

# **Understanding Justice Delivery System from the Perspective of Women Litigants as Victims of Domestic Violence in India**

*(Specifically in the Context of Section 498-A, IPC)*

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## **Introduction**

The present study attempts to understand the justice delivery mechanism from the perspectives of women litigants specifically within the context of Section 498-A Indian Penal Code (IPC). This research work empirically examines and explores the process of women's resistance to the male dominion within the sphere of family and law. It is a part of the larger study being taken up by the Centre for Women Development Studies, New Delhi. This part of the study ventures specifically into narratives of women victims of violence involved in the process of litigation within the context of the law relating to domestic violence i.e. Section 498-A, IPC. It does not attempt to examine the judgments pronounced on the issue or try to read in between the lines of court records, rather it looks at the functioning of the Mahila Courts operational in Delhi from the perspective of women litigants in relation to the above law. The study examines the process of operation of law within the larger context and its implication on women. While exploring the individuals' endeavour for justice, it attempts to draw linkages between micro-level struggles with laws and policies at the macro-level, which affects daily lives of victims of violence. The study suggests that the justice delivery system does provide a platform for a woman to raise her concerns and a space to negotiate for her rights, yet, at the same time, it also acts to disqualify her claims and often ends up in re-victimizing the victim.

## **Context and Conceptualization**

Laws and the legal systems are major tools that may be used to promote justice and these play a vital role in the well being of any society. Formal legal system comprises of the constitutional provisions as well as substantive and procedural laws. Constitution and substantive laws set the normative framework while procedural laws facilitate enforcement. However, the legal system may act like a double-edged sword. Just as fair laws can dispense justice, unfair laws can lead to infringement of rights and violations of principles of justice. Similarly, even if laws are fair and impartial, but implementation of laws is carried out in unfair manner, it may act as a barrier to achieve the goal of justice. This becomes apparent when one considers the issue of laws pertaining to violence against women within Indian context.

Presently, the formal legal system is adapted to accommodate a set of laws and procedures to protect women from violence. Yet several pitfalls, systemic constraints and restraints within the system operate against elimination of violence against women. These lacunae exist in spite of the process of law reform that has been initiated by several stakeholders in the justice delivery system as well as the civil society. In other words it may be said that the ad hoc and sporadic attempts of legal reforms has resulted in formulation of a system which provides for inadequate redress to the victims of violence. For instance, lacunae in both content and procedural aspects of law dealing with rape have been pointed out through several studies. Or recently, the year 2004 may be looked as a period of aggression among victims of violence and their reaction to insensitivity of stakeholders in criminal justice system<sup>1</sup>. The present work focuses on similar contradictions existing in the justice delivery mechanisms specifically in the context of law relating to domestic violence. It examines the problems that exist at the level of framing of law as well as the impediments that continues to act as hurdles in the pathway to justice.

### *The Indian Legal System and its Aberrations*

In context of the Indian legal system as an institutionalised form of justice, it may be said that like all other systems of governance, this has not remained immune to ideological shifts due to social, economic and political transformations over the period since independence. De-colonisation was followed by affirmation in the principles enshrined in Constitution and post-colonial India witnessed enactment of several laws clubbed with assertion of rights by individuals and collective groups. State is configured as a patron of justice and a guarantor of rights on the basis of the assumption that it will redress persistent inequalities existing within the larger social structure. Indian women's movement has also played a crucial role in demanding changes in the law. As a result, during the 1980's, when a resurgent women's movement was asserting itself through public action, several laws were enacted and others were amended including those addressing issue of violence against women, i.e. dowry law, rape law or law relating to cruelty against married women. Viewed from a broader perspective, the state apparently has helped to empower women through its policies and laws, yet, at the same time, its actions have also tended to institutionalize and reinforce patriarchal norms and values. It has been said that the patriarchal attitudes and values held by the three organs of the Indian State – namely, judiciary, executive and the legislature, prevented them from implementing the constitutional mandate of equality in its true spirit<sup>2</sup>.

Inconsistencies existing in the Indian legal system jeopardized gender concerns. This is exemplified when one considers a few of the provisions in criminal law, for instance, cases

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<sup>1</sup> Protest by women in Nagpur against the criminal justice system results in lynching of accused Akku Yadav within the courtroom on Aug 13<sup>th</sup> 2004. Deshpande V. (2004) Mob kills rape accused Akku Yadav in Nagpur court Indian Express August 16 Several other similar incidences were also reported in a TV Channel Aaj Tak in its report *Jurm: Aaj Tak* dated 2.1.05.

<sup>2</sup> Sarkar Lotika (1995) *Women's Movement and the Legal Process* Occasional Paper No. 24 CWDS, New Delhi p. 1-2.

relating to offences in marriage i.e. adultery, bigamy etc. These view women not as citizens entitled to rights rather they perceive them within the confining web of their social relations<sup>3</sup>. Similarly, contradictions may also be pointed out within the domain of civil and personal laws that govern institution of marriage and family<sup>4</sup>. In fact, the legal discourse reinforces traditional gendered notions thereby reiterating gender inequality within social structure. This becomes apparent in the context of women victims of violence within intimate relations when approach the state apparatus to seek justice and becomes clear from the empirical material collected and analysed for the purpose of this work.

### *Legal Remedies Available for the Victims of Domestic Violence*

Besides, using constitutional provisions or remedies provided under the personal laws, a victim of domestic violence may seek remedy under civil law as well as the criminal law. Also, in order to remedy matrimonial wrongs within a common structural framework, the Family Courts Act was enacted in the year 1984<sup>5</sup>. The main object of the Act is to provide “for the establishment of Family Courts with a view to promote conciliation in, and to secure speedy settlement of disputes, relating to marriage and family affairs, and matter connected therewith”. However, not all states have implemented this Act. Further, wherever it is made applicable, several lacunae have been pointed out by those who had experience working with it<sup>6</sup>. One of the major drawbacks pointed out by commentators includes its object that primarily emphasises on the preservation of family in its patriarchal form. The Act ignores the existing power structure dominating conjugal relation and negates the vulnerable position of women within the family and society. It does not take into account the fact that in most cases of marital dispute women opt for legal recourse when other efforts for conciliation have failed to yield result. Intense stress on reconciliation has proved to be counter-productive<sup>7</sup>. The Act refused to recognise irretrievable breakdown of marriage and puts an additional pressure on women by delaying the process of awarding maintenance by restarting the process of reconciliation.

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<sup>3</sup> Mukhopadhyay Maitrayee (1999) Brother There are Only Two Jatis – Men and Women: Section 125 Criminal Procedure Code and Trial of Wifehood In Institutions, Relations And Outcomes Naila Kabeer and Ramya Subrahmanian (Eds.) Kali For Women New Delhi.

<sup>4</sup> Personal laws are based on different religious dictums and traditions that perpetuate existing inequalities and restrict women's rights. These sets of laws contradict the equality provision embodied in Constitution not only on the basis of religion but these perceive men and women differently thus resulting in women's subjugation.

<sup>5</sup> The Family Court Act of 1984 received assent of the President on September 14, 1984.

<sup>6</sup> For details please refer Workshop on Working of the Family Courts (A Background Note) held on March 20, 2002, National Commission of Women New Delhi Also Nagasaila (1991) Family Courts: A Step Backward, The Hindu March 24; Chatterjee Jyotsana (1997) Justice to Women – Role of Family Courts In Family Courts in India: An Appraisal of Strength and Limitation Ratna Verma (Ed.) Inter-India Publications: New Delhi.

<sup>7</sup> Ruth Vanita (1984) Preserving the Family at the Cost of Women: The New Family Court Bill Manushi 25 41-47 and Agnes Flavia (1991) A Toothless Tiger: A Critique of Family Court Manushi 66 9-17.

Civil laws allow a woman to obtain relief according to need such as injunctions, divorce, custody of children and so forth. However, the process of obtaining civil remedy is complicated, lengthy and expensive. Criminal law, on the other hand, primarily works on the principle of deterrence and penalty. Action under this law may be invoked by making complaints against perpetrators of violence. It covers only a range of behaviour<sup>8</sup> and women may have no say once a complaint is made. A victim or a complainant is therefore bound to utilise other legal provisions outside the criminal law for the same though these may be related matters.

Under criminal law, a victim of domestic violence may lodge a complaint against her violent husband and/or in-laws for inflicting cruelty under Section 498-A IPC besides evoking other Sections (for hurt, grievous hurt, etc). She may invoke Section 406 IPC for criminal breach of trust which may help her to recover *streedhan*<sup>9</sup>. A woman may appeal under Section 125 CrPC for claiming maintenance. Though criminal law is considered to be gender-neutral, yet, there are provisions which when implemented undermine women's interests<sup>10</sup>. Family ideology underpins the operation of law<sup>11</sup>. Operationalisation of law in a social structure driven by patriarchy is yet another factor that construes women's subordinate position in a conjugal relationship. Frequently, secondary status relegated to women in both social and legal aspects impedes the process of asserting their rights as citizens of a democratic society. This is well exemplified when one looks at the manner in which Section 498-A IPC is enforced within the given socio-legal context.

### ***Section 498-A IPC: Provisions, Prospects and Challenges***

Before the year 1983 there was no specific legal provision pertaining to violence against women at domestic front. Husbands guilty of committing violence on their wives could be convicted under general provisions relating to murder, causing hurt, abetment to suicide or wrongful confinement. These general provisions under criminal law do not take into account the specific situation of women facing violence within confines of home as against assault by an outsider or a stranger. Therefore, an amendment was made in 1983, which added Section 498-A to Chapter XVI, IPC. In its statement of the Objects and Reasons the Criminal Law Amendment Act<sup>12</sup> emphasize- "the increasing number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the working of Dowry Prohibition Act, 1961. Cases of cruelty by the husband and relatives of the husband which culminate in suicide by or

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<sup>8</sup> Interestingly Section 357 CrPC provides monetary relief to the victims of crime, yet, it is seldom being used.

<sup>9</sup> Gifts given to the bride at the time of marriage constitutes her *streedhan* for which she is sole owner and in the event of separation can claim it legally.

<sup>10</sup> For details see Mukhopadhyay Maitrayee (1999) supra n.3.

<sup>11</sup> Family ideology construe women as loyal, self sacrificing and dependent wives. It operates to regulate women through moral and economic regulation.

<sup>12</sup> Act 46 of 1983.

murder of hapless women concerned constitute only a small fraction of cases involving such cruelty. It is therefore proposed to amend the IPC, the Code of Criminal Procedure and the Indian Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married woman by their in-laws". Although the aim of this amendment was to deal with dowry harassment, explanation (a) of this law does not use the word dowry as a necessary condition to define cruelty. It therefore applies widely to the situation of domestic violence. It recognises the fact that offences committed within the privacy of home by a person on whom a woman is emotionally, financially, socially or otherwise dependent needs to be dealt at different plane. It made violence perpetrated by husband and in-laws a cognisable and non-bailable offence and enables a woman to take preventive action before such violence leads to her death and reads:

*"Whoever, being the husband or the relative of the husband of a woman, subjects such women to cruelty shall be punished with imprisonment for a term which may extend to three years and shall be liable to fine.*

*Explanation - For the purpose of this Section 'cruelty' means*

*(a) Any wilful 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 death whether mental or physical of the woman;*

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

One of the merits of Section 498-A IPC is that it is wide enough to include mental cruelty. Though the term 'grave' is not elaborated by the lawmakers, in practice, everyday violence suffered by majority of women is precluded. The law does not defined 'domestic violence' though it explicates the term 'cruelty' to include (1) Any wilful conduct that is likely to drive the woman to commit suicide; (2) Wilful conduct which is likely to cause grave injury to the life, limb and health of the woman; (3) Harassment with the view to force the woman or her relatives to give property; (4) Harassment because woman or her relatives have not given any property. A single act of violence amounts to cruelty as also a series of acts would constitutes cruelty. Courts in several judgments have clarified the behaviour that may be termed as cruelty or harassment for the purpose of this law. For instance, persistent denial of food, insisting on perverse sexual conduct, constantly locking a woman out of house, denying her access to children, confining her at home, repeatedly abusing children in the presence of mother with the intention of causing mental anguish to her, constantly threatening her with divorce, are all held to be 'harassment' of a married woman by her husband and his relatives<sup>13</sup>. However, marital rape is not recognised as 'cruelty' under this law.

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<sup>13</sup> For Details kindly refer to Jaising Indira (2001) Law of Domestic Violence: A User's Manual for Women The Lawyers Collective: Universal Publishing Co. Delhi.

Nevertheless, this law has several pitfalls<sup>14</sup>. For instance, it does not restrain a violent husband from indulging in an abusive conduct nor does it allow a victim to seek an order to stay in matrimonial house once she files a complaint<sup>15</sup>. A complaint under this law can be made only after the crime is committed. Contradictions inherent in the content, structure and process of laws further complicate the matter<sup>16</sup>. The Indian women's movement therefore has been advocating for a comprehensive legislation on the issue that would remedy these defects<sup>17</sup>.

Half hearted attempts were made under the regime of NDA led government during its tenure (1999-2004) in this direction due to persistent demand being made by the women's movement. Consequently, the Protection of Domestic Violence Bill 2002<sup>18</sup> was tabled before the Parliament. Several objections<sup>19</sup> were raised against this Bill and after the protest made by the women's group it was referred to Parliamentary Standing Committee on 28<sup>th</sup> August 2002. The Committee submitted its report on 12<sup>th</sup> December 2002<sup>20</sup>. However, with the dissolution of Lok Sabha on February 5<sup>th</sup> 2004, the Bill was allowed to lapse. Besides, several suggestions were made by the Ministry of Home Affairs during the tenure of NDA led government to dilute the provisions of this law on the assumptions that it is being misused and abused by women<sup>21</sup>. As pithily put forward by a major figure in the women's movement, irony lies in the fact that though this government talked persistently about cross border terrorism, yet, it made relentless efforts to exclude 'cross bedroom terrorism'<sup>22</sup>.

## Need for the Research

In the context of political transformations<sup>23</sup> and with the introduction of issues relating to gender discrimination and domestic violence under the Common Minimum Programme of

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<sup>14</sup> Nigam Shalu (2001) Role of State in Asserting Women's Rights at Domestic Front In State and Civil Society: A Human Rights Perspective Edited by Dr. R.M. Pal and Somen Chakraborty ISI Publication New Delhi.

<sup>15</sup> Under the existing law these remedies may be sought under the civil laws.

<sup>16</sup> Nigam Shalu (2002) Enemy Lies within, *Social Welfare*, Vol. 49 No. 7 July 2002, New Delhi.

<sup>17</sup> Several organisations including the National Commission for Women have drafted the Bill on the issue and have lobbied with the government to enact the law.

<sup>18</sup> Bill No. 13 of 2002 was introduced on March 8, 2002 by the then HRD Minister Mr. Murli Manohar Joshi.

<sup>19</sup> Major objections include definition of domestic violence, the caveat of 'habitual' abuse or repeated assaults added. It enables perpetrator to seek plea of self-defense and provides for mandatory counselling to women, it find no mention of a women's right to matrimonial home among others

<sup>20</sup> Parliamentary Standing Committee (2002) 124<sup>th</sup> Report on the Protection from Domestic Violence Bill, 2002 issued by the Department – Related on Human Resource Development, Parliament of India, Rajya Sabha.

<sup>21</sup> See Shinghal's report and Recommendations made by the Malimath Committee. These are discussed below.

<sup>22</sup> Karat Brinda (2004) As referred in her Speech made on 8<sup>th</sup> March.

