

**BHUMIKA WOMEN'S COLLECTIVE**

## **STATUS OF 498A**

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# **HYDERABAD AND RANGA REDDY DISTRICTS**

**By**

**Tanay Agarwal**

**Research Team:**

**Tanay Agarwal**

**Ayush Ranka**

**Sravya Koparappu**

**Sree Mitra**

**12/31/2011**

*Bhumika Women's Collective,  
Baghlingampally, Hyderabad*

*Report on: Status of 498A in  
Hyderabad and Ranga Reddy Districts*

..... Dedicated to Bhumika Women's Collective

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## **ACKNOWLEDGEMENT**

At the very outset I wish to express my gratitude towards Ms. K. Satyavati (Chief Functionary, Bhumika Women's Collective) for entrusting the team with the research. Her guidance and recommendations have been invaluable to the project. I also wish to thank Ms. Mujeeba Tarannum (Research Associate, Bhumika Women's Collective) and the entire Bhumika Team for instilling confidence in the team to successfully carry the project forward. I would like to thank my entire team without whose co-operation and strenuous effort the research would not have been so fruitful. I thank all those people who have helped us with the research, all government officials, counselors, staff at the courts and the police personnel who have co-operated with us during the research.

Lastly I would thank the almighty and my family who have constantly supported me during the research.

**-Tanay Agarwal**

## **Part I**

### **INTRODUCTION**

#### **1.1 Introductory:**

The year 1986 witnessed a silver lining for the feminist activists with the government making major amendments to the Indian Penal Code, which was expected to plug the loopholes in law for protection of women, against violence perpetrated in the household. With the increasing number of cases of harassment, murders of and suicides by distressed women it was found expedient to make the law more effective and favorable for victim women. While the Indian penal Code was amended to create space for gender specific offences, the law relating to evidence was also altered to pave way for the effective implementation of the same. A further development in law was witnessed when the government, in 2005 came up with the domestic violence act which provided a civil and quasi criminal<sup>1</sup> recourse to the victim women.

The statement and objects of the Criminal Law Second amendment Act of 1983<sup>2</sup> recognized the growing concern over harassment of women in domestic household which many times also culminated into suicides by such women. The act traced the cause of such deaths directly to cruelty inflicted upon the woman which if proved amounted to dowry death. In the following statements the act further observes that such culmination into suicides or murders constituted only a smaller fraction of the much heinous problem of cruelty upon the woman which required a parallel control and therefore section 498A was introduced in the penal code whereby any willful conduct of the husband or relatives of the husband which cause grave physical or mental injury or drive her to commit suicide or any harassment inflicted with an intention to coerce her or any of her relative to meet any unlawful demand for property would amount to a cognizable and non-bailable offence under the section<sup>3</sup>. The amendment promised a great deal of alleviation in the condition of the legal system in the favor of the woman.

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<sup>1</sup> While some high courts have claimed it to be purely civil remedy some have claimed it be criminal and some high courts call the remedy a criminal one. The nature of remedy has produced varied standpoints on the question whether parallel suits under the act constitute double jeopardy.

<sup>2</sup> Act 46 of 1983.

<sup>3</sup> Read: Statement of objects and reasons, Criminal Law Second amendment act, 1983 point no. 2.

While the step was welcomed by all social activists then, thirty years hence the efficacy of the amendment has now become questionable. The amendment now stands for trial among competing claims of low efficacy and high misuse both sides agreeing at one position that there needs to be a legislative reform. While one side of the arguments entail that the section has failed to reduce cruelty the other side argues that the amendment has opened floodgates of blackmail and seeking vengeance<sup>4</sup>. While on one side an effective implementation of the protection system is being cried for, the other side claims for an effective check on the abuse or misuse of the law.

Over a period of thirty years the courts have variedly come up with what would and what would not constitute as cruelty under the section and the maintainability of the suits under the section. In an almost unanimous view which is now confirmed by the apex court, the section does not require a valid legal marriage to invoke the section<sup>5</sup>. Further in the case of *State of West Bengal v. Orilal Jaiswal*<sup>6</sup> the court further confirmed that the principle of establishing doubt beyond reasonable guilt was not altered by the introduction of the amendment and hence the principle applied in full force to the section.

The next big thing in the Indian arena was the introduction of PWDVA<sup>7</sup> act, which provided the women with more practical benefits. While the law under the Indian penal code restricted itself to punishing the convict, the new law created space for protection of the woman from the very happening of the crime with remedies such as availing protection orders, residential orders, custodial orders and financial order. The new law was more wide as it covered any form of a domestic relationship not necessarily marriage. The PWDVA had brought in the concept of protection officers, counseling centers and service providers with an aim of establishing a full fledged protection system<sup>8</sup>. Along with both the laws a third remedy under the Code of Criminal Procedure (CrPC) exists under section 125 for the claim of maintenance which was amended to accommodate maintenance claims exceeding Rs.500/-. The law for the

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<sup>4</sup> The Supreme court observed that the section has been prone to misuse in various cases a recent a few being: Sushil Kumar Sharma v. UOI: JT 2005 (6) SC 266 and Preeti Gupta v. State of Jharkhand: AIR 2010 SC 3363. However in the former the Supreme court also observed that certain instances of misuse do not warrant unconstitutionality or invalidity of the law. In the latter judgment the Supreme court requested the ministry for law and the Law commission to make and suggest changes to put the law on a better stand.

