

Fallacies of a Supreme Court Judgment

Section 498A and the Dynamics of Acquittals

PRASHANT K TRIVEDI, SMRITI SINGH

A higher proportion of acquittals is often put forward as evidence to suggest that Section 498A of the Indian Penal Code has been continuously misused. This position appears to focus on interpersonal violence, overlooking the various subliminal factors governing the everyday lives of women, such as the varied forms of violence and the role of gendered state institutions in conceptualising and implementing law. This paper considers the complexities of law enforcement from the survivors' perspective to investigate the dynamics of the formation of a new perception regarding the misuse of Section 498A.

The Supreme Court judgment in *Arnesh Kumar vs State of Bihar* (2 July 2014) has initiated a heated debate by referring to the frequent misuse of Section 498A of the Indian Penal Code (IPC). However, in the ongoing debate, it appears that both the opponents and the proponents of the judgment have failed to arrive at a comprehensive understanding of the issues involved, in the absence of adequate social science research on the subject.

This is reflected in the citation of a "higher proportion of acquittals" as evidence suggesting that the IPC provision has been continuously misused. The Supreme Court judgment also refers to National Crime Records Bureau (NCRB) data to show that "the rate of charge sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads". Nobody questions the assertion that the conviction rate in these cases has been miserably low; but divergent views emerge as soon as the reasons for the low conviction rate are brought into question. The Supreme Court explains its position thus:

The fact that Section 498-A is a cognisable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision.

Not everybody would subscribe to this explanation. Higher acquittals may also result from inadequate investigation, the benefit of doubt given to the accused, or bias against women accessing the law (Jaising 2014).

Court Judgments and Section 498A

However, this Supreme Court judgment is not the first to make such observations. Earlier, the Justice Malimath Committee on Reforms of Criminal Justice System also recommended that Section 498A be made both compoundable and bailable. The Law Commission of India, in its 243rd report, recommended making it compoundable. Several other judgments appear to argue that the increasing number of 498A cases is a reflection of "exaggerated versions of the incident" (*Preeti Gupta vs State of Jharkhand* 2010, Supreme Court of India, AIR 2010 SC 3363), and that "by misuse of the provision, a new legal terrorism can be unleashed" (*Sushil Kumar Sharma vs Union of India* 2010, 2005 6 SCC 281). In 2011, the Allahabad High Court judgment (Criminal Misc Writ Petition No 3322 of 2010) emphasised arbitration and reconciliation.

Before this, in *B S Joshi vs State of Haryana* (AIR 2003 SC 1386), *Manoj Sharma vs State* (2008 SC [Suppl] 1171) and

Data presented in this paper was collected for an Oxfam India-supported project, "Legal Provisions against Matrimonial Cruelty: An Analysis of Section 498A of the Indian Penal Code". The authors owe a special intellectual debt to Poornima Joshi and Arathi P M for their comments on an earlier draft of the paper. Seema Rana's help in data collection is acknowledged.

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Madan Mohan Abbot vs State of Punjab (AIR 2008 SC 1969), courts recommended quashing the complaint in proceedings under Section 482 Code of Criminal Procedure (CrPC), or in the writ jurisdiction where the aggrieved wife compounded the offence. In *Rajeev Verma vs State of UP* (2004 CrilJ 2956), however, relying on *B S Joshi*, it was mentioned that whilst the trial could be quashed in an application under Section 482 CrPC or under Article 226, the proper forum was the lower court, in which to decide whether it was a fit case for granting permission to the wife to compound the offence under Section 320(2) CrPC. This was only possible if the offence under Section 498A IPC was made compoundable with the permission of the Court.

The Court, in *Ramgopal vs State of MP* (2010 SCALE 711), observed that an offence under Section 498A IPC is essentially private in nature, and should be made compoundable if the parties are willing to settle their dispute amicably (<http://dowrycasesindia.wordpress.com/tag/allahabad-high-court-judgement-in-498a-ipc-dowry-case/>). The Government of Uttar Pradesh, along with several other state governments, has stated that they do not have any objection to this section being made compoundable.

There seems to be a certain lopsidedness in the judicial perception on domestic violence, which leads to a divergence between the position taken by the state institutions and that of feminist researchers. The official strand in this discourse appears to be focused on interpersonal violence, overlooking the various subliminal factors governing the everyday lives of women. At the same time, feminist researchers consistently argue against overlooking two crucial factors: first, that violence is not only physical, but is also unleashed in varied forms. The second is the role of gendered state institutions in conceptualising and implementing law (Kothari 2005; Visaria 2008; Suneetha and Nagaraj 2006).