<sup>23</sup> Political transformation that took place after the elections held in the year 2004.

the newly elected UPA led government, a hope has been generated that gender violence issue will be dealt with. Yet, a comprehensive legislation on the issue is still awaited<sup>24</sup>. Also, despite advances in laws addressing the issues relating to violence against women a tremendous difference may be observed between the law as exists on paper and its implementation. In the light of these developments it becomes imperative to conduct a study in order to explore the existing ground realities. This is with the object of documenting problems women face while utilizing the law against domestic violence as well as with the aim of developing a comprehensive policy to address the lacunae existing within the given framework. The present research work analyses the justice delivery mechanism from the perspectives of women litigants as victims of violence. It attempts to understand the constraints faced by women knocking the door of the courts as complainants.

## **Objectives**

Keeping in mind the above discussion, the following objectives were formulated for the purpose of this research study:

1. To examine the perspective and experiences of women litigants seeking justice within the legal domain. This is in order to arrive at an understanding of whether or how such mechanisms have been able to mitigate the sufferings of women in cases pertaining to domestic violence.
2. To analyse the role of the justice delivery mechanism in fulfilling its objectives toward empowering women victims within the patriarchal social structure.
3. To understand the problems women litigants face within larger socio-legal matrix once they approach the legal system with the object to seek justice

## **Research Design and Methodology**

The study is interdisciplinary and exploratory in nature. It examines both legal and social aspects of the issue relating to domestic violence and documents the real life experiences of women litigants approaching the Mahila Courts in Delhi under Section 498-A, IPC. Delhi is one of the states where family courts have not been established as yet under the Family Court Act 1984 as described above. In the absence of these formal institutions, several alternatives are being adopted at the state level in order to resolve domestic disputes, the Mahila Court being one of them.

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<sup>24</sup> Though by the time this paper is being finalised it was reported that the UPA government is in the process of drafting a new Bill on the issue of Domestic Violence as well as bringing amendments to the Hindu Succession Act where women are known to be given equal rights to property as that of males within a Hindu family.

## A) *Mahila Court: A Brief Sketch*

Designed as exclusive forums, Mahila Courts came into existence since 1994 in Delhi with a view to provide a congenial atmosphere to the women victims so as to enable them to narrate their tales of woes without any hesitation<sup>25</sup>. These courts were established on the basis of an experiment carried out in Andhra Pradesh where a 'Mahila Court' was first set up in 1987. Encouraged by the success of this novel venture, it was decided to set up a similar infrastructure in the Capital. Mahila Courts are headed by 'experienced' women judges and magistrates and are expected to deal exclusively with cases pertaining to offences against women. Women's organisations in Delhi have welcomed setting up of Mahila Courts, yet, there are a few who expressed their doubts about the outcome of such a move<sup>26</sup>. Women's groups argued that sensitivity of judges on gender issues is of greater significance.

However, Mahila Courts in Delhi, since beginning, have received strong opposition from professional lawyer's association. The Bar Association strategized to oppose these forums and demanded closure of these courts<sup>27</sup>. They termed Mahila Courts as "an absolute failure"<sup>28</sup>. Professional community argued that employment of female staff in Mahila Courts implies that the scales of justice are tilted in favour of woman. They charged that such courts 'discriminate against male judges and create fear in the mind of the accused'. It was claimed that female public prosecutors are not "well conversant" with law and female judges are "gender biased". The attitude of this body is indicative of prejudices that operate behind the system<sup>29</sup>. However, in spite of protests, Mahila Courts are operational and are taking up cases pertaining to crime against women. At the session level, Mahila Courts deal with the cases of kidnapping, procuring minor girls for the purpose of prostitution, rape and of cruelty by husbands or in-laws. The metropolitan magistrates in these courts are assigned cases relating to molestation, rape, kidnapping, as also of domestic violence. In Delhi, four courts are functioning with effect from September 1, 1994<sup>30</sup>.

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<sup>25</sup> The Times of India (1994) Mahila Courts in Delhi dated 31<sup>st</sup> August.

<sup>26</sup> The Hindu (1994) Mahila Courts Welcomed dated 6<sup>th</sup> September also, the Times of India dated 5.9.1994 Women Groups Hail Mahila Courts.

<sup>27</sup> The Hindu (1994) Closure of all Mahila courts demanded dated 4<sup>th</sup> September.

<sup>28</sup> The Pioneer (1994) Mahila Courts function smoothly despite furore dated 18<sup>th</sup> December.

<sup>29</sup> Madras High Court recently in its ruling raised the issue of embarrassment by the women judges in the Mahila Court and ordered to transfer the case dealing with charges of preparing pornographic photos and videos to a male judge. For details kindly refer to Bhatnagar Rakesh (2005) Can Courts Rule on Embarassment? 17<sup>th</sup> January, Times of India.

<sup>30</sup> At the time this research work ended two Mahila Courts were reported to be operational at Karkardooma, four at Patiala House and four were functional at Tis Hazari each headed by the Metropolitan Magistrate. This is in addition to one session level court headed by the Additional Session Judge at Tis Hazari.



## **B) *Universe and Sampling***

To identify women for this study the choice was either to locate them in the labyrinth of official records, which implies entering into the intricate task of getting permission from the bureaucratic machinery. Second option was to approach organisations that assist women in gaining access to justice, and third was to contact women approaching the Mahila Courts directly. Researcher selected the third option. Reason for choosing the direct method was to gain access to unmediated first hand experiences of women as litigants and to obtain a glimpse of wider perspective of their situation. Informants were located within the premises of three courts in Delhi<sup>31</sup>. Women coming to attend hearings of their cases were randomly selected and requested to respond after stating the purpose of study. Initially, a few were suspicious. Some refused to participate. Yet, others were found to be enthusiastic to share their anxieties and concerns. Others took time to come out of the legal ambience and initially shared what their 'lawyers have asked them to say'.

Sharing women's experiences of 'cruelty' at the domestic front, their version of what happened, what went wrong, their experiences in the court and their social situation was not an easy task. Most often, sharing involves expression of anger, fear, guilt, agony, pain, anguish, frustrations (emotional catharsis), and at times, of courage, boldness and revenge. It requires a lot of patience, investment of emotional energy and concentrated attention in noting down details of each case. Similar is experienced while talking to men as 'accused' under Section 498-A, IPC.

For the purpose of present study, fifty case studies of women coming to the Mahila Court were compiled and 25 men were interviewed. Information was also obtained from lawyers, NGOs representatives among others who play an important role in shaping the legal as well as social discourse. Data obtained pertains to nature of case, process women underwent before coming to the court, their experiences and views about the legal system and the constraints they were facing within larger socio-legal matrix. These interviews were of informal nature though an interview guide was prepared for the purpose. Fieldwork was conducted between April 2003 to February 2004. As the present study pertains to role of the legal system within the context of Section 498-A, information pertaining to related legal issues like divorce, maintenance among others have been avoided while writing this report. Reason being that it is beyond the scope of the present paper to deal with the same as these will be dealt with at the later stage. This research report is divided into several parts.

## **Research Findings and Preliminary Discussions**

At a preliminary level, the data obtained indicate that women from varied background approach the Mahila Courts to seek justice against their husbands and in-laws. The study

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<sup>31</sup> One at the Patiala House, the other at Tis Hazari court premises and the third at Karkardooma court complex.

suggests that experiences of women litigating in courts under Section 498-A IPC are discouraging. Several impediments paved the women's access to justice. These include obstacles within the legal system, complexities within the larger social structure along with anti-women ideology that operates to negate and disqualify women's experiences as described below.

#### **A) *Profile of the Women Litigants***

Present study found women litigants struggling in the Mahila Courts in the age group of 19 to 47 years. Majority (68%) of them was in the age group of 25 to 35 years. Possibly more young women are registering their protest against their family ties because of social transformations taking place within the larger social fabric. About one-third hailed from Delhi i.e. their natal families have been residing in the capital for more than 40 years, another 42% were first generation migrants and have been residing in the Capital for several years. Rest were either living in Delhi since the time they got married except a few (4%) who were coming from outside for the specific purpose of attending the hearings. Almost two-fifth were from the lower middle class, 52% belongs to middle class while the rest came from higher income group. About one-fifth respondents were postgraduate and other 40% hold a graduate degree. Only 3 out of 50 respondents claimed that they had never been to school. Rest more than 12% had been to primary school or have studied up to secondary school level. Data thus indicates that education does not seem to protect women when it comes to violence within the confines of home. But it may be said that perhaps education helps women to seek alternatives in order to escape the clutches of violent relationship or may help them to gain autonomy - to take decisions, which, at times, are against the conventional norms.

A remarkable revelation was that 54% women informants were found employed as teachers, lecturers, officers and executives with private and public sector while there were others (38%) employed as domestic workers, sweepers or were self employed (tailors, beauticians, fashion designers, giving tuitions, maids, vegetables vendors etc.) bringing the proportion of employed women fighting their cases to 92%. A few of them have taken up part time jobs or occupation to earn their living. Others were unemployed. A correlation is thus apparent between employment and women's resistance to violence as suggested by the data, though this need to be looked into in details. Apparently, it may be said that either employed women are prone to be the targets of violence or alternatively employed women are more willing to register their protest against their violent partners because of their economic independence. Third possibility is that women were compelled to take up employment because they had no options left but to fend for themselves and their children and this is also evident in many of cases contacted for the purpose of this study.

Almost one-fourth respondents had filed their cases within two years of marriage, 46% had registered the case within five years and the remaining had completed more than five years of marital bond at the time of entering the legal domain. About two-fifth had no children,

28% had one child and remaining have two or more number of children. Data indicates that majority of women register their protest within the early period of their marriage. Further, out of fifty respondents, nine (18%) said that they filed their case for a period less than a year at the time the data has been collected, 12 were struggling in court for the period between one to three years and other 16 women had been running around in the courts for five years. One-fifth had experience of more than 8 years and remaining had been coming to courts for more than 10 years. Thus findings illustrate that a large number of women had been struggling in courts for more than three years. Perhaps, the time consuming court process adds on to their misery.

### ***B) Nature of Cases Coming to the Mahila Courts Under Section 498-A IPC***

A probe into the nature of case revealed that 12 out 50 women had experienced severe physical and mental violence which may also be confirmed by the presence of medical records. Other 56% cases (28 out of 50) were such where medical records were not available. (i.e. where violence is grave but women were unable to produce records or where violence was not of the nature that can be verified by medical records for example everyday violence like slapping, punching etc.) Remaining 10 cases were such where it is not physical violence but it is the mental or other form of violence which caused anguish to the complainant. Thus respondents have experienced varied forms of violence, however, only a few could produce the physical or material evidence.

Further analysis of the nature of cases indicates that in 21 out of 50 cases element of dowry demand did exist and this was also framed legitimately into the complaint. However, 54% (27 out of 50 cases) cases were such where the cases pertain to cruelty but this was not related to dowry demands. The component of dowry demand was built up later on in the case when women approached the formal state institution to lodge their complaint. Only two cases were found where women had managed to register their complaints as cruelty without the insertion of the component of dowry demand. Thus in most cases component of dowry demand is added on at the later stage at the behest of state agencies while filing the complaint. Quiet a few informants also claimed that 'in order to make the case strong' under this law they were compelled by the police and lawyers to add dowry demand component into their complaint. Reason being that often a case under Section 498-A IPC is construed to be 'stronger' by the state agents if it is linked to dowry demand. This has major implications for complainants as often they find it difficult to establish the genuineness of complaint and case is therefore dismissed as false. Frequently, these women are accused of 'misusing' or 'abusing' the law overlooking the fact that it is the official agents within the system that made them insert dowry demand component into the complaint. Therefore, perhaps a deeper introspection of the process through which 'facts' of a case are formulated into 'complaints' within the legal framework is required. However, before proceeding further it is essential to take into account the procedure for filing complaints under this law.

### C) *The Procedural Context*

In general, an aggrieved woman or her friends or relatives may approach the police station and get a FIR registered against her violent husband and in-laws<sup>32</sup>. As the offence of cruelty against married woman is a cognisable and non-bailable offence the police may immediately take action and may arrest the perpetrators of violence. It is the duty of police to conduct investigation. Officer in-charge of the case is then required to produce a charge-sheet in the court on the basis of investigation s/he has carried out. Trial begins once charges are framed and conviction or acquittal is decided by the court after its completion. If dissatisfied, an aggrieved party may appeal against the decision with the higher forum in the hierarchical set up. As violence is perceived as a crime against society, it is the state that pursues the case on behalf of a complainant<sup>33</sup>. The role of woman complainant is therefore reduced to a witness<sup>34</sup> while the husband and in-laws who perpetrate violence and against whom the case has been registered, are termed as the accused/s. An accused has to engage a private lawyer to defend himself<sup>35</sup>. A complainant may seek advice of a private lawyer but it is the public prosecutor who argues the case on behalf of state. In practice, it has often been observed that a public prosecutor is burdened with the caseload and may not be in position to pay the required in-depth attention to each case. Moreover, it is generally observed that the accused husband is in better economic position to hire services of a 'reputed' lawyer than a victim who because of her financial position may not be in position to do so. As observed in this study, in cases where women are employed, often most of the expenditure is incurred in starting life afresh and includes expenses for managing the household, children's education, paying rents etc. Hiring the services of a 'reputed' lawyer thus becomes difficult for these women. This creates an imbalance within the adversary legal system where the position of both the litigating parties, could not be held at par with each other<sup>36</sup>. Further there are other barriers that impede the women's way to justice.

### D) *Case Studies*

Before discussing the findings it was felt essential to present a short description of a few of case studies that highlight the nature of cases coming to the Mahila court under this law. Though each case coming to the court has its own significance and reveals different aspects

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<sup>32</sup> For details of filing complaint under the Section 498-A IPC pl. refer Jaising Indira (2001) Law of Domestic Violence: A User's Manual for Women The Lawyers Collective: Universal Publishing Co. Delhi.

<sup>33</sup> Therefore cases are often registered as State v. accused rather than complainant v. accused.

<sup>34</sup> Here the word reduced is used as once the complaint is filed a complainant has no say in the proceedings of the case. She is often called as witness during the later stage of trial.

<sup>35</sup> In case the accused is not in position to engage a lawyer the state provides for free legal aid and assistance.

<sup>36</sup> During my personal discussions with Prof. Lotika Sarkar on this issue, one of the suggestion that came up relates to the provision of placing a defense prosecutor within the system at par with public prosecutor who may argue on behalf of the accused.

of violence, litigation or its social component, yet, not all are listed here. These few case studies described here provide insight into the problems litigants encounter at various stages of registering protest against their family ties.

### *The Pressure to 'Adjust' or 'Compromise' With Violence: A School Teacher's Case*

Asha\*, 29 years old working as a teacher with a private school in Delhi got married to Rakesh, an executive working with a private firm five years back. It was an arranged marriage where parents of both spouses were living outside Delhi. Within two months of marriage, problems started when his mother joined them and started finding faults with the bride. According to Asha, her mother-in-law wanted her son to marry another girl of her choice in their village and therefore 'started playing tricks'. She said that her husband would often beat her up at the behest of his mother. They would take her entire salary and would give her only a small amount of money that was not sufficient to meet her basic expenses. Against her will she was coerced to sign documents including blank cheque books etc. which she did to escape violence. Initially she tried to 'adjust' but when 'things could not be sorted out' and 'went out of control' she wrote to her parents. However, they told her to 'compromise' and 'adjust' to the situation but once when she was hospitalised due to severe violence they came and took her. After much negotiation between the two families she was sent back to her matrimonial home. But the situation remained the same. Finally with the help of her colleague she sought the assistance of a lawyer who suggested that she should file a complaint with the Crime Against Women (CAW) Cell. Proceedings there continued for several months where according to Asha she was pressurized by the inspector dealing with her case to 'compromise'. But on her persistent refusal, the CAW Cell helped her to retrieve 'some of her dowry articles'. She was then advised to lodge a complaint under Section 498-A, IPC by her lawyer. She went to the police station but the duty officer there, refused to register her complaint. Finally, she sought the help of a lawyer to get the same done.

