

SHADES OF COURAGE

Women &
Indian Penal Code Section 498 A

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Special Cell for Women and Children
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CONTENTS

| | | |
|--------------|--|-----------|
| Preface | Anjali Dave | 5 |
| Introduction | Nandita Gandhi | 7 |
| Section I | The Law Looks at Violence on Women | 18 |
| Section II | Case Studies : Voices of Three Women | 29 |
| Section III | Evidence from Data | 47 |
| Section IV | Conclusion | 58 |
| Appendix I | Common Myths on Violence Against Women | 70 |
| Appendix II | Recommended Readings | 72 |
| Appendix III | Survival of Womankind | 74 |
| Appendix IV | Memorandum on IPC Section 498 A | 78 |

PREFACE

The Special Cell for Women and Children action project set up by the Tata Institute of Social Sciences with the cooperation of the Bombay Police began in 1984 by offering immediate services like police help, legal aid, counselling and social work interventions for women. Amongst the objectives of the Special Cell were the creation of a platform for bringing together the police and women's organisations as well as conducting studies and surveys on issues relevant to grassroots practice.

The field experience of workers in the Special Cell with the police, women, laws and legal procedures has constantly thrown up issues, ideas and policy suggestions. The Special Cell has taken up research in different areas to explore situations and begin discussion on various topics. Section 498A of the Indian Penal Code was formulated in 1983 to address cases of cruelty and harassment of women in the home by their husbands or members of their family. Since then this new law has become quite controversial with different points of view being put forward by the police, lawyers and women's groups. Given this background, the Special Cell felt the need to study the cases/filed under Section 498A.

This booklet is aimed at women's groups, activists, students, lawyers, police and all those who are concerned with the debate on violence against women. It provides empirical evidence gathered

from police records for analysis and debate. The introduction on violence highlights the gravity of the problem, the nature of violence and an analysis of its continuation through the years. Section I outlines the debate on Section 498A.

Section II consists of narratives of three women who have suffered violence and used this law to help overcome their problems. Section III provides empirical data from 1,397 cases to bring out the trends in the nature of violence, profiles of the women, their abusers, their complaints and case details. The last section is a general conclusion of both sections.

This booklet is the result of three studies undertaken by students and workers at the Special Cell. Special thanks are due to Lakshmi Narayan, Trupti Panchal, Sejal Dand, Arlene Rego, Hemali Sanghvi, Vandana Nanavare, Suvarna Shinde and Anuradha Rajan. But for their enthusiasm and seriousness of purpose these studies would not have been possible. We gratefully acknowledge the guidance of Murli Desai, Prof. Apte and Neeraben Desai. We also thank the Mumbai Police for sharing records on cases of violence against women.

Thanks are due to Akshara for editing the two manuscripts and bringing out the material for wider circulation. We thank Saroj Iyer and Nandita Gandhi for editing the manuscript and Nandita Shah and Priti Karande for the design of layout and cover.

We hope this booklet will contribute to the ongoing debate on the law and its implementation as well as feed into the strategy of bringing justice to women who have faced oppression.

- Anjali Dave

Family and Child Welfare,
TISS, Mumbai
January 1999

INTRODUCTION

Understanding Violence on Women

An Embarrassed Silence

Can such things really happen in families? Though there have been numerous articles in the newspapers, films, TV and seminars, the general reaction of people to wife beating, dowry murders and sexual abuse is one of incredulous disbelief or disgust. How can members of the family do this to one another? And as it simply does not make sense, reasons put forward are social or psychological problems like emotional disturbance, alcoholism in poor families and greed. Women are often seen as the culprits, especially the provoking mother-in-law or the nagging sister-in-law. In spite of overwhelming evidence of the existence of domestic violence on women, we continue to be disbelieving or maintain an embarrassed silence. Why is it that in spite of the attempts of women's movements all over the world and the massive women's world conference in Nairobi in 1975 and more recently in Beijing in 1995, we have not been able to grapple and curb this violence? And the few attempts which have been made like the formulation of some favourable laws have not acted as an adequate deterrent?

However, unlike domestic violence, other forms of violence do find a place in public discourse. Debates and opinions within society are constantly rating violence and prescribing punishments for it. The old proverb, 'spare the rod and spoil the child' has been continuously debated with views changing over the years. Capital

punishment has as many opponents as proponents. Newer forms are added to the spectrum, like :

"Are billboard advertisements an assault on our senses?" In the context of women, atrocities like sati, rape and sexual harassment have been given some attention. But when it comes to domestic violence, there is a silence. So the only voices we hear are the few scattered ones of women's groups and social activists.

This is not a new phenomenon. Violence against women has been hidden behind the walls of the home. Those within do not wish to speak about it and those outside do not want to hear it. Women in general, the victims of violence, the families, the community, the courts, the police and the government, all seem to be part of keeping it under wraps. Each has a rationale, from family honour, intimate relationships, dependency, the right to personal/family privacy, the complexity of proving and implementing the law. We need to seriously question why we do not give the issue of domestic violence the importance it deserves. Given its long history, its recent proliferation and the massive number of women affected by this violence, it should have become a serious global issue like terrorism or global warming. It should not only be discussed in world bodies like the United Nations, but should have coordinated strategies like the Interpol with specific country departments to tackle it. Besides, each society should be tackling violence in its own way to eliminate it. Instead, we have international and national disregard and lethargy. In India, we have some laws but they are ineffectively implemented and though the rate of crimes against women has increased, the conviction rate has not increased. So the struggle against domestic violence continues.

Perhaps we need to look within and ask why we resist calling this violence a heinous crime against women. Some women may be victims of domestic violence but are not all women its potential victims? If we listen intently to what women have to say and allow our own feelings and fears to surface, we may realise that there

are few barriers between women. There is no "them" and "us" between those who have suffered violence and those who have not. And the men in society who do not believe in violence, should they not empathise with women?

Is domestic violence a phenomenon by itself or is it part of a wider spectrum of violence? Is there a difference between the violence committed on women at home, on the streets and at the workplace? Can one type of violence fuel another? Then how do we explain violence against women? Why do we resist examining the family or questioning its idealisation by society. We point at the breakdown of the family as a 'danger' to society. Is it not time we look for answers which will fearlessly probe different institutions and their complicity in allowing this crime? Because violence on this scale cannot exist without the social sanction of a large number of people and institutions. Lastly, we need to, collectively, strategise to end this embarrassed silence and inaction towards violence against women.

Them and Us

While reading about or listening to battered women, some questions that immediately spring to our minds are - why did they tolerate the beatings for so long? How can they possibly live again with the men who abused or almost killed them? Couldn't they have taken some action earlier? Sometimes, it is difficult for us to understand their need for silence, their sense of humiliation, frustration, despair, and the seesawing ambiguity of battered or sexually-abused women.

In the process of 'counselling' women, we realise that there are a multitude of tacit personal rationales and equations which guide their decisions. And just as we feel that the battered women are beginning a new life, we glimpse some of the scars they are trying to hide. The more we come in contact with victims of violence, we are amazed at how little we can do for them. We protest against such forms of violence, demand for legal reforms, for government

programs and shelters for women, etc., only to realise that at every step there are insurmountable societal prejudices and pressures on women to keep silent, to 'adjust', and not to 'shame' the family. If they wish to get out, there are no homes or jobs which will sustain them.

If we were to ask ourselves, what would we have done if we were battered or whether we have been afraid of rape or assault on the streets, we might come up with a deep, almost unconscious fear of violence which we bury by taking precautions or restricting our own movements. We can say that we have not been victims of violence but can we claim to have never felt the fear of violence? Sometimes in our childhood, in college, down a dark lonely road, or during a riot, we might have experienced the fear of violence. This fear clings to us like a shadow all our lives. So if women who have been victims of violence are at one end of a spectrum, we are on the other end. No one is outside of the spectrum of violence. This spectrum is wide and encompasses different types of violence which are numerous. All women are potential victims of these different types of violence. In the present society it becomes important for us to recognise this as it removes the barriers between women or "them" and "us". This does not mean that other differences like education, class, religion and caste do not exist between women. It means that despite our differences, all women share a commonality of the fear of violence.

The Spectrum of Violence

Battery, sexual assault and rape are a few of the many violences experienced by women. As the women's movement in different countries focused on the issue, a variety of forms of violence were revealed and more are being added to the list. The different types of violence on the spectrum ranges from sexual harassment to molestation to rape; from battery to assault to murder; from media violence to stereotyping to pornography; from incest to child sexual

abuse to marital rape. Some have preferred to identify the different types of violence as that within the home, like battering, dowry murders and incest and that outside the home and the workplace, like sexual harassment and rape. Some have differentiated forms of violence by their source like familial violence or that which is done by members of the family like foeticide, dowry murders and incest or that which is perpetuated by State authorities, like the police or state remand homes or by society such as sati. Others have added class, caste and communal violence [Gandhi N and N Shah, 1992]. Another method of categorisation is overt physical violence like battery and sexual assault at home and at the workplace, psychological abuse like confinement and forced marriage, deprivation of resources like nutrition, education and means of livelihood, and commodification of women including trafficking and prostitution. [Schuler M., 1992]

All these are known forms of violence. We have heard or read about them in newspapers or during campaigns. Women of all ages are targets of violence. As the categorisation of violence shows women can face violence from the foetal stage. The use of the amniocentesis is meant to kill the unwanted female foetus in the mother's womb. A majority of young girls in India suffer from malnutrition and many succumb to different diseases owing to lack of medical attention. The Census figures, decade after decade, point to the growing rate of female infant mortality. This is brilliantly captured in Amartya Sen's essay "More Than 100 Million Women are Missing" [Sen, A., 1990]. It is a myth that mainly girls are raped. There *are* many cases of rape on older women and even minor girls. Incest and sexual molestation of young girls is often not reported by them to their parents or the police. Women have spoken after many years of how their earlier experiences affected their lives and relationships. In its pamphlet, *The Forum Against Oppression of Women*, a women's organisation has shown the odds against women's survival as they are subjected to different

forms of violence from the pre-birth stage through childhood and youth. [Refer appendix]

Violence on women is also perpetuated through the mass media i.e. the visual and print media in the form of stereotyping women's images and work and the objectification of their bodies. Beauty contests are examples of how women's bodies are fragmented into Miss Eyes and Miss Skin to qualify to become beauty queens. Prostitution which was earlier seen as a 'social evil' now has been categorised as a form of violence as it not only commodifies women into saleable sex objects but has many aspects of coercion. Development policies which deprive women of a livelihood and add to their household burdens like deforestation and lack of water resources, have also been seen as a form of violence on women.

It has been proved by this study and earlier small surveys [Gandhi N and N Shah, 1992] that wife beaters are not usually drunken husbands. In fact, the act is premeditated or conscious. Dowry murders are committed by members of the matrimonial family. The silence or refusal to accept the woman back makes the natal family an accomplice to the murder. The natal family also cannot escape the stigma of foeticide and food deprivation to daughters. Similarly, the myth that strangers or psychologically deranged persons are responsible for rapes is incorrect. Rapes by and large are committed by persons known to the victim and the family. At the workplace, superiors like employers, supervisors or co-male workers sexually harass, molest and sometimes even rape women working under them. In the case of communal or caste clashes, men in groups ambush and rape or molest women of the other community as a form of revenge.

Understanding Violence

The various forms of violence and its widespread nature cannot be maintained without the active complicity of different people and institutions. Of the many, the family, the state and the community

play an important role in the perpetuation of violence against women. The family which gives nurturance and love can also be discriminatory and violent. The natal family socialises its members to believe in gender inequality by discriminating against girls. Boys grow up with a sense of privilege and girls with the feeling of inferiority, lack of self confidence and fear. Child sexual abuse and incest by relatives is a common experience of young girls. Mobility is restricted in different social ways, through purdah, night curfews or notions of a 'good' woman. In the matrimonial home, women's fertility is often controlled by making them go through unwanted pregnancy, abortion or forced to commit foeticide. They become pawns in the deadly game between their husbands and brothers often leading to dowry murders or suicide.

The community or what we call society is the 'public' sphere or a man's world.

Rules, indirect and tacit, are set for women and are reflected in our social, cultural and religious practices. Men can wear western clothes but it is more 'appropriate' for women to wear traditional clothes. Branding women as witches, encouraging sati, etc are decided by groups of male leaders, supported by younger men and sometimes by women. Who decides that women should be housewives? If women enter the workplace, it is as secondary workers who will be placed in the most vulnerable and low paying jobs. The powerful and almost omnipresent mass media reinforces many patriarchal notions and practices through commercial advertisement and entertainment. With state sanction, it brings out soft and hard pornography which shows women as objects or their subjugation through violence.

The State and its agencies, the police and judiciary, are dominated by men and women raised in the patriarchal tradition. They are more prone to consider familial violence as a 'private' or domestic matter and refrain from taking any action against the erring men. Women have constitutional rights as citizens which seem to be held in abeyance

within the family. Inheritance of property, violence, divorce and custody of children are issues which are quite discriminatory against women. In brief the State legitimises men's rights over women. Police indifference, brutality and rape of women are obvious human rights violations. But there is no action against those many policemen who refuse to take down women's complaints of battery, marital rape and incest or let rapists go scot free for lack of evidence. Courts have very often been sympathetic to young male criminals by reducing their jail terms rather than to the violated woman. The nexus between the indifferent police and the biased courts leaves women frustrated, helpless and less likely to seek justice. Lastly the State itself can become violent through its coercive family planning and development policies.

The wide variety in the forms of violence, its proliferation and perpetuation through various societal institutions calls for a comprehensive definition of violence. We cannot define violence in a narrow way as the use of physical force. The gender dimension to violence makes it a more complex phenomenon. At a theoretical level, there have been attempts to trace the roots of violence against women by linking it to the exploitative production relations [the Marxist theories], the basic contradiction between men and women [the radical feminist trend], the inter-relationship of capitalism and patriarchy [the socialist feminist trend] and the caste-class nexus [Marxism-Phule-Ambedkarism]. At the ground level, women activists had this to say about violence, "Women face specific forms of violence: rape and other forms of sexual abuse, female foeticide, witch hunting, sati, dowry murders, wife beating. Such violence and the continued sense of insecurity that is instilled in women as a result keeps them bound to the home, economically exploited and socially suppressed. In the ongoing struggles against violence in the family, society and the state, we recognise that the state is one of the main sources of violence and stands behind the violence committed by men against women in the family, the workplace and the

neighbourhood." [The III National Conference of Women's Movement or the Nari Mukti Sangharsh Sammelan in 1988 Patna, Bihar.]

Violence against women has to be understood in the context of class, caste and patriarchal social relations in which male power through societal institutions controls and dominates with the intent of subjugating women, keeping them dependent and resourceless and in constant fear.

Strategies Against Violence

If the roots of patriarchy and violence are so deep and wide-spread, can we do anything about it? In the 1980s, women's groups resorted to taking direct action whenever an atrocity or act of violence took place. Women would demonstrate in front of the house where a dowry murder had occurred with placards and slogans. This public protest served a number of purposes, it 'shamed' the family in the neighbourhood, the issue got prominence as it was covered by the news media, it pressurised the police and indirectly the court to pay attention to the violent act. In case of rape or wife beating, support was given to the woman through financial and other ways. As it would be impossible to have demonstrations for every act of violence in the city, other strategies had to be evolved.

Strategies emerge from our assumptions, analysis and ground realities. For example if we happen to believe in male superiority, there is no question of campaigning against it. If we believe that caste or class is the core problem, we will strategise to eliminate caste or class and establish a society free of them. If patriarchal control and practices in the family, society and the State are responsible for the tacit sanction given to violence, they must be analysed and curbed. So there cannot be any one strategy or method.

Women's groups have learnt, after years of campaigning against violence, that they need to use a multi-pronged approach or different strategies against violence. They have offered counselling, legal aid and shelter services to victims of violence. Consciousness or

awareness raising campaigns consisted of using the mass media, street theatre or discussion groups to highlight the grossness of violence, expose the myths and societal prejudices around it, and point out the lacunae in the legal system. Lastly, there were campaigns for legal reforms or new laws which would empower women to struggle for justice e.g. the changes in the laws relating to rape, dowry prohibition and Section 498A was meant to curb violence in the family. Research and surveys have been essential in providing the cutting edge to all these strategies. Data and material had to be excavated or created to feed into the campaigns.

The Challenge

The campaigns against violence against women has many a times met with disapproval, resistance and indifference. The most painful has been the continuation of old prejudices, notions of subordination and bodily differences. The police personnel continue to treat domestic violence as some trivial marital dispute and the judiciary continues to victimise the women rather than the culprits. [Agnes, F.,1984]. Families still see women as wives who have to 'adjust' in their matrimonial homes even if it means death. Society does not penalise the wife batterer, the rapist or dowry seeker, he is free to marry and lead a normal life.

The formulation of Section 498A has been the strongest statement from the State so far to empower women to fight domestic violence. Not surprisingly it has met with resistance from men and the police who claim 'misuse' and would like it scrapped. The Special Cell for Women and Children has made an attempt to answer this allegation through an analysis of data from police records. We need many such studies which will provide data and strength to the struggle against violence.

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THE LAW LOOKS AT VIOLENCE ON WOMEN

Introduction

No society condones violence on its own members, least of all on women. Yet violence has been a constant feature in women's lives and attempts to deal with it have varied but basically from a humanitarian perspective. The third phase of the Women's Movement, in the early part of the 1980s, initiated campaigns against rape, wife battering and dowry murders which put the issue of violence against women on the political agenda. This began the process of breaking the silence around violence as a personal issue and several organisations, including political parties, protested, demanded legislative reforms and set up groups, shelters and facilities for women who were victims of sexual or domestic violence. The first legislative reform to emerge from this political consciousness and protest of women was an amended law for rape. The second came in response to the alarming rise in dowry deaths or the mysterious 'suicides' or 'the stove accidents' of young married women. In July 1983, the Home Affairs Ministry put forward amendments in three different Acts i.e. Section 113 A of the Indian Evidence Act, Section 498 A of the Indian Penal Code and Sections 174, 176 and 198 A of the Criminal Procedure Code.

This was a step forward for the campaign against violence on women especially in the area of domestic violence. It became one

of the few provisions in the Constitution which recognises that male members of the marital family can perpetuate violence.

The introduction to Section 498 A states, "Traditionally, the woman is subjected to the whims and caprices of the man especially in the relation between husband and wife. Cruelty which makes the woman's existence intolerable was not punishable (till recently). If the wife committed suicide, the guilty escaped punishment for want of an adequate provision."

It also ended the so-called sanctity of the home and brought "the private" into the open by bringing it within the legal purview. Specifically it recognised that there could be other causes behind 'suicides' and made cruelty a cognisable and non-bailable offence. However, it was not a comprehensive legislation and did not include wife battering and other forms of cruelty in both the matrimonial and natal homes. The Dowry Prohibition [Amendment] Act, 1984, was intended to make the law more effective through redefinition, modification and stringency. But it has failed to act as an effective instrument as not even a handful of persons have been convicted.

The issue of violence against women is fraught with peculiar problems. There is the silence, taboos and social stigma of battered and violated women. The Women's Movement, concerned individuals and other organisations are struggling for laws which are favourable for women. Their implementation through the police and judiciary present a different nature of problems and prejudices. And there are those voices which, because of social conservatism, right wing influence or vested interest, would like to reverse any progressive move. Like in most movements for change which go against the dominant stream of social thinking and practices, the campaign against violence against women has not been easy. This booklet is a small contribution to this ongoing struggle. It will look at the Indian Penal Code [IPC] Section 498A, its provisions, the debate around its use and misuse, based on data gathered from battered women themselves.

Definition

Section 498 A of the Criminal Procedure Code was introduced in 1983 making cruelty to a married woman a crime. It broadened the scope of the term domestic violence and states that:

"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."

For the purposes of this section, "Cruelty" means—

- a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) 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."

This section regulates that a court can take cognisance of any offence punishable under this section only upon a complaint made by the person aggrieved by the offence, or by her relatives. It is cognisable and the non-bailable.

Section 498 A of the IPC made violence perpetrated by the husband or in-laws a cognisable offence. It was aimed as a deterrent to marital violence by enabling the woman to take preventive action before it led to her death. The law penalises the perpetrators with a prison term which may extend to three years and or a fine. It also makes it mandatory for the police to arrest the accused husband or in-laws immediately after a complaint is registered.

The Debate

Table : No. of Cases according to year

| | |
|---------------------|-----|
| 1986 [June onwards] | 26 |
| 1987 | 126 |
| 1988 | 176 |
| 1990[Nov.onwards] | 33 |
| 1991 | 197 |
| 1992 | 223 |
| 1993 | 281 |
| 1994 | 204 |
| 1995 [till Aug.] | 128 |
| 1996 | 110 |

The data shows a steady increase of cases from the time of the formulation of the law till 1996. In the decade, a variety of reactions, problems and experiences have emerged. Women's groups helping women in distress or victims of domestic violence considered the law incomplete but used it cautiously whenever the problem was severe. They were quite taken by surprise when in 1993, the then joint police commissioner of Bombay, R. D Tyagi, created a controversy when he instructed the police not to hastily register cases under this section. His advice to policemen was to use the section only in cases of dowry-related problems. He explained to the representatives of women's groups that the police found it difficult to register cases of mental harassment as the definition was too broad and vague. His officers had also complained that many women withdrew their cases under some pretext or the other. The policemen resented this waste of time and energy.

In 1994, a petition was filed by some lawyers in Bombay alleging misuse of the law by women and asking for amendments to IPC

Sec. 498 A, 33, 365 and Schedule I of Cr. P C. The request was to make the section non-cognisable, bailable and compoundable with the permission of the Court. The objective was to prevent misuse by women who sent their spouses and their family members into custody and to give men the same rights to file proceedings against women.

A Nashik-based organisation, the Purush Hakka Saurakshan Samiti, with branches in Mumbai, also joined in this debate. Its main allegations were that women misused this provision to "get even" with their husbands or in-laws in an unhappy marriage. S. Bhatt, one of the lawyers, in a Samiti's meetings said, "Feminist groups use this section to blackmail families and settle other disputes" (TOI, 28-8-97). Its demand was that this law should be amended as it placed disproportionate power in the woman's hands.

Then in 1995, a senior judge, M.L. Pendse, of the Bombay High Court triggered off an acrimonious debate by questioning the relevance of the section and pointed out its misuse. He was addressing law students of the Bombay University (TOI, 1-4-95, Bombay Edition). According to him, the provision was misused by women to wrongly implicate their husbands and in-laws. "When the police come to the husband's doorstep, everybody feels he must be guilty." He noted that a low level of tolerance, greed and vengeance were some of the motivating factors for women's use of this law.

Though women's groups have time and again answered these allegations of false cases, withdrawal of registered cases, and definitional problems in the law, the charges continue. In 1995, two women's groups, The Forum Against Oppression of Women and Majlis organised a press conference and public meeting to protest against Justice Pendse's disparaging views on women and, in general, the judiciary's insensitivity to women's issues and injustices. Several women's groups called on the Police Commissioner to request him to issue a Notification to all police stations asking the police to be more sympathetic to women complainants, to register cases of physical and mental harassment

and use Section 406 in a creative way to retrieve streedhan in accordance with the Supreme Court judgment. [Letter dated 31-10-96, FAOW] At a press conference, 15 women's groups put forward their experiences including data from surveys. Ms Mazumdar of Sakhya, an anti-dowry cell in the College of Social Work, Nirmala Niketan, said, "Reports that women lodge false cases under 498A to get their husbands arrested are exaggerated. None of the women's organisations gathered here have dealt with false cases." [TOI 14-6-97] A similar statement had been made by deputy inspector-general Ms Sridevi Goel. "It is misused sometimes. But the aberration does not make the rule." [TOI 26-5-97].

The number of cases of misuse would be extremely small because women rarely use the section. Given our cultural and social pressures and lack of resources and support, women are reluctant to file cases against their husbands and jeopardise their marriage. It is well known that divorced, deserted and separated women are not treated well by society. Women are aware that using this provision will mean a permanent break with the marital family and they would like to see a resolution rather than a break. Statistics put forward by women's groups show that of the total number of cases handled by them only a few are filed under Section 498A.

In reality, women are reluctant to register cases against their husbands and women's organisations too discourage them from doing so except in extreme cases. The third deterrent is the police. They are reluctant to register a case because they do not take domestic violence seriously and continue to dismiss it as a "personal" matter.

So, women's groups ask, how did this belief of "misuse" gain ground? Since filing a complaint under Section 498 A has serious implications, it is found that very often women also file for divorce and maintenance in the family court. Withdrawal of the charge under 498 A is then placed as a precondition by the husbands to settle divorce proceedings. Since the trials under Section 498 A take much longer than the divorce itself, it is in the practical interest of the women to give in and close the case. It takes anywhere from three to four years before a case of 498 A actually comes up for hearing in the court, whereas divorce proceedings in the family court take a much lesser time. Also, given the time gap between the actual filing of the complaint and the court hearing, women may miss out on details, especially painful ones of their case or what they had told the police. The fiscal and physical energy needed to fight a civil case for maintenance or divorce in the family court and a criminal case at the magistrate or sessions court can wear down even the most persistent of complainants. For a woman who may be grappling with issues of finance, shelter and dependent children, withdrawing the case may offer the most practical solution by way of a quick divorce and maintenance. All these factors force women very often to turn into a "hostile witness" in the court. This implies that the complainant either denies to the court that she had ever filed such a case or declares that the case has been recorded wrongly. This not only frustrates the police who may have tried to gather evidence but also leads to hostility towards the women and reinforces the view that such complaints are unreliable and hence undeserving of serious investigation. The conviction rate is thus

abysmally low. in fact, most cases are compounded well before they can even reach the stage of conviction or acquittal.

Retired Bombay High Court judge, H. Suresh, at the press conference said the allegations of 'misuse' should be dismissed because they basically emanate from an organisation meant for husbands who have a vested interest in the dilution of this Section. If a few exceptions of misuse can make a law redundant, then many laws will have to be scrapped.[Press Conference held at the Police Conference Hall, 27-8-97]. Women's groups see Section 498A as a deterrent, preventing abusive husbands from further violence. The main feature of this Section is that it gives women quick relief as well as some bargaining power as the accused is taken into custody.

In fact, women's groups contend that the section is very ambiguous and like most legislative measures poorly implemented. They also say its scope should be widened to include harassment of unmarried daughters too in their parental home. At present, the law covers only married women who face harassment in their marital homes. It should include divorced and widowed women too who may be harassed in their natal or marital homes.