<sup>5</sup> The purposive interpretation of the legislation was confirmed by the Supreme Court in the case of Reema Aggarwal v. Anupam: AIR 2004 SC 1418.

<sup>6</sup> AIR 1994 SC 1418.

<sup>7</sup> The protection of Women against Domestic Violence Act, 2005, hereinafter PWDVA or the DV Act.

<sup>8</sup> Refer to PWDVA rules 2006.

protection of women has now developed into a three dimensional system of civil, quasi-criminal and criminal remedies.

The question which now arises for our consideration is “what went wrong rather what did not go right in the system that the system has now become a controversial set up?”. While both the sides of the arguments have their reasons attached to the question, it becomes essential that before a comment is made we analyze the ground zero situation so as to assertively make a judgment.

This research is an attempt to analyze the situation at the ground level of the system. It seeks to study its working and implementation and to find out the realities thereof. This research overtly keeps itself away from the debate as to the section at the research level and attempts to neutrally analyze the situation and critique not the law but the situation. It thereby attempts to create a base for making a further argument upon the controversy. This report is hence a status report which shall analyze the status of the law in force and test this so called force.

### **1.2 Key Objectives:**

1. To analyze the prevalence, patterns and trends of Domestic Violence cases filed under section 498A and to assess the need of the provision
2. With the help of primary and secondary data understand and analyze whether section 498A is being used or misused
3. To serve the base for conducting further detailed studies pertaining to legal effectiveness of the current statutes and the need for new statutes to combat domestic violence.

## **PART II**

### **THEORETICAL FRAMEWORK AND RESEARCH QUESTIONS**

#### **2.1 Review of literature**

Protection of women against domestic violence has been a historic concern for the feminist movement in India. The problem with the offence is its occurrence cannot be determined hence its deterrence is an equally thorny task. It is necessary for us to examine the intricacies of this issue before we further venture into the report. This section is dedicated to the theoretical study of certain aspects of domestic violence wherein we aim at examining the generic feminist theory of objectification of women through a commentary on the famous playwright *Aur Kitne Tukde* followed by specific problems such as dowry, domestic violence. Lastly we examine the functioning of similar systems in another country and then a similar report which was made by a NGO in another study. This is then followed by an examination of blogs on the misuse of 498A and analyzing the claims thereof.

##### ***2.1.1 Gendered Violence in Aur kitne Tukde: Tisha Menon<sup>9</sup>***

“*Aur Kitne Tukde*” is a playwright in Hindi highlighting the objectification of women by the patriarchal society. It was centered around four female leads who were grossly mutilated by the state, the religion, the society and the culture. The argument which the article puts forward is that the patriarchal set ups have always been considering women as objects and this attitude has led to them being treated as a ‘belonging’.

##### ***2.1.2 Sexuality, Freedom and the Law, S.P. Sathé<sup>10</sup>***

The article is a critique of the rape laws and family planning laws in the country however it also parallel and rather centrally argues as to how behavior of women is stereotyped in the patriarchal society against which they are measured.

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<sup>9</sup> Feminist Review, No. 84, Postcolonial Theatres (2006), pp. 29-47

<sup>10</sup> Parashar and Dhanda, Family Law in India, Routledge.

### **2.1.3 The Study of Gender in India: A Partial Review; Bandana Purkayastha, et. al.**

Each country, with its cultural ingenuity, differs in its gender scholarship. This article is an endeavour by scholars in U.S. academies with the primary purpose of enhancing the awareness of U.S. scholars pertaining to the similarities and differences of gender literature in another part of the world. For this, the authors have chosen India and have conducted a partial review. Thereby, the authors wish to foster critical reflection on the inequities of global knowledge, production and consumption and also the role of U.S. academic institutions and scholars in the project. Acknowledging their limited cultural awareness and remote locale, the authors state clearly that this is just a glimpse of the gender scholarship in India. The article deals with the theoretical and methodological issues related to the women's movement and violence against women in India with many caveats.

The report highlights the issue and severity of dowry deaths and talks about how the problem of dowry has managed to become a secular evil. Further the report does away with the misnomer that issues of wife battering exist only in economically or socially lower class. This article proves to be extremely useful by giving a comprehensive insight into the gender inequality issues prevailing in India as a case. Thus the article has spoken about how women are subject to subjugation. Although this is presented in most articles of the type, this article has gone a step further into analysing the culture's role in the prevalent gender inequalities, be it in India or elsewhere.

### **2.1.4 "Dowry: Why it prevails?"- Sonia Dalmia and Pareena G. Lawrence<sup>11</sup>**

The article deals with the nuances of the *dahej pratha* and is an inquiry into the reasons for its existence and the pattern of arrangements around these systems. While though dowry has been regarded under the Hindu system as an inheritance belonging to the female it has rarely stayed in her control and the concept of *streedhan* eternalized into *dahej*. Over a period of time the dowry system took over the system of bride price (where the groom's family pays to the bride's) and has also crept into the non Hindu societies.