Asha has been struggling in the courts for past three years. Charge sheet in this case is yet to be filed. Meanwhile, her husband has filed a divorce case in the civil court to counter proceedings of the criminal case. Currently, she claims to be under stress running to lawyers' offices and courtrooms. Her parents and colleagues are lending her support and often she is accompanied by one of them to the court. She feels tired running around from pillar to post but is hopeful that she will 'get justice one day'.

Facts reflect that women resist utilizing public or legal domain. Probably, when the situation becomes un-tolerable they seek assistance of a wider network. This case is also an illustration of the problems women face in their journey from 'personal' or 'private' to the 'political' or 'public'. It indicates that the task of mustering support of the social network comprising of family, friends, relatives, etc. is arduous. It highlights the role of family and

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\* All names have been changed for the purpose of maintaining confidentiality.

kinship as arbiters in resolving the conflict. Parents, relatives or friends of women who are harassed seldom act on the initial complaints of violence. As also evident in this case, it is only when Asha was hospitalised did her natal family recognised her as a wronged wife and lent her support. This case also reflects on the seriousness conferred to issue of domestic violence by the larger public domain. In this particular case the inspector in-charge of CAW cell initially 'pressurized' her to 'compromise' neglecting the fact that often women seek state's interventions as a 'last resort'. Another issue that emerged from this case is that often, complainants end up in being caught within the web of litigation. Accused husbands counter-reply women's complaint under this law with a petition for divorce, conjugal rights etc. Women, therefore, often find themselves not only enmeshed within the complex legal web with multiple legal cases under various laws but also were compelled to run around in different courts simultaneously.

### *Varied Form of Violence Confront Complexities of Law and Technicalities of Legal System*

Manorama is an UDC clerk in a government office. She was married to Prasanjit ten years back in her natal village in Madhya Pradesh. Within a year after her marriage the family shifted to Delhi as her husband got a job with a private company here. After some time she also got a government job. A son was born who is now eight years old. After some time her husband lost his job and problems started after that. He started making allegations against her character and lamented that she is not a good mother. Heated arguments took place which would end in his slapping and hitting her and this became a daily routine. Prasanjit insisted that she should give up her job and after continuous altercations she took leave from her job. However, the situation got complicated further with financial crisis growing worse day by day. Then one day he told her to leave the house. She pleaded but to no avail. She initially went to a friend's house for shelter and called up his family. But they behaved rudely with her. Finally, she went back to her parents. Her brother came to 'settle' the matter but could not help much except that she got her son back. However, her husband often used to come to her brother's house to meet his son and during that time he passed derogatory remarks against her and her natal family. He also used to 'foment' her son and the child started getting nervous breakdown and lost his interest in studies. Manorama claims that every time after meeting his father her son would fell ill and behaved in a 'very different' manner. She told her husband not to meet the child on several occasions but he never paid heed to her. Each time her husband came to her brother's house he would end up in creating scene and when problems grew worse, she contacted a lawyer who advised her to file a case under Section 498-A IPC. Presently her case has been pending for more than two years. However, her lawyer has not told her the fact that she can claim maintenance for her son. Instead the lawyer has been pressing her to 'reconcile' with her husband or else she would have to pay maintenance to him! Every time she gets late in attending the court proceedings her lawyer insists that she pays a fine to the other party!! She is bewildered by the court proceedings and is hoping to get relieved as soon as possible from this formal, 'tedious, ruthless and complex' system of justice.

The case indicates that it is not only the physical act of battering that constitutes violence rather it takes varied forms. Education and employment among women hardly matters when it comes to violence. This particular case also illustrates not only lack of knowledge about legal procedures and technicalities among educated or employed women but also points out the manner in which this ignorance is exploited by handful of professionals for vested interest. It also indicates toward the issue of complexity of law and technicalities in the legal system that often act to marginalise women even though the law advocates to protect victims of violence.

***Blind Pressures for Reconciliation: Regressive Features and Distinct Polarities within Public-Private Divide***

Bala, a 34 year old woman working as a domestic servant was sitting in the premises of Mahila court with her two children and mother in-law waiting for hearing of her case. There were three other children at home waiting for their mother to return. She is living along with her children and mother in-law. Her husband is working as a fourth class employee in a government office. Problems between the husband and the wife started eight years back when her husband got a job in a government office and became intimate with another woman. He started living with her leaving Bala and her three children. He came occasionally to visit them. She tried to persuade him to come back but he refused. Then she told her mother in-law and on her behest the parents tried to convince their son to return but without result. Bala's parents' in-laws supported her and often used to argue with their son. A situation was reached when he stopped talking to them. During this period his father died and he did not come to perform the last rites. Earlier, he had been giving Bala some money but later on he stopped doing so. All this made her and her mother-in-law furious. They managed to earn their living by taking up jobs as maids in the neighbourhood. Then later one day her husband came and asked them to leave the house they are staying in. On their refusal he became furious and beat her and her children. According to Bala, he was about to kill one of the child when neighbours came to their rescue. Finally, they went to a counselling centre near by where she was guided to approach to the CAW Cell. After few months of proceedings nothing happened. Then one day her husband along with the other woman came to their house and threw away whatever possessions Bala and her mother in-law had. Their neighbours called the police and with the help of another family for whom Bala works, she managed to get her case registered under Section 498-A IPC. She never had money to hire a 'good' lawyer. However, she often talks to the Public Prosecutor about her case and 'fortunately the Lady Public Prosecutor is helpful enough to let her know about her case though she has to run around after her'. At present, a charge sheet has been filed in the court, but charges are yet to be framed.

However, the judge in the court insists and is advising her to 'compromise' and to go back to her husband. Her husband in the courtroom also claimed that he is ready to stay with her and his lawyer argued that it is Bala who is adamant and is not ready to 'reconcile'. According to Bala, outside the courtroom her husband insists that he will stay with them

only if they accept the 'other woman' which she refused. She claimed that she has tried to explain 'his tricks' to the judge but his lawyer did not let her do the same. She is therefore against any 'conciliation' proceedings going on in the court. Her argument is that her elder daughter is grown up now and 'settling with other woman' would create problems for her daughter's marriage. She feels that people in the *biradari* (community) are sympathetic to her and she can hope to get their help. According to her, she is 'lucky enough that her mother in-law is supporting her'. This fact further legitimises her claims as a wronged wife in the wider social framework. She wants that her husband should 'repent for his deeds'.

This case brings out the distinct polarity between the public-private divide that operates within socio-legal framework and highlights the difference in the manner in which 'reconciliation' is construed in the official legal discourse and its meaning within the wider social context for a woman. In the legal discourse, Bala is construed as a defiant party as she is unwilling to 'settle' the matter. However, the legal discourse overlooks the existing reality within the social domain where the position of Bala remains the same as it was prior to filing the complaint in case she agrees to 'reconcile' with her husband on his terms and conditions. Major point of contention for which she sought redressal was her husband's relationship with the 'other woman', and reconciliation now in social terms would imply accepting the similar situation again. Law thus overlooks the complexity of situation as embedded within the social context and construe 'reconciliation' in a peripheral manner. The situation is also reflective of excessive stress on reconciliation being made by the state agency that often proves to be counter-productive to the women's concerns.

This specific instance also reflects lacunae in law governing marriage and family. For instance, Bala legally may file a complaint under the bigamy law, however, the technicalities require that she should produce evidence of her husband's second marriage. This she could not do so because of practical difficulties involved in collecting evidences. She also feels that people may not marry her daughters if they came to know that their father has been imprisoned, however, she hopes that her husband may allow them to lead a peaceful life and may come back at least for the sake of their daughters' weddings. Thus Bala is seeking relief which cannot be obtained under the criminal law. The situation thus is indicative of complexity of the nature of law governing marital relationship and its consequences that are embedded in the social context of women's lives.

In this case a significant role was played by the family and community in legitimising a woman's claim against her violent husband and supporting her struggle against injustice both within private and public domain. Interestingly, unexpected role played by Bala's mother in-law illustrates the crucial interventions that may be made by associates in women's support network<sup>37</sup>. Community or *biradari* also may play a dual role in legitimising

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<sup>37</sup> Probably due to social pressure or for any other reasons Bala's mother in-law is supporting her daughter-in-law rather than her own son. This also reflects on the manner in which conservative endogamous institutions play unexpected roles in certain situations.



women's claim as a wronged wife as apparent in this case<sup>38</sup>. On the other hand the traditional patriarchal set up in the community compels a woman to stay in a violent relationship reinforcing power imbalance within marriage. Occasionally, it may lend support to a woman once the larger structure recognises the fact that a woman's rights are violated. Perhaps such support comes in an enhanced form when the issue is of another woman.

### *Construing Mental Cruelty: Difference Between the Social and Legal Discourse*

Meena, 29 years old, an educated girl working in a multinational company, did not want to have children at the peak of her career. Coming from a small city of Uttar Pradesh, she wished to settle down professionally. However, her husband, also a professional and from the same town wanted her to leave the job and take care of his parents. She refused to compromise. Twice she underwent abortion without the knowledge of her husband and in-laws. However, the second time, her husband came to know, he became furious and went to her office and insulted her in front of her boss and colleagues. Situation worsened, and daily rift between the wife and the husband went to an extent that he decided to break the matrimonial bond. Her parents' in-law ridiculed her for not keeping her husband happy or fulfilling the 'essential function of procreation'. She insisted that she should be given sufficient time as her promotion was due that year but nobody paid heed to her. They accused her of being 'ambitious' and 'career minded'. Her parents too did not support her. One day heated arguments took place between Meena and her husband on the same issue and he threw her out of the house. She then went to her friend's place and with the help of her colleagues she approached the CAW Cell. During the proceedings she was constantly advised to 'behave like a good wife'. The inspector in-charge of the case 'informally' suggested her that 'her case is weak and her benefits lie in listening to her husband and in-laws'. She thought of trying once. But even after this intervention too problems could not be sorted out. Her husband and in-laws passed negative comments and were nasty to her for approaching the police. Then one day while she was staying in her matrimonial home, she received a court's notice. She asked her husband about it. He replied that he is filing a case for divorce. After heated arguments she went to a friend's house who then took her to a lawyer.

This lawyer advised her to file a case under Section 498-A IPC and insisted that she should add 'dowry demand' to the case if she wants to make it 'strong'. According to Meena, the lawyer suggested that 'her case is weak and only pointed out her failure to perform her obligations as a 'dutiful wife'. Therefore she is bound to manipulate the facts, in case she

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<sup>38</sup> This case also points to the larger debate relating to strengthening traditional indigenous system of law as enforced by panchayats or nyaya-panchayats or consolidating the formal legal system by empowering the state which implies enhancing state's authority in 'private' lives of individuals, families and communities. However taking up this debate is beyond the scope of this paper and this may be dealt elsewhere.

wants to 'win the favour of court'. Now the case is pending for more than a year in the court. Presently, she is staying at her friend's house as a paying guest who also helps her while she run around in the courts. Now she wants proceedings to end soon as these are 'too time consuming and tiresome'.

This particular case is of grave mental violence and points out the manner in which state agencies (lawyers, police etc.) and society operates to deny a woman her right to lead a life on her own terms and conditions. Their own attitudes and sensitivity comes into play while dealing with the cases. The case also reflects on role of law implementing agencies who decide what should constitute the 'complaint' that makes the case 'strong'. Apparently the legal discourse shapes 'the facts' or the actual experiences of women and manipulates and distorts these in the manner following a narrow and pre-conceived notion of marriage, family and cruelty. The system is inclined to construe women in their social relation rather than as distinct individuals vested with inherent rights as citizens. Law here delineates the roles and stereotypes in social relations and defines who is a 'good wife'.

The situation is also reflective of the manner in which women's issues are construed in wider public domain. In this case, Meena could not get the support from her parents. Thus not only the legal framework but also the social discourse plays a vital role in preserving the family ideology and defining the role, rights and responsibilities of parties within the conjugal relationship. Often, family, kinship and others eventually epitomize and legitimize women's subordinate status in the marriage. The space earmarked in the system for protection of women's interest is thus hollowed out and perverted within the socio-legal network. Paternalistic approach adopted by the state institution and society often synthesizes together to produce a system that act against the interest of women.

### *Is Decriminalization of Justice A Viable Alternative to Resolve Domestic Violence Cases?*

Rupa, a young girl from Rajasthan was married to Narendar who was also from the same village but had settled in Delhi for several years. He was working in a private firm and was earning quite well. Their marriage was arranged in the village and her parents had given a large amount of dowry at the time of wedding. Yet, his parents insisted that they should get more dowry as their son is employed with a 'foreign company' in the city and is in position to fetch more. Her parents clarified that they were not in position to pay more but may be in the coming years they would compensate for it. Marriage was performed and after a few months she along with her mother in-law came to Delhi to stay with him. After a year of marriage when her parents were unable to fulfill dowry demands, his parents insisted that they should sell their land to provide for their daughter's dowry. Her parents refused to do so as that was their main source of income and the problem started after that. Her husband and mother in-law turned violent and would beat her for trivial reasons. They openly began to tell her to go back as they were looking for another match for him. The situation became worse and one day they beat her mercilessly and went out to 'negotiate with the other family' locking her inside the house. Somehow she managed to escape as she smelt danger

and called her parents from her neighbour's house. Her father and brother came to Delhi but Rupa's husband and mother-in-law insulted and humiliated them. Things went to the extent that finally they had to lodge a complaint at the local police station. Narendar and his mother were taken into police custody but were released on bail after two days. Rupa went back to Rajasthan where she is now staying with her parents.

The case is pending with the court in Delhi for six years. The charge sheet is yet to be filed in this case and she feels that nothing is being done. She feels harassed by the court proceedings as every time she has to come from Rajasthan spend money on transport and on staying in a hotel in Delhi. Her father often 'accompanies her as he can't send his daughter alone'. Her husband has hired a reputed lawyer and she feels that the judge in court is biased and is indifferent to her plight. She opines that her husband is bribing all officials involved in the case. According to her, she is being advised to go back to her matrimonial home by the judge and when she refused to do so, the judge told her 'to 'settle' the case in lieu of compensation'. As explained by her lawyer this would imply that she is required to compound the case in lieu of 'some money' that will be paid to her by her husband 'on the condition that she will withdraw the criminal proceedings under the Section 498-A IPC and would also obtain divorce from him'. However, she insisted that she do not want to go for any 'reconciliation' or 'settlement' as advised by the court as 'it will make things easier for her husband and he will remarry another woman fetching more dowry'. Earlier, people in the village were sympathetic to her. But now even they are indifferent to her plight. Though neighbours are telling her parents to arrange another match for her but she does not want to remarry. While sharing her experiences, Rupa also confides in that *"though they (husband and in-laws) are extremely greedy and did every thing to extract money, yet, after the case has been filed they are compelled to shell out the money in paying fee to lawyer, bribing the officials besides other incurring expenses, ... and this encourages me to continue my struggle"*.