Given these two positions, for and against the Section 498A and the various arguments, it seems that the problem of finding justice for battered and tortured women in their homes is more complicated than it appears. It was with this in mind that a study on the application and use of Section 498 A. was undertaken so as to provide basic, hard data as evidence.

The Study

The objectives of the study were:

- To show that women resort to this section only in exceptional cases and that too after they have endured years of harassment.

- To see if the legislation has helped women in situations of violence.
- To gather information on the nature of violence and cruelty in the marital home.
- To see what self-sustaining mechanisms are used by the woman in violent situations.

The Method used:

The study was conducted by the Special Cell to help Women and Children set up by the Tata Institute of Social Sciences in collaboration with the Bombay Police. The Special Cells were created at selected police stations which were run by social workers to help women with domestic violence or any other problem. The Cell was also meant to create a platform for bringing together the police and women's organisations as well as to document and undertake research on issues of relevance to grassroots practice.

The social workers of the Cell have used both the quantitative and qualitative methods for the study. This was to give them statistical data as well as help them fill in the gaps by recording the voices of women. This began with looking at the records of cases registered under Section 498 A available with the Special Service Branch for the Dowry Committee set up under the chairpersonship of the Police Commissioner. The Additional Commissioner of Police for Crime and the Special Cell were members of this committee and felt further analysis of these cases was required. The police had maintained meticulous records of Sec 498A cases. The data was transferred to a code book. The limitations were that the records often emphasised one aspect more than another e.g. it might have more details on physical torture but little on mental harassment, etc.

Another problem was a break in the collection of data for the period of 1989 to 1990 due to the non availability of such reports. So there are two sets of data from 1986 to 1988 and 1990 to

August 1995. The first contains data from 331 cases and the second from 1,066 cases with a total of 1,397 cases. The data was analysed using the SPSS program. Secondly, the schedules of the two periods are broadly similar but the latter covers more questions than the former. So one set of data is common and the rest is specific to its period. This again poses a constraint on the nature of generalisations which can be made. However, the combination of the qualitative and quantitative methods was designed to overcome some of these limitations.

Cell workers had to confront several problems in accessing women for interviews. They were unable to locate willing interviewees as women were more interested in putting their painful episodes behind them. Some women had changed residence and their in-laws refused to divulge any information about them. From those willing, there was not a representative sample according to income or caste/ religion groups. It was not possible to interview the husband, in-laws and the natal family as most of them refused to talk. On the other hand, some women were not keen on the Cell workers interviewing their in-laws as they had reconciled and did not wish to destabilise the situation.

Besides accessibility, the other problem was the 'selective memory' of women or the tendency to highlight certain information and downplay other episodes. Mainly women would not dwell on painful experiences instead concentrate on giving more factual information. This observation was later confirmed when their letters to their natal families which were in police files were studied. They revealed much more of the emotional trauma they had experienced than they later narrated. Their letters brought alive many incidents and painfully expressed their feelings. This shows that data gets lost when it is told to researchers at a later date. Feelings and attitudes get diluted or distorted and much valuable information remains undisclosed. As a result, a longitudinal case study, focusing on the changes taking place over time is extremely difficult to

undertake. In this study, a comparison between letters written by the woman before the case was registered and the information provided during interviews was done to get a much deeper insight into the woman's changing situation, feelings and attitudes.

Finally, the Cell workers had to settle for doing only three case studies. The three women interviewed were extremely co-operative and actively contributed to this research not only in terms of information, but also, more importantly, in the form of suggestions and support to other women in distress.

Structure of Booklet

Section I of the booklet is an Introduction to the question and controversy surrounding the issue of Section 498A, its use, misuse and implementation by the State. Section II has three case studies which provide an insight into the background of the women, the violence in their marital homes, the attitude of their husbands and in-laws, and the reactions of their natal homes. The narrative clearly brings out the struggles and coping mechanisms of women suffering violence and the last incident which leads to a police complaint. Section III contains the data and analysis of 1,397 cases on the nature, form of violence, a brief bio-data of women who were victims as well as that of the accused. Section IV pulls together the data from the earlier sections to give an overall picture of domestic violence. The booklet ends with four appendixes giving general information on violence against women.

SECTION 2

VOICES OF WOMEN

These narratives have been put together from interviews held by the students placed at the Special Cell with three women, excerpts from their letters and reports and summaries from police records. They are testimonies of women's 'tolerance', self-delusion, frustrations and the struggle to find a way out of family violence. The names of these women have been changed to protect their identity.

Prema

Prema came from a well-to-do but conservative family. She was the only daughter of her parents who had two sons - both of whom were professionally qualified and established in business. Prema had not been encouraged to study beyond the tenth standard, but initiated into household chores whilst they began the process of looking for a suitable bridegroom. By nature, Prema was a shy, submissive and homely person. Soon a relative brought a marriage proposal. During the initial negotiations a demand of Rs.80,000 as dowry was made and as it was too high an amount for the family, they refused. After some negotiations, a compromise was agreed on and the marriage plans were finalised.

After a few years, her husband Prasad began pressurising her family to help out in his business. He wrote two stern letters, saying that he did not want to have any discussion, and would like his

demands fulfilled. However, Prema's family did not pay any attention to the letters or his demands. So he changed his strategy and put pressure on Prema, through taunts and abuses, in the hope that she would, in turn, speak to her family members. But her family refused to yield to the new dowry demands.

Around this time, Prema gave birth to a daughter. Her husband did not come to see the baby nor did he attempt to bring them back from her natal home, where she had gone for delivery. Prema and the baby stayed with her natal family for over four months. Prema convinced herself that she was being blamed for not having given birth to a son. From that time onwards, her in-laws too showed their displeasure on both the issues of the unsent money and the birth of a girl.

Frustrated by this indifference and possibly his own financial problems, Prasad adopted a different tactic of subjecting Prema to physical and mental harassment to exert pressure on her family. Prema was beaten up and even simple pleasures were denied to her. When she went to the neighbours to watch television, she was abused with, "why do you need to watch TV, your father did not give you one." Sometimes she and her daughter were denied food. And she had to constantly borrow money from her neighbours and relatives. Prema bore this torture and hung onto her marriage even though there was little to keep it going. 'I live only for my daughter' she wrote in a letter to her family. The harassment and violence soon became a way of life. Their daughter Anuradha's school fees would not be paid and often the school authorities threatened to strike her name off their rolls. As a result, Prema had to beg for money from her parents or take up petty jobs on the sly to earn a few rupees. Whilst she was out working, her daughter was beaten till her hands were blue.

Prasad seemed to enjoy the power he exercised over her and her total helplessness and inability to retaliate spurred him on. He did everything to keep her subservient and isolated. She was also not

permitted to take up a job. On one occasion, Prema had gone to her aunt's home to do some tailoring for a wage, Her mother-in-law lied to Prasad that she had gone without informing her. This led to a fight and Prema was severely thrashed and further restrictions were imposed on her. Prasad accused her of going out without taking permission and returning at odd times. She is "irresponsible and behaves as she pleases". Adding insult to injury, Prema was often accused of extra marital affairs. "Just because I do not take you out, you roam with other people", he would say.

Prema felt stripped of her dignity as a person. She was reduced to begging for some things from her in-laws, borrowing from the neighbours and pleading for help with her parents. It was as if she did not exist for anyone. Prema verbalised her feelings of helplessness in one of her letters to her parents. "If they tell me not to visit you, I will not come. If they ask me to break ties with you, I will do so because ultimately, every woman has to seek her husband's support. Tomorrow people should not say that I was deserted by my husband. Now I have some respect in society."

However, she could not bear the ill treatment of her daughter. She pleaded with her father to take Anuradha away. "I will stay and bear. If he refuses to pay school fees, please tell him that you will pay them but he should allow the girl to stay at your home. I feel ashamed to ask for money. But I have to shed my shame for my daughter's education'. After initially asking for Rs.75 she reduced it to Rs.35 saying, "The rest I will manage. Anuradha is used to not having anything, so do not worry."

Prema had no money except the pittance she earned and it was never enough for food, and they often remained hungry. One day, while she was working in an automobile unit, she fainted because of hunger and malnutrition. Unfortunately, three fingers of her right hand got crushed in the machine. The trauma of losing her fingers was further compounded by Prasad's indifference and unsympathetic attitude. Her pain and feelings of helplessness

were outweighed by her feelings of anger and hatred towards the family which had brought this on her. She was immediately sent away to her brother's house. It turned out to be a blessing in disguise. Her brother and his wife looked after her lovingly. Anuradha was treated with affection and kindness. But Prema would have to live the rest of her life without three fingers on her right hand. It was a permanent handicap, but worse still, an ugly reminder of her precarious position in her marital home.

After she had recuperated, the situations in both her homes returned to square one. Prasad once again began his harassment and her family responded with silence or worse, with a 'tolerate it.'

By the end of four years, Prasad intensified his harassment and demanded a divorce, saying that he wanted to remarry. Prema pleaded to her family for immediate action. "I am very scared. Please do something fast. One of my husband's friends had come home and advised me to be careful as Prasad had said he wished he could strangle me and get me out of the way'. "I give her so many opportunities to leave but 'saali' does not go," he had told his friend. Prema wrote about her suspicion that her husband was having an affair. "One of Prasad's friends had come to see him. On finding him away he asked for his wife. When I said I was his wife, he expressed surprise and said "No, you can't be". He then explained that he had travelled with Prasad from Nashik to Bombay and had been introduced to another woman as his wife."

Gradually, the situation deteriorated to the extent that all communication between them stopped and the violence increased. In a series of desperate letters, she pleaded to her family, "I cannot bear this torture any more. Today, he kicked me and beat me. I could not go anywhere for help as it was night. He does not provide even the basic needs to me, yet I have to bear his beating. My mother-in-law constantly instigates him and then he beats me up mercilessly. How long can I go on?" Prema ended the letter with "do something. If he does not want to keep me tell him to give

it in writing. Bring a lawyer. If this goes on, I may end up taking my life. Till today, I have lived only for my daughter. Now she is grown up." Please do something fast. Take some time off for me." Prema's pitiful pleadings did not yield any concrete response. Four days later, Prema wrote again, "It is becoming very difficult to stay here. I feel scared to stay. Please help me."

A teacher in Anuradha's school got to know of Prema's problems referred her to a social organisation which sent her to the social service branch of the Bombay police. Prema had read an article in a women's magazine about laws relating to women and places where she could go for help. However, neither the social organisation nor the police were able to stop the harassment. Finally, Prema was advised to send a letter to her husband's office informing him about his behaviour, to make a list of her Streedhan gifts and then to leave her husband after registering an NC with the police. Prema, too, had come to a point where she believed this was the only alternative. A date was fixed for the separation.

When Prasad got to know of Prema's intentions, it came as a blow to his male ego. He could not accept the fact that she actually had the nerve to leave him, to fight back and take some action. He also realised that if she registered a criminal case against him, he could lose his job, social status and respect. These thoughts agitated Prasad as the date of separation approached.

Three days before the appointed date, Prema, along with her daughter, had gone to sleep when she felt water dripping on her. She got up to find that Prasad had washed the television cover and hung it on the clothesline just above her bed. Angrily, she told him to hang it somewhere else. Prasad got annoyed and an argument ensued. He flew into an uncontrollable rage and threw a bucket of water on her bed and started beating her with the washing stick. Prema threatened to go to the police but he was undeterred. This was the last straw. Prema grabbed her terrified

daughter and ran straight to her brother's house. Her brother escorted her to the police station where a case under Section 498 A was registered. She was sent to a municipal hospital where she received first aid. The medical certificate recorded all her injuries.

Prasad was arrested the same night. As he could not pay the bail amount, he stayed in the lock-up for two days. In the meantime, Prema sent her daughter to pick up some of their personal belongings and went to stay with her brother. Later, Prema went with her brother, two social workers and two policemen and recovered her Streedhan. Her next step was to apply for a divorce, hoping she would, at least, get maintenance for her daughter. At the court, she was referred to the marriage counsellor who held some sessions with her and some with her husband. The counsellor also spoke to both of them together. These sessions seemed to have a beneficial effect on them. They were able to communicate without spitting fire and abuses. Besides, the implications of a criminal case forced Prasad to compromise and listen to his wife's point of view. After a few months they were able to spend time together. Her advocate also felt there was a change in Prasad's attitude. Prema was counselled about the consequences of two possible decisions, i.e. divorce and reconciliation. Finally, she decided to withdraw her divorce case and return home. Prasad was referred for psychiatric treatment as he was suffering from anxiety.

Prema reconciled with her husband and claims to be happy. She feels a sense of achievement that she has 'saved' her marriage and is respected by her husband and mother-in-law. She gives tuitions to small children and takes evening classes at a local school so that she can later do college or law through a correspondence course. Prasad seems to have changed for the better. He has stopped all violent actions, nor does he abuse or taunt Prema. He returns home directly from work and has not gone on any of his suspicious trips.

Vanita

Vanita was from a lower middle class family, living in a chawl with her mother, brother and younger sister. She was an average woman with some education and a pleasant nature. As luck would have it, her family was unable to find a husband for her. So they had to constantly listen to the refrain, "33 years old and still not married! There must be something wrong with her."

When Vanita's cousin brought a proposal from a widower with a young son, Vanita's family was naturally keen on it. Hemant was 35 years old, came from a well-to-do middle-class background and owned a jewellery shop. The proposal seemed ideal. In their state of happiness and relief, Vanita's family did not wonder at Hemant's haste in fixing an early marriage nor did they look into his background. Hemant's explanation that his mother had to return to the village and he could not look after his son was enough for them.

Immediately after the marriage, Hemant took Vanita to his village. Vanita took to his three-year-old son Ashish immediately and looked after him like her own child. However, much to her dismay, she discovered that Hemant was temperamental, bitter and an alcoholic. Every night he would come home drunk, fly into a rage over minor matters and batter her. He would find fault with her over small things and abuse and insult her. The first major blow came when Hemant told Vanita of his decision not to have another child. Though Vanita was upset that she was being denied the joy of having her own child, she however, gave in to his wishes.

Within a month, Vanita had already come to the conclusion that her marriage was a mistake. She wrote to her brother, "I do not want to bother you and be a source of concern. But I have to say that my marriage is not a happy one. He beats and abuses me. He also accuses me of having affairs and tells me to get out of the house." This desperate letter was not posted. Nor were six

others as Vanita did not want any social stigma to spoil her sister's chances of marriage. So she suffered silently narrating incident after incident in her unposted letters.

The day her brother came to visit her for 'bhau beej', Hemant beat her so badly that she had to be hospitalised for two days. Vanita wrote, "I did not tell the real facts to the doctor because I did not want to implicate my husband. I did tell my brother the truth, but he too did not want to report the matter to the police."

In one of her letters, Vanita wrote: "Marriage has brought me no happiness. In spite of all the harassment, I have been tolerating everything. I am not blaming you or anyone. I am blaming my destiny." Then she went on to describe another incident. One night, after dinner, he kicked her in anger, threw water on the food and the floor and walked off after showering her with abuses and insults. "Get out and go to your home, or else go to Deepak's" (her brother's friend who like a family member and lived nearby). This insinuation that she was having an affair with Deepak made Vanita furious and she longed to shout back at him. However, she dare not express her feelings for fear of being beaten. So in a desperate act of defiance, she quietly left and went to Deepak's house even though it was almost midnight. She hoped she would at least hear some kind words and get a few minutes of peace. It turned out to be a costly mistake. The next morning, when she returned with Deepak's father, Hemant asked her "How much did they pay you?"

This incident took place just a month after their marriage. There was no trust, no love and no warmth in her marriage — only anger, hate, abuses and violence. Unfortunately, her situation only worsened as the days went by. Vanita consoled herself saying, "I must not lose courage."

Nothing Vanita did was ever good for Hemant. He had the knack of turning anything and everything into a disaster. It seemed that

he thrived on bringing unhappiness to his wife. On Gokulashtami day, she had worked hard the whole day cooking, cleaning and then dressed up her little son as "Krishna" so he could go out to break the butter milk 'handi'. Both mother and son were excited and were waiting for Hemant's arrival. When he returned, he shouted at the child, "This dress is not nice, throw it away. Are you going to break the handi for your mother?" By giving a double meaning to the word, he was indirectly referring to the handi which is broken at a funeral. Vanita was horrified at his words. He could either have wanted to remind Ashish who his real mother was, implying that Vanita was a 'nobody', or that Vanita was 'dead'. Either way it only deepened her fears that she could actually die perhaps in the same way that his first wife had died.

In a moment of frankness, Vanita revealed, "No decent woman will speak about sex with her husband but his acts are very unnatural and disgusting. It only proves his sick mind. This would be constantly reflected in his conversation." Once Hemant had taunted her, "Go and bring your sister" (implying that he would have sexual relations with her). Vanita had angrily shouted back, "Why don't you go and bring yours". This defiance had enraged him so much that he beat her on the head till she bled. The neighbours heard her screams and went in to find out what was wrong. Hemant told them that "she is a whore and has had pre-marital affairs". He then yelled at Vanita, "I am a respectable man, get out, but if you are going in the morning, tell me beforehand so that I can make arrangements for my son." Vanita was indignant that he had shamed her in front of the neighbours. She was made out to be a 'whore, a loose women and a maid-servant'.

Often Hemant would make sure that his family would also join in insulting her. Vanita related an instance when Hemant yelled at her in front of his brother, who then chipped in and shouted at her saying she was a bad woman and that Hemant should not eat anything cooked by her. He also said she was from the slums

and had slept with "hazaar" men. Vanita silently heard all these abuses. Her husband seemed to enjoy her plight. Hemant then added insult to injury by saying, "You are not my real wife, only my first wife was my true wife. I will go to the lawyer and pay him Rs.50,000 to destroy you and your brother because he has arranged this marriage," he said. He accused her brother of dumping her on him because he was finding it difficult to "marry her off".

Yet another form of ill-treatment was via her step-son who she doted on and was her only source of joy. "You are not his real mother" her mother-in-law was quick to remind Vanita. She would point to the photograph of the first wife and tell Ashish "That is your real mother". Behind her words and tone was the taunt - "You don't have a son, you are barren, you are worthless, your affection is not a mother's love. Hemant's first wife's memory is still fresh and alive, she was better than you, she was his real wife'. Vanita was nothing, not a wife, not a mother just some outsider.

Vanita had now reached the end of her tether. The suppressed anger and hate were draining her. She had kept quiet all this while, desperately hoping that the situation would improve. Two things had held her back - her love for Ashish and the fear of being a burden on her brother. But the violence was becoming unbearable. She was terrified after he had, in a drunken state, threatened her once with a broken bottle. "I have tolerated all this and imprisoned myself physically and mentally within these four walls. All my dreams of a happy married life have been destroyed." She wrote to her brother. She steeled herself and went to the police.

The police officer at the chowky listened to her, told her not to worry and sent her home. She went away thinking that the police would do something and end her harassment. But on the contrary, exactly the opposite happened. Her situation only worsened. Her husband returned home only to thrash and insult her further for having gone to the police.

Vanita pulled through four more years of cruelty, abuse and violence. Threats to her life kept increasing. She went through phases of doubt and despair. Finally, she went to the police station and got her husband arrested for attempted murder.

Hemant could not accept the fact that his wife had got him arrested. Outraged that she could wield this power over him, he decided to make her pay for it. He had himself released after bribing a police officer with a gold chain and a ring. Back home, he told Vanita, "Your brother or the police cannot harm me in anyway because of my contacts with the police. My police friends come often to my jewellery shop." All Vanita's hopes of getting justice crumbled. The protectors of law were not interested in protecting her.

In her last letter, she wrote, "A few days after this, I was not well and had overslept. He woke me up rudely with harsh kicks. I angrily shouted I was leaving his house because I could not bear his torture. He fell silent and said he would leave me at my brother's place as I was not well. Instead, he took me to the police station and asked the officer to register a case against me. As he found no reason to take action, the officer told him to go. But on the way out we met the 'friendly' officer, who took us in and ordered the first officer to register a non-cognisable offence against me."

"They forced me to sign a statement. I was alone and scared. They did not even read out the complaint to me. They then forcibly extracted my brother's phone number from me." Vanita's brother was called to the police station and given a list of complaints. Vanita forces her husband to take her out at midnight, constantly fights with him and might intentionally harm herself in order to falsely implicate him, etc. "My brother was advised to take me back home as it would be better. Better for whom?"

A few months later, Hemant came home totally drunk. He kicked and beat Vanita saying, "You do not deserve to stay here. Go to your brother's place." The commotion woke up the

neighbours who tried to intervene. Hemant boasted that the police would do nothing to him as he knew them very well. He continued to beat Vanita till she got into the taxi and went to her brother's place.

Vanita decided to appeal for justice to a higher authority. "I wrote a letter to the Inspector explaining my history and the behaviour of the policeman who had handled my case. I also mentioned that the jewellery given to me at the time of my marriage were in my husband's possession. I have not had a moment of happiness after marriage financially, mentally or socially." Vanita's plea was desperate and an earnest request for action. The next day, under the instructions of a higher officer, a case under Section 498 A, was registered against Hemant. Her gold was also returned. It had taken four years for some concerted action to be taken. Moreover, it was only because of the sympathetic attention given by a higher authority that the case came to be registered. Vanita now lives with her natal family recuperating and healing the scars of her violent married life.

Jyoti

Like all women, Jyoti too looked forward to a happy married life. All the right factors existed for her dream to come true. Her husband Subodh had a permanent job and came from a respectable family. She too was working and hoped to do well in her job at the civic works department. Her parents had given her a generous dowry at the time of marriage, met all the demands of her in-laws and the marriage had gone off without a hitch. She thought she had nothing to worry about.

Jyoti was in for a rude shock as her in-laws were anything but kind to her. One of the first serious allegations against Jyoti was made just four months after marriage. Her mother-in-law accused her of being barren. Jyoti was appalled as she could not understand how something as personal as this could be a cause for others to

get angry about and taunt her. Moreover, it was not her fault alone that she was not pregnant. However, when Jyoti did conceive ten months later, her troubles did not end. Instead of being cared for Jyoti got kicks and abuses and was made to do the usual housework. Jyoti did not know that this was only the first indication of the problems which were to follow. She also attributed this continuous taunting to the common understanding of a difficult pregnancy with the conceiving of a girl.

Jyoti eagerly looked forward to Ganesh utsav when she could make her first visit to her natal home. Knowing that they would not be refused during such an auspicious occasion, Jyoti's in-laws demanded gifts from her parents, including a silver Ganpati for her husband. Jyoti's retired father, though upset with the demands, gave in to them, hoping that his daughter would live in peace. Many such demands were made and fulfilled. Their demands seemed like a bottomless well with no end to them. Constant abuses, fighting, beatings and instigations continued and forced Jyoti to ask her husband to set up a separate residence. She felt that perhaps in her own house, she would be able to influence her husband and live in peace. But this intimidated her mother-in-law further and only widened the rift in the marital relationship. She accused Jyoti of being a "demanding, and overbearing person" who could not adjust in her marital home. She was always found wanting as a "good daughter-in-law and a good wife".

Hostility and anger were a daily feature in her life. Often they led to violent outbursts. On two occasions, Jyoti had to seek police help. These "daring" acts caused more problems for her. Her husband would be threatened and beaten up by the police who wanted to 'cure' him of his violent behaviour. But this had the opposite effect. Subodh considered her action as an attempt to shame him and felt she was going beyond her limits. So he thrashed her even more to put her in her place.

Soon Subhod began making more allegations against her. He accused her of sending home money, having affairs in the office, of roaming about after work, not doing housework, and not looking after the child. When Jyoti could not bear it any more, she turned to her family for support. Her father, along with some of his relatives, came to reason with Subodh and his family. But it was in vain.

Frustration reached a peak and the situation became volatile. One Sunday morning, when Subodh was performing puja and Jyoti was cooking, he asked what she was cooking. Before she could reply, he suddenly flew into a rage shouting, "Unless you are dead, I will not be able to do what I want". He began to assault her and threatened to throw boiling water on her. He picked up the kitchen knife and held it to her throat. Jyoti began to bleed. Her desperate cries attracted the neighbours but they did not intervene. Jyoti ran out of the house and went to the first place she could think of her office colleague's house. Even though she was not very friendly with her, Jyoti could not think of any other place close by. Her colleague calmed her down and gave her a change of clothes as her saree was stained with blood. She then took Jyoti to her parents' house.

Since Jyoti was in a state of shock they felt she was not well enough to go to the police station the same day. The next morning, the police immediately sent Her for medical treatment and recorded her statement. A case under Section 498A was registered against Subodh and he was arrested.

Jyoti decided not to return to her marital home for, she felt, she would surely be killed. Her job gave her an income as well as self-confidence. Gradually she gained a feeling of self-worth and independence which helped her to overcome all the negative feelings and messages which were forced on her by her husband and in-laws. However, this confidence, security and happiness had one drawback, Jyoti felt sad at having left her child behind. Through the initiative of some relatives, she finally gained access to him. She began travelling long hours to visit him and often returned late

at night after having spent barely a few hours with him. Though she had to face many insults, she continued to go, so her son would not be deprived of her memory and affection. These visits not only helped her nurture her relationship with her son but also maintain contact with her in-laws.

After nearly two years, this paid off and the stage seemed set for reconciliation. Her parents and relatives were in the process of making several such attempts. Her case was in the court by now. The court counsellor, too, encouraged her to patch up with her husband. A compromise was reached and Jyoti and her father agreed to withdraw the charges against Subodh. However, legal procedures did not allow Jyoti to withdraw the case filed under Section 498A. The only way out was to admit in court that she had made a mistake and that the accused was actually innocent. To Jyoti and her family it was a small penalty to pay for her future. Much to the annoyance of the police, Jyoti closed the case and that frightful chapter of her life.

Tentative Conclusions

These three case studies are similar to the hundreds of women who seek help from the Special Cell or women's organisations. They bring out some tentative findings on the women, their background, the nature and extent of harassment, their reactions and struggles before registering a police complaint. The three women come from more or less similar socio-economic background and religion but vary in education, employment and age at marriage. They are from lower middle class families living in chawls. Like most conservative families, they had given them minimal education and then began the process of arranging their marriage. Their ages varied from 18 to 25 years with only one of them over 30 years. The families had selected bridegrooms who were well off and known in their communities. All three of them had their own business. The families except in one case had paid the negotiated amount of dowry. It would appear that they had done their duty to them.

Verbal violence by the husbands in all three cases had begun within the first three months of marriage. Physical violence followed immediately in the form of beating, deprivation of basic needs and threats to their lives. In two cases, demands for more money were made and when not met, abuse and violence were used to force their families to give in. It has often been said that sometimes there is some violence in the family but it is 'nothing serious' and part of domestic life. This violence did not end with an occasional slap or a taunt but was regular, pre-meditated and injurious.

Physical violence in these cases ranged from slapping and kicking to assaults with sickle, broken bottle, knives and beating with brooms, sticks and a grinding stone. Usually there was a mix of physical and mental cruelty which became the medium of venting anger, expressing authority, expecting subjugation. Both cause humiliation, frustration and anger which finally makes the woman give up in despair.

Prema put down starvation as the reason for losing her three fingers in an accident. The incident which drove Prema to ultimately register a 498 A case was when her husband purposely hung dripping clothes over her while she was sleeping. Vanita's letter reveals an incident when water was thrown on her food by her irate husband. In Jyoti's case, when the time came for her delivery, she was not allowed to go to her natal home. Her in-laws preferred to extract money from her parents to conduct the delivery. Prema was tormented because she had given birth to a daughter. But Jyoti was harassed despite giving birth to a son. This shows that the birth of a daughter merely becomes one more weapon in the hands of men to harass their wives. In Vanita's case, she was not allowed to have a child of her own. Vanita's statement that "they treat me like a maidservant" reveals the extent to which her husband and in-laws used her labour and treated her with indignity.

Mental cruelty includes regular insulting, taunting, questioning, restraining from interaction with own family, neighbours or

others, all these often accompanied by physical abuse. From the three cases it is clear that violence traumatised the women and robbed them of their peace of mind. The women stated that they feared being beaten or killed. Prema had a definite fear of being killed in her sleep. Vanita's suspicion that her husband had caused his first wife's death made her fear for her own life. The constant accusation of having "affairs" and taunts about their family background also caused much agony to them.' The most frightening situation for them was when they were told to get out of the home, when they had no other place to go to. There was a constant fear and feeling of isolation.

The initial reaction of these women to violence was of surprise that this could actually be happening to them. In both cases of dowry demands, the women appealed to their father and brother to fulfill them so that they could escape the violence. They realised that they were being used as instruments for financial gains. The women seemed to have recognised the unlimited power which their husbands had over them. In all the three cases the husbands were the primary actors who were aided by their family members like mother or brother. The women knew that they were dependent on their husbands and that their natal families were not interested or could not bail them out of their violent situations.

All the three women first tried to wish the violence away, hoping that it was a passing phase and would disappear. This wishful thinking was then replaced with resignation to the situation. Ingrained gender socialisation on the necessity of marriage and marital status in society combined with their own dependency and lack of support from their natal families made them use all sorts of rationalisations to endure the violence. "Only for my daughter", 'not to be a burden on my brother,' 'my fate', etc. were some of the reasons. Clearly, none of them wanted to break their marriage. Marriage gave them a status in society, whilst "single, divorced or widowed" statuses carried social stigmas. They only wanted

the violence to stop. Endurance, tolerance and control of emotions were the main coping mechanisms used by them. Silent acceptance of cruelty seemed the only way out on some occasions. This may be in the hope that the violence would decrease due to lack of provocation.

The women tried to garner support and sympathy from their natal families, friends and neighbours. While their families offered sporadic support, the local community in all the three cases did not stand up for them. It seems that with the increasing privatisation of emotions and family affairs, neighbours and even relatives do not want to take steps to help victims of wife abuse. In Prema's case, when all efforts to solicit external help failed, Prema directed her pleas towards god, fasting and praying that her problems would end. When all hope dimmed, she went into severe depression and thought of committing suicide.

It is important to note that the women first tried to solve the problem with their natal families' involvement and only after there was no option they went to the police. All three women sought the help of the police in the hope that the fear of authority would curb their violent husbands, but this step resulted in revenge, leading to more violence. Initially there was no intention of registering as serious a complaint as Section 498A. However, efforts to solicit police assistance were not always fruitful and the women were left doubly harassed—one by violent husbands and the other by a system which preferred to keep the status quo. All the three got varied responses from the police, thus proving that police attitude and actions are crucial for women's sense of security.

SECTION III

EVIDENCE FROM THE DATA

This section presents statistical data which was gathered from 331 summaries of cases from the year 1986 - 88 and 1066 summaries from 1990 - 1995 drawn from 69 police stations in the city of Mumbai. This information is based on two interview schedules with some overlapping questions. This is perhaps the first attempt at gathering this sort of 'hard' data on victims of violence and users of the law - IPC Section 498A. Statistical data has an advantage in that it gives a cumulative picture of the issues involved and therefore has a good potential for making generalisations.

The Victims and the Abusers

What emerges from the data is a profile of the woman who had been battered and chosen to register an official complaint. The woman is usually young. The majority of them, 61.4% were in the age group of 21 years to 30 years and about 20% of them were less than 20 years of age.

Table 1 **Age & Profile of Complainants**

| Age of Complainant | 1986 - 1988 | | 1990 - 1995 | |
|---------------------------|--------------------|-------------------|--------------------|-------------------|
| | Cases | Percentage | Cases | Percentage |
| upto 20 years | 63 | 19 | 222 | 20.8 |
| 21-30 years | 218 | 65.9 | 654 | 61.4 |
| 31-40 years | 36 | 10.9 | 144 | 13.5 |
| 41 years and above | 2 | 0.6 | 20 | 1.9 |
| Not Known | 12 | 3.6 | 6 | 2.4 |
| TOTAL | 331 | 100 | 1066 | 100 |

The education level of most of the women ranged from the primary level to SSC. Only 17.4% of them were engaged in economically remunerative jobs outside the home. This means they were totally dependent on their husband's income and his inclination to give her housekeeping money. Both factors, i.e. little education and no paid work, reveals that these women were in a vulnerable position and easy targets for abuse.

Table 2 **Employment Status of Complainants**

| Employment Status | 1986 - 1988 | | 1990 - 1995 | |
|--------------------------|--------------------|-------------------|--------------------|-------------------|
| | Cases | Percentage | Cases | Percentage |
| Employed | 8 | 2.4 | 186 | 17.4 |
| Unemployed | 297 | 89.7 | 716 | 69 |
| Not Known | 26 | 7.9 | 144 | 13.6 |
| TOTAL | 331 | 100 | 1066 | 100 |

Using the usual indicators of nature of employment and residence, the schedules categorised the woman complainant into high, medium and low socio-economic groups.

Table 3 Socio- Economic Status of Complainants

| Socio-Economic Status | 1986 - 1988 | | 1990 - 1995 | |
|------------------------------|--------------------|-------------------|--------------------|-------------------|
| | Cases | Percentage | Cases | Percentage |
| High | 9 | 2.7 | 116 | 10.9 |
| Medium | 146 | 44.1 | 814 | 76.4 |
| Low | 161 | 48.6 | 120 | 11.3 |
| Not Known | 15 | 4.5 | 16 | 1.5 |
| TOTAL | 331 | 100 | 1066 | 100 |

The majority of them belonged to the lower and middle groupings. 10% of them belonged to the high level group. These figures seem to show that violence exists in families of all classes and social backgrounds. The popular notion is that such domestic violence is prevalent only in the lower classes. The reason for the low percentage of high socio-economic group is possibly because they have more resources to seek help than go to the police.

Who is the abuser? There is no typical profile of an abuser. Studies show that he could belong to any class, could be highly or not educated, etc. This data shows that in most of the cases the husband alone or with other members of his family were named as the abusers. The FIRs usually had at least two names of abusers but the husband was common in most of them. It will not be incorrect then to assume that the husbands were the prime culprits in most cases of domestic violence.

Most of the abusers or 52% were between 21 years to 30 years. Only 5% were over 40 years. This is quite common as most men in the middle and lower income groups marry around the legally sanctioned age of 21 years and after they have finished their education and began work.

Table 4 Age of Complainant's Husband

| Age of victim's husband | 1986 - 1988 | | 1990 - 1995 | |
|------------------------------------|--------------------|-------------------|--------------------|-------------------|
| | Cases | Percentage | Cases | Percentage |
| Upto 20 years | 4 | 1.2 | 20 | 1.8 |
| 21 - 30 years | 187 | 56.5 | 553 | 51.9 |
| 31 - 40 years | 90 | 27.2 | 227 | 21.3 |
| 40 + years | 17 | 5.1 | 62 | 5.9 |
| Not Known | 33 | 10 | 204 | 19.1 |
| TOTAL | 331 | 100 | 1066 | 100 |

A common notion about domestic violence is that husbands who are alcoholics are usually the abusers. The data below clearly shows that in the majority of the cases the husbands were not alcoholics. This means that these abusers did not have even the 'cover' of being drunk. They were consciously and in a premeditated manner persistently being violent to their wives.

Table 5 Presence of Alcoholism

| | 1986 - 1988 | | 1990 - 1995 | |
|-----------------|--------------------|-------------------|--------------------|-------------------|
| | Cases | Percentage | Cases | Percentage |
| Alcohol Present | 39 | 11.8 | 339 | 31.9 |
| Alcohol Absent | 185 | 55.9 | 542 | 50.8 |
| Not Known | 107 | 32.3 | 185 | 17.3 |
| TOTAL | 331 | 100 | 1066 | 100 |

Harassment As a Process

Why and how does harassment and violence begin? In fact, **there** seems to be no one reason. It could be money demands **which go** under the category of 'dowry' or it could be suspicion **of adultery**, sterility or the sex of the child. Most of the time there are **several** allegations made which may or may not be true. The data reveals that in the majority of cases the demands were for money.

The data shows that 63% to 75% of the women had a history of harassment which stretched to 5 years. In trying to find out, if **the** harassment was mainly mental or physical, the researchers **could** not differentiate as there was too much of overlap. This is **not** surprising because verbal and physical abuse usually **accompany** each other. This is a rather long period to tolerate any form of violence, mental or physical. The significant point is that **most** women endure violence rather than take immediate action.

Table 6 **Duration of Marriage in Cases of Violence**

| Years of Marriage | 1986 - 1988 | | 1990 - 1995 | |
|--------------------------|--------------------|-------------------|--------------------|-------------------|
| | Cases | Percentage | Cases | Percentage |
| Upto 2 years | 136 | 41 | 422 | 39.5 |
| 2-5 years | 83 | 25 | 220 | 20.6 |
| 5-10 years | 52 | 15.7 | 156 | 14.6 |
| 10-20 years | 17 | 5.1 | 83 | 7.8 |
| 20 + years | 5 | 1.5 | 6 | 0.6 |
| Not Known | 38 | 11.4 | 179 | 16.7 |
| TOTAL | 331 | 99.7 | 1066 | 99.8 |

The nature of violence ranged from physical violence like battery, burning, strangulation to electric shocks. Mental violence took the form of verbal abuse, threat to life and marriage and restrictions. Were these incidents of violence sporadic or regular? Eighty percent

of the women said that violence was an almost daily feature of their life. Whilst 11% said that it was sporadic. The remaining women had either reported few incidents or had not made data available.

Table 7 Chronicity of Harassment

| Chronicity | 1986 - 1988 | | 1990 - 1995 | |
|-------------------|--------------------|-------------------|--------------------|-------------------|
| | Cases | Percentage | Cases | Percentage |
| Few Events | 13 | 4 | 34 | 3.2 |
| Sporadic | 36 | 10.8 | 116 | 10.9 |
| Regular | 236 | 71.3 | 889 | 83.4 |
| Not Known | 46 | 13.9 | 27 | 2.5 |
| TOTAL | 331 | 100 | 1066 | 100 |

After enduring violence of different types for a lengthy period, some one instance usually acted like the last straw which broke all patience and limits. Researchers found from the two sets of data that the precipitating factors were usually overlapping but the majority [80%] said that battery and verbal abuse was the factor which motivated them to register a police complaint. From amongst the bum victims, 13% suffered from first degree burns and 71% had third degree burns. Since the latter type of burn is almost fatal, most of these women may have died. Threat to life and marriage was the most prominent in the mental violence actions. Unnatural sex was also reported in a few cases. The use of poisons and toxic substances like Tik 20 also occurred in a few cases. The site of this violence was for 63% of women [1990-95 data] the extended family home and for 35% it was the nuclear home.

When there is violence in the family, who is the person most likely to lodge a police complaint? In the majority of the cases or 78%, the complainant has been the victimised woman herself. And in

over 13% of the cases, it has been her immediate family i.e. mother or father. Sometimes, other relatives like her brother, sister or even the neighbours register the complaint. It is only in 3.3 % of the cases that the police or the hospital have been complainants.

Table 8 Complainant's Relationship to Victim of Violence

| Relations | 1986 - 1988 | | 1990 - 1995 | |
|------------------|--------------------|-------------------|--------------------|-------------------|
| | Cases | Percentage | Cases | Percentage |
| Self | 231 | 69.8 | 722 | 67.7 |
| Mother | 12 | 3.6 | 69 | 6.5 |
| Father | 35 | 10.6 | 109 | 10.2 |
| Brother | 27 | 8.2 | 55 | 5.2 |
| Sister | 4 | 1.2 | 16 | 1.5 |
| In-laws/ Husband | 3 | 0.3 | 6 | 6 |
| Neighbours | 11 | 0.9 | 13 | 1.2 |
| Police/ Hospital | 1 | 3.3 | 69 | 6.5 |
| Not Known | 6 | 1.8 | 7 | 0.7 |
| TOTAL | 331 | 100 | 1066 | 100 |

When women delayed in making a formal complaint, either because of their natal families or their own fears, it has sometimes cost them their lives. The mortality rate amongst the women was quite high. Almost 40 % of the women who had registered cases were dead after suicide, accident or murder. This is a significant feature of the data and raises questions regarding the law itself as well as the allegations of misuse. The Section 498A was formulated to deter violent husbands from battering , murdering or driving their wives to death. Has it acted as a deterrent? It appears that it is mainly being used to bring the violent husband before the court only after the wife has died.

Table 9 Cases by Life Status

| Life Status | 1986-88 | | 1990-95 | |
|---|----------------|-------------------|----------------|-------------------|
| | Cases | Percentage | Cases | Percentage |
| Mode of Death by Suicide, Murder or Accident | 119 | 36.0 | 440 | 41.2 |
| Alive | 212 | 64.0 | 607 | 57.0 |
| Not Known | -- | --- | 19 | 1.8 |
| Total | 331 | 100 | 1066 | 100 |

Secondly, this data shows that women by and large are tolerating violence almost until they are driven to death. If a large number of women who are suffering violence, are unable to get out of their violent situations and make police complaints, can stray cases of 'misuse' be taken up so seriously as to ask for amendments? Another telling piece of information is the combination of Section 498A with other sections of law. In most cases the police have used Sections 114 [Abettor] and Section 306 [Abetment to suicide].

Table 10 Distribution of Cases by Sections in IPC/CRPC in addition to Section 498A

| Section in IPC/ CRPC | 1986 - 1988 Cases | 1990 - 1995 Cases |
|----------------------------------|--------------------------|--------------------------|
| 498 A | 15 | -- |
| 304 B (Dowry Death) | 17 | 92 |
| 302 (Murder) | 13 | 29 |
| 306 (Abetment to Suicide) | 79 | 266 |

| | | |
|-----------------------------|------------|-------------|
| 114 (Abettor) | 104 | 266 |
| 506 (Criminal Intimidation) | 32 | 117 |
| 406 (Breach of Trust) | 25 | 111 |
| 109 / 110 | 5 | 2 |
| 323 / 325 (Grievous Hurt) | 25 | 90 |
| Dowry Prohibition Act | 65 | 8 |
| 341 / 342 | 38 | 15 |
| 384 | 9 | -- |
| 485 / 386 | 2 | -- |
| 491 / 494 | 3 | 6 |
| TOTAL | 430 | 1004 |

Tentative Conclusions

This data from 69 police stations in Mumbai and representing 1,397 women over a period of 8 years gives a solid base of authentic information as it has been drawn from special reports sent to the social service branch by the police stations. This data which focuses on various details like the women's history of violence, regularity and nature of harassment, the complainant and what prompted the complaint. It also shows the socio-economic and educational status of the women and that of the accused.

From the various pieces of information, it is possible to put together a picture of the battered woman. She is a young woman of around 21 to 30 years, recently married and living in a lower or middle class family. Her education level is not very high and she is usually a housewife. Her husband is usually the abuser with or without the help of his family. He begins on the course of violence by making demands for more

money from his wife's family and when it is not forthcoming he resorts to abuses and taunts at first and then physical violence. Reasons multiply and violence keeps increasing until it becomes a daily feature of the marriage. Alcoholism has little to do with battery.

These simple statements which seem so common place shatter some popular myths. It is usually believed that wife battering exists largely in poor families as a result of alcoholism. Violence cuts across class and possibly caste. The reason for fewer higher socio-economic group women complaining to the police could be that they have more resources and contacts to turn to for help. The second significant feature is that it is the husband and not the mother-in-law who is the perpetuator of violence. His family members may agree and/or provoke him but he is the one who performs the violent acts. Thirdly, he takes advantage of his wife's total dependency on him for money and basic amenities in order to harass her and get her family to part with money. She becomes the pawn in the game played by the men of both her families.

Without any resources of her own and little support from her natal family, the battered woman endures violence for a long period of time of 5 years. She endures both mental and physical violence. It is only after the violence becomes unbearable that she decides to register a formal complaint. Most cases were registered along with various offences under other law sections. These included threat to life and marriage (over 50%), threat of being burnt (30%), causing grievous hurt (10%) and abetment to suicide (25%).

Ironically, almost 40 % of the women were dead at the time of registration of the cases and the complaints were filed either by their parents or other family members and in a few cases by the police or the hospital. In a majority of cases of dowry deaths, registered along with Section 498 A of the I.P.C., the complainant was a family member - 73 per cent against 14 per cent of cases where the woman herself blamed the husband. Dowry demand emerged as the strongest reason for harassment (over 60 per cent).

This data shatters the allegation that women 'rush' into using the Section 498A and subsequently harass their husbands or withdraw their cases. On the contrary, it shows that women have endured violence for long periods of time before actually registering a complaint under this section. This could be because of the social conditioning and the glorification of suffering and sacrifice of women to bear their fate in silence. This is reinforced by their vulnerable economic condition, gender socialisation and fear to live alone.

Ultimately, the data shows that women endure violence at the cost of their own lives. 40% of the cases are registered after the woman is dead. Her natal family then wakes up to 'helping' her by registering a case against the husband. This fact comes out through two sets of data. The relationship of complainant to victim and the other sections of law used by the police in booking the complaint. The most commonly used are Sections 114 [Abettor to suicide] and Section 306 [Abetment to suicide].

This 'hard' data has put forward some very hard hitting information.

CONCLUSION

The Invisible Crime

Violence, physical and sexual, has been a constant feature in women's lives around the world. But the silence around these acts of violence, the social stigma and personalised nature of crimes have not generated either enough debate, statistical data or studies. More recently, the United Nations has declared November 25th as the International Day on Violence against Women which has led to the unearthing and generation of some statistics. It has been estimated that gender violence is a greater cause of death and disability among women of 15 to 44 years than cancer, malaria, traffic accidents and war. The World Health Organization says that one out of five women in the world has been physically or sexually abused by a man at some time in her life. [Times of India, 25-11-98]

The generation of statistical data on violence has severe limitations in India. We not only have reluctant women who would rather not speak but an inadequate and often socially lethargic police force which, either does not register cases or does so under different legal sections. The statistical departments add to the problems by delaying the compilation and publication of figures. The National Crime Records Bureau is lagging behind by two years. Molestation and torture incidents top the list of crimes against women. The percentage distribution of various crimes against women during 1996 are:-

| | |
|------------------------|--------|
| Torture | 30.4 % |
| Molestation | 25.0 % |
| Kidnapping & Abduction | 12.9% |
| Rape | 12.8 % |
| Sexual Harassment | 4.9 % |
| Dowry Deaths | 4.8 % |
| Dowry Prohibition Act | 2.3 % |
| Others | 7.0 % |

[Source: Ministry of Home Affairs, quoted in Times of India, 25-11-98]

These figures are only the tip of the iceberg. For every one reported crime there are probably hundreds of unreported ones. Kumari's study [1989] shows that if the number of reported cases in the police stations are compared to the number of cases that come to women's organisations, the actual number of domestic crimes are much higher than what statistics suggest. Secondly, the categorisation of crime is often not adequate. Mental cruelty is registered as dowry demands, subtle sexual harassment is ignored, threats are registered only after they turn violent, rape is not called so if objects are used for penetration and sexual abuse does not figure in the list. Pornographical material does not come under violence as it has a different law. Suicides form a different category.

Domestic violence is a particularly difficult crime as it usually kept a secret by the women themselves and by both families. Reporting is done after the violence becomes severe or when the woman dies. The National Crimes Record Bureau have statistics for 1981 to 1991 which show that domestic quarrels and emotional estrangement lead to more suicides amongst married women than men. [Ibid] Unnatural deaths registered in police stations in Delhi numbered 883 for the year 1981 - 82. [Khan and Ray, 1987] Smaller surveys done by researchers and women's groups give a better

idea of the prevalence of domestic violence. In the city of Nagpur, 124 cases of crimes against women were lodged under Sections 302, 304, 498 A, 304 B, and 323 in only one year i.e. 1987 [Kashyap, 1988]. RAHI a Delhi based group found that 76 per cent of women were subject of some form of sexual abuse by people known to them. A recent study covering 300 households in Gujarat shows that well over 50 per cent of the women respondents had suffered domestic violence. [Times of India, 25-11-98]

The question before us is - why do women not speak about the violence done to them. It only helps feed into the myth that women believe that it is part of their lives that they do not mind being suffering *savitris*. The objective of having statistics is to give us an idea of the magnitude and types of the crime, so that we can understand it better and formulate ways to deal with it.

Between The Two

In spite of the best methods of statistical compilation, it will be difficult to gauge the extent of violence on women because it either involves their own social stigmatisation or their family honour. Most of us know how a woman is caught between two families. One which has raised her and given her some of the most precious memories of childhood. And the other is her matrimonial family in which she has to spend her adult life. Both can become a basis for happiness and support or can give her immense pain and unhappiness. However both families are also part of a society which devalues and subordinates women. A woman becomes a victim of patriarchal notions and practices in both families. Each family creates and perpetuates the notions of the 'superior male' and the 'inferior female' in its own way.

It is not that a young girl is not loved in her family but the allocation of food, clothes, education, and the encouragement of skill and confidence between siblings is biased in favour of her brother. Concerned older brothers, fathers and uncles are also the ones

who restrict mobility, suspend education and forcefully marry her off. "How can one seek justice within the family ? Who is going to help the woman asking for her inheritance? Not her brother, the heir apparent or her mother, a powerless member or her older married sister ? Can she afford to break off her ties with them? A woman would rather waive her rights to home or land than pick a fight with her family because she knows that, given her vulnerability and resourcelessness, she may need her fathers' or brothers' support at some point in life".

Similarly the matrimonial home which can be a base of support and love can be the most violent place with beating, cruelty and harassment driving the woman to suicide. The matrimonial family replays the ideology of 'husband superiority'. Her husband now controls her mobility, sexuality, labour and fertility. Control can be subtle or overt and can be accompanied with violence. But who can question him? How does the woman raise her voice against her husband, the patidev [lord], who would believe her and even if people did they would consider it a domestic issue. If she dared speak, she knows that the doors to that home will close forever. And then where could she go or turn to? She might have to leave her children behind. Society is quite intolerant of single women.

Is this really true? The 1991 All India Census shows that sex ratio is 927 females per 1000 males. The majority of the countries in the world have more females than males. It means that women who are usually more in numbers and are genetically stronger than men are being reduced or eliminated. In 1987, it was recorded that the infant mortality rate [0-4 years] for girl child was 36.8% and for boys was 33.6%. [Registrar General, GOI] Girls are neglected in food distribution within the family and suffer from malnutrition. Combine a generally weak health status with indifference to health requirements and girls are likely to become victims of diarrhea and other health ailments. Girls, especially in rural areas, are not sent to school but are trained in looking after their younger siblings.

the common saying goes "what does she need education for, she has to set up a home" has resulted in a literacy rate of girls [39.3%] which is roughly half of boys [64.1%]. Social taboos prevent families from teaching their daughters skills like pottery or weaving as women are barred from touching tools.

These startling statistics appear in different parts of the country and in different communities in a variety of ways. Neglect and indifference may not be overt and in a gross manner. It is common for women in middle class families to serve meals to men, thus giving them the choicest meat and other food before eating themselves. Girls are unintentionally veered into home science subjects or into women-oriented occupations like teaching or nursing. These generally do not yield a decent income. The majority of the families in the Special Cell study had educated their daughters. Their education ranged from the primary level to SSC. Only 17.4% of them were engaged in paid work. The case studies show that soon after some education, families were anxious to marry off their daughters. Other studies also show that most women in their sample were not highly educated nor did they work outside the home. [ibid] The women covered in most studies came from the middle and lower classes.

The overall ideology being that women are 'parayadnan' or belonging to their matrimonial homes. The other, 'real' home is where she has to live out her adult life. Once the natal family concludes the marriage, they literally turn their backs on women. What happens in the matrimonial home is the 'fate' of the woman. Not wanting to accept her back in their homes, actually gives the husband a sanction to misbehave. All three women had complained of harassment to their natal families. Prema had written letters. Vanita's brother did not want to complain to the police even after she was beaten so badly she had to be hospitalised. Gautam and Trivedi [1987] found that in 67% of the cases the girl's parents were aware of the violence. Nari Samta Manch, Pune [1990] said

that in 60% of the cases, parents did not offer support. Kumari [1989] and Kaushik [1988] report that parents forbade their daughters from leaving their husband's house. In contrast, tribal and Muslim women whose natal families do not abide by the concept of parayadhan and who have some usufructory and inheritance rights are not mistreated by them

Men, have the power to mistreat their wives with the tacit sanction of society. There are several well known examples of men exercising their power over their wives in violent ways. O J Simpson, the famous Black American sportsman, not only beat his wife for years but continued to harass her after a separation. Lorena Bobbitt confessed to castrating her husband as he had abused her physically and sexually for a number of years. Basu Bhattacharya, the filmmaker was accused of wife battery.

The majority of researchers [Prasad, 1989; Gautam and Trivedi, 1989; Kashyap, 1988] have found that the husband emerges as the chief tormentor. The common notion that the mother-in-law is the prime instigator or actor is not true. In the Special Cell study, the husbands were named in the police reports as the main abusers. These were not alcoholic men who beat their wives under intoxication. The data shows that in the majority of the cases they were not alcoholics. It can be said that men were conscious of what they were doing i.e. exercising power over a vulnerable person. Prema's husband, Prasad was clearly enjoying the power over her. Other researchers namely Parihar [1989], Sriram [1988], and Ranjan [1989] also state that an important cause of harassment was the male ego and the need to exercise authority. One reason which is most highlighted is the demand for money or more dowry. In one of the case studies, dowry seemed a prominent reason but in Hemant and Vanita's case it seemed to be sadistic pleasure. Jyoti found that Subhod could concoct any number of reasons.

Most studies indicate that harassment begins shortly after marriage. So most of the battered women [61.4%] are young i.e. between 21

to 30 years and 20% were below 20 years of age. This is also true in most other studies. Violence begins from the second or third year of marriage. [Prasad, 1989; Kumari, 1989; Ghadially and Kumar, 1989; Special Cell, 1998] The Special Cell data shows that in over 80% of the cases, women endured regular forms of violence and only 11 % said that it was sporadic. 63% to 75% of the women reported that they had a history of violence that stretched to 5 years. Violence went to absurd limits of starving women and continuous mental harassment. Dangerous weapons like bottles, sickles and knives were used. Verbal abuse was meant to strip women of their self worth and dignity. Not being able to interact with their own family members as in the case of Prema is a form of mental cruelty. The data shows that the majority of women had put up with violence from the time of their marriage to 5 years before filing a police complaint.

Like Jyoti, Vanita and Hema, many women continue to face violence for years because they had no option. They did not want to go back to their natal homes as they were unwilling to be a 'burden' on their brothers. Nor do they have the education or skills to live independently. Furthermore, society does not permit a single woman to live easily but targets her with taboos and social stigma. Women opt out when it becomes unbearable like a threat to their lives or marriage [over 50%], threat of being burnt [30%], grievously hurt [10%]. The ultimate point of tolerance is death. It is of significance to note that most of the complaints i.e. 40% of the women were dead at the time of registering the police complaint and it was filed by either her family members, police or hospital. These statistics belie the myth of women not wanting to 'adjust' to her new home, and misuse law to teach their husbands and in laws a 'lesson'. Women are caught in the quagmire of their dependence and societal disapproval, the more they try to conform and tolerate, the more they are sucked in.

The Law without Order

Caught between two families, the only option for a woman is to appeal to a third party which is either the local or caste panchayat or the court. Panchayats or jammats do have the potential for speedy justice as all the judges know the village situation and the opposing members can plead their own case. However, more often than not, the panch members are old or conservative or succumb to power politics and corruption. So the speedy justice is hardly ever in favour of women. Gangaben, a member of the Meghwad community in Mumbai was very sceptical of her panchayat which used to disbar women from being part of the panel but with great spirit fielded women candidates in the reserved seats for local government! [Personal interview]. She may not be allowed to represent her case or may find herself alone before a gallery of elderly men. She cites several cases in which the status of the men and their financial power are more influential in the resolution of women's marital problems.

The next agency, a woman can turn to for help is the police. Women generally hesitate to go to the police. This fear is enhanced by the probability of beatings or even rape at the police station. Human rights and women's organisations have cited various examples of police brutality and gang rape within police stations. [Gandhi N and N Shah, 1992, Rao A et al] The police are known to be generally indifferent to women's complaints. "Where is the blood?" they have often asked. For them, a few slaps or a beating is part of the relations between a husband and a wife, nothing which warrants their involvement. Vanita pleaded with the police officer who refused to register her complaint. The data shows that very few cases were registered by the police. The majority were registered by either the victim herself or her family members.

A study by Khan and Ray [1984] which compared data obtained from police source with information from interviews with women and their families revealed a divergence. Police sources showed

37% of the cases as unnatural deaths whereas social investigation showed that 50% were dowry related. Police recorded 12% as dowry deaths as against 16% from family information. The police, it appears, show a great amount of caution. Ghadially and Kumar [1998] and the Nari Samata Manch [1990] have pointed to the general apathy which results in delay in taking action, partiality, corruption and intimidatory actions of the police.

The mass of women have found that justice is truly blind, not in its dispensation but to their complaints and circumstances. Most women who go to court, the lower or higher ones, feel that they are being tried rather than the culprit. Rape victims are made to repeat the incidents in front of a gallery of leering lawyers and court officials. A woman seeking divorce is frowned upon and sent to a marriage counselor. A battered woman is advised patience. Judges choose to either go strictly by the rules or interpret law in favour of the accused. Flavia Agnes [1988] in her study of cases admitted under Section 498A in Delhi Courts, reported that although the number of suicides and dowry deaths had increased, there had been very few convictions.

| | 1984 | 1985 | 1986 |
|---------------------------|-------------|-------------|-------------|
| Cruelty [non dowry] cases | 59 | 106 | 114 |
| Dowry harassment | 68 | 146 | 172 |

More recently in 1998, the Session's Court in Mumbai released the following figures : there were 97 registered cases [1-1-98 to 12-11-98], only 9 were disposed off from which 7 of the accused were acquitted.

It is hardly surprising that given these personal circumstances, gender socialisation, the exorbitant cost of lawyers and paperwork, women have no 'sense' of their own rights and usually do not opt for using the legal process.

This is indeed unfortunate for two reasons. Firstly, women need a non family and more neutral body to step in to resolve family disputes. In fact, the State should be partisan to women in positively discriminating for them as they form a vulnerable section of society. In addition they should provide back up services like alternative shelters for battered women, special laws and legal services. Secondly, the State and society should recognise that it is because of the complicity of its implementation machinery with male offenders that violence against women has not been curbed. Judges, police and administrative officers should be sympathetic rather than indifferent to women and their issues.

Reclaiming Our Rights

Reclaiming women's rights will indeed be a long process for women. Like any oppressed group of people, they will have to teach themselves and take courage in their own hands. But women cannot be held responsible for not utilising the legal process.

It is only when women have at least a glimmer of hope for justice and some alternative support structures that they can take recourse to the legal process. Women's and other organisations will need to support them with alternatives like better laws and basic facilities. The State will have to gear its own agencies for implementation of the existing laws, re-formulating the outdated ones, training its personnel to be more gender sensitive.

Suggestions put forward by women's groups, lawyers and social work organisations have been in the following areas:

- 1) Strengthening existing laws dealing with violence on women like the rape laws, the ineffective dowry prohibition law, molestation and eve teasing. The Section 498A, the only law which recognises domestic violence has come under attack from a group wanting to protect men's rights. Instead of diluting the law to support a few men who might have been targets of misuse, it needs to be reinforced with other provisions. For

example, the special cell workers have found that not only married women but unmarried women too are beaten within their families. Secondly, women have no alternative accommodation, lack of child support or a sufficient income so the delay in investigations and lengthy procedures pressurises them into withdrawing their case. The nature of the offence is such that requires immediate action and investigation. Chargesheeting and trial should be completed in a year.

- 2) The law can include provisions for childrens' testimonies for court proceedings in camera. Provisions can be made by the State for shelter for women. Fines can be imposed on violent husbands which can be transferred to women & children.
- 3) The legal process has to be made more user friendly. Family Courts were set up for the purpose of speedy disposal of cases, less expenditure as lawyers were excluded, and lower court fees. However, the same malaise evident in other courts have crept into the Family Courts namely red tapism, delay in hearing of cases and disposal and expenditure. More judges and simpler procedures might help in making these courts effective.

Extra judicial groups like women's panchayats have been tried out by women's groups especially in rural areas. Five respected women of a village have been able to hear and opine on family quarrels and cases. Their judgments have been followed by both the women and men.
- 4) The police are the nodal agency to which women go when they wish to take matters up formally. Gender sensitization training might help make the police more conscious of the problems and difficulties women face. Their refusal to register cases has to be dealt with sternly by the police officers. Proving wife beating or mental harassment is extremely difficult. The Police have to find ways to using circumstantial evidence to support their case. Lastly, they consider withdrawal of cases a

'waste of their time' and blame women for hurriedly registering them. In fact, what escapes them is that women have used it for negotiating a return to their marital home. It is not always that the rate of convictions show success. It would be better for the police to add another column to their statistics which shows these withdrawals in a favourable light.

- 5) Domestic violence cases maybe included in the preventive measures of policing i.e. chapter cases (Sections 107-110 of the I.P.C). As the police have some discretionary powers, it could be a preliminary step to using Section 498 A. The Police can seek the help of the Special Cell and women's organizations for social investigations.

Common Myths on Violence Against Women

Rapists are strangers

Most women who are raped know their rapists as neighbours, relatives or friends.

Most rapes happen late at night.

Most rapes take place indoors and can happen at any time of the day.

Rapes are done by deranged or mentally unbalanced men.

Most rapes are pre meditated and done in a way which leaves little evidence.

Rape is invited by women who dress provocatively.

In a survey done by a civil rights group, it was found that most rape victims were poor rural women, specially tribal and dalit women. They are hardly in a position to dress provocatively.

Women who go out late at night are asking for rape.

Many women have late night shifts like nurses, telephone operators, secretaries, construction workers. They need to travel at night as part of their work. Is that asking for rape?

Children are rarely sexually abused.

Children are most vulnerable and are often abused by their relatives.

Children are abused by servants.

Children are generally abused by family members or relatives.

Children often fantasise about sexual assault.

Children are ignorant about sex so cannot fantasise.

Beating is part of a husband-wife quarrel

A quarrel need not have beating. Battered women usually are battered and assaulted leaving permanent injuries on them.

No man would beat without being provoked. She must have done something.

The reasons are sometimes irrelevant. Preparation of food or tea, dress, suspicion, denial of money, children crying etc. are some of the reasons often quoted in newspaper reports.

Women enjoy the beating or they would leave.

No woman enjoys living in the constant fear of beatings or bearing the pain of beatings. They do not leave because they are dependent on the men for their and their children's survival. They may also have no alternative housing or support from their natal families.

Alcohol causes battering.

Alcohol is a good excuse for men to beat up their women. Why is it that drunken men on the streets do not beat up other men? The majority of the men beat their wives when they are sober.

Middle class women do not get beaten.

Women from all classes get beaten but it is usually assumed that poor and working class women are the victims. Middle class women tend not to speak about it whilst the latter are quite frank about the violence.

Source : Flavia, 1984; Sunday, 1997

Recommended Reading

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The Forum Against Oppression of Women, Mumbai had circulated this pamphlet on 8th of March, International Women's Day - 1982 as part of their campaign against violence on women. It succinctly brings out the different forms of violence on women from birth to death highlighting the very nature of their survival.

Survival of Womankind

A woman's struggle for survival begins from the moment she is conceived in her mother's womb. Amniocentesis, a test to detect foetal abnormalities is used in India to determine the sex of the foetus. In 1982 in Bombay 6,000 such tests were done. Detection of a female usually leads to abortion.

The struggle for survival continues if a baby girl is allowed to be born. She is small and underweight. She is generally given less food and her health is not so well looked after.

Table : No. of deaths per 1,000 population

| Age | Rural | | Urban | |
|------------|--------------|---------------|--------------|---------------|
| | Male | Female | Male | Female |
| 0-4 | 52 | 160 | 426 | 427.8 |
| 5-9 | 4.0 | 5.5 | 2.2 | 2.5 |
| All ages | 18.2 | 20.1 | | |

An analysis of the death figures in a health project reveals that in the first five years of life, female deaths were significantly higher - 56% females to 41 % males.

Even if she survives the discriminatory apportioning of food and negligent health care, another handicap awaits the little girl: unequal opportunity for education

Literacy rate

| | |
|---------|--------|
| Males | 42,62% |
| Females | 24.73% |

Uneducated as she generally is, the girl or woman has few options in terms of an occupation. This does not mean that she is unoccupied. Over the years, the fiction that it is the man who does all the real work and the woman who sits at home has been accepted, but computation of family member's contribution per household (in % of hours) shows:

| | |
|----------|-----|
| Men | 31% |
| Woman | 53% |
| Children | 16% |

Then, before she even reaches adulthood, comes marriage, which often proves to be a hazard for both the physical and mental/emotional survival of the woman. In Delhi alone, the number of brides burnt

| | |
|------|-----------|
| 1981 | 568 cases |
| 1982 | 619 cases |
| 1983 | 371 cases |

The burden that marriage and motherhood place on the women have not only been underplayed but virtually denied. Instead the two have been so romanticised that they have come to symbolise the very purpose of her life.

The wife and the mother may be working a double shift at home and the office. Yet she expends far more calories than she takes in, because she usually eats after the man and the children.

| Calories | Women (rural) | Men (rural) |
|-----------------|----------------------|--------------------|
| Expenditure | 2505 | 2473 |
| Intake | 2410 | 3270 |

Half of all the Third World women are anaemic. Women need three times as much iron as men, due to loss of blood during menstruation and pregnancy.

Overworked and undernourished, the women's health is almost consistently poor. She hesitates to use the healthcare system because it is far too expensive.

For every three men: 1 women uses a hospital. For every five men : 1 woman uses a primary health center.

| | |
|---------------------------|--------------|
| Maternal deaths (anaemia) | 20% |
| Maternal mortality | 6/1000 |
| Illegal abortion deaths | 6 lac a year |

If a woman survives the first 30 years of her life, she is likely to live long. The life expectancy of the woman is 51.55% only slightly less than that of the man which is 52.62%. The frightening truth is that she is not always able to overcome all the hazards placed in her way by an ungrateful and callous society. The marked decline in the sex ratio provides evidence of this tragic fact:

| Year | Females per 1,000 males |
|-------------|--------------------------------|
| 1901 | 972 |
| 1931 | 950 |
| 1961 | 941 |
| 1971 | 930 |
| 1981 | 935 |

It is time everyone recognised the woman's invaluable contribution to the society. It is time her vital role is seen and acknowledged. It is time people realised that the woman is as important as the man and therefore should be given equal status and rights.

The survival of womankind is at stake and women are beginning to realise their oppression of the subtle and the glaring kinds. Women are waking up to struggle for their survival, and fight for their rights, and their freedom.

- (Data : Mainly from census figures)

APPENDIX IV

The following memo was prepared by the Lawyer's Collective for discussion amongst women's groups on the IPC Section 498A, the accusations of its misuse and necessity of such a law. Several women's groups have contributed to this debate and it is hoped that more groups and individuals will contribute to the ongoing debate.

Memorandum Regarding IPC Section 498-A

Several groups, representing men who have allegedly been harassed because of complaints filed against them for committing dowry related offences, have been leading a sustained media campaign, seeking to abolish or, in the alternative, dilute the provisions of Section 498-A of the Indian Penal Code, 1960 (hereinafter the "IPC").

The section reads as follows:

Section 498A of the IPC - Husband or relative of husband of a woman subjecting her to cruelty. **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.**

Explanation

For the purpose of this section, 'cruelty' means: -

- a] any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health, (whether mental or physical) 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 account or failure by her or any person related to her to meet such demand.

The offence is non-bailable, non-compoundable, and cognizable if made to a police officer by the victim or by designated relatives. It is triable by a Magistrate of the First Class.

Section 498-A was introduced into the IPC by the Criminal Law (Amendment) Act No. 46 of 1983 to address violence against women by the husband and his relatives. It came into effect on 2nd October 1985. This Act also amended the Code of Criminal Procedure, 1973 (hereinafter the "CrPC") and the Indian Evidence Act, 1872 (hereinafter the "IEA") to effectively deal with cases of violence against women, inclusive of dowry deaths. For example, the said Amendment Act inserted S. 113-A in the IEA which lays down that where a woman commits suicide within a period of seven years of marriage and that her husband or any of his relatives had subjected her to cruelty, as understood under Section 498-A of the IPC, there is a presumption that the suicide was abetted by her husband or such relative.

The Concerns of Men's Groups

The concern of groups like the Purush Hakka Saurakshan Samiti and others is that the human rights of men are allegedly violated by S. 498-A, IPC, which allows for innocent men to be arrested and humiliated in police custody by wives acting mala fide. In other

words, they do not want any legislation to address domestic violence on the ground that it could be misused, the term 'domestic violence' being used here to include cruelty as has been interpreted in judgements of Indian criminal courts.

The main arguments made by the pro-abolition groups is that:

* Section 498-A, IPC is violative of the guarantee of equal protection of law enshrined in Article 14 of the Constitution, as it treats husbands and their relatives as a class apart from other offenders. A S. 498-B, IPC, corresponding to S. 498-A, IPC but applicable to women and their families who have subjected the husband to cruelty, requires to be inserted.

*The law is being misused and abused by women making false complaints against their husbands and in-laws, with the result that 'innocent' persons are labelled as offenders.

The Constitutional Questions

All legislation is intended to meet a perceived social need, and the function of criminal law is not simply to confer rights but also to criminalize behaviour which is socially and morally reprehensible, and impose punishment for the same.

The right to physical security is intrinsic to the enjoyment of the fundamental right to life and personal liberty as enshrined in Article 21 of the Constitution. Thus, violence against women deprives them of their fundamental right to life, as well as their right to live with dignity. Hence a law such as S. 498-A, IPC which imposes criminal sanctions against such offenders should be viewed as a law which enforces those fundamental rights.

Equality before the law does not mean that the law should treat persons differently situated as equals. Rather than being violative of Article 14 or 15(1), S. 498-A, IPC is in fact protected by Article 15(3) of the Constitution, which enables the State to make special provisions for the protection of women and their interests.

The claim that Section 498-A, IPC discriminates against men only is incorrect as the offenders under the same include both men and women. For example, a mother-in-law who has treated her daughter-in-law with cruelty, can also be prosecuted under the said section. Thus, the section does not punish men because they are men, but because they have treated a woman with cruelty.

In *Balkrishna Moghe v. State of Maharashtra*, [1998 (6) LJ 957], the Bombay High Court held that S. 498-A, IPC did not violate Article 14 of the Constitution as the same allows for separate treatment of persons belonging to different classes provided there is a reasonable basis for such a classification. Taking into consideration, social reality of crimes which occur in the matrimonial home, identification of husbands and relatives as a class of persons who commit such crimes, is not violate of Article 14.

The Statistics of Domestic Violence

The demand for a Section 498-B, IPC which deals with the offence of cruelty against a husband by his wife or her relatives is based on a hypothetical premise that most men are physically abused within the household, and the same is ignoring the social reality in which the law has to function. Statistics indicate that the crime of cruelty is committed mainly against women and the only reason Section 498-A, IPC was introduced was to combat the same and afford battered women some protection under law.

The high crime rate with respect to offences against women is indicated from the report published by the National Crime Records Bureau, wherein it is stated that no less than 6.8% of all crimes reported in the year 1996 were committed against women. If certain crimes are committed with high recurrence rates against a particular gender only, the law is required to address such behaviour and criminalize the same. That is all that Section 498-A, IPC seeks to do - address a social problem with criminal law ramifications.

People who refuse to acknowledge the fact that the victim of domestic violence is almost always the woman are blind to their

surroundings, and such a stand could ultimately have fatal consequences for fifty percent of our country's population. Statistics indicate that incidents of cruelty against women are on the increase:

Table 1 :

| Offence | 1994 | 1995 | 1996 | % variation in 1996 over 1995 |
|----------------|-------------|-------------|-------------|--------------------------------------|
| S. 498-A | 25,946 | 31,1127 | 35,246 | 13.2% |

Additionally, the disposal of such cases by courts has also been extremely slow:

Table 2:

| Crime | Total number of cases for trial including pending cases | | Percentage of cases tried | | Percentage of cases convicted | | Number of cases pending trial | | Percentage of cases pending trial | |
|--------------|--|---------------|----------------------------------|-------------|--------------------------------------|-------------|--------------------------------------|---------------|--|-------------|
| | 1995 | 1996 | 1995 | 1996 | 1995 | 1996 | 1995 | 1996 | 1995 | 1996 |
| 498 A | 75,522 | 99,542 | 10.3 | 12.2 | 2.5 | 2.3 | 65,533 | 83,195 | 86.8 | 83.6 |

Further, the argument that Section 498-A, IPC should be abolished on the ground that it applies only to men, could be extended to offences like rape under Ss. 375-376, IPC which are also directed only at men. The fact is, there are several crimes that, though hypothetically can be committed against men, are in fact crimes committed only against women. The law has recognised this fact as can be seen in the following table.

Table 3:

| Provision of the IPC | Nature of the offence criminalized |
|-----------------------------|--|
| 304-B | Dowry Death |
| 354 | Assault or criminal force to woman with intent to outrage her modesty |
| 366 | Kidnapping, abducting or inducing a woman to compel her marriage |
| 366-A | Procuration of a minor girl |
| 366-B | Importation of a girl from a foreign country |
| 375 | Rape |
| 376-A | Intercourse by a man with his wife during separation |
| 376-B | Intercourse by public servant with woman in his custody |
| 376-C | Intercourse by superintendent of jail, remand home etc. |
| 376-D | Intercourse by any member of the management or staff of a hospital with any woman in that hospital |
| 498-A | Husband or relative of husband of a woman subjecting her to cruelty |
| 509 | Word, gesture or act intended to insult the modesty of a woman |

In addition to these crimes under the IPC, there are a number of special legislations which specifically address crimes against women, such as the:

- Immoral Traffic (Prevention) Act, 1956
- Dowry Prohibition Act, 1961
- Indecent Representation of Women (Prohibition) **Act**, 1986
- Commission of Sati Prevention Act, 1987

Reform of the law relating to Domestic Violence

The law as it stands today is greatly in need of improvement if it is to prove effective in combating domestic violence against women.

1. The Explanation (a) to Section 498-A, IPC at present defines cruelty to mean:

"any willful conduct which is of such a nature as is likely to drive a woman to commit suicide or to cause grave injury or danger to life limb or health (whether mental or physical) of the woman"

This could be interpreted to mean that violence against women which stops short of driving a woman to suicide or causing grave danger to her life, is not be taken seriously. It is therefore necessary to provide a wider definition of cruelty so that it covers situations of abuse that may not necessarily endanger the life of the victim.

2. The Explanation (b) to Section 498-A, IPC links harassment of a woman to an intention to coerce any person related to a woman to meet any unlawful demand for property. It is submitted that this clause is unduly restrictive as women are harassed not just to meet unlawful demands for property but often merely to assert authority. Such harassment takes many different forms, such as the denial of food, access to children, access to the matrimonial home or threats to dispossess a woman from the matrimonial home.

It is submitted that the above mentioned subsection should be amended to make any harassment of a woman, including the denial of amenities and threat of dispossession from the matrimonial home, as an act of cruelty, whether such harassment is with a view to coerce any person related to her to meet an unlawful demand for property or not. The said subsection could be further subdivided into two areas: the first providing an inclusive definition of what would constitute cruelty and the second specifically dealing with the unlawful demand for property as amounting to cruelty.

3. Because of the complex relationship between the victim and the perpetrator, and the social and economic consequences associated with marriage, women are reluctant, or rather, unable, to report cases of domestic violence while still living in the matrimonial home. Decisions thus made are influenced by socio-economic status, the presence of children, their relationship with the perpetrators of violence, the socio economic status of their natal families and the support they get from the same. As it is practically impossible to complain about domestic violence and then continue to reside in the matrimonial home, the reality of the situation is that survivors of domestic violence only complain about the same *after* they have been driven out of the matrimonial home. It is in this context that the need for civil remedies in the case of violence against women arises. The complainant should have a right to seek and obtain an injunction restraining the perpetrator from entering the matrimonial house or coming anywhere near the same.

It is therefore submitted that the remedies available under Section 498-A, IPC are insufficient, and a comprehensive domestic violence legislation which provides civil injunctive remedies in conjunction with criminal remedies is required. Until such a time as this legislation comes into force, criminal courts should be empowered to grant injunctive relief which are currently granted only by civil courts, when a complaint under Sections 498-A, IPC is prosecuted.

Conclusions

It is thus evident that domestic violence has to be recognised as a serious crime. The home cannot be considered a haven for perpetrators of violence, and the fundamental right of women to life, safety and dignity, in and outside their homes, has to be recognised and enforced. It is important to ensure that the offence is "cognizable" to ensure that a police officer who has reason to believe that a cognizable offence is being committed can make an arrest without a warrant. It is a general rule of law that offences

which are serious in nature are cognizable. Usually petty offences are non cognizable. It is important to maintain the offence as non bailable as all cognizable offences are non bailable. The purpose of making an arrest is to ensure that the accused does not tamper with evidence or intimidate witnesses or escape from the jurisdiction of the court. In cases of domestic violence, the woman is at great risk of being harassed and being intimidated into withdrawing her statement so that the prosecution does not go ahead. It is important that the offence remains non compoundable. If it is made compoundable, having regard to the intimate nature of the relationship between the complainant and the accused, the latter will undoubtedly attempt to intimidate the woman in compounding the offence. Moreover as the law stands today, it is open to the prosecution to apply to the court for permission to withdraw from the prosecution. The Court, on being satisfied that there is good and sufficient reason to withdraw, may permit the prosecution to withdraw. It can be argued that if the judge is satisfied that the accused has made recompense for his offence or that the parties have settled their disputes to the satisfaction of the court, it would be in public interest to permit a withdrawal from the prosecution. This would ensure a continuing scrutiny of the matter by the court seized of the case, so that the woman is not pressurised into signing a document that she does not agree with.

In reality, very few women make their way to complain about the commission of offences under Section 498-A, IPC. In one study by the Tata Institute of Social Sciences (hereinafter "TISS"), for the period 1986 to 1988 and 1990 to 1996, only 1397 First Information Reports were registered across 69 police stations in Mumbai. Of these, 40 % (about 550) of the victims were already dead at the time of registration of the crime.

Thus it is clear that Section 498-A, IPC alone is insufficient to deal with the problem of domestic violence and a comprehensive

legislation is required on the subject. It is submitted that pending such a legislation, the scope of Section 498-A, IPC should not be curtailed in any manner. In fact, its scope should be widened as indicated in the discussion on law reform above.

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About Akshara

Akshara-a women's resource centre was set up in 1995 with a free library and reference facility. It believes information can become a powerful tool for empowering women and supporting women's and other movements. It conducts information and gender trainings, publishes educational materials, undertakes programs for college lecturers and students and participates in various campaigns. Akshara has recently initiated an educational loan scholarship program for young women.

Some of the publications of Akshara are given below:

The Quota Question- Women and Electoral Seats [English and Marathi]

Shadow Workers- Women in Home Based Production. [English and Marathi]

Not just a matter of Faith- Essays on Communalism

The Akshara Handbook-An Alternative Classification and Documentation System

A Source Book- In Search of Feminist Visions, Alternative Paradigm and Practices

Purush Pradhante che Gaudbangal (What is Patriarchy?) - Marathi

The Law on Trial- The Debate on Uniform Civil Code

Apne Hone ka Sach (Stories of Muslim Women) - Urdu

Apne Jivan ki Kuch Jankari - Hindi

Yuvati Mela - an alternative feminist awareness program - video and booklet [forthcoming]