case*, the Commissioner of Police of Delhi issued Standing Order No.330 of 2008 compiling the "Guidelines for Arrest" as laid down by the Supreme Court and Delhi High Court.

The study revealed that in a few cases, counsellors located in police stations had coerced the complainants to withdraw their case, convincing them to “adjust” to their situation and continue to live in an abusive relationship.

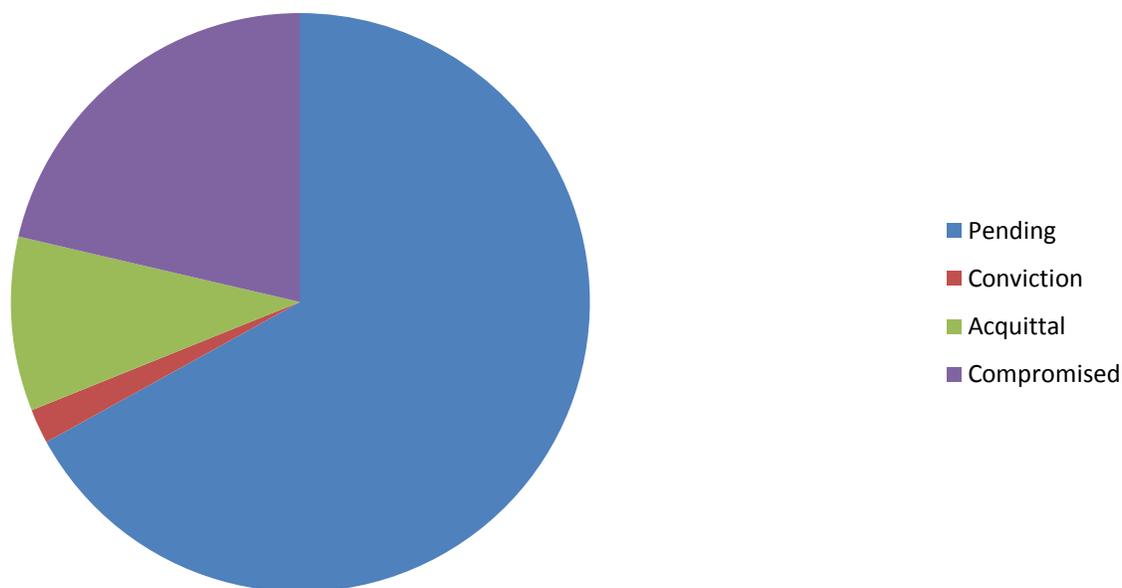
Counselling maybe one of the methods of correcting abusive behaviour; however, it should be done by professional counsellors for helping the woman address the trauma of violence rather than initiating conciliatory efforts.

In one case, it took 3 months for police to register the complainant’s FIR. The woman filed for maintenance along with Sec.498-A which lasted for almost 3 years; however, it resulted in mediation and she returned to her husband's house. She stayed for 7 months and suffered beatings and torture, and eventually decided to leave the household. In another case, a woman filed a complaint to the Police authorities which resulted in compromise. Consequently, on returning to her in-laws' house she was physically assaulted by her husband and in-laws.

10.8 Conviction:

Out of 105 cases analysed, there were only 2 cases which resulted in conviction. The fact that high percentage of cases are compromised or still pending in the courts, reflects the flaws that exist in the judicial system which defy the very purpose of the law. The fact that there has been no conviction yet in all these years, even where the first violent incident took place 14-20 years earlier, shows a grave lacuna in the system. In cases where the court has passed an order of conviction, the accused generally makes an appeal in the Higher Courts leading to high chances for reversal of conviction orders. **The dismal number of conviction draws to the fact that in only a few cases women are getting access to justice, while the pool of women who are subjected to compromise is ever-increasing. The judiciary and society in general perceives that women are misusing the law, whereas in reality, they are being increasingly denied proper justice due to legal gaps and social pressure.**

Overall status of Sec. 498A Cases Analysed



11. Recommendations

- Registration of FIR- In a recent case of *Lalita Kumari v. State of Uttar Pradesh*³⁷, the Apex Court held that a preliminary enquiry could be conducted for the limited purpose of deciding whether the offence was cognizable or non-cognizable in nature. The Supreme Court held that if the information received did not disclose a cognizable offence but indicated the necessity for an inquiry, **a preliminary inquiry may be conducted only to ascertain whether a cognizable offence was disclosed or not**. The police officials must follow the directives issued by the Supreme Court in the said judgment in letter and spirit. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received, but only to ascertain whether the information reveals any cognizable offence.