This case highlights the manner in which process of imparting justice in the domestic violence cases is decriminalized. Though the case could be registered under the Dowry Prohibition Act but this was not done so. Similar issues were also raised at the conference held by NCW<sup>39</sup> by a representative from AIWC that in Delhi the police is not registering cases under the Dowry Prohibition Act but according to them a complaint under Section 406 would serve the purpose. Further the presiding officer in court too insisted that Rupa should 'reconcile' or 'settle' the case and should withdraw the criminal proceedings without considering the fact that this may lead to serious repercussions. Terms and conditions dictated for the purpose of 'settling' the case raise question about legitimacy of law, the legal system and its process. It indicates the manner in which women are compelled to negotiate the on terms that are dictated by those who hardly are sensitive to the sufferings of victims. Unjust terms and conditions are imposed on women neglecting the fact that it often revokes a woman's confidence and negates her faith in the justice delivery system.

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<sup>39</sup> National Commission of Women organised a National Conference on Role of Dowry Prohibition Officers and Review of Legislation on Dowry held on January 31st 2004 at IIPA, New Delhi.

This also indicates to the fact that intricate process of litigation may have a detrimental affect on litigants. In this case, the problem also relates to territorial jurisdiction because Rupa is living in her parental house at Alwar, Rajasthan. But because the matrimonial home was in Delhi she was advised by the lawyer to file case with the local police station. However she was unaware of these technical defaults. Neither her lawyer, nor the judge has explained difficulties in the process of investigation and adjudication. Situation therefore indicates that once women encounters state machinery she realizes the inherent pitfalls in the state apparatus and therefore is compelled to question the legitimacy and the capacity of the state in addressing women's concerns. However, one of the interesting observations that can be made relates to women's agency. In this case in spite of all odds, she insisted to continue her struggle. Though she felt that the system is operating to deny her of her justified claim yet she dared to continue her resistance against oppression.

### *Construing Cruelty: Difference between Legal Definition and Women's Real Life Experiences*

Mandira, 29 years, a postgraduate from Delhi University recollected, *"I have two children aged 5 and 2 years and after the birth of my daughter- the second child in 1999 I underwent abortion seven times while I stayed with my husband i.e. till January 2001... I never used 'precautions', my husband never allowed me do so. He always used to beat me up when ever I tried to say something about using 'precaution'. In fact he used this to torture me... he always tells me that I am a wretched woman and deserve to die like that... and he is using this (frequent child birth and abortion process) as a tool to weaken my body. He accused me of being a woman of loose character... going around and talking freely with other men... and therefore he wanted to disfigure my body so that nobody gets attracted towards me. Every time I went for abortion he would never accompany me or allow any body else to help me or to accompany me to the doctor. Even he refuses my aunt and neighbouring women to enter our house if they come to help ... I have two young children to be looked after. And after going through abortion I never had energy to get up and take care of them or myself... to serve them food or wash their clothes. I never had money to hire domestic help. He never gave me anything. I was getting weaker and weaker day by day. And he too realized that and took advantage of the fact. He would not even allow me too have 'adequate' food after undergoing so much of stress and strain.... Thank God! I escaped from that devil's hand. He would have killed me by know if I had stayed even for few days more"*.

Mandira got married seven years back to a co-student who now is working with a private company. It was a love marriage. Her parents and parents in-laws never agreed to that marriage and had stopped talking to her since then. She does have an aunt in Delhi with whom she is staying at the time she was contacted. She took up a job with a private company after she got separated a year back when she filed a case against her husband. Her aunt helped her and took her to a lawyer whom she consulted before filing the complaint. She feels that she will not be able to get justice as nobody is ready to listen to her woes. According to Mandira neither the police nor the lawyers could understand her experiences of violence. She lamented, *"And you wont' believe that my lawyer said that it is not a crime in the*

*eyes of law. Is it not a crime? Can somebody be so cruel and still law will not punish him? If I would have been the judge I would have ordered to kill this person to death..."* At the time she was contacted she said that she found it difficult to cope with her existing situation – raising children, coping up with the job and running around in the court.

The case illustrates that women's experience of 'cruelty' within the confines of domesticity find inadequate reflection within the definition of 'cruelty' given by the law. Law does not recognise marital rape as violence. In this particular case non-consensual impregnation and abortion is used as an instrument of violence by the husband to violate a woman's body and dignity and the irony is that this particular law (i.e. Section 498-A IPC) does not recognise this as 'cruelty'. Here, 'cruelty' moves beyond the confines of sexual intercourse against one's will to infringement of sexual and reproductive rights<sup>40</sup> and violation of one's self and dignity. A woman is subjugated to an extent that she was denied and deprived of material, economic or other resources with the clear intention of harm. However, the law may interpret the situation differently as done by her lawyer. The lawyer advised her that her experience did not fall under the definition of cruelty. Though several other Sections of IPC may be evoked in this specific case, yet law appears to be insufficient keeping in mind the complexity of situation.

#### ***Beyond Legal Discourse: Public Humiliation as an Elaboration of Domestic Violence***

Maya, aged 38, working in a Multinational Company in Delhi alleged, *"It was a love marriage. He used to work in the same company where I was working earlier. Within six months of marriage we realized that ours' was not a perfect marriage. He was a 'womaniser'. No amount of arguments worked. And when things went out of control we decided to live separately. But after few days he suddenly came to my office and started calling names, he even talked ... against me with my colleagues and went to my boss to harass me. It was too embarrassing. I was depressed and was on the verge of losing my job. He never wanted that I should earn more than him... I was so ashamed to show my face to any one. He knew that I am alone and he is taking advantage of this fact... I am still facing the consequences. My boss is trying to take undue advantage. He (the boss) is 'exploiting' me... I can't share my problems with anyone... everyone blames me... My colleagues are accusing me that I am a bad woman ... What can I do? I am alone... there is no body to share... I even thought of committing suicide one day... but then who will look after my younger siblings, my widow mother...you know I am the one who is sending money for their daily needs including my younger brother's education".* Maya is now living alone for past four years in a rented accommodation. Her natal family lives in a small town in UP. It is her widowed mother who occasionally comes to share her woes. But she feels she has been caught in a vicious cycle of pain and frustration and could not share her saga with anyone. Cases including that

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<sup>40</sup> Though vast literature is available on pro-life v. pro-choice debates as took place in West. In Indian context safe, accessible services, informed choices, abortion as a population control measure and sex selective abortion among other issues have been discussed and debated by scholars. However the present case highlights another aspect where *abortion is used as a tool to commit violence against women.*

of divorce along with the one under Section 498-A IPC are pending in the court for more than four years. She now feels tired and opines that she may 'settle the case' with her husband and obtain divorce on mutual consent.

In this particular case cruelty moves beyond the confines of physical or mental cruelty as defined under the law to the wider social domain affecting a woman's social and work relations. 'Cruelty' within the confines of a home has made her vulnerable to other forms of exploitation at work place or within the wider social structure. She feels being isolated and excluded. 'Cruelty' thus no longer remains limited to the marital relationship but it makes an impact on the woman's 'self' and her 'identity' at large. Present case is a specific situation where an attempt to escape from a violent situation put a woman into position of vulnerability thus creating a vicious circle of never-ending violence. It indicates the need to address the issue of violence within the broader social framework. This particular case also indicates the manner in which long and tedious battle against a situation of violence both within the legal framework as well as within the socially embedded institutional framework compel a woman to give up her struggle against injustice.

Overall, a few of significant issues emerged out of the above case studies. These relate to women experiences of violence within marriage as well as the response of the state, women's support network and the larger social structure to the same. Findings depict that most respondents have experienced severe, harsh, continuous and varied form of violence. At times, these forms of violence are not recognised by the law. Case studies suggest that decision to use legal system against their husband and in-laws was difficult for majority of women. Findings indicate that in an encounter with state apparatus these victims of violence often end up in getting re-victimized. Though the law is protective of women's concern yet the process of its operation is complex and complicated and ends up working against women's interest. Several barriers in terms of procedural aspects of law, social attitudes and perception about the institution of marriage and family act as barriers in women's access to justice. Another aspect interestingly relates to women's agency, their will to initiate and continue with their struggle for justice in spite of the fact that the system (both legal and social) is oppressive, traditionally patriarchal and at times disapproves of their efforts to seek justice. These women continue their struggle against all odds and barriers imposed by the legal system as well as the larger social structure. These few case studies are illustrative of the manner in which women articulate their struggle against oppression within the socio-legal domain and barriers, which impede this process, as discussed below.

### ***Women's View about Oppression in Marital Relationship and its Impact on their Decision to Protest***

Not all women who are victims of domestic violence raise their voice against it. A few manage to raise their concern within the social arena and a small number of women articulate their struggle against oppression within the legal domain. Reasons for these

differences may include their sensitivity, knowledge, resources, support or courage required to register the protest or it may be one's own individual notions about the marriage, family, violence in marital relationship among others. One of the interesting finding that emerged out of the study relates to women's own notion of equality and justice within the realm of marital relations and their discontent with the situation that affects their decision to proceed against their conjugal ties. Presented below is an analysis of views of these women about marriage and the manner in which they articulate their oppression within marital relationship.

### *Women's Reasons for Registering Protest against their Conjugal Ties*

Respondents in the present work were requested to point out reasons for registering their protest against violence within the marital relationship. Asymmetry in relation between men and women in marriage configured as a significant source of discontent among respondents (78%). These women uphold the sanctity of marriage as an institution, yet, they questioned the power relationship that operates to subjugate status of women in a marital tie. For instance, Bala (her case is described above) though believes in sanctity of marital relationship and is keen that her daughters should get married questioned the notion of inegalitarian marital relationship when she argued that the *"society allows a man to keep another women but what will happen if I went out to stay with another man? Will they (society) accept me?"* Similarly another young litigant argued, *"I have been taught since my childhood that husband and wife are like two wheels of a chariot. And, if the chariot has to run smoothly don't you think that two wheels should be equal?"* she added. In-egalitarian aspects of marriage and discontent that arise out of such situation is also reflective in the statement made by a respondent where she pointed out, *"It is said that marriages are made in heaven. But being a woman is torturous. Even Sita, the Goddess, marry Rama and was penalised for that. Today, their story is frequently repeated in each and every house"*. Another respondent opined, *"We are destined to accept our husbands as Gods. But do you think that these notions can still be uphold when the husband is a drunkard, a womaniser or a male chauvinist?"* This is indicative of the fact that women in contemporary India have began challenging traditional order and are questioning the dominant norms relating to marriage. They do question patriarchal notions inherent in the institution of marriage and articulate the oppression in their own language using their own icons, symbols and images. Whether educated or illiterate, women have their own way of interpreting conjugal relationship in democratic terms. Perhaps with the altering socio-economic environment women's attitude towards the institution of marriage is also transforming.

The study reflects that strong urge of these women to strive for justice (88%) is a major guiding force that compels them to register their protest. It is not the attitude of 'teaching other person a lesson' (one-tenth cases) which emerged out as a significant factor to appeal to the state. Rather it is the desire to preserves one's dignity and to receive fair treatment within the web of social relations that impel these women to strive for justice as indicated by majority of informants. The notion of 'self-respect' and 'dignity' (76%) exhilarated the

respondents to adopt the legal recourse. *"I am entitled to receive fair treatment within the family. How can they (husband and in laws) humiliate and torture me like an animal?"*, remarked a respondent.

### ***Women's Views about the Notion of 'Protection' in Marriage***

Marriage is no longer seen as an institution that provides for financial or other form of security by informants (80%). Possibly, with the altering socio-economic equation, women no longer perceive men as the 'providers' of economic or social security. *"I can earn my living, I can feed myself, so why should I depend on a man for the same... that too when he is too cruel... a beast?"*, commented a respondent. Perhaps, the notion of 'protection' in marriage in 'physical terms' (presence of a man is perceived to provide protection from other men) is seen as an illusion by these women. *"My husband beats me and my children. He is taking away the money I earned by working in several houses day and night. He even tried to sell off one of my child for his liquor. What protection is he going to provide to me or my children?"* claimed an informant. *"He calls his friends for the late night party and ask me to serve liquor to them. Is this right?"* questioned another. Thus women do question the notion of protection within marriage. They delineate the familial roles to juxtapose their claims and at times, these entitlements are not the same as notion of 'rights' in politico-legal or juridical sense. They focused more on moral and social obligations in the conjugal relation.

Findings indicate that often respondents expressed that seeking family or state intervention was not their aim when they aired their 'private' grievances into 'public' domain, what they wished to attain was a space for themselves as also to lead a life which is peaceful and free of violence. However, journey to justice within socio-legal terrain therefore is not easy and entails hurdles not only within legal system but also within larger social matrix as explained below.

### **Journey to Seek Justice: Constrains and Complications**

As discussed above barriers exist at various levels within the legal as well as in social domain. Hurdles arise at initial level when a woman decide to bring 'private' matter into 'public' as well as during the period when a case is pending before the court. Perhaps, the situation is complex and it is difficult to compartmentalise women's concerns and problems, but for the purpose of present study and with the object of explaining the issues in comprehensible manner, women's experiences are visualised into three broad stages. These are:

- i). Constraints at the stage of initiating action of making the 'private' family matter 'public'
- ii). Impediments when the matter is in the domain of social relations
- iii). Problems in the arena of state



Discussed below are the impediments women encounter at various levels that obstructs the process of seeking justice. This is based on analysis of the data supported by the verbal expressions of respondents and statistics wherever possible.

#### ***A) Constraints at the Stage of Taking Decision to Initiate Complaint***

Analysis of data revealed that at the initial level, problems arise when a woman facing violent situation decides to 'speak out' against the perpetrator of violence. As being reflected from the case studies described above, bringing the private matter into the public domain is not an easy task and requires a volume of courage on part of a woman. Often, lack of options available to stay clubbed with dependence on husband frequently compels women to continue to stay in a violent relationship. Another issue relates to concern of children which often forbids a woman to transgress the boundaries of marital home. Fear and insecurity to stand against their own family members impede their way to seek justice. For instance, Manorama's case cited above is indicative of lack of knowledge that prevents women to venture into the domain of state to seek justice. Although, Bala's case is reflective of the fact that support of her family members allows a woman to stand against their violent husbands. However, Rupa's case is reflective of women's agency, a willingness to continue the struggle in spite of all odds. Perhaps, limited choices available to women and their constrained circumstances impel them to approach the social relation network and once they found that kinship ties failed to bring justice, they may decide to appeal to the state. Possibly, the 'personal' becomes 'public' or 'political' only in extreme situations when all other mechanisms to ensure 'dignity' and to seek 'justice' have failed.

#### ***Resources: Availability, Accessibility and Utilization***

Data reflect that major impediments in women's access to justice include availability of resources in terms of finance, knowledge and information about her rights and legal procedures. Majority of women (92%) claimed that initially they lack access to information about the procedure of filing the complaint. Legal content, legal jargon, concept and the context was alien to them and it is only after they had contacted lawyers and others and had experiences in the court over a period, they gradually became familiar with the system (held by 68% informants). The study reflects on lack of legal literacy and awareness among women. For majority of women law is a 'mystique' and a 'complex subject' which they failed to understand because it is 'too complicated'. 76% claim that they were not aware of their right to file a complaint against their husband though 20% said that they have heard of other cases where other women have taken action in such cases. A few of them said that they were aware of the fact that women's concerns are better heard of these days. 76% respondents claimed that their natal family, neighbours (16%), friends or colleagues (23%), employers (2%), community leaders (2%) or NGOs (12%) were their source of information

about filing a complaint. Perhaps, education or employment has not made any impact in terms of enhancing legal knowledge or information<sup>41</sup>.

Non-availability of residence is considered as a major 'block' by majority of informants. Most often a woman is thrown out of the marital house either before she files a complaint or is not allowed to enter the marital home after she initiates legal proceedings. Returning back to natal home was not seen as a viable option initially by majority. None of them except one went back to marital home, 58% managed to obtain the support of natal family, 26% were supported by friends, relatives or colleagues, 4% gathered support of neighbours, community or even sympathetic members in the marital family. Ironically, none of them was aware of shelter homes or other such services provided by the state or the non-governmental organisations.

Access to financial resources impedes majority of respondents to seek justice. Most women (78%) reported that they hardly had access to financial resources while they were staying at their matrimonial home. Gifts being given to them at the time of marriage i.e. *streedhan*, consisting mostly of jewellery, cash or other items, were 'in the control' of husbands or in-laws. 70% women who were employed reported that while they were staying in their matrimonial home their earnings were taken away by their husbands or in-laws. Often, they claimed that they were coerced, either, physically, mentally or emotionally to part of with their earnings. This indicates that women hardly had control on earnings, acquired or earned, after marriage. Often the power relation determines the authority of 'financial control' within matrimonial relationship. Women, therefore, were frequently deprived of the control over financial resources, which make their task of seeking justice more arduous.

Around 72% opined that filing complaint is a complex process therefore they felt that it was essential to consult a lawyer before they initiated legal proceedings. Resources in terms of monetary capacity to pay lawyer's consultation fee, transport charges frequently appeared as a block to continue with the long drawn battles in the court. Only one out of 50 respondents was aware of the provision of free legal aid. Still another problem arise where a woman is a daily wage earner or employed on contract or otherwise where she has to loose a day's salary each time she appears for a hearing. Her emotional strengths and capacity to continue with the struggle to seek justice is yet another requirement to proceed besides her information and knowledge about the legal process.

Besides this, for 54% women, custody and concern for children became a major issue. *"I did not want to deprive my child with affection and comforts of being in his father's house. But, when the situation became worse did I dared to walk out"*, remarked an informant. Preventing their husbands and in-laws to inflict injury to the children emerged out as a factor that often compels women to register their protest (28% cases). *"My children started behaving in a*

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<sup>41</sup> Ironically, programmes like victim assistance or witness assistance, which exists in the other parts of the world, are not practised in India.

*different manner since the time they seen my husband beating me. I realised that every day fights between us were harming the children. Eldest one of them started scoring poor grades in school. Otherwise he is a brilliant child. Younger one began remaining ill and scared of his father. At times, my husband would beat up the children for no faults of theirs. Even, sometimes, I myself could not resist taking frustrations out on my children. I, therefore, finally, decided to bring an end to this situation",* says another.

Yet another barrier relates to fear and stigma being associated with going to police station or the court (reported by 74% respondents). *"My parents did not want that I should go to police station or police officers coming to our house for investigation. For them it is the matter of 'family prestige'. No body in our parental family has ever been to police station or court",* uttered a respondent. Reluctance to approach the state machinery hinders the women's way to justice. Often the common perception is that courts and police stations are meant only for 'different' set of people and not for persons living in a familial situation. Further, walking out of the conjugal tie often has its own connotations and is not considered as normal by the majority of people. Perhaps, this attitude prevents women to register their protest against their violent husbands.

### ***Why do Women Bring 'Private' Matter into 'Public' Domain?***

Often, a family matter is considered as a 'private' and a 'personal' issue not to be brought into the public domain (opined by 92% respondents). A family is stigmatized if 'personal' matters are taken to the 'public' domain (feels 88% informants). *"It is only when the situation became unbearable does my parents realized that I need their support ... then only I could come back to my natal home... The life became too harsh. I could not tolerate any more of pain...I was at the verge of committing suicide..."*, recalls a young girl coming from a middle class family. Another respondent recalls, *"Firstly, I tried to negotiate with my husband to stop violence but he refused to listen and became more violent. I resist telling my sad tales to my parents and bear the brunt myself. I took the matter to my mother in-law, but she always favoured her son. It is only when one of my friend visited me one day and asked about injuries I had, I could not prevent myself narrating the entire episode of violence. She then informed my parents and my brother came. After his departure, they (husband and in-laws) beat me to blue and black for the wrong that I had committed in bringing the family matter before my natal family. My friend took me to the hospital and informed the police. My in-laws also alleged me of taking family matter to the police and told them that 'it is our personal issue and we will solve it'. Since then they 'banned' my calls and visit to my parental house. It is when my elder sister came once and took me away and we consulted a lawyer who told us to file a complaint. Since then I am staying with my parents".* These statements reflect that for a woman registering protest against her violent husband is a difficult decision. Often, women do not opt for bringing 'private' into 'public' unless complexity of situation compels them to do so. Case studies also pointed out the fact that whenever a woman tries to raise her voice against injustice, her voice is muffled and throttled by her own family members. For instance, Asha's case (as described above) reflects that women initially resist to 'speak out' or share their experience of violence with their kin.

## B) *Social Relation Network as Patron in Marital Dispute*

Findings illustrates that often, a woman in situation of marital conflict initially raises her 'private' grievances within the larger 'public' arena of social relations comprising of her immediate family members, kinship network, friends, colleagues etc. in order to seek their support. Probably, financial, social and emotional support by the social relations helps victims in long run to sustain courage to seek justice within larger socio-legal matrix. Majority of litigants therefore initially relied on their kinship and family network to negotiate with their husbands. However, the task of mustering support of social relations in the support network is often arduous. Usually, these relations compel her to 'reconcile' or 'compromise' with the situation of violence. This compulsion by family and friends to 'adjust' often prevents women to register their protest against violence. Often victims were advised to 'forgive and forget'. Common assumption that dominates the discourse is that marriage is a sacred tie. Preserving marriage is frequently prioritised by the family and kinship network rather than protecting the interest of women (88% informants). Parents, relatives and friends of women who are harassed seldom act on the initial complaints. Often, they pretend, as the problem does not exist. Perhaps, their perception is the artifact of traditional ideology that perceives violence as 'normal' affair in a marital situation (in 76% cases). They get anxious about 'spoiling relations' overlooking the fact that relationship is already wrecked. As long as violence remains under the wrap of 'common day-to-day altercations' in marital relationship no body is compelled to acknowledge it. Family as a unit remains concerned about preserving its so called 'family honour'.

A respondent explained, *"a number of times my parental family tried to negotiate with my husband. Every time he apologises for his violent behaviour and assures that he will not repeat the same. He is manipulative and wicked and put the entire burden of fault on me. Things remain as it is for few days. But again, he would turn like a beast and would beat me up without any reason. Finally, one day he beat me so badly that I was hospitalised. My broken bones and blue body compelled my parents to lend me support"*. Thus, for majority of respondents, gathering support of their family, friends, etc. was not easy. Perhaps, in extreme situations like hospitalization or where she attempts to or threatened to commit suicide, does the social relations offer her required support. While pointing out the inability of support network to lend aid, a respondent claimed that, *"My parental family never wants that I should not break up with my husband. For them breaking the relation would mean bringing shame and ill repute to the family and will lead to problems in marriage of my siblings. Therefore, they forced me to stay at matrimonial home in spite of my husband's ill-treatment to me"*. Other said, *"They (natal family and friends) thought that the wives should not complain. They refused to support me when I really need them..."* This statement is reflective of a woman's hope and expectations from her family and friends and revealed that how she felt betrayed. Though these women realize that complexities within the social system that prevented their family members to offer helping hand yet they felt that their trust has been defied by their own kith and kin.

Thus, often, at the altar of preserving the institution of marriage women's concerns are relinquished by social relations in women's support network. This is reflected in yet another case where a respondent approached to a local NGO with her marital discord problem. According to her, she was denied of assistance. Instead she found people working for that particular organisation becoming spoke persons for her opponent's illegitimate claims. *"It is through the reference of one of my friend that I approached that NGO. But they took money from my husband and favoured him to the extent they compelled me to give up the custody of my four months old child in case I decide to live separately. They told me that wife beating is a 'right' of the husband and I should not get bewildered by trivial matters. They said that violence in marriage is a common notion and that I should not emulate the western society and warned me to behave like a 'good' wife"*, shares a victim who is a graduate and is employed. Hence, it may be inferred that most elements in social system enforce the order based on power relations. The 'public' (social relations) construction of the 'private' (family) is based on ideology that undermines women's sense of self and makes her invisible in the process.

### ***Family and Kinship as Arbiters in Resolving the Marital Conflicts***

It is when the women's support network gets convinced that 'things are beyond their control' they recognise a victim as a wronged wife. On the one hand, a woman when resist in marital relationship is discerned as a defiant, but at the same time she is also construed as a 'wronged wife' by her support network who then acknowledge her claim. She is then transformed from a 'wronged wife' to a person with 'rights' and her social relations may lend her aid to seek state interventions. In this study in majority of instances, the decision to approach the state was 'sanctioned' or 'authorised' by stakeholders. Here 50 women were contacted and out of these none of them claimed that they had not been through the lengthy process of negotiation mediated by relatives, friends or others before they appealed to the state. Often, the process of negotiation with their husbands was lengthy and at times it involves other stakeholders in society including community leaders. Majority of them (98%) resorted to state apparatus only when they felt that all other mechanisms to bargain with their opponents have failed. Ten respondents took the assistance of local agencies while negotiating with their husbands. Twenty-Nine approached the CAW Cells<sup>42</sup>. This also indicates that their own support network including family, kinship, community leaders and others including the non-governmental organisations construed their claim in a manner that failed to safeguard their interests. Or in other words, women find little maneuverability over her social relations. These respondents also stressed that their rights were denied and could not be established by the arbitration in the family or kinship network. Therefore, in order to actualise their rights they step out within the larger public domain - the state. This is in spite of problematic of women and state relationship where state fails in distinguishing women's claims as citizens from women as gendered subjects enmeshed in social relations<sup>43</sup>.

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<sup>42</sup> Crime against Women Cells were established by the GOI in the early 80s to address the problem of increasing violence inflicted on women within familial and social domain.

<sup>43</sup> Mukhopadhyay M. supra. n.3

### *Why do Women Appeal to the State?*

One of the reasons emerged out of the study is that state is a forum available for women above the family, kinship or community ties which may act as a neutral arbiter in resolving disputes. It may construe their interest differently from social relations. Often, a woman when appeal to the state believes that she is addressing a formal authority that governs citizens and is different from the informal authority vested with the family or kinship tie that is determined by the social norms. Power and authority vested with the state lends it credibility to act as an arbiter between the disputing parties or to intervene in the matter that is 'private'. Theoretically, a person appealing to state is construed as a neutral citizen irrespective of his/her sex, religion, caste, class or other identities. State apparatus, thus apparently, helps women to negotiate at par with their opponents when other available fora like social relations, kinship ties or community networks failed to treat them as individuals with rights. An appeal to the state implies refusal to conform to the norms of family and kinship. It contemplates re-inscribing the logic of independence and autonomy by these women outside their 'private' domain into the arena of state.

For instance in Bala's case described above, the social relations network has failed to negotiate for her claim though these informal networks do recognise and legitimise her claims as wronged wife. The shift in locus of power from family to the state therefore delineates a space for Bala where her interest can be construed. However, state again reinforced claims that are determined by the social norms thus limiting the choices available for women to assert their claims against their husbands on the same plane as citizens. Ambiguities and contradictions within the formal legal system become apparent when a woman approach the state as citizen but the state construes her identity as a wife. Twin axes of conservative tradition and patriarchy ossify women's identity in the arena of state. Perhaps, it is only once women entered within the realm of law and justice do they recognize that the platform provided by the state is no different as an arbiter than their family and kinship tie. The state therefore, is hardly seen as a practical and political choice by these women to bring about desired change in their lives as described below.

#### *C) Experiences in the Arena of the State*

Women litigants in this study opined that state offers them a politico-legal space to negotiate their claims. Majority (86%) of them felt that it is when they entered the legal domain their 'voice is being heard'. They opined that once they made their grievances 'public' within the arena of state did their matrimonial and natal families or others have begun taking them seriously. Perhaps, this has helped women to assert their status as wives which has been so far ignored by their husbands. These women recognized the fact that state provides them a platform to bring down their husband at the level of negotiation. Earlier, their claims have been ignored which in the space offered by the state, are at least, recognised. It gave their 'private' complaint legitimacy within 'public' domain. The process of appealing to the state, thus, has benefited women, if not in direct, than in indirect terms.

### ***Women's Perception of State***

The study reflects that women's initial encounter with the state apparatus bestowed their hope and faith to receive justice and enhance their credibility in the state mechanism to intervene in the 'private' domain and restructure social relations. An informant, who had recently filed a case in the court while expressing her faith in ability of the state to adjudicate claims in neutral manner pointed out, *"Courts are the temples of justice. I believe that I will definitely get justice at the end. My lawyer has told me that I have a strong case and they (husband and in-laws) will definitely get the punishment"*. Yet, once they entered the legal domain they found that the process adopted by the state negates their identities as citizens as it utilizes the lens of social relations while adjudicating their claims. About three-fifth litigants argued that state is no better than their social relations. They questioned the state's neutrality and shared their uncertainties about its efficacy in determining their claims. Others found that the paternalistic approach adopted by state is not helpful. Thus, women in the present study opined that they may maximize their ability to control their lives by utilizing state as a mechanism to negotiate their claims within marriage, yet, at the same time, problematic construction of womanhood, marriage and family by the state negates their faith in its ability to do justice. They therefore felt that the process of appealing to the state is dis-empowering. As one of them who has been struggling in the courts for ten years opined that involving in litigation implies 'harming yourself'. She shared *"Initially, in my native place, people use litigation as a curse. 'Tumhe Kachhari lage' (May you get involved into litigation) is considered to be an anathema in our town. I never took it seriously. Now, I realize how much true this is"*. Most litigants (90%) who have been litigating for more than three years were full of mistrust against the system.

Further, litigants opined that maneuverability of the state apparatus is difficult. A woman has little control over the manner in which her complaint is handled by the state machinery. Women thus felt powerless. A respondent while articulating her opinion about the state expressed, *"I have explained my problem to the police and lawyer, but they never allow telling the same before the judge. The lawyer asks me to say whatever he wants to and warned me that if I tell something different I may loose. Even the judge hardly listens to my complaints. Isn't it is my pain and sufferings? It is me who had experienced violence, then why not they listen to me. What kind of system is it which allows others to talk for you but you are not allowed to raise your voice or express your concerns and share your experiences?"* Others felt that courts are only giving them 'dates' and not 'justice'.

### ***Legal Terrain: Impediments and Obstructions***

In the present research it has been found that majority of women were not satisfied with the legal system. Results indicate that often respondents resort to law with different expectations rather than what law offers them. Ironically none of the informants were in favour of the remedy provided under Section 498-A except 11 who agreed that their husbands should be imprisoned and fined. Others do not see the solution in terms of

penalising their husbands or compound the offence and seek divorce which in turns bring more difficulties or paltry sum of alimony. Rather they want specific solutions like end of abusive situation. In fact, one-fifth respondents held that they were utilising law to bring their husband to the negotiation table which they have been unable to do through familial and kinship network. Respondents were of the view that litigation is not offering them solutions but in fact end up in victimising them. *"I want solution to my problem, but I ends up being harassed and humiliated by the lawyer, and courts"*, says a respondent. Technicalities of law frequently neglect the fact that a woman who is a victim of violence over a period of years often lack the capacity to represent her case, and, at times may need medical, psychological, emotional, legal, financial or social assistance to continue with her struggle for survival and justice. However, law offers them piecemeal solutions without taking into account the holistic account of their situation.

For victims of violence the situation further becomes complex because legal process impedes the process of gaining 'normalcy' in their lives. Majority of women said that they want to forget their past and wanted to start afresh but their visit to court often remind them of their 'scars'. *"I was seeking a way out of my agony and pain, but experiences in the court are more painful. Every time I wish to forget my past and start my life afresh, I am reminded of the same when I came to the court"*, remarked a respondent. Often, a woman in order to start her life afresh needs to come out of the violent situation and to repress her traumatic past experience but the legal process never allows her to do so. Perhaps, the process of obtaining remedies under the law thus became the process of tyranny and oppression for victims. These sets of barriers thus often make the process complicated, tiring and arduous.

### ***Multiplicity of Litigation: An Absolute Anguish***

Another complexity of legal system is that it operates on the basis of geographical location, remedy sought and the process involved. It fragments a problem into that of being civil or criminal in nature and offers solutions accordingly. A complicated life situation is therefore compartmentalized into different 'legal cases'. This multiplicity of laws and multifarious process of litigation creates problems for both the parties involved in litigation. Often litigants end up being caught into web of litigation from which escape is difficult if not impossible. Reason being that frequently accused husband counter-reply a complaint under Section 498-A, IPC with a petition for divorce, restitution of conjugal rights or custody suits. Informants in the present study were also found to be attending proceedings in several courts simultaneously. Often these courts are located within different geographical locations and each court follows its own set of procedures without taking into account the proceedings being held at other forums. Proceedings in criminal court dealing with complaints under Section 498-A, IPC or Section 125 CrPC is often in no way associated with that of civil court dealing with the divorce or custody suit between the same parties<sup>44</sup>. Often, these are earmarked in different courtrooms at different locations with different judges

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<sup>44</sup> Though by the time the data collection was completed apparently an order was issued that the Section 125 CrPC cases should be heard by the same judge who is hearing the complaint under the Section 498-A IPC.



hearing the complaints on different dates fixed for hearing. Thus litigating parties found themselves running around concurrently in various courtrooms on varied dates. Perhaps, litigation, therefore, does not offer an option but becomes a compulsion for men and women resorting to it. It seems to create a vicious circle of powerlessness and helplessness. *“Court ka chakkar to ek aisa chakravahayu hai ki jo bhi isme ek baar phanss gaya to phir nikalna mushkil hai”* (the court system is a vicious cycle, once you enter it escape becomes difficult) explained one of them.

### ***Men and Women Perception of Law***

As mentioned above, often law is perceived and interpreted differently by various stakeholders within the legal system and frequently this is without taking into consideration victim's perspectives. The definition of 'cruelty' as construed in the legal text appears to be narrow and constricted when compared with real life situations that existed on the ground. Law may not recognise certain experiences as 'crime' yet, from women's perspective these episodes have larger implications on their lives. Often, reliance on legal requirements of what constitute 'cruelty' results in disqualifying women's experiences of violence. Women's day-to-day experiences of violence in marital situation drive them to interpret 'cruelty' in their own terms which is different from its legal interpretation. They delineate their own notions of right and wrongs in marriage.

### ***Constructing Cruelty from Women's Perspective***

Findings indicate that in most cases, an episode of cruelty cannot be dismissed as usual nitty-gritty of marital relationship rather it is vast and makes an impact on woman's identity. For instance, a respondent recalls, *“he (the husband) would force me to drink and smoke with his male friends he invite for late night parties and when I refused he told me that I am a conservative, uneducated, illiterate fool who does not know how to socialize and insulted me before everybody. Then one day he forcefully took me out to a kittie party in the winter midnight with my one and a half-month-old child in spite of my refusal and as a result the child died within few days of severe cold. He even compelled me to sleep with them and when I declined he thrashed me severely”*. Another informant expressed that *“Within two months of my marriage, when one day my husband went out of station, my father in-law took me to my parent's house and abused them saying that they have committed fraud... that I am a baanjh (barren) woman and left me over there... without getting any medical tests done ... that too within two months of marriage they accused of me being infertile. I was fortunate enough that at that time my mother took me to a gynecologist and the results were found to be positive. But they didn't stop there and when my husband came back he took me to the clinic where after the sex determination test they found that it was a baby girl they compelled me to undergo abortion. Not only that they told all friends and relatives that I am incapable of producing a normal child and that the abortion was performed because the child was abnormal. They do everything to eliminate and stigmatised me as barren women. I bear everything silently... I was fortunate enough to give birth to a girl next year. This time I went to a government hospital with my friend. But they did not stop there and wanted to kill my daughter”*. Most respondents

reported that they were violated during pregnancy. Fertility, abortion etc. often emerged as a ground for inflicting violence as also seen in Mandira's or Meena's case discussed above.

These are a few experiences of 'cruelty' though these are not the only incidents which drove them to file a legal case, yet these are a part of larger experiences of violence women underwent. A few of these respondents felt that they have escaped the clutches of death by daring to walk out of the violent relationship. Perhaps, for them it was a step to ensure their survival. Yet, the law requires establishing *mensrea* or criminal intention on the part of accused, which at times, is difficult to prove. However, the following part of this report explains how women's experience of cruelty takes the shape of 'complaints' how the state mechanism perceives and interprets women's experiences.

### ***From Facts to Complaints: Role of Police and Lawyers in Recording Complaints***

Data obtained reflect that at times, out of sheer embarrassment victims find it difficult to share their actual experience of violence in marriage with their family, friends or lawyers. Thus, the complaint being lodged as FIR often lacks the basic substance or experience of violence which victims underwent. Also, at time, a victim is not in situation to narrate the incidences in coherent, consistent or continuous manner as demanded by the law. Incidences are narrated by a victim as per her own priorities and gravity is accorded to each episode of violence as per her own understanding rather than the manner in which law expect her to do. Technicalities of law often misconstrue the victim's experience of violence. A victim narrates her version of violence, but, how it should be processed legally so that 'facts' becomes a 'legal complaint or a case' is designed technically by the procedural laws. Police and lawyers suggest what constitutes 'complaint'. Language deployed by the police and court is different from the language in which victim narrates her version. Frequently, facts and experiences are distorted by the police and lawyers to shape these into the manner recognized by the legal discourse. Often appraisals of facts are not based on logical and atomistic fashion or holistic assessment of narratives. For instance, in most of the cases mentioned above, the police have attempted to link dowry though the woman has alleged of mental or other forms of cruelty. Thus it may be said that neither police record the victims' version as reported nor the court attempts to understand the true version of victims' experience. Often, they have a little time to hear the 'victim's story'. A victim often lacks awareness about the procedure and technicalities of law. She has a little role to play in designing the complaint as per technicalities involved except to narrate incidences of violence.

### ***Is Seeking Police Intervention Helpful?***

Providing citizens a sense of security is a *raison d' etre* for the existence of police. In the present study majority (78%) of women seeking justice viewed the role of police as significant in their ordeal. However, only 28% respondents found them helpful. 78% opined that police did not respond efficiently and took a great deal of time to respond to their

complaints. More specifically, the data illustrates that cases pertaining to domestic violence are treated as 'private' family matter by the police. Therefore, even in cases of drastic assault, the complaints were not seriously taken (felt by 70% informants). Generally, commonsense knowledge and attitude of police and other law enforcement agencies about differential rights and obligations of a wife and husband are brought to bear on deciding the legitimacy of claims. The process of law, far from trying husbands as criminals, often normalizes the husband's violent actions as the reasonable behaviour. Reluctance by police to intervene positively in the matter of family dispute adds to the anguish of women. 64% opined that they were dissuaded by police officials to register their complaints. 66% respondents felt that police authorities used coercive powers and compel them to 'compromise' with their opponents. 2% reported to bribe or sought the interventions of local politicians or senior police officials to get their complaints registered. Due to reluctant attitude of law enforcement agencies, at times, a victim is compelled to seek remedy under civil law or is prevented to seek any relief at all. As one respondent hailing from an upper middle class family said, *"After seventeen years of our marriage, my husband realised that I am not a good wife and he brought another man to our house (possibly homosexuality???). After that I faced severe problems in my life. He stopped giving me money. I was a housewife and has never been out of my house so getting a job out in the market was impossible for me. My parents are no more surviving and it became difficult for me to exist. Then one day my friend took me to lawyer for his advise and the lawyer told me that a case may be made out and asked me to go to police station to lodge a report. But the officer in-charge insisted that I must add 'dowry harassment' to my complaint as it will make my case more strong. But how can I lie? It was never the dowry demands!"*

Getting a copy of complaint report is a legal right of a complainant<sup>45</sup>. This however has not happened in all cases (as claimed by 16%). Further, the foundation of the criminal justice system relies on the investigation done by the police. However, a majority of respondents said that the facts stated by them were not correctly recorded by the police. One-fourth reported that their medical examination was not done and the police did not advised them to do so. One respondent claimed that she herself asked police officials to get her medical done when she initially approached the police station to register her complaint but was dissuaded by the duty officer on the ground that 'it is a personal case and is not a serious offence'. Often, procedural lacunae during investigation make it is easier for the accused to seek bail or even acquittal. Usually, time taken by the crime investigating authority is long and in the process victims suffer. A sizable number of respondents felt that their opponents were not arrested promptly by the police. A large number of women (74%) reported that they were released on bail due to the inefficiency of police.

64% respondents opined that police did not accord fair and impartial treatment to them. Slightly more than half the respondent felt that they were treated with downright hostility and suspicion. They believed that police was discriminatory siding their husbands as their opponents are 'rich, powerful and influential'. More than two-fifth felt that police personnel

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<sup>45</sup> Section 154 CrPC makes it mandatory for the police to give a copy of the FIR free of cost to the complainant.

took money from their opponents and 36% opined that their opponents have used political power to influence the police. Majority of them found police behaving rudely, indifferently and unsympathetically. 46% reported of harsh language used by police. 38% observed that they were made to sit for long in the police stations. Police stations are viewed as unfriendly places with hostile environment. 76% women reported frequent visit of police personnel to their house for the purpose of carrying out investigations. One complained of being stigmatized because of frequent visit of police personnel to her parent's house resulting in withdrawal of support by the parental family. Another complained of harassment by the police. Credibility of police was often questioned by respondents. Often, patronising attitude adopted by police acts to erode victim's faith in law enforcement mechanism.

### *Courts and Victims of Violence*

Experiences in the courtroom act to deter majority of respondents to continue with their ordeal to seek justice. Atmosphere prevalent in the courtrooms was found to be unfriendly and hostile by 82% informants. Small sizes of courtrooms as compared to large number of people it has to accommodate during the day's proceedings further complicate the situation. Most respondents reported that at times, they have to stand outside courtrooms waiting for their turn in the premises along with perpetrators of violence. 64% reported to have 'heated arguments' outside the courtroom with their opponents. 72% women claimed that encountering with their violent husbands has led to increase in hostility, anger and frustration in them. Women respondents also pointed out that, at times, Mahila Courts are situated next to courtrooms where other criminal cases are being taken up or when the judges are absent their cases are at times earmarked to other courts dealing with other types of criminal complaints. Surrounded by 'all kinds of people' often make them vulnerable 'to sexual and other form of abuse'. "A woman standing in the court premises is perceived as a 'bad woman' by most of the people", argues an informant.

Further, the court staff is found to be 'unfriendly or non-helpful' (64%) and at times, 'hostile' (28% cases). Respondents complained about the rude behaviour of staff. A few women alleged that the other party bribes the staff. 46% respondents found that the attitude of judge was not women-friendly. Most felt that their case was not being heard properly by the court. Moreover, the courts have their own procedures and practices to deal with victims. A victim is often not allowed to participate in proceedings except when she is called as a witness to testify her case. Though as a complainant she is entitled to attend the hearings and appear before the court on the given dates. 68% respondents felt totally alienated from the system because of this. A few reported that often they could not make out what is happening. It was also observed that during the time when courts make efforts for 'reconciliation' in the judges chambers, the presence of the husband - the perpetrator of violence and lawyers prevent women to speak out (74% respondents).

### *The Adversarial Nature of Trial: Is it Advantageous?*

Adversarial nature of trial practised in India has played a significant role in shaping the practice of law. Assumption behind the current system is that truth is best discovered by presence of impartial judges and best arguments are given by lawyers who are neutral and working for the establishment or explanation of truth. The present system of justice delivery is thus based not on dispute resolution but is based on the assumption where 'solutions are dictated by an outsider, won by a victor, and imposed upon loser'. Criminal trials are frequently referred as 'fights' and 'battles' and judges are referred as 'umpires' or 'referees'. Parties become 'winners' or 'losers' while the courtroom becomes the 'battlefield'. In particular, many victims criticize the adversarial process for producing an atmosphere that is hostile and stressful. Often, the intimidatory and possibly inefficient nature of legal proceedings also flows from its adversarial nature. The truth finding approach in adversarial system is based on competition, dialectic argumentation and binary outcomes. It is well known to encourage not only in courtroom but through out the legal process - exaggerated claims and various dirty tricks designed to impede emergence of the truth. Perhaps, the process of fact interpretation in the adversarial process views 'reality' as multifaceted, confusing and subject to varying interpretations. Also, the adversarial process has been criticized as reflecting male values of 'competition and aggressiveness'. Essentially competitive and combative culture of the adversarial system acts as potent barrier to the dignified treatment a woman complainant. Often, the criminal law's treatment of a victim is largely based upon standards of behaviour and morality that reflects a male perspective.

26% women felt had they been given chance to speak up they could have argued their case differently and 10% accused the court for not giving them any chance to reply to their opponents or his lawyer's arguments. 82% complained that their opponents have been using 'dirty tricks' like denying truth, falsely implicating complainants, accusing their character, involving their (women's) family members when they have no role to play etc. About 78% reported that they felt depressed every time they visit the court and this is reported to hamper their normal life. Perhaps, the deeper structural and strategic imperatives of adversarial trial process deter women to continue with the legal proceedings in courts.

### *Evidence and Gender Bias*

Evidence simply refers to information which may persuade a person to accept something likely to be true. In other words, evidence is concerned with 'how stories are heard and how society determines its credibility'. Evidential issues are influential at all stages of criminal proceedings i.e. from the point of investigation up to the point of conviction. Further likelihood of framing of charges and conviction depends on the sufficiency and quality of available evidence. Experiences, however, reveal that it is extremely difficult to prove violence by husbands and in-laws 'beyond reasonable doubts' as required by criminal jurisprudence. One respondent hold, "*The IO (Investigating Officer) asked me to tell the correct*

*date and time at which particular incident took place. How can I tell the exact time or date? I was too tensed to recall the exact period. And every time his lawyer in the court would ask me the same thing again and again. I felt as if I had done something wrong and not him (the husband)”. The statement reflects on the stress and strain a woman undergoes during the trial. In the present study 74% respondent said that they could not produce evidence as frequently the episode of violence took place within the privacy of four walls of the house. 51% reported that their neighbours who are witness to violence have failed to come forward because either they are afraid or do not want to spoil their relations with perpetrators. 64% women claimed that they do not wanted to involve their children, siblings or other members in their family in the court proceedings. Often, they relied on the ‘selective’ witnesses in their network. 78% respondents expressed that they had never kept any documents (i.e. medical reports, letters they had written to their families or friends or maintained a diary of incidents etc.) as they ‘had never thought of taking extreme step of going to the court!’ Thus, it may be said that these women were not prepared ‘legally’ to proceed against their violent partners.*

### ***Cross-Examination and Its Adverse Impact***

Cross-examination emerges out to be an abusive aspect of adversarial trial which traumatise women's experience in the courtroom. Treatment during cross-examination is often describes as humiliating. Women claimed of having been asked irrelevant and unfair questions. This is frequently done by invading her private life, alleging her character, typical questioning techniques adopted by the defense lawyer which is hostile, confusing and distorting and repeating the traumatic episode in a manner which is humiliating for a victim. At times, these includes repeating same questions again and again, pretending not to hear answers, using aggressive tone, demanding precise collection of seemingly obscure facts, asking questions in rapid succession, deliberately misrepresenting parts of complainants testimony and pre-emptive interruption. Informants in the present study lament that often their personal lives are scrutinized and their roles as wives are questioned. Many women reported being subjected to endless questioning around matters that had apparently nothing to do with the issue in trial. Respondents expressed their frustration at the coercive questioning technique. Defense lawyers frequently portray them as a person of low intelligence, immoral and untrustworthy. Aim of defense lawyers often is to attack the character and credibility of the complainant with the purpose to save the skin of their clients. The lines of questioning often reflect and perpetuate cultural myths and biases and compare the victim's set of action to an ideal behaviour of a woman's reaction in typical circumstances. Cross-examination is therefore, used as a strategic device to apparently reduce the credibility of the complainant in the eye of the court. This also compels advocates exploit prevailing cultural biases and reinforces gender stereotypes. Frequently, complainants are portrayed as opportunistic, accused of lying and were confronted for bringing false allegations. Among the more frequently expounded motives are extra-marital relationships, alleging moral character, lacking wifely characteristics, accused of not performing wifely obligations, interference of their natal families, or to gain monetary benefits among others.

Women in this study feel that defense lawyer confused them and didn't provide them an opportunity to say what they really want to say. They felt if their 'voice is being throttled and muffled' and they were silenced during the cross examination by the defense lawyer's frequent interruptions and instructions to give answers in 'yes' or 'no'. Often they claimed of being interrupted and prevented from responding to questions in detail or their words were twisted. The study indicates that the complainants are compelled to give their evidence in 'fragmentary testamentary' style - as strictly controlled responses to specific questions. Thus, improper and degrading way of cross-examination adds unnecessarily to the trauma of litigants testifying in the court and affect their ability to give evidence. Perhaps, inadequate regulation of cross-examination in criminal trials explains why women often experience degradation in court. Adversarial nature of trial frequently encourages advocates to engage in maneuvers designed to intimidate, humiliate and confuse complainants and witnesses in order to achieve tactical gains.

Women litigants in the present study also stated that often their opponents are accompanied by bunch of lawyers and appearance of number of advocates from one side frequently affects the trial process. It acts to intimidate victims and seemingly tilt the balance of justice. At times, the body language, the style of speech etc. by the opponent's lawyer, all, are used to achieve tactical gains. 76% informants reported that their opponent's lawyers have been using various techniques to coerce them to 'settle' the case, and this is both inside and outside the court premises. *"I was pressurized by his lawyer to withdraw the case. They often called me and through my relatives and friends compel me to wind up the case"*, complained an informant.

### ***Humiliating Trials: Illusory Justice***

As evident from the above, the criminal trial frequently disqualifies women's experiences of violence. It often celebrates deep-seated notions of masculinity. More fundamentally, the court hierarchies, formalities and architect act to intimidate and silence many courtroom participants and can be held problematic for women who hardly had experienced trial earlier in their lives. Generally most women are less accustomed to participate in a public fora, and often poor acoustics of many courtrooms can be said to silence them in literal sense. Allegedly masculine modes of authoritative speech dominates in the court more often which are marked by self-assurance, self-assertiveness and unqualified declarativeness while victim's utterances marked with uncertainty or confusion are not being recognised by courts. Moreover, one cannot expect a battered woman whose confidence has been undermined by months and years of physical and emotional battering to stand up in the court and testify against her violent husband or expert lawyers.

Further, a woman's experience of violence is negated by the courtroom experiences. *"She is fabricating the story. She is lying"* often accuses defense lawyer. *"She just wants to extract money from me therefore she is using law"* utter most men respondents. *"Though there may be a bit of truth, but most of the time women exaggerate. This is a part of usual wear and tear of the marriage*

*that women most of the time present in distorted manner”, hold most lawyers. Even judicial utterances are perverse to the interest of women and are based on patriarchal notions. “You are a woman, you should think about your future as well as future of your children. Why don’t you go along with him? Your arrogance will spoil your future”. Often, in open courtrooms remarks are made that derogates women's claims as “You creating moles out of hills”. A victim felt humiliated by these oppressive remarks. Perhaps, well-documented process and system that exist in the court filter out women's complain of violence out of the legal system. Informal processes, which are less visible than the trial, operate to deny women's account of violence. Trial, thus informally, reflect upon her own person rather than the abuser in the process and attempts are made which accuse a woman being guilty of bringing ‘private’ family affair into ‘public’. Often the complicated procedures involved make her convinced of her powerlessness and helplessness of her situation.*

### ***Procedural Lacunae: A Tiring Ordeal for Women Victims***

Besides above, several other barriers exist in varying from indifference of family members to pursue the case to witnesses turning hostile as emerged out of the study.

Further, matrimonial litigation is considered as ‘different’ from other forms of litigation and often less seriousness is devoted to it. It is considered as litigation in perilous conjugal tie within an emotive situation where ‘parties often change their moods and minds frequently’. One of the lawyers during an informal discussion shared, *“Matrimonial litigation are fruitless. We therefore are less concerned about them and often see to it that they drag for a period. As the time lapse, clients do change their minds and without much efforts we may reach to an amicable solution. And, of course, it is paying too”*. Attitude and earnestness of lawyers towards matrimonial litigation suggest the gravity of situation and its implications on litigants. A desperate litigant often goes on knocking doors to consult a number of lawyers. Yet, justice remained an elusive goal because frequently a few lawyers work for their own vested interest of making money, name of fame. The lives of women, their feelings and desires, their aspirations: these counted for nothing at all.

Moreover, the occupational role specificity of the lawyers in India prompt them to prolong dispute processing, for once the dispute ends it results in the occupation being redundant. Lawyers therefore largely confine themselves to that of dispute processing rather than playing the role of negotiator, advisor, counsellor etc. Respondents complained that often lawyers took the fee but had not appeared before the court, or they send their juniors who are ignorant about the facts of the case, or at times, lawyers themselves appeared unprepared for the proceedings. At times, advocates appearing for a particular case disappeared without any notice. Often, there are complaints of corruption in legal profession. Perhaps, they feel that there is nothing in this case and it is not worth pursuing, or, often, they realized they have earned enough out of a particular case and decide it is not worth putting in more effort. Practice of ethics and principles in the legal profession is rarely being raised as an issue. The component of trust in relationship between professional and their clients is often found to be missing. A few respondents reported harassment by the



lawyers. Besides financial aspects, three respondents also reported of being sexually or otherwise harassed by the lawyers. *“He often made me unnecessarily sit in his chamber till late would hold my hand or touch me or at time passes vulgar comments or often ask unnecessary things about my sexual life within marriage that has nothing to do with my case. But I have paid a large sum to him so I can’t even change my lawyer”*, reported a respondent. Another revealed, *“My lawyer never told me about the details. Whenever, I asked him, either he would shout at me and says that mine is not the only case he has to deal with but there are other important cases. He compelled me to compromise the case and said if I don’t do that the court will punish me or even in case my husband would go to jail, I would have to pay money for his maintenance!”* The law, its system and its process, thus apparently help lawyers rather than victims. *“It is the system where lawyers gain at the cost of victims. People sell their house to pay lawyer’s fee and lawyers build their houses from that money”*, explained a respondent.

Often, cases drag on for years, and for victims this becomes a tiring and a frustrating ordeal. In courts, a victim has to sit for hours and wait for their turn. Sometimes the magistrate does not turn up or the defense lawyer seeks adjournment on some pretext or the other. Repeated adjournments dampen the faith of victim in the legal system. And as time passes and initial shock of grief lessens and the daily routine of life reasserts itself and often less importance is accorded to pursue the case. The accused is also aware of this fact and bank upon it. In the beginning they attempt to seek bail. Once the bail is granted, it is well known that they can get the hearing postponed on one pretext or another. Frequently, accused persons being released on bail manage to buy off the witnesses or intimidate them into silence. At times, either the judge is transferred or an important witness is purchased or refuses to get involved or the case takes so long that witnesses sometimes die before the hearings take place. Thus indifference works at various levels. Perhaps, flaws in the system and indifference among professionals deter people to seek justice.

State conducts the criminal case and an aggrieved party depends on state prosecutor, who is frequently not sympathetic to a woman’s concern and is burdened with a pile of cases. They are not paid by the aggrieved party and their priorities are perhaps different. His or her sensitivity to gender concerns is yet another factor that may come into play while arguing for a case. Criminal justice system is therefore, weighed against the victims. At times, women (26%) complained of public prosecutor being bought over by their opponents.

Mostly, judges show a pro-male prejudice. Probably they import their own ‘values of life’, customs, manners, prejudices and beliefs’. It was found that often Mahila Courts are considered as substandard forums where judges are least interested to work in<sup>46</sup>. Also, assessment of their work in these forums is based on the success in the number of cases they have been able to get ‘compromised’ or ‘settled’. Thus it may be said that, in practice, matrimonial litigation, besides legal rules and principles is shaped by cultural constructions and social practices. Primacy is given to ‘reconciliation’ or reaching ‘compromise’ without

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<sup>46</sup> Information shared by senior advocates during their personal conversation on the issue.

evaluating its consequences on the parties to litigation which often ends up in decriminalizing the process of justice. Majority of women (92%) reported that the court initially persuaded them to 'compromise' or to go back in violent situation which they do not wanted. At time, women reported that courts use threat as a means to mediate between the parties and coerce them to compromise the case. *"I resisted the offer made by the judge to back to him because of inherent 'dangers'. But the court insisted that I should go back for the sake of my children"* said a respondent. Further she raised, *"How can a court monitor if the harm has been done or not? And of course my dead body will not come here to complain against him"*. There are others who reported that judges often asked them about the 'amount to settle the case' in case they insist they will not 'compromise'. *"It is your youth why do you want to spoil it? You will get nothing out of this litigation why don't you end the matter?"* are a few of statements made by judges in the open courtrooms. *"I never want any money from him. I have not come to the court to receive any 'settlement'. How can they negotiate that? Can I buy the time I had lost, the dreams me and my parents had of marriage or the future for my children out of that money?"* argues a respondent. In other words, courts either compel women to go back to violent situation or end the litigation process by withdrawing their complaints. What is offered is meager monetary compensation in lieu of withdrawing complaints.

Continuous pressure is exerted on women not only by the judges who are fulfilling their legal obligations but also by lawyers from both sides. Opponent's lawyer in order to satisfy their clients locates the solution in withdrawal of the complaint. Complainant would often be compelled by her own lawyer to withdraw the case as *'law does not offer any 'reasonable' solution'*. The social relations in her support network would coerce her to withdraw the proceedings and 'start a life afresh'. The complainant herself may get exhausted running around in courts, on and often, bringing up children (if any), struggling with day-to day ordeal of life, are compelled by the complexity of their circumstances to end the proceedings. Thus, litigation hardly serves its purpose. Further, during the process, the initial anger and resentment against a person often is replaced by the concern for daily nitty-gritty of life. The struggle for survival perhaps undermines concern for justice. Thus for a seeker of justice the process results in disillusionment.

### ***Compounding of Offence or Reconciliation: Is it a Voluntary Decision or a Compulsion?***

As mentioned above, the courts, lawyers, police, the social relations all compel women to either 'compromise' the case (go back to the violent situation) or 'settle' the case (withdraw the case in lieu of meager compensation). Thus often, it is under compulsions that women may decide to compound the offence. Compelling socio-economic circumstances further impel them to 'compromise' or 'settle' the case. Out of 50 cases being examined 7 women claimed that they would be compounding their cases i.e. withdrawing their complaints and only one said that she intends to go back. She explained, *"I have three children, till now my father was supporting me, but after he expired my brother and his wife have refused to share my natal house with me and my children. Even with my job, my earnings are not enough, I have no options left"*

*but to go back and `adjust' with him. I never wanted to go back...I know once I will be back he will become more violent ...he knew I am alone now..."*

Similarly, in another case where a respondent is in the process of `settling' the case reasoned, *"I am tired of running around in the courts. My children are growing up. Their requirements too... I have no money to pay lawyer's fee and every time I have to go to the court or each time my lawyer calls me I have to take leave from office. My salary is deducted... I am employed on contract basis"* Yet another argued, *"I am exhausted. I want to forget everything happened in my life but going to the court frequently reminds me of those bad days"*. Thus, for victim of violence the court experiences are frustrating and tiring. Concerns for children, cost involved in litigation and problems that arise at other fronts including work prevent them to continue with the legal proceedings. *"What I will gain out of this never ending battle? He may be imprisoned but that is not going to help me or my children anyway"* remarked a respondent. Undesirable solutions offered to a victim by the law along with its procedural lacunae dissuade them to continue their struggle for justice. Findings thus indicate that women often have not voluntarily decided to compound the offence, rather it is the compulsions and complexity of their circumstances that has compelled them to do so.

Overall, it may be said that the Mahila Courts though started with the motive to provide women a space to raise their concerns, in practice, ended up being the admixture of a criminal and family court where the proceedings are taken up in the manner as done in criminal courts but they operate on familial ideological underpinning. Thus, the very purpose of formulating this `special' forum is hardly being served. Though the term Mahila Courts seemingly implies a forum "where women experience violence; justice has everything to do with the fact that such women need to talk to women"<sup>47</sup>. But reality is found to be different. Women approaching these forums do not just need to talk to vent out their feelings rather they need to address a system, which is prejudiced and complex, has its own dimensions, follow its own practices and its own set of rules. It may be said that these courts do provide a space for women to raise their voice and render them a platform to negotiate their claims as wives, but its biases, lacunae and pitfalls hardly allow them to negotiate on their own terms.

#### ***D) Social Aspects of Women's Lives Struggling In Legal Terrain***

Besides, examining the legal aspects the study also probed into the social aspects of the lives of women victims of violence and its significance. Understanding the social aspects becomes important because these operate to determine women's struggle within legal terrain. Further, seeking state interventions often affects other life situations. For instance, a large number of women (48%) found it difficult to negotiate at the work place due to their

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<sup>47</sup> Kapur Naina (1994) Mahila Courts: A Big Step in Sensitising Justice The Pioneer dated September 6<sup>th</sup>

struggle in the legal terrain<sup>48</sup>. In most of cases where women were employed, their opponents have attempted to evoke sympathies of their wives employers and colleagues by approaching to their work place. Often women said that they faced several problems at work place once their employers and colleagues came to know of their 'private' lives. This includes sexual harassment, perverse remarks made by colleagues or bosses, insensitive attitude among others. *"I was forced to discontinue with the job, ...they are denying me of all other benefits which my colleagues are availing of as they are in better position to bargain... getting another job will not be easy for me in my situation ...and they are aware of this fact "*, shared an informant. 46% of employed respondents felt that their capacity to bargain or negotiate at work place with the employers is being affected after they had filed the case though another 18% reported that their employers and colleagues have developed more sympathetic attitude toward them.

Moreover, existing social structure frequently ostracise woman rather than the man who commit the act of violence. Often family and community suggest that women contributes to their victimization or even 'deserve it'. Society stigmatized and alienates women who dared to challenge the patriarchal structures. These women are labeled as 'perverse', 'home breaker', 'defiant' and 'available'. They are often accused of being 'influenced by the western liberal ideologies and education, or are construed as 'revengeful', 'non-sacrificing' 'one who lacks the basic wifely qualities as patience and tolerance' or are 'greedy and corrupt'. Women claiming recognition of their rights are often being criticized for their attempt to destroy traditional cultural practices. The notion of modesty prevails and insists that a modest wife could not challenge her husband. Therefore, a woman who is challenging the norms is stigmatised as a woman of loose virtue. An informant laments, *"My husband would find another woman to remarry. Society never questions his violent behaviour but a for a wife it is difficult...that too when she is handling the responsibilities of bringing up children... society questions her character, her ability to 'adjust' or 'tolerate' in marriage"*. Thus, social structure plays a dual role. On one hand, it provides women a support and yet at the same time, it becomes problematic for women seeking justice within legal domain.

### ***Are There Any Options Available?***

Often, for a victim of violence limited options are available in the existing social structure. Society, in general, considers institution of marriage as only viable solution. *"In case a woman with a problem of domestic violence came to us we can advice her keeping in mind the options available. And options are of course limited within the given setup"*, shared a spokesperson for an NGO working on the issue. State, family or others in her support network often ends up creating a situation where a woman hardly can exercise autonomy or think of possible available alternatives. *"I just want to live on my own. But my parents, relatives and friends are*

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<sup>48</sup> This is exemplified in Maya's case, described above where her husband has approached her work place and once her boss came to know of her situation he tried to take advantage of the same. Also in Meena's case, her husband went to her office and attempted to demean her by pointing out her inability to act as a dutiful wife.

pressurizing me to 'go back' or remarry. They just want me to 'settle down'... But I just do not want to think about starting the cycle of violence once again in my life", remarked a young respondent. However, 40% respondents held that they are convinced that their 'decision was right and that they never wish to re-enter into the same'. For them there are options that exist even if these are not acceptable by the larger society. These women, therefore, are paving ways to transform society by challenging the existing social structure, which has discriminated, oppressed and subjugated them.

### ***Reflections on Positive Aspects***

*"I felt I am not alone who is a sufferer, there are others like me. And more importantly, I have not done anything wrong in voicing my problem, whatever the results may be"* says 22 year old, informant, hailing from a middle class family. Yet another claimed, *" I felt more confident know, I knew that I can ... Earlier, I was afraid as I never knew anything.... But my experience in the court as well as other wise has made me wiser and mature. My whole way of looking at the life has changed"*. Thus, it may be said that apart from the difficulties in the process of litigation, at individual level a few respondents attribute positive aspects of it. A few of them felt confident and experienced transformation in their life coping skills. A deeper introspection of case studies in fact reflect on women's agency, their will to struggle in spite of all odds and a desire to strive for identity of their own. Yet, there are others who felt indifferent. *"I have become more skeptical of people approaching me. I feel that I cannot trust any one. Therefore, it is difficult for me to forge new relationship"*, claimed another informant. Thus, the experience of violence and the process of litigation affect different people in different manner.

## **Understanding Men's Perspective**

Gathering information from men about the issue was a daunting task and that too within the court premises where researcher is also viewed with a suspicion. The information was therefore obtained in two parts. In the first part the information was collected about their own case. Again obtaining information about one's personal case was not easy and most of them were reluctant to share the same. However, the questions are framed in a manner to obtain their views. For instance a question like 'what brought you here?' or 'why your wife has filed a complaint against you?' evoke responses to their justification of their own violent behaviour. In the second part, information was obtained about the general view of men about wife battering and their opinion about the law (i.e. Section 498-A, IPC).

In specific contexts, when men respondents were asked about their personal cases, most of them blamed their wives for their violent behaviour. They construed their wives as incompetent, mentally sick, of loose moral character, being unable to produce or rear children, being too ambitious or career oriented, being under the influence of the friends, family or others. A few blame it on lack of 'wifely' characteristics and accused their wives for not fulfilling their tasks properly. *"She doesn't know how to cook properly or wash clothes or do other domestic chores"*. *"She doesn't know how to dress up properly or how to 'behave well' in the*

society. People made fun of me and ridiculed me". "Her parents have not taught her to be submissive and patient and to adjust to realities of life", are few of the comments being made by men informants. As per views of male respondents 'the wife' is expected to behave in a stereotypical manner and in case if she doesn't she deserve to be 'taught' a lesson or needs 'to be controlled'. Still other believed that it was on the instance of their friends or family that women created problem in marital relationship. "It was her parents who want her income therefore they created rift in our relationship. They provoked her to leave me. She has been living with her parents since her birth than why should she now wanted to go back to them" remarked a man respondent. "I have provided her the roof and food... I deserve the right to do whatever I want even if I beat her up for something..." justified another. Thus men, as husbands and perpetrators of violence, frequently, expose fault with their wives. From the men's account it is the women who fails to meet her contractual exchange of her security and commitment and therefore deserves to be 'controlled'.

Majority of male respondents opined that women are forging the case to obtain material benefits or exaggerating 'the things that are a part of normal marital life'. "She has cooked up a story". "She wants to extract money". "She and her family wanted to harass me" claimed a few of men informants. Men also talked about the cruelty being committed on them by their wives by lodging the complaints. "She (the wife) and her family has brought my whole family to the court. This is a grave insult she has brought to me," says a respondent. "It is because of her that me and my family went to jail for first time ever in our life. Is there any law to protect us from this act of her cruelty?" Thus, men project women as the cause of litigation.

Role of men and women in marriage are culturally and socially determined and violence is legitimised in the relationship. What is implicit in the quotations is the women's inability to perform the wifely obligations as per the given parameters, which justifies men to behave violently towards their spouse. Thus stereotypes relating to role and responsibilities of a wife are reinforced justifying male hegemony. Discourse relating to marriage construes a woman as a passive object at the receiving end. This construction separates women's wifely obligations from the identity of woman as a person with her own self or being. In this formulation any resistance shown by women is considered as an act of negating the social norms.

Unexpectedly, the male respondents in the present study, in general, assume that it is the right of the husband to beat his wife. On asking about 'do you think that wife beating is justified'? Majority said 'yes'. "Wives need to be controlled, once they become uncontrollable it will be difficult to keep the family intact", reasoned one of the informant. "These days women are getting educated and the fact that law favours women and is a major reason why families are being broken", justified another. "Because we are not following the 'right path' we (society) has been suffering and families are being broken", is a reason given by a respondent to justify violence. Findings reveal that patriarchy guides the operation of social structure and surprisingly the male dominated society hardly considers women's issues relevant in spite of changing values and norms.

Most men were in favour to scrap Section 498-A IPC. While explaining this one reasoned, *"The God has made the men to dominate. Women are weak and inferior creatures and need to be disciplined. This is the basic biological fact and the Creator Lord Brahma creates this. If you change these divinely 'natural' rules, you are inviting trouble for society. Let the society follow the right path as given in our Vedas and the dharma"*. Often men tend to rationalise their violent behaviour in terms of the need for controlling women on the grounds of religious texts or biological difference or explains male domination in 'divinely' terms and use it further to rationalise the need for scraping the 'laws favouring women'. According to them the 'laws favouring women' should be scraped as these are disturbing the social order. *"Doesn't men face violence within the domestic situation?" "I was being victimized between my wife and my mother". "It is only the woman who is indifferent or hostile to another women (Aurat hi aurat ki dushman hai)"*. In general, men project women as their own rivals in order to shed their responsibilities in a violent situation. Such 'a psyche breeds docile acceptance of injustice and torture' and justify coercion and cruelty by those who enjoy higher status within the family structure. It projects victim as weak, vulnerable and helpless and reifies the legitimacy of undemocratic family structure. The same was also projected by the state under the regime of NDA led government as explained earlier.

## **Myths of Misuse and Abuse of Section 498-A IPC**

Allegations of misuse and abuse of Section 498-A by women has been voiced consistently by the state and its allies. However, often, sweeping statements are made without any substantial evidence to substantiate the claim. For instance, recently, the Malimath Committee which submitted its report in April 2003 while ostensibly discussing the reform of the Criminal Justice System discussed the 'heartless provisions' of Section 498-A and recommended to make the offence bailable and compoundable. The Committee observed that it makes "reconciliation and returning to marital home almost impossible" (para 16.4) Similarly, the 'Shinghal Report'<sup>49</sup> sponsored by Bureau of Police Research and Development, Ministry of Home Affairs premised itself on the assumption of misuse (exaggerated complaints) and abuse (false cases) of this law. It reads "There is substantial misuse both by the victims/complainants and the police, particularly of Section 498-A IPC, which is often used not for checking the malady of marital violence of getting such violence punished in accordance with the law, but for dubious purposes, not at all intended under the law. The public perception about such misuse is, as such, not devoid of substance." (para 8.21). The report therefore appears to be an eye wash document that argues that this law is being abused and misused. It ignores the ground realities.

The Government to further prevent the alleged 'abuse and misuse' of Section 498-A IPC introduced the Criminal Law Amendment Bill 2003 (Rajya Sabha on 22nd August 2003) to

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<sup>49</sup> Shinghal N.K. (Year of publication not mentioned) Study report on Crime Against Women – Role of Section 498-A IPC in the State of Delhi and Haryana Sponsored by Bureau of Police Research and Development, Ministry of Home Affairs, GOI.

make Section 498-A IPC compoundable with the permission of court. In the statement referred to in reply to Rajya Sabha Question no. 230 for 17.12.2003 regarding amendment to Sections 498-A and 406 IPC it was reported that, "There is no information available with the Government to come to the conclusion that many families in India are suffering due to exaggerated allegations of harassment and dowry cases made by women against their husbands and other family members involving them in criminal misappropriation and cruelty".

Apart from the apathy and indifference to the gender concerns reflected by the police and legislators, the judiciary has also shown its insensitivity towards the issue as reflected recently in the judgment pronounced by the High Court of Delhi in the case of *Savitri Devi v Ramesh Chand and Ors.*<sup>50</sup> It recommended that marital offences under Section 498A/406 IPC be made bailable and necessarily compoundable. According to the learned judge, 'it is hitting the foundation of marriage and revealed the manner in which this law is being used to harass the husbands and in laws by the women and by the police'. While sympathizing with the husbands the judge observed "*their arrest ruin their future life and lower them in their self esteem*". Further, it was assumed, "*There is a growing tendency to come out with inflated and exaggerated allegations roping in each and every relations of the husband and if one of them happens to be of higher status or of vulnerable standing, he or she becomes an easy prey for better bargaining and blackmailing*". These comments are indicative of stoicism and pointed out towards laxity on the part of state towards gender justice<sup>51</sup>.

Thus, it may be said that the police, judiciary and the legislature, all organs of the state had invested their energies and resources to justify the fact that this law is being abused and misused by women. Officials within these institutions like men informants in the present study argued that women make false complaints to extort money. Another allegation is that low conviction rate in these cases is a result of 'settlement' of the case and a motive of filing complaints is greed of the complainant. However, often these allegations are made without any substantial evidences. Hardly any attempt has apparently been made by the agencies to look into the reasons of compounding the offences under this law. Constrains women face into the arena of state are hardly being talked about.

One of the fact that is being neglected in the above construction is the manner in which the interpretation of words 'misuse' or 'abuse' is carried out. The word 'misuse' or 'abuse' may imply 'filing a false case or exaggerating claims or allegations made with the intention to extract money or harass the other party' as being interpreted by the state agencies described above. However, looking at it differently may insinuate that something within the marital relation is wrong for which there are no other remedies available and therefore women were compelled to lodge complaints under this law. Logically, a person uses legal recourse when

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<sup>49</sup> 104 (2003) Delhi Law Times 824 CLR R 462/2002 date of decision 19th May 2003.

<sup>51</sup> For Details kindly refer to Also refer Singh Kirti (2003) Who Abuses Section 498-A? Journal of the Women's Equality July – Spetember 2003 Published by AIDWA and Ms Indira Jaising comment on JD Kapoor's Judgment. (Obtained from the office of Lawyers' Collective).



there is a concern about an issue. This may or may not find legal expression yet it may be causing distress to the complainant for which s/he seeks remedy. Thus the terms 'misuse' and 'abuse' need to be seen in wider context. In this context, as also evident from the discussions above a woman may use a legal platform when she finds no other workable remedy for the situation of violence or matrimonial wrong.

An argument that may be raised against the statement that 'women exaggerate the complaint' is that a woman as a complainant has a little role to play in the criminal proceedings i.e. from recording the complaint till the judgment is delivered. It is the duty of police to record the complaint, the lawyers present the facts and argue the case and a judge decides the matter. The role of a woman as a complainant or as a litigant is often restricted to that of passive observer of legal proceedings. She is allowed to give her evidence as a witness but that too in a fragmentary style as shaped by the defense lawyer or public prosecutor as explained above. Technicalities within the legal system leave a little space for women to maneuver the process. The manner in which a subjective experience of women is interpreted also holds significance in this context.

Another justifications given by the state is that the conviction rate in these cases is low because often cases are 'settled' by women for their vested interest. However, findings here reflect that reason for 'settling' the case is different. Frequently, the complexity of circumstances or socio-economic compulsions compels women to compound the offence. Coercion by stakeholders in the legal system as well as in the larger social structure is one of the reasons that often lead women to accept 'whatever is offered'. In the present research work it was observed that the reason for quashing FIR lies in women's complex situation ranging from the concerns for children, absence of support network or depletion of social, mental, emotional and financial resources to continue with the proceedings. Thus, the statement that law is being misused or abused needs to be reconsidered. In fact, the findings of the present study reflect that the often provisions of law remain 'under-utilized'. Moreover, it has been observed that the criminal law offers limited solution to the victims of violence. Legal proceedings take place in a manner that disqualifies their experiences. Thus, it is imperative to reconsider the content, context and implementation of domestic violence law from gender perspective.

## **Concluding Statement**

The processes and functioning of state institutions and women's engagement with these agencies is the major focus of this study. Findings indicate that though apparently, state has advocated for equality and social justice, yet, in its institutionalised and contextualised form it has eternalized patriarchy and reinforced women's victimization. Especially in the case of domestic violence, the family ideology underpinning the content and process of implementation of law plays a major role in impeding access to and delivery of justice. Findings reflect that legal terrain has provided a space for women to negotiate their claims and assert their identities, yet, on the other hand, it disqualifies their experiences of violence.

Protection by the legal machinery is virtually non-existent in the cases of domestic violence because it is geared to protect marriage rather than victims. Section 498-A, is also difficult to operationalize because of resistance to its use by the law implementing agencies. Police, judiciary, lawyers and others are found reluctant to pursue cases under this law because it generally implies breaking up the marital bond. The legal as well as social system reinforces the tradition that tolerates the abuse of women. Norms that perpetuate silence and stigma around domestic violence in families and communities permeate the formal institutional response too.

Further, procedural lacunae often act to re-victimize the complainant. Once an individual enters the arena of formal legal system, s/he becomes powerless and is compelled to surrender herself before the authority of law. State defines nature and quantum of claims while the process of adjudication delineates rights and responsibilities of the contesting parties and in the process it reiterates the power relation between men and women. Subjectivity of agents of the state determines the course of operation of law as they shape the techno-legal course of action. Agency of women is overshadowed in the process. Women's experiences of violence are filtered through the institutional lens of what is socially and legally acceptable. The system provides for punishment but not the practical solutions to the problems women faced. Yet, the state provides major fora for a woman to seek remedies against unjust marital ties.

Further, recommendations were made to dilute the provisions of Section 498-A. Myths have been propagated that the law is being misused and abused by women without any substance to authenticate the claim. However, in this research work it has been observed that law often remains under-utilised. Several constraints that impede the path of women using law are of such an order that severely restrict their ability and de-motivate them to use the legal system – let alone the misuse or abuse.

Therefore it is imperative to reassess the situation from a victim's perspective and a re-consideration of various aspect of law from context to procedural aspects to identify its constraints and strengths. The content of the law may be reconsidered as may be the process of its implementation. Largely, it implies that reducing victimization will rely on fundamental structural reform. In other word, to resist victimization it is essential to evolve a victim friendly mechanism. In the sphere of domestic violence there has been a call to greater use of experiential discourse on the reality of domestic violence rather that the pseudo-science of legal technicalities. A woman friendly mechanism is imperative to achieve the goal of gender justice.

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