Academic research in India brings out several structural issues that go beyond interpersonal violence. For instance, Koeing et al (2006) found that economic pressure, lack of assets, low education, and history of family violence were all determinants of domestic violence, especially in the case of Uttar Pradesh. The study also found that community norms that tolerated violence against women were strongly correlated with higher rates of abuse (Koeing et al 2006: 135). Similarly, Martin et al's (1999) study in Uttar Pradesh found that men reported stress-related factors, such as household poverty and a husband's low education, as the most significant precipitators of violence (Hackett 2011). Another group of feminist researchers underlines issues such as a general acceptance of domestic violence against women, and that "[d]ispute over dowries, a wife's sexual infidelity, her neglect of household duties, and her disobedience of her husband's dictates are all considered legitimate cause for wife-beating" (Rao 1997: 1174).

The feminist approach to domestic violence in India sees a connection between gender-discriminating laws, dowry and domestic violence. This perspective views all these factors as manifestations of gender inequality in India, perpetuated by the traditional patriarchal social system (Hackett 2011). In spite of strong evidence to the contrary, the dominant

discourse is shaped by mainstream social practices and state institutions, through actors such as the judiciary and police officers (henceforth referred to as "actors"). How gender stereotypes are formulated through the actions of these actors remains to be investigated rigorously. It needs to be probed whether these actors carry dominant social perceptions with them, which may have consequences for survivors' quest for justice.

The more disturbing aspect is that this debate continues without any empirical basis. The opinions of high-level judicial reform committees, which make recommendations on such sensitive issues, are not based on in-depth investigations, nor are they informed of the theoretical or academic understanding. It is safe to argue that this gap in the existing stock of knowledge allows dominant stereotypes to prevail, form an ill-informed perception of existing laws, and dictate the functioning of both the executive and the judiciary.

In the context of the present debate on the alleged misuse of Section 498A of the IPC, this study considers the complexities of law enforcement from the survivors' perspective. Further, this study intends to investigate the dynamics of the formation of a perception regarding the misuse of Section 498A. Attempts have been made to gather insights into this process by following cases of this nature from the time of registration to the final judicial decision. This helps us to understand how dominant stereotypes and social norms govern the attitudes and functioning of state actors. More importantly, it informs an understanding of the bearing these attitudes have on cases of dowry-related violence.

The Study

This study examines the implementation of legal provisions to prevent matrimonial cruelty within the social fabric of Uttar Pradesh in the past decade. The aim is to deepen our understanding of domestic violence by first, looking at varied forms of violence, and second, investigating the perceptions of actors in the criminal justice system of Uttar Pradesh. It is argued here that there are clear connections between the general implementation of the legal provisions and perceptions, and the social conditioning of the actors. Besides, the location of women in the broader social, economic and political arrangements and the socio-economic status of individual survivors should also be considered in any discourse on domestic violence.

The argument contains three elements: First, instead of conceptualising the debate around the "use-misuse" (of laws) dichotomy, it is more reasonable to talk about a number of different forms of violence that remain unnoticed because dominant stereotypes cloud their understanding and recognition. We will argue that this dichotomy is constructed to distract attention from the real issues of the varying categories of violence. Second, inequalities in access to resources determine the position of women in their families. Hence – and this is the third point – the relationship between the criminal justice system and the balance of power between survivors and perpetrators is neither simple nor one-dimensional.

Overall, it presents a pattern that correlates to the dominant social discourse, which influences the understanding of the state actors, their conduct, and the position of women in the society in general and in their families in particular. How laws are implemented is thus a result of the influence wielded by the state institutions that operate in a given socio-economic context.

The present study uses a combination of primary and secondary data. It reviews secondary knowledge material and relevant government data. Empirical evidence was collected from 20 case studies of women who had experienced matrimonial cruelty. The cases were randomly selected from the list of all those being tried in courts in selected districts of Uttar Pradesh. These districts were purposively selected, considering the feasibility of data collection. Researchers conducted exhaustive interviews with women survivors. Documents available with the police and the courts, such as the first information report (FIR), charge sheet, court proceedings, etc, reflected the legal attention given to such cases. Survivors selected for the study belong to different social groups, including dalits, Other Backward Classes, Muslims, and the so-called upper castes. However, the limited size of the sample does not allow us to attempt a social group-wise analysis. The police, judicial officers and lawyers involved in these cases were interviewed as well. In addition to case studies, focused group discussions (FGDs) were conducted with newlywed or to-be wed young boys and girls and their parents, college-going girls and boys, and women activists.