³⁷WP(Cri) No. 68 of 2008

- In cases of non-registration of FIR: The Apex Court in *Lalita Kumari*³⁸ further states that when the police officer conducts preliminary investigation, before registering an FIR and decides to close the case, he must take this decision at the earliest. The police officer must immediately inform the complainant of his decision in writing **not later than one week** so that she may pursue the remedy of approaching a Magistrate under Sec. 156 (3) for a direction to register FIR. It must disclose reasons in brief for closing the complaint and not proceeding further.
- Role of the Police during Investigation: One of the weaknesses that came through was the lack of accountability and lackadaisical attitude of the police, which was a challenge for most complainants, as they were often unable to communicate with the relevant police officials looking into their case. They need for them to be more diligent and they should act in a timely manner. The police should also educate the complainants about the need for accurately documenting the facts of the incidences in their statements to avoid anomaly during the examination in chief and cross examination. There is a need to strengthen the investigation mechanism and investigation techniques. Police should be properly trained to carry out the investigation in a professional and scientific manner. To ensure that the complainant does not remain in dark about the investigations regarding his complaint/FIR, the complainant should be kept informed about the progress of investigations. As per Sec. 173 of CrPC, the investigation should be completed “without unnecessary delay”. To achieve this, investigation team should be provided with necessary infrastructure, adequate personnel and logistics to carry out their role.
- Coordination between Police and Prosecution: There is a need to build effectiveness of law enforcement agencies and prosecution. To achieve this effective coordination should exist between the investigation team and the prosecution. To enhance the veracity of the case during trial proceedings, the approval of the Prosecutor should be taken before the filing of charge-sheet. Thus, the Prosecutor will be able to assess whether the investigation has been carried out in an unbiased and professional manner.
- The Judiciary should examine the problem of how the effectiveness of trial courts can be improved. In an alarmingly high ratio of cases of conviction by the trial courts, the High Court comes to the conclusion that the judgment is erroneous and therefore, quashed by the High Court in appeal. To avoid delays during trial, it is

³⁸Id.

important that time limits are prescribed and strictly followed for filing of charge-sheet, framing of charges and completion of trial proceedings.

- The women's lack of awareness of how the criminal justice system works reflected in all the interviews. The women were often helpless as the authorities were not able to adequately guide them through the process during the trial stage. It is important that their lawyers guide them throughout the process. Prosecutors ought to prepare the woman for her examination-in-chief and cross examination. This should be done at least a day prior to the date of hearing.
- Clearly, complainants and witnesses were being threatened or intimidated into settling the case. Safety and protection of these women and witnesses seemed to be the least of the priorities of the police who more often than not were hand in glove with the perpetrator's family. The complainants/ witnesses must be ensured safety and protection by the SHO concerned, who should personally attend to their complaints. In such circumstances the complainants should seek for "residence order" or file an application for "protection order" under Protection of Women from Domestic Violence Act, 2005. Keeping in mind the interest of the women, the courts should grant these orders immediately. Sec.498-A itself has little to offer with respect to taking care of the woman's immediate needs of protection, shelter and monetary relief. In such circumstances, it is important to know whether remedies entitled to women under the Protection of Women from Domestic Violence Act, 2005 and provisions for maintenance such as Sec. 125 of CrPC are being used by the complainants.
- It has become something of a practice to send women to mediation centres for settling of cases, even in cases when they have expressed no inclination whatsoever to do so. It is wrong to heap upon women an order to attend mediation, when the concept of mediation contemplates it being very much a matter of voluntary choice and not something to be complied with compulsorily.
- The most important aspect that came out through the study was that most of the women were illiterate and lacked self-dependence, due to which they felt a sense of being defeated while undergoing legal trials, with the result that they were eventually compelled to enter into a compromise with their husbands and in-laws. Government agencies should provide employment/ financial assistance to affected women. They should also

provide compensation to them and their dependent(s) who have suffered loss, injury or require rehabilitation, as a result of the offence committed. Aggrieved women also need various services such as shelter, medical and psychological counselling among others. It has been observed that these women lack support systems and look to the police to be able to guide them to the requisite services. To begin with, police stations must maintain a list of service providers for their ready reference.

- With a view to create awareness on the law and the issue of domestic violence, ad campaigns, legal aid camps, workshops etc. should be organised extensively by the central and the state nodal agencies.

12. CONCLUSION

No matter how hard we may try to sweep the malaise of dowry, dowry related deaths and domestic violence under the carpet, the harsh reality of them being still highly prevalent, among all strata of society, remains. Sec.498-A and other legislations like the *Protection of Women from Domestic Violence Act* have been specifically enacted with the object of protecting a vulnerable section of the society (read 'women', and 'married women' in particular) which has been the victim of cruelty and harassment. If the rigour of such provisions is diluted, the social purpose behind them will be lost. The abuse or misuse of law is not peculiar to this provision alone. It is important to point out that a married woman only ventures to go to the Police station to make a complaint against her husband and other close relations out of an abject sense of despair; and after being left with no other remedy against cruelty and harassment meted out to her. In such a situation, the existing law should be allowed to take its own course, rather than succumbing to a knee jerk reaction to its misuse in some cases. There is also a valid apprehension expressed that once the offending family members get to know about the existence of a complaint of such a nature; there is a very real possibility of a backlash in the form of further torture of the complainant and her life and liberty may be at peril, if the Police were not to act firmly against them.

The national statistics on crime clearly prove that the conviction rate of cases filed in court under Sec.498-A is about 15 percent in the trial court and the conviction rate is further reduced in the appellate courts. This clearly illustrates the fact that for these women, justice is evasive and busts the myth of Sec.498-A being a tool of misuse against men by unscrupulous women. Any dilution of Sec. 498-A would be wholly unwarranted and self defeating,

given the unabated rate at which crimes against married women occur. Therefore, the demand to make Sec.498-Aa compoundable and bailable offence must be rejected forthright with the contempt that it deserves. Although it sounds really far-fetched and unthinkable at the time, we could only perhaps think of diluting the stringency of the provision in its current form when our country has matured into a truly equal society, which is free from the yoke of patriarchy and the feudalistic moorings that characterize it presently. Unarguably this process would be gradual, as societies take generations to evolve.

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- x. 154th Report of the Law Commission of Indiaon Code of Criminal Procedure 1973 (Act no. 2 of 1974)
- xi. 177th Report of the Law Commission of India relating to Arrest
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- xiii. Report of the Committee on Amendments to Criminal Law- headed by of Justice J.S Verma

ANNEXURE I-Districts Chosen for the Study

	Districts	Cases received
1.	Lucknow	50
2.	Allahabad	7
3.	Azamgarh	3
4.	Banda	7
5.	Bareilly	2
6.	Chitrakut	10
7.	Kanpur	5
8.	Muzaffarnagar	2
9.	Saharanpur	3
10.	Sitapur	8
11.	Unnao	1
12.	Varanasi	7
	Total	105

ANNEXURE II- Questionnaire Administered to the Interviewee

Annexure III- Directions issued by the Commissioner of Police of Delhi Standing Order No.330 of 2008

STANDING ORDER NO. 330/2008

GUIDELINES FOR ARREST

The Hon'ble Supreme Court of India in the matter of Joginder Kumar Vs State of UP (CrI. WP No. 9 of 1994) made the following observations:-

1. No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so.
2. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person..... no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest.
3. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the Officer effecting the arrest that such arrest is necessary and justified.

The following requirements also prescribed in the judgement:-

1. An arrested person being held in custody is entitled, if he so requests to have one friend relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.
3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22 (1) and enforced strictly.

The Hon'ble Supreme Court of India in the case of **D.K. Basu Vs. State of West Bengal** issued the following requirements to be followed in all cases of arrest or detention:-

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register and the case diary.
2. The police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.
3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or the person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside of the district or town through the Legal Aid Organization in the District and the police station of the area concerned telephonically/ telegraphically within a period of 8 to 12 hours after the arrest.