The study ascribes numerous reasons to the existence of the dowry system and the patterns of culture around the same. The article further highlights through its research findings the determinant factors of the amount of dowry. The research holds importance as it highlights

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<sup>11</sup> The Journal of Developing Areas, Vol. 38, No. 2 (Spring, 2005), pp. 71-93

that the dowry system does exist besides the facts that there is a well set legal system in place. Further, it is to be noted that often dowry does not destroy the hierarchy of between the groom's family and the bride's family. Rather many a times it is the quantum of dowry which are claimed to be the bone of contention in the family. Though the research could have further highlighted the relation between the system and domestic violence it nevertheless introduces us to certain set ups in the society which exist headstrong besides the fact that they are illegal.

#### ***2.1.5 Anatomy of Domestic Violence: A. K. Jha<sup>12</sup>***

A few chapters in the book deal with the problem of Domestic Violence in the Indian Household (the household being stereotyped). The researcher therein has produced an empirical critique to this stereotyping of the violent household and to show that violence is not bound in the same. The researcher has studied 133 independent cases of women from both the stereotyped violent household and also the non stereotyped household and to ones horror conditions do not edify in the non stereotyped household. The writer relates the violence to the deep rooted psychology of the husband than his recent issues in life and his upbringing. While the women were questioned largely about their experiences in the household their reaction to the same was not inquired about regards approaching the authorities.

The research renders itself incomplete at many instances. Firstly, it fails to register the response which the women have opted for and the reasons why they chose or did not choose to opt for a legal remedy. Secondly the research does not give any review of the victims towards the efficacy of the system in place which basically emerges out of their abstinence from seeking the former details. However the research contributes much towards the fact that the myth of violent and non violent household is nothing but an inaccurate second guessing.

#### ***2.1.6 Understanding Justice: Shalu Nigam<sup>13</sup>***

The article dates back to years before the PWDVA act was introduced and is majorly written to highlight the lacunae in the existing machinery then in the initial stage. However, the article then studies the Domestic violence law under the Indian Penal Code (IPC) through case studies by analyzing various victims and their cases. According to the study though the state has advocated for impartiality and societal justice, yet, in its customary and contextualized form it

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<sup>12</sup> A.K.Jha, *Anatomy Of Domestic Violence* (Anmol Publications, 2002).

<sup>13</sup> See annexure.

has eternalized patriarchy and strengthened the victimization of the women. Particularly in situations of domestic violence, the family ideology supporting the content and manner of implementation of law plays a chief role in obstructing access to and delivery of justice.

While the article was able to relate to the problems of the victims however the article does not take us much further for one reason that it does not keep itself free from the bias of one side's view and at some places the author seems biased and makes generalizations based on singular cases. There may have been cases where the women must have given exaggerated accounts of systems slogs which they could have probably misconceived as anti women sentiments in the system. Further approaching the victims is not a good idea for a research work as it would be painful for them to recollect the details of the same.

***2.1.7 Hitting is Not Manly Domestic Violence Court and the Re-imagination of a Patriarchal State: Rekha Mirchandani<sup>14</sup>***

The study is based in Salt Lake City in the united states describing the changes that had occurred post the introduction of law and system for protection of women against domestic violence. the system which was then introduced in the Salt Lake city is much similar to the DVC system introduced in the year 2005. The research initially focuses on the feminist theories of state and pre determination of roles in the per se neutral laws of the state. It then focuses on the gender of governance being largely masculine and how the same creates problems whilst dealing with issues such as domestic violence. The researcher then discusses the changes in the realities at the ground level and expressly mentions that she tends to keep herself away from a study of changes in the legislation.

The researcher then highlights the importance of the changed methods of trial and the gender of governance, as to how it contributed towards a better implementation of law and effected a change in the ideology that hitting is something manly. The researcher further highlights the importance and efficacy of the system of counseling which has been a subject of much critique in the country<sup>15</sup>. Further the researcher highlights the importance of making the perpetrator realize that he is not right and take the responsibility of his acts. However we can import-export legal systems across borders of cultures and dynamics of each nation yet the

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<sup>14</sup> Gender and Society, Vol. 20, No. 6 (Dec., 2006), pp. 781-804, published by Sage Publications .Inc

<sup>15</sup> It is to be noted that the system in the Salt Lake city has been designed much differently. Certain aspects of these have been considered by the researchers in the conclusions and suggestions part.

research hereby provides an example of a success story of a domestic violence legal system in another environment.

### ***2.1.8 Domestic Violence, Contraceptive Use and Unwanted Pregnancy in Rural India<sup>16</sup>***

The article is an insight into how women facing domestic violence lead themselves into issues such as unwanted pregnancies and the violent hierarchy enters the sexual intimacies. The research further found that these women did not have a proper access to the contraceptives. The research was carried out by asking the willingness of women undergoing gestation as to their willingness to have the child. Around 23% of the women faced unwanted pregnancies as per the research. It was found that women who faced violence had a less access to the contraceptive measures and were more prone to unwanted pregnancies. Women facing violence have no say in the sexual activity or making decisions about the timing of childbirth. Such is the gender-stratification in the society where men wield power over the women. These unwanted pregnancies were found to be the result of her being restricted from contraceptives and a lack of her decision making when it came to childbirth.