The jurisdiction of the study was Uttar Pradesh. However, the study area for conducting the empirical research was limited to four districts – Aligarh (from the west zone of Uttar Pradesh), Lucknow (central zone), Gorakhpur (east zone), and Banda (Bundelkhand region).

Data received from the NCRB on matrimonial cruelty present flaws due to the high dependence on the willingness of victims to report to police. There existed a perception that some dowry deaths were recorded as accidental deaths, suicides or natural deaths. Under-reporting of crimes, especially those related to women, is not new in Uttar Pradesh. However, one cannot claim that its impact on the data has been uniform over a period. Nevertheless, after considering the unvarying influence of this factor, the data provide a prevailing pattern.

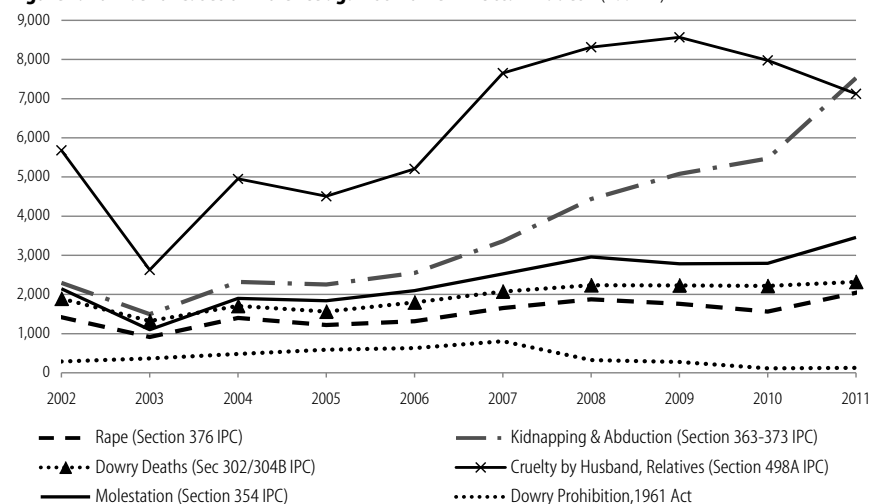
The most challenging part of the study was interviewing judicial and police officials. Similar challenges were faced while interacting with survivors, because most of them were fighting legal cases in despair. Some of the other victims were considering second marriages, and were not willing to recall the trauma faced in their earlier marriages. Most police officials, magistrates, lawyers, and even survivors were in constant fear

of their names being published in the reports, so their feedback could have been affected by this.

The Larger Picture

According to official statistics, crimes against women have been constantly on the rise from 2002 to 2011. Cases of Section 498A have increased by more than 25% in just 10 years. During the same period, dowry deaths have gone up by around 23%. When compared with the National Family Health Survey (NFHS) data, gross under-reporting is reflected. According to the NFHS III, 44.3% of married women in rural areas and 36% of women in urban areas have experienced some form of spousal violence.

Figure 1: Number of Cases of Violence against Women in Uttar Pradesh (2002-11)



Source: National Crime Records Bureau, New Delhi, various years.

There has been an increase in the number of cases registered under Section 498A, with 2009 being the worst year (Figure 1). In the past two years, there has been a gradual decrease in the number of cases compared to 2009, but the number of cases in 2010 and 2011 continued to be much higher than the corresponding figures of most of the previous years. During the same period, the number of dowry deaths increased. In a period when cases of cruelty were going down, the increase in dowry deaths reflects a false suppression of cruelty cases. Propaganda about the misuse of Section 498A has been going on for a long time, but has acquired additional momentum in the past few years. Even before the formal high court judgment, it appears that police officers avoided the registration of such cases and continued to respond with caution, as per the indication given by higher authorities when dealing with cases on Section 498A.

As intended, Section 498A works as a deterrent against dowry deaths. For instance, in states like West Bengal and Kerala, where cases under 498A are higher, dowry deaths are substantially lower, whereas in states like Uttar Pradesh, non-reporting of several cruelty incidences at this stage leads to dowry deaths. It appears that a legal intervention at an initial stage halts further deterioration of matters relating to cases under Section 498A; however, its absence encourages culprits, leading to a higher number of dowry deaths.

If we look closely at the data on registration, charge sheets, final reports, withdrawals, and convictions of different years,

Table 1: Registration, Conviction and Acquittal of 498A Cases in Uttar Pradesh (2002-11)

Year	Cases Pending Investigation from Previous Year (Col 11)	Cases Reported during the Year	Cases Declared False on Account of Mistake of Fact or of Law	Cases in Which Charge Sheets Were Laid	Cases in Which Charge Sheets were Not Laid But Final Report Submitted during the Year	Cases Pending Investigation at the End of the Year	Cases Pending Trial from the Previous Year (Col 20)	Cases Sent for Trial during the Year	Total Cases for Trial during the Year	Cases Compounded or Withdrawn	Cases in Which Trials Were Completed	Cases Convicted	Cases Pending Trial at the End of the Year
2002	1,144	5,679	721	4,557	1,178	367	11,323	4,557	15,880	858	3,292	1,689	11,730
2003	367	2,626	300	1,920	402	370	11,730	1,920	13,647	545	2,095	1,064	11,007
2004	370	4,950	389	3,356	899	676	11,007	3,356	14,363	831	2,335	1,329	11,197
2005	676	4,505	349	3,375	836	621	11,197	3,375	14,572	547	2,544	1,452	11,481
2006	621	5,204	337	3,782	934	772	11,481	3,782	15,263	493	2,733	1,559	12,037
2007	772	7,650	730	5,013	1,816	863	12,037	5,013	17,050	635	3,431	1,764	12,984
2008	863	8,312	716	5,837	1,739	883	12,984	5,837	18,821	730	4,410	2,345	13,681
2009	883	8,566	747	6,082	1,604	1,016	13,681	6,082	19,763	854	4,452	2,268	14,457
2010	1,016	7,978	561	5,776	1,676	981	14,457	5,776	20,233	259	5,485	3,024	14,489
2011	981	7,121	408	5,352	1,473	869	14,489	5,352	19,841	392	4,876	2,821	14,573

Source: National Crime Records Bureau, New Delhi, various years.

some very interesting points emerge. The most striking issue that emerges from Table 1 is that of pendency. Every year, out of the total running cases in courts, 75%-80% remain pending at the end of the year. In absolute terms as well, the total number of pending cases has been increasing every year. Between 2002 and 2011, the total number of pending cases has increased by around 25%. Apart from an overburdened judicial system, the interest of the accused in prolonging the case seems to have contributed to pendency.

Of the total cases in a year in which investigation is completed, around 8-10% are declared false, owing to errors of facts or law. In another 15-24% (in most of the years, around 20%) cases, final reports are filed. Of the total cases that reach the courts, somewhere between 2% and 5% are either withdrawn or compounded. Accordingly, almost one-third of the total registered cases do not reach the level of completion of trial, and collapse somewhere in the process. With regard to the rest of the two-third cases – where trial is completed – conviction is secured in just about half of them in most of the years surveyed. This means that of the total registered cases, only one-third of the accused are actually convicted.

Insights from Case Studies

This section highlights a few general points after analysing 20 case studies. Documentation of the case studies is primarily based on the information provided by the complainants. The facts given by these women have been cross-checked against information shared by lawyers, judicial officers, investigating officers, and legal documents.

An attempt is made to establish the legal stages through which a case passes, and see at each stage how women survivors have had to negotiate with the criminal justice system. This will help us to understand the dynamics of legal procedures from the perspective of women survivors, and see how a techno-legal provision, however well-intentioned it may be, does not help in providing justice.

It is often said that the number of registered domestic violence cases are increasing because women approach the police almost as soon as the violence starts. A closer look at the

Table 2: An Overview of Case Studies

Total No of Cases	20
No of years of marriage at the time of lodging FIR	Within a year 5
	2 years 1
	3 years 5
	4 years 4
	5 years 2
	6 years 1
	8 years 1
	9 years 1
No of cases for which FIR was lodged	19
No of cases in which FIR was lodged at the police station	14
No of cases in which FIR was lodged after the intervention of superintendent of police	3
No of cases in which FIR was lodged on the instructions of the court	2
No of cases in which only husband was arrested	5
No of cases in which husband and relatives were arrested	3
No of cases in which only relatives were arrested	1
No of cases sent for reconciliation before investigation	5
No of cases appealed in high court to get arrest stay/bail	11
No of cases appealed in high court to stay/quash on proceeding and send the case to mediation centre	6
No of cases sent for mediation by sessions court	7
No of cases in which mediation was successful	3
No of cases in which mediation was unsuccessful	10
No of cases in which charge sheet was filed	15
No of cases in which names of relatives were removed from charge sheet	2
No of cases pending in sessions court	8
No of cases pending in high court	4
No of cases in which case of theft has been filed by husband against wife and her relatives	7
No of cases in which divorce has been filed at family court	7
No of cases in which restitution of conjugal rights has been filed under Section 9 of Hindu Marriage Act	4
No of cases in which case under Domestic Violence Act was filed	5
No of cases filed in which maintenance case under Section 125 CrPC was filed	5
No of cases closed	5

data negates this perception. It can be noted from Table 2 that on an average, women take three-and-half years after marriage to take recourse to the law, even when cruelty starts within a month after marriage. This data also reveals that generally, cases are not registered under Section 498A alone;

other IPC sections, such as IPC 323, 504 and 506, are also included. It confirms our apprehension that a case of cruelty is not registered until it reaches a stage of injury or intimidation, whereas under Section 498A, a case can be registered for any wilful conduct likely to cause grave injury to a woman's life, limb, or health.

Registration of an FIR in Cases of Matrimonial Cruelty

Registering the FIR remains a challenging task in these cases. Often, the survivor does not take the decision to approach the police on her own; her natal family plays a significant role. In cases of domestic violence, if a woman reaches the police station in a seriously injured condition or with marks and bruises on her body, the FIR is generally registered in the first attempt. In other cases, the question of jurisdiction is invoked to avoid registering the FIR. This happens despite clear-cut provisions stating that the FIR can be registered at both police stations (where the crime was committed, or where the woman is currently residing).

In five cases, repeated visits were made by the survivors to two different police stations over the question of jurisdiction. In three other cases, FIRs were lodged only after the intervention of senior police officers, whereas in two cases, the intervention of the court was required just to lodge the FIR. In one case, when the FIR was not registered despite several efforts, the complainant filed an application in court, and considering

it a complaint case, the court directly started case proceedings by issuing summons to both parties.

A common perception is that Section 498A is most misused against innocent relatives. However, out of the 20 cases, only in four cases were the relatives arrested. In five cases, the husband of the complainant was arrested and sent to jail. Most of these arrests happened before 2009, when Section 41 CrPC was amended. Section 41(i) (b), CrPC provides that a person accused of an offence punishable with imprisonment for a term up to seven years cannot be arrested by the police until such arrest is considered necessary on certain conditions. Another important development was (the previously mentioned) judgment of the Allahabad High Court in 2011, which emphasised the need for attempts at reconciliation between both parties on the part of the police before filling the charge sheet. Many survivors see it as an attempt to veil the crime before it is investigated.

Relentless Pressures for Reconciliation

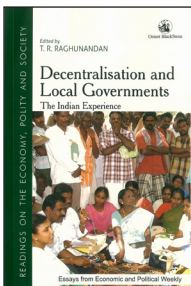
Generally, before registration of the FIR, both parties are called to the police station for reconciliation. Sometimes, all reconciliation efforts fail as police officers realise that the accused parties are usually not cooperative at this stage. In five such cases, the accused was called to appear at the police station for reconciliation.

Framing the charge sheet in these cases takes between three months and a year, which is an unusually long period.

Decentralisation and Local Governments

Edited by

T R RAGHUNANDAN



The idea of devolving power to local governments was part of the larger political debate during the Indian national movement. With strong advocates for it, like Gandhi, it resulted in constitutional changes and policy decisions in the decades following Independence, to make governance more accountable to and accessible for the common man.

The introduction discusses the milestones in the evolution of local governments post-Independence, while providing an overview of the panchayat system, its evolution and its powers under the British, and the stand of various leaders of the Indian national movement on decentralisation.

This volume discusses the constitutional amendments that gave autonomy to institutions of local governance, both rural and urban, along with the various facets of establishing and strengthening these local self-governments.

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Pp xii + 432

ISBN 978-81-250-4883-1

2012

Rs 695

Orient Blackswan Pvt Ltd

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It is seen that the accused party mobilises all resources to delay filing the charge sheet. During this time, they appear before the high court for bail, or a stay on arrest. In 11 of the 20 cases, the accused parties benefited from this. In 15 cases, charge sheets were filed; in six cases, either the process of reconciliation was ongoing, or an appeal in the high court to quash the FIR was pending; and in two cases, the names of relatives mentioned by the survivor in her FIR were removed from the charge sheet. In one case, the FIR was initially registered under Section 498A, but in the charge sheet, this section was dropped.

At each subsequent step, the criminal justice system adopts an approach that favours settlement, and is a lot less concerned about justice to women. Once the charge sheet is filed, the sessions court again sends the case to the mediation centre. The case studies show that out of 13 cases sent to the mediation centre, only three were successful. In two cases, the mediation ended in an agreement for mutual divorce, while in one case, the parties agreed on mutual divorce, and the accused party agreed to return part of the marriage expenses to the complainant.

Section 9 of the Hindu Marriage Act, 1955, is another tool that is frequently deployed in these legal battles. At times, the husband throws his wife out of the house and files a case of restitution of conjugal rights under Section 9. On this ground, he moves the high court, demanding a stay on the proceedings in the sessions court. Divorce cases pending in the family court are also cited frequently in appeals to the high court to quash sessions court proceedings, or stay those proceedings. Through these time-tested means, the accused got a stay in four studied cases.

The third round of efforts to strike an agreement between both parties takes place at the mediation centre of the high court. When proceedings begin at the sessions court, the accused party seeks the shelter of the high court with an appeal to stay the proceedings, and send the matter to the mediation centre of the high court bench. This is again a well-planned strategy, aimed to discourage the complainant by delaying the case. It is evident from one case that restoration of the case was a tough task. Delay in the judicial process is another discouraging issue from the complainant's point of view. Out of 20 cases, eight were pending in the sessions court. Approximately, all have been pending for more than two years. Four cases were pending in the high court, either for an appeal to quash the proceedings of the sessions court, or for a transfer of the case from one court to another.

Mutual agreement through mediation proves counter-productive from the complainant's perspective. Although Section 498A is a non-compoundable provision, legal ways and means have emerged to bypass this provision. These include quashing of the FIR or proceedings by the high court under Section 482 CrPC, on submission of an affidavit by the complainant to confirm an amicable settlement of grievances with the accused party, and acquittal by the lower court upon the complainant turning "hostile". Five such cases were closed by

the courts. One of the complainants even started living again with her husband.

However, not everybody is equally lucky. Another complainant withdrew all the cases and agreed to live in her marital home. Four days later, the girl's father-in-law filed a protest petition and got summons issued in the woman's name from a court on a case of theft. The woman is now in the same situation as earlier, and has lost the legal case as well. In three other closed cases, one ended in mutual divorce, while another was withdrawn because the complainant lost hope after a four-year legal battle. Another case was closed as the complainant had no money to pursue her case further; she had three more sisters of marriageable age, and so her parents decided to opt for a mutual settlement.

Implicating the Petitioner

Implicating the complainant and her family in false cases is another time-tested tactic to put them on the defensive. In seven cases, the husband filed an FIR accusing his wife and her family members of theft. In three such cases, all family members of the wife found it tough to get bail. Two of them were still trying to get bail, as they did not want to appear in court. In some cases, when a woman returns to her marital home after intervention by relatives, she learns that her husband had lodged an FIR during her absence. In one such incident, the date mentioned in the FIR matched the date of the woman's appearance in the sessions court for a statement.

Perceptions of Key Actors

This section tries to capture the perceptions and experiences of complainants, lawyers, and judicial and police officers. This analysis gives us an idea of the behavioural patterns of different actors in varied situations. Additionally, this understanding allows us to study the extent to which the criminal justice system adheres to its own codified laws, and in which cases it allows societal norms to take precedence. The debate around Section 498A revolves around misuses of the provision, the way the criminal justice system functions, the reasons behind the increasing number of domestic violence cases, and the question of women's awareness of their constitutional rights.

At a deeper level, these issues demand an enquiry into the way different actors look at each other, and the way laws are perceived by them. This exercise is done here to contrast the perceptions of survivors, judicial officers, police officers, and lawyers, based on the issues mentioned above. It helps us to understand the construction of a popular imagery, and will help us to investigate the factors contributing to the formation of such perceptions.

Interviews with judicial and police officers give the impression that the criminal justice system accords utmost importance to the protection of the institution of marriage and the family, even at the cost of the physical and emotional security, and dignity of a woman. Women's interests and well-being are perceived only within the family. Cruelty against women within the family is generally seen as a social issue, rather

than as a criminal offence. This understanding emphasises counselling and mediation, with a view to rehabilitating women within the family that has tortured her for years. Judicial and police officers feel that the most common form of misuse of this law lay in the naming of distant relatives, who could not have participated directly. One can infer two related points from this: one, that generally cases were not entirely false, and two, investigating officers consider physical participation in violence a necessary precondition for legal action.

Predominant Perceptions on Matrimonial Discord

Perceptions of actors diverged on issues of matrimonial discord. A section of police officers was of the opinion that most matrimonial disputes related to couples who had love marriages, and that all love marriages fail because of an ego clash. Case studies, however, show a very different picture. Most victims had arranged marriages, with prospects suggested by relatives or family friends. Nearly three out of five women said that their opinion had not been considered while finalising the marriage. One of the views of the lawyers was that women were using this legal provision to extract money from their spouse's family. At the same time, female lawyers opined that women are expected not only to earn, but also to fulfill their domestic roles; they are expected to fit into multiple roles, and this constant pressure results in tussles and routine clashes.

Are Women Eager to Approach the Police for Redress?

A section of judicial officers stated that attention should be given to why courts were flooded with cases under Section 498A. They questioned whether violence was rampant in society; or were women approaching the courts with issues that could be sorted out within the family? Some of the judicial officers clearly commented that the tolerance level of women to differences within marriages had gone down, women were "getting ambitious", and were not ready to compromise on minor differences. Most police officers, too, shared this perception.

Against these charges, most survivors reported that they initially had not disclosed their problems even to their parents, as they were well aware of the economic stress their parents had experienced in arranging a significant amount of dowry. They were also hopeful of being able to handle the situation and impressing their family members and husbands with love, care, and the required domestic work. Almost all survivors reported that mistreatment started within the first week of their marriage, whereas they approached the police years later.

Ubiquitous Forms of Violence

This section aims to map the types of physical and mental torture experienced by the survivors. Spousal assaults are rarely isolated incidents. They continue unabated. Women constantly fear for their lives. In fact, half the survivors feel too embarrassed or guilty to share their hardships with anyone.

They said that emotional violence was the worst form because it could not be expressed in words, despite being relentless. The most frequent types of emotional violence

included harming or threatening to harm relatives or friends; public insults and constant humiliation by pointing out her lack of education or domestic skills; a constant demand to know her location, limiting her contact with family or friends; and instructing her not to talk to other men.

Sexual assault was one of the worst kinds of hidden violence that the survivors faced and were embarrassed to share. Interactions with survivors also revealed that they were more vulnerable to violence when they were pregnant. Three of the victims went through miscarriages after they were beaten up and pushed while pregnant.

Some of the common forms of physical violence included attempts to strangle the woman, beating, pulling women's hair, and pushing. Some spouses came up with dreadful forms of violence, such as regularly injecting the women with painful medicines, asking them to jump from the third floor, and burning them with cigarettes. Almost all the survivors reported that the husband's entire family had been involved in the physical violence. In some cases, the situation went to such an extreme that the women were about to commit suicide, or be killed by their husbands and their families.

Is the Law Misused?

Most judicial officers agreed that Section 498A served its purpose. Some sarcastically said that it had served more than its intended purpose. Women judicial officers, in contrast, held that it had given a legal tool to women who did not have legal protection before. They felt that this law had helped to decrease the incidence of dowry-deaths. Almost all of them opined that the most common form of misuse of Section 498A occurred when survivors roped in all the family members. They reported that family members get bail on the very first appeal. Police officers were generally strongly opposed to naming husbands' relatives in complaints. A section of them, however, was of the opinion that if relatives were involved in instigating violence, they were equally guilty.

Concluding Discussion

This study shows that higher acquittals in 498A cases are also a reflection of the conceptualisation of the law and its enforcement. For instance, the definition of "cruelty" does not capture the varied forms of physical, mental, verbal, psychological, sexual, and economic violence experienced by women. As a result of the very vague definition of "cruelty", it is often at the discretion of the police officer to assess whether the

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sexual, or verbal and psychological, abuse faced by a woman at the hands of her husband or in-laws would qualify as cruelty under Section 498A.

Sexual violence particularly needs to be recognised as a form of cruelty not only because of its high prevalence within marriage but also because the definition of rape within Sec 376 IPC specifically excludes marital rape as an offence (Kothari 2005: 4844).

It is worth mentioning here that the Protection of Women from Domestic Violence Act, 2005, takes cognisance of physical abuse, sexual abuse, verbal and emotional abuse, and economic abuse.

The NFHS-3 data reveal that 41.4% of currently married women in the age group of 15-49 years in Uttar Pradesh have experienced spousal violence. If all these women had registered their cases with the police, the number of reported cases under Section 498A should have been in the millions. Not even a fraction of these incidents of spousal violence is actually reported. The main causes behind this under-reporting are the dominant perceptions that domestic violence is a matrimonial dispute, and that primacy should be given to protecting the family. A gender-insensitive criminal justice system and the survivor's economic and social dependence on her family are additional obstacles. Besides, some survivors perceive matrimonial violence as "normal" and lack faith in the criminal justice system.

Sections of this study clearly highlight the construction of the dominant view of Section 498A. The "misuse view" draws upon a particular perception of domestic violence. Here, domestic violence is considered a social and private issue and the result of a matrimonial dispute, rather than a criminal offence and public harm. Emphasis is placed on the maintenance of family institutions, rather than on ensuring justice for the victims. A "mutual agreement" is considered the most suitable way to protect the interests of all. For this purpose, a series of reconciliation and mediation processes have been introduced under the criminal justice procedure. However, these processes are counterproductive for the survivor in at least three crucial ways.

First, it delays the case and discourages survivors – most mutual agreements are tactics employed by the accused party to escape criminal cases; victims who withdraw their case lose their hard-earned legal ground. Second, it does not satisfy survivors' need for justice. Third, this is the only instance when the criminal justice system tries its best to convince victims to forget about the violence inflicted upon them and reconcile with the perpetrator. The "matrimonial

dispute" treatment of domestic violence assumes that both accused and victims are on an equal footing, thus overlooking the structural factors. This in itself is an injustice to survivors. Demands to make this provision "gender-neutral" flow from this understanding.

Additionally, qualitative data collected through in-depth interviews with investigating officers and corroborated with the experience of victims reveals that prima facie evidence in 498A cases is difficult to gather. Most of these incidents occur within the confines of marital homes, and do not get out until the victim is grievously hurt. Different forms of cruelty reflected in everyday life are thus difficult to document in an independently verifiable format. It is even more difficult to prove psychological violence beyond reasonable doubt in a court of law.

Besides, it seems that the forms of cruelty practised in these cases are generally socially accepted. This kind of "normalisation" of violence against women does not consider everyday cruelty as deviant behaviour, and is reflected in the lower reporting of these cases and even lower conviction rates. The above-mentioned issues partly explain the reason behind acquittals in most of the cases. It is therefore even more intriguing that the Supreme Court, instead of delving into these structural issues, considers acquittals an indication of the misuse of the legal provision.

As indicated by the NCRB data presented earlier, Section 498A has decidedly been a deterrent to dowry deaths. This was precisely the intention behind its enactment. It provides legal protection at an initial stage and halts further deterioration of the situation. In spite of the limitations of NCRB data, the pattern that emerges is a steady increase in the number of dowry deaths between 2005 and 2011. This shows a laxity in enforcing Section 498A. The outcry against its misuse in the past few years has further undermined the provision – a fact reflected in the increase in dowry deaths cases. In fact, to check the further deterioration of the situation, provisions against domestic violence need stringent implementation. Section 498A and the Domestic Violence Act shall work as complimentary to each other, and for that, the definition of "cruelty" given in the former shall be aligned with the definition of "domestic violence" provided in the latter.

We need to have a broader understanding of the forms of abuse that go beyond physical abuse. The core concept must be the exercise of power and control (Schneider 2008). And finally, the issue of "domestic violence" must not necessarily remain domestic. The notion of domestic violence must be taken out from the "private sphere" and politicised.

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