5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police affecting the arrest and its copy provided to the arrestee.
8. The arrestee should be subjected to medical examination by a trained doctor after every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.
9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.
10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
11. A Police control room should be provided at all district and state headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

The Supreme Court of India also directed that failure to comply with the said requirements shall apart from rendering the concerned official liable for departmental action, also render him liable to be

punished for contempt of Court and the proceedings for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter. These instructions are to be notified at every police station at a conspicuous place.

The Delhi High Court in Crl. M (M) 3875/2003 in '**Court On Its Own Motion Vs CBI**' made the following observations/ directions regarding arrests under section 498A/406 IPC. The Court observed that Sections 498A/406 IPV which "are much abused provisions and exploited by the police and the victims to the level of absurdity.....every relative of the husband, close or distant, old or minor is arrested by the police.....unless the allegations are very serious nature and highest magnitude arrest should always be avoided".

In a recent judgement in criminal appeal Nos. 696/2004, 748/2004, 787/2004 and 749/2004 pronounced on 1.11.2007, the Delhi High Court observed that "..... In all these cases in the name of investigation, except recording statement of complainant and her few relatives nothing is done by police. The police does not verify any circumstantial evidence nor collect any other evidence about the claims made by the complainant. No evidence about giving of dowry or resources of the complainant's family claiming spending of huge amounts is collected by the police. This all is resulting into gross misuse of the provisions of law.....".

The Hon'ble Mr. Justice Kailash Gambhir, High Court of Delhi, in Bail Application No.1627/2008 titled "Chander Bhan & Anr. Vs State" passed, inter-alia, the following guide lines to be strictly followed by the police authorities:-

- "(A) (i) No case under Section 498-A/406 IPC should be registered without the prior approval of DCP/Addl. DCP.
- (ii) Arrest of main accused should be made only after thorough investigation has been conducted and with prior approval of the ACP/DCP.
- (iii) Arrest of the collateral accused such as father-in-law, mother-in-law, brother-in-law or sister-in-law etc. should only be made after prior approval of DCP on file.

- (B) Police should also depute a well trained and a well behaved staff in all the crime against women cells especially the lady officers, all well equipped with the abilities of perseverance, Persuasion, patience and forbearance.
- (C) FIR in such cases should not be registered in a routine manner.
- (D) The endeavour of the police should be to scrutinize complaints very carefully and then register FIR.
- (E) The FIR should be registered only against those persons against whom there are strong allegations of causing any kind of physical or mental cruelty as well as breach of trust.
- (F) All possible efforts should be made, before recommending registration of any FIR, for reconciliation and in case it is found that there is no possibility of settlement, then necessary steps in the first instance be taken to ensure return of stridhan and dowry articles etc. by the accused party to the complainant”.

The earlier Standing Order issued vide No. 80033-132/C&T (AC-5)/ PHQ dated 21 /12 /07 is hereby withdrawn.

(Yudhbir Singh Dadwal)

Commissioner of Police,

Delhi

Order Book No. 02/Record Branch (PHQ)

Dated:08/10/2008

No. **301-600** /HAR (PHQ)/AC-I Dated the **08/10/2008**

Copy forwarded for information and necessary action to the:-

1. All Special Commissioners of Police, Delhi.
2. Managing Director, Delhi Police Housing Corporation, Delhi.
3. All Joint Commissioners of Police, Delhi.
4. All Additional Commissioners of Police, Delhi.
5. Principal/PTC, Jharoda Kalan, Delhi
6. All Deputy Commissioners of Police of Districts/ Units, including FRRO, Delhi/ New Delhi.
7. SO to Commissioners of Police, LA to Commissioners of Police, and F.A. to C.P., Delhi.
8. All ACsP in PHQ.
9. ACP/IT Centre with the direction to upload the Standing order in Intra DP net.
10. All ACsP Sub Division.
11. P.A. to C.P., Delhi.
12. All SHOs/Delhi Police through their respective DCsP with the direction to place the Standing Order in register No.3 Part-1 of the Police Stations.
13. All Inspectors/ PHQ, including Reader to CP, Delhi
14. Librarian/ PHQ
15. Record Branch/PHQ with 10 spare copies.

Annexure IV- Directions issued by the Supreme Court for “Registration of FIR” in *Lalita Kumari v. State of Uttar Pradesh*

111) In view of the aforesaid discussion, we hold:

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The categories of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/ family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.