The research highlights the ludicrous nature of domestic violence which makes it a grave concern and its prohibition and control becomes essential to ensure a dignified and free life to the women in the country. The research highlights the heinous nature of the consequences which may follow domestic violence.

### ***2.1.9 Getting Away With Murder: A Study by Vimochana, Bangalore***

The article is a study of the status of 498A in the city of Bengaluru. The study is from the perspective of a distressed woman who approaches the formidable law than pathetically singing "Protegga il giusto cielo". The research unravels the grim situation in the system which has rendered it almost useless. The research analyses the entire mechanism in place around both the penal provisions and those enshrined under the DVC act which have now been parallel functioning as almost one system. The research claims that the law has failed to achieve any of its objectives rather spoilt the situation further more.

The research looks into the entire process of counseling and its implementation along with reviewing the status at the levels of police stations. The research critiques the careless and rather reckless attitude of the police personnel and the magistrate, et al in procedures involved in

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<sup>16</sup> Studies in Family Planning, Vol. 39, No. 3 (Sep., 2008), pp. 177-186

collection of evidence. It shows a concern as to the criminalization of various essential procedures which are often passed off carelessly. Further the research observes the various reasons as to why maximum cases lose their credibility to the defense.

The article concentrates on its claim that the governmental bodies are not taking enough care and concern about the cases related to harassment, battering of women, and unnatural deaths of women. The authors feel that this is because of lack of supervisory bodies to look after that the laid down rules were being followed, and not flaunted. They also feel that negligence on their part also results in the offender escaping at more than one level. The counselors who ideally should look into the complaint properly do not do so, but try compromising the case. The police are reluctant to record such cases for various reasons, as are the doctors while performing post mortems.

The whole report is based on various reports, interviews and meetings with various people, police, people with medical knowledge and the statistics provided by the police. The report however is a strong critique towards the entire process of counseling as being yet another patriarchal set up to vitiate the willingness of the women to file the case. The report could be very well a depiction of the reality in the city of Bengaluru however we do not intend to make any opinions of the system in Hyderabad. Therefore on one hand we appreciate the scope of the report yet we do not wish to seek to be influenced by any such conclusion until the research has taken its own course.

#### ***2.1.10 498a.org: site review of claims about misuse of section 498A.***

This site is a forum against the “rampant misuse of 498a (Dowry Law misuse) by unscrupulous women to extort money and harass their husband's entire extended family”.<sup>17</sup> This law has been termed as 'legal terrorism' by Honourable Supreme Court of India. They demand that the law be more lenient taking into consideration the circumstances and contextual evidence. Also, given that this initiates Criminal proceedings, it makes the accused culpable despite being innocent.

They conducted interviews of the accused and have concluded thus:

Several male groups have expressed concerns regarding this law. Although this is a matter dealing with the family, it is handled under the Criminal law for marriage related matters and not

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<sup>17</sup> [www.498a.org](http://www.498a.org)

under Civil Laws. A non-bailable warrant does not require proof before arrest. No investigation is necessary. This makes the accused completely vulnerable taking away their basic human rights. Also, the accused is presumed guilty until proven innocent. In addition, the complaint is non-compoundable. Therefore, the complaint cannot be withdrawn and hinders any scope of reconciliation between the couple.

A Number of cases are filed because the husband refuses to throw his parents out of the house at the wife's demand. The possibility of a woman over-reacting over a trivial matter in the family is never considered as a reason of complaint. A woman tries to get divorce proceedings faster by filing a 498a case even if no dowry was demanded. Some women who marry NRIs, thereafter, slap 498A cases and extort large sums of money to live in comfort with a new partner without any regret. Most often the lawyers extort a lot of fees from the accused and their family exploiting their vulnerable situation. Although, deplorable this cannot be constrained.

Elderly parents who lived with dignity and respect throughout their lives are forced to live with the stigma of harassing their daughter-in-law for the rest of their lives. The man is unable to find a suitable bride even though acquitted. Women's organizations often proclaim the lenient laws to be the cause of the dowry deaths in the rural areas. The law is already unfair, biased and inapplicable. The factual reason for dowry deaths in rural areas is poverty and under-developed civilization. Dowry deaths still flourish in the rural areas and misuse of 498a law is flourishing in the urban areas. Unwillingness of the women's organization to alter the law so that misuse of law can be stopped is evident. On the contrary, women's organizations are planning to strengthen and increase the severity of the 498a law to curb dowry death, which is preposterous to say the least. One must not forget that the chunk of the GDP comes from the urban cities where these laws are prevalently misused. If the misuse of laws still continues, then the social infrastructure will collapse which will have a direct unfavourable impact on the country's economy. When the law is unable to curb the dowry deaths and even its misuse, then what is the use of such a law that causes millions of people to suffer?

## ***2.2 Research Framework***

It is clear from the above discussion that at some level both sides of the argument have an element of truth (not necessarily unexaggerated) in the light of which the study has to look at the following aspects.

1. How far the section is approachable: here by approachable, we seek to examine the attitude of the police authorities, protection officers, Activities of the SLSA and NGOS who determine the ability and willingness of the victims (presumed) to approach the law.
2. To what extent is the system useful to the victim (presumed) and what kind of difficulties one can face? Here we seek to examine the provision in the light of the other remedies available in law and examine the efficacy of the system as a whole.
3. To what extent is there a possibility of misuse and how effective are the safeguards? Here we seek to examine the extent of misuse of the section and the counters available to the same.
4. What changes can be brought in and what can be the challenges to these changes? This part would deal with the suggestions that have come from various experts, practitioners and of the researchers themselves and an immediate critique to them.

The report has therefore been divided in to the following parts. The next part of the report (part III) shall give an outline of the research scope and the data collected. Part IV of the research would then examine the data in the light of questions 1, 2, 3; part V would deal with the fourth question and the research would then take a conclusive note followed by a bibliography.

## **PART III**

### **RESEARCH SCOPE AND DATA ANALYSIS**

#### **3.1 Research Scope**

At the very outset of this part we would like to highlight the various considerations that come to light when an occurrence of domestic violence (presumed to have happened) takes place. We do not seek to highlight any mental agony or trauma or any subjective behavior or any subjective circumstances at this stage. A victim of domestic violence may approach the nearest police station to lodge a complaint of the incident. The police take up a complaint and if a facility of counseling is available, may inform the victim of the same and also of the other remedies she has under the DVC act<sup>18</sup>. If the victim wishes to not opt for them and proceed then the police file an FIR.

If the police fail to lodge a complaint or inquire into the matter the concerned may approach the State Human Rights Commission (SHRC) against the same or file a writ petition otherwise the matter moves in for litigation<sup>19</sup>. The accused is/are arrested. The litigation proceeds with the criminal court, if the accused party is aggrieved for the case being lodged on false grounds or insufficient evidence they may move a petition under section 482 of the Cr.PC invoking the inherent powers of the court to quash the case. Parallel the aggrieved may file a petition with the DVC court or/and the criminal court for other orders under the DVC act and maintenance respectively<sup>20</sup>. In case before the litigation stage the victim opts for counseling the counseling procedure is initiated. The woman can approach the State Legal Services Authority (SLSA) for a lawyer.

Therefore for a status report all the authorities concerned have to be brought to light as the system of law for protection of women against domestic violence and punishment to the perpetrators functions as a whole and consideration of 498A in isolation would not be justifiable

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<sup>18</sup> In case of Dowry death substitute the victims with the Survivors/relatives as the case may be.

<sup>19</sup> Procedures specific to the CRPC are presumed to have taken place. We are not highlighting each individual step here.

<sup>20</sup> By the judgment of the APHC in the case of *A Sreenivasa Rao v. State of AP*: Manu/AP/0143/2011, relief under the DV act is quasi criminal and its concurrence with a suit under CrPC is not Double Jeopardy. Further the law does not exclude in application, Muslim women, by the virtue of their personal laws or the Muslim Women (Protection of Rights on Divorce) Act 1986: *Syed Md. Nadeem v. State and Anr*: Manu/DE/2460/2011.

on any grounds. For this purpose the researchers have collected data across police stations, APSHRC, Protection Officers, Legal Service Authorities, Counseling Centers, APHC, Trial Courts, Family Court, lawyers and other experts in the areas. The researchers have excluded NGOs and both the victims and the accused as it would require examination of counter claims and to sort out the same would lead to inferences of researchers playing a main role, as adjudicators, deciding what is more believable and creating an express space for bias of the researcher. However to compensate the same legal practitioners were consulted who were capable of giving a neutral opinion though not completely so but more so have been consulted.

### **3.2 Data Analysis**

#### **3.2.1 At the police stations<sup>21</sup>:**

It is important to understand the procedures and legalities involved at the level of filing a complaint to analyze what is the approachability the law has towards the victims. The police being the first rung of the ladder it is necessary to have an idea as to the attitude of the police personnel towards the victim and as the case proceeds it is on the inquiry, investigation and the findings of them that the case is based. A set of randomly selected 45 police stations from Hyderabad and Ranga Reddy Districts were visited by the researchers, the four women police Stations in particular<sup>22</sup>. It was so done as in the initial findings of the research it was found that the Police stations situated nearby the women police stations directed almost all cases there and hardly a few were inquired into by them. The complaints were required to be filed with the women police stations necessarily<sup>23</sup> and the only help available was a route map to the nearest WPS. However as the proximity from the WPS decreased circumstances changed. The explanation to the same from the police authorities was ease of execution, availability of infrastructure, lack of comfort levels of the victim with the male police personnel and the fact that most of the victims and their lawyers knew that they had to file a complaint under 498A with the WPS.

When the police authorities were asked as to the number of cases which are filed and taken cognizance of, the number (not at the WPS) did not in any case exceed 6 cases a month

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<sup>21</sup> See annexures 2, 2.1, 2.2, 2.3,2.4

<sup>22</sup> Basheerbagh, Begumpet, Saroornagar, Charminar.

<sup>23</sup> The police authorities denied answering any questions and asked the researchers to visit the WPS only as they did not accept any cases unless circumstances were so severe that they had no other option but to immediately file a case.

while at the WPS the numbers crossed around 100 in the past six months<sup>24</sup>. The figure however reached to 240 cases at the Charminar Police stations and as many as 413 requests for counseling were registered. When the authorities were asked as to the counseling procedure it was discovered that the police authorities *suo moto* counseled the victims<sup>25</sup>. Another response which was recorded was of the problems with small fights. The police authorities informed that many a cases arose out of 'petty' fights and the next day the woman would deny the filing of the complaint<sup>26</sup>. When asked about the misuse, the police responded that they would not make a statement calling it a misuse but agreed to the fact that most of the complaints never materialized. As many as 1225 cases<sup>27</sup> were filed with the police authorities since May 2011 to October 2011 which is certainly an astonishing figure<sup>28</sup>.

When asked about the inquiry procedure, the police authorities informed that the investigation procedure pre and post arrest was one of the most difficult aspects. The crime happening within four walls of the house it was difficult to collect evidence. The police confirmed that the initial charges were however framed based on the evidence of the victim mainly supported by those of the milk man, newspaper boys, house maids, watchman or neighbors. The officer at the Basheerbagh Police station further said that this was one of the reasons why the cases failed on the absence of sufficient evidence, however officer was of the view that his experience suggested that as much as 99% of the cases were true and involved harassment.

The police authorities were also asked to comment upon the issue of the offence being bail-able. While officers interviewed at 8 stations refused to comment as many as 20 respondent police officers were of the view that the offence should be bail-able. The reason so ascribed by these respondents was that most of these cases were petty fights and therefore arrest of the relatives and the husband would not be justified however 17 respondents did not favor any change as they anticipated a further deterrence in the situation. One of the respondents favoring bail in such cases was of the view that in the Indian arena arrest brings about enough disgust to the family and post preliminary arrest the family would not perpetrate violence out of fear.

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<sup>24</sup> For detailed figures please find Annexures 2.2.23,24,25, 2.3.19.

<sup>25</sup> See also Meerpet P.S. data, annexure 2.3.12

<sup>26</sup> See for example data collected from Malkajgiri P.S., Thirumalgiri, Dabeerpura, and as many as 30 police stations informed that most cases either were small fights or women filed a complaint to scare the husband.

<sup>27</sup> Annexure 2.4.

<sup>28</sup> Ibid.

When the police authorities were further asked if they informed the complainants about the alternate and parallel remedies under PWDVA, the response was negative. While the police authorities were favorable in their use none of them agreed to suggest that to the victim and many also sounded unaware of any such remedy. The police authorities were very positive about the potential of NGOs in providing help, however as of today there was not much help recorded from that side but for running certain counseling centers and bringing in victims to justice.

It is pertinent to note at this point that the police authorities stressed at two points mainly. Firstly the police authorities have observed that many times the complaints did not materialize into charges due to the inclination of women to continue their family lives. Secondly, the societal pressure does not warrant a further step from the side of the woman and therefore the woman does not proceed with any action. While at one point in time the police did not favor a violent relationship it did not seem that they were in favor of lodging cases against the husband and the In-laws which makes the system land in a quagmire.

### **3.2.2 At the Courts:<sup>29</sup>**

For the purpose of the research as many as 70 cases under the section and 35 cases under the DVC and Section 125 of the CrPC were examined. It is to be mentioned that the parallel remedies were examined only at the *Nampally* Metropolitan court and not at the LB Nagar court (*Rangareddy* court) due to non feasibility. A case brief of the cases regarding their institution, duration, allegations and counter arguments along with the *ratio decidendi* was generated for cases adjudicated in the past six months<sup>30</sup> at the two courts.

The research has opted for a case law based analysis to examine the success ratio of these cases, the strength in the allegations, misuse (as recorded by the court if any), reasons for suit failures and available safeguards to the parties so as to come up reformative analysis as would be dealt with in the last part. It is important for the study to be extended to the lower courts as it forms the first rung of adjudication and justice delivery. Not many cases go in for appeal or revision and therefore the lower courts become the center stage for all the legal action.

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<sup>29</sup> See annexure 3, 3.1-3.8

<sup>30</sup> Six months from the first day of November, 2011.

From the data collected from the courts<sup>31</sup> it was observed that the success rate of 498A petitions was very low. The lower courts form the first level of adjudication in the justice delivery system and therefore are the center stage for the performance of the system. It is to be noted that any petition whether under the DV Act or the Cr PC or under the Code of 1860 are filed by the metropolitan court and therefore all the folds of the system are dealt with under one roof. Success rate for 498A petition was 2 in 70 cases which we had dealt with and off the total number of petitions coming to the Ranga Reddy court was 6 out of 52 cases heard by the court in the past six months. On the other hand under the PWDVA of the 35 cases selected randomly for the study 10 cases were not proved either due to lack of evidence<sup>32</sup> or lack of interest of the petitioner in pursuing the case<sup>33</sup>. While the other cases ended up in either a adjudication in favor of the woman or in a compromise with the woman getting a maintenance. The maintenance amount under the DVC ranged from Rs. 2000/- a month to Rs. 20,000 a month according to the ability of the respondent to pay.

Most of the cases filed under the penal provision under section 498A met the fate of dismissal on certain similar grounds. In all cases dismissed by the metropolitan court at Nampally the major reason was the lack of substantial evidence that could bring home the guilt under section 498A.

The picture was alike even at the Ranga Reddy court, where the deficiency in evidence, lead to the dismissal of suits under the section. It is to be remembered that the section falls under the ambit of criminal jurisprudence due to which the case of the victim has to be established beyond reasonable doubt and most of the cases lacked the standard of proof. Another factor which heavily pulled down the strength in the cases was the disagreement of facts among the evidence produced. Quite often the evidence of the victim herself varied from her plaint or earlier statements or at times the victim had a new argument which would not have been written down in the plaint. This creates a benefit of doubt in the favor of the accused that the victim has been concocting false stories of the case. While this might not be the case in all petitions yet the

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<sup>31</sup> 35 cases adjudicated (under 498A) from the Metropolitan court @ Nampally and Rangareddy court each along with 35 DVC petitions filed with the Metropolitan court @ Nampally.

<sup>32</sup> Only one case was adjudicated so.

<sup>33</sup> 9 cases were dismissed due to continuous absence or lack of interest of the petitioner.

court is bound by the principle of guilt being established beyond doubt and therefore the evidence adduced falls short of this standard.<sup>34</sup>

Another ground on which the petitions have dismissed is the lack of interest of the complainant in pursuing the case. The court has decreed such recklessness in negative and has dismissed various petitions even under section 498A. the ground has been the common ground for the dismissal of various DVC petitions as well.

The third point of examination of data has been the duration which the cases have taken to be adjudicated. We will first discuss the data received from Hyderabad district. Most of the cases under 498A which have been dismissed due to lack of any evidence were adjudicated within a year or two while those whose evidence was considered have taken a year longer. However there have been reported, cases, which have crossed five years of litigation and the longest period being discovered is of eight years from the year 2003 to 2011. Amazingly, the cases reported under the DVC act were disposed off within a year's time. Off all the thirty five cases none of the DVC petitions crossed a year for being adjudicated upon clearly showing that it is a much faster and effective remedy provider.

At the Ranga Reddy court it was found that the cases which were selected were mostly decided within two years of the complaint however there were cases which took as long as 5 years. From the panopticon view it is to be noted that the cases under the section took on average more than a year to be adjudicated. Further the success rate has been really low for various reasons mentioned above. It is to be noted that on a contrasting note the system under the PWDVA has been a more effective remedy. Another important observation that can be made from the facts of the cases reviewed is that all cases under section 498A and many under DVC were rooted in the system of dowry.

### ***3.2.3 At the State Human Rights Commission (SHRC)<sup>35</sup>:***

It is well obvious that no person admits his own follies. The data collected from the Police Authorities would not lead us to a conclusive analysis. Therefore it becomes necessary for us to examine the police authorities from the point of view of a grievance redress forum which is

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<sup>34</sup> It is to be noted that the evidence of the near relatives is to be validly taken by the court as per a ruling of the Supreme Court in *Prakash Chander v. state: 1995 Cri LJ 368*. . It has been confirmed by the lawyers that the same is done at the trial courts yet cases are lost due to improvements in the statements or contradicting statements which indicate towards the elements of falsehood in the case.

<sup>35</sup> See annexures 4, 4.1.

the State Human Rights Commission for Andhra Pradesh. The commission receives complaints from across the state pleading to request the authorities to take necessary action. Though, technically the forum is a toothless tiger it is no doubt a very effective one in the state of AP. Therefore data was analyzed at the SHRC regarding the number of cases which were filed with it against the lack of action from the police authorities or misfeasance, malfeasance or nonfeasance by the police authorities. It is not argued that the number of cases would accurately determine the efficacy of the police authorities however would to an extent correct the defect of the data collected otherwise.

It is to be noted that stealth loses its character upon discovery. Therefore there is always a chance that the research misses out a certain aspect which operates in a clandestine chamber. It was found from the data collected at the SHRC<sup>36</sup> as many as 314 cases<sup>37</sup> were referred to the SHRC in relation to instances of Domestic Violence of which 139 cases were accepted for adjudication and the rest dismissed. 88 cases pertained to harassment by the police authorities of which 29 cases were accepted for adjudication and the rest dismissed due to lack of grounds. 35 cases were filed for nonfeasance by police authorities by women of which only 6 cases were found to be having substantial grounds. 7 cases were filed with the SHRC for negligence of the police authorities out of which 2 were adjudicated and rest dismissed on the absence of grounds<sup>38</sup>. The AP SHRC also receives cases of domestic violence against the husbands, children, in-laws and has been adjudicating upon the same. It was however observed that most of these cases were settled outside court by the time they came for adjudication. While the SHRC is an effective forum for grievance redressal the only hurdle to its competency is that its orders are recommendatory in nature and not binding.

### ***3.2.4 At the Counseling Centers<sup>39</sup>:***

Hyderabad and Ranga Reddy districts have two counseling centers in total, located at the Basheerbagh WPS and at Masab Tank. Cases approach the counseling centers in two ways. Firstly cases may be referred by the police authorities and secondly the victims might directly approach the counseling center. The counseling center cannot proceed with the reconciliation

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<sup>36</sup> See annexure IV to this report.

<sup>37</sup> May- October, 2011.

<sup>38</sup> For a month-wise analysis of the data please refer to annexure IV

<sup>39</sup> See annexures 5.1-5.5

attempt unless the victim so desires. If the victim consents to counseling then the husband and victim are spoken to and a possibility of reconciliation is sought.

If the reconciliation is not in favor of the victim or the victim wishes to opt out of the proceedings half way through she may do so. Counselors may end up reconciling the parties, helping the victim proceed with the litigation, filing of divorce or any other remedy as the law provides for and the victim opts for. The counseling centers are run by local NGO with two social workers and a legal officer. In certain cases it was found that the police *suo moto* entered into counseling which is prohibited under the law<sup>40</sup>. Data as to the number of cases approaching the counseling center was collected along with a conversation with the counselors at one center<sup>41</sup>.

The counselors informed that cases reached the center either through the police constables who referred the couple to the center or through the relatives or the couples themselves. The counseling center had to get a permission granted from the DGP after getting the consent of the victim to begin the process of counseling. The counseling process first confirmed with the victim as to her choice to give a chance to her marriage. If the victim later or at any stage decides to opt out of the process the counseling is immediately terminated. The counselors however informed that such a case was very rare.

The second step involved a meeting with the husband. At this juncture the counselors speak to the husband and try to frame the reasons of the dispute and calculate if there is any scope of improvement post counseling. The third step is of a joint meeting of the couple. The entire process is under the strict surveillance of the counseling center with the help of the police. The counselors informed that much of these cases in Hyderabad were reported from the Muslim community and problems increased manifold as the couple would have already registered a talaq. Further the counselors confirmed that most of these disputes were disputes between the families, than the couple and were cases of violence in the relationship post such disputes. They also confirmed that at one level none of the cases was of a false nature and there was an evidence of violence in every case.

When asked about the information about the remedies provided to the victim, the counselors informed that the victim was given a complete picture of the legal remedies in her

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<sup>40</sup> See annexure V for detailed information as to health, age group ...et. al.

<sup>41</sup> See annexure 5.5.

first interaction and was fully informed about both civil and criminal action including grounds for divorce. The counseling centers do feature with a panel of advocates but the researchers were informed that most of these people had their own advocates assisting them in case a suit was to be filed. In case of reconciliation between the parties the counseling centers had to carry out home visits and in such process were assisted with a constable. We were informed that the importance of counseling grows four fold in the Indian scenario because the family institution is ascribed with great value.

Most of the cases approaching the counseling centers have been of women who range in an age group of 18-34 years who have just begun with their family or have children and it becomes difficult to survive alone. While this condition is not a good one the counselors showed helplessness themselves because the woman would have to undergo further hardships otherwise. However they specifically mentioned that even in these situations the counseling process would not proceed if at any stage it is found that it is not favorable for the woman to get back. The counseling centers maintain a connect with rehab homes, hospitals, et al and have reported cases where the husband had changed his mind set and psychology and realized the fact that he was wrong. The counseling centers however expressed its grievance of being disregarded as evidence in cases whereby even after having a first hand knowledge of the crime they cannot help the victim any further.

In the last two quarters since April 2011 the two counseling centers dealt with as many as 470 victims<sup>42</sup>. Most of these cases were referred to the counseling centers by the police authorities to the centers. The victims were generally of 18-34 years and illiterate victims from low financial backgrounds formed the majority of the clients to the support centers. Violence was largely physical or mental in nature. Most of the cases as per the data provided with ended up in a non violent reconciliation of the parties and the follow up process of home visits ensured the safety of the woman<sup>43</sup>. Counseling centers are not home rejoinders but consultancy forums where the needs of the woman are addressed. While it is true that most cases with the counseling centers have ended up in reconciliation it is also true that this most is the highest number but not the greater number and other remedies such as custody of the child, Building support system,

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<sup>42</sup> See annexure.

<sup>43</sup> For detailed account of other types of violence, et al. please refer to the annexure.

Enlisting police help/ Interventions, Negotiations for non violent separation, Divorce, Retrieval of *Streedhan* being quite a few.

### **3.2.5 Protection Officers (PO<sup>44</sup>):**

The office of the protection officer becomes important to the study as it plays a pivotal role for availing the victims (presumed) with the remedies under the DV Act. The Protection officer (PO) makes the Domestic Incidence Report (DIR) on the basis of which the magistrate decrees the remedies to the women. The PO office for Hyderabad is at Nampally and at Lakdi Ka Pul for Ranga Reddy districts.

As per the data received from the PO office at Nampally<sup>45</sup> as many as 1689 complaints were received by them since their establishment until October 2011. Of these 133 cases were compromised at the level of counseling and 210 were withdrawn before the DIR was forwarded. However, as many as 1346 cases were filed before the magistrate for adjudication. Cases reached the PO's office either through the police. It has been observed that the PO's Office provides much more help than the police stations. the Rangareddy PO office had even lower numbers of cases being reported. Hardly 100 cases were filed with the officer of which 46 cases had DIRs being filed, 5 were forwarded to ADR, 6 were compromised and 2 saw mutual divorce. These low figures do not represent reduced violence rather represent a low awareness among the victims about the remedy.

The PO's office provides the client with information about all the remedies she has at her disposal along with providing her with medical aid, shelter homes, et.al. Legal Aid is also given to the victim if she so desires and the case is forwarded to the legal service authority. Further the PO's office is also involved in retrieval of *streedhan* and other property from the in laws of the victim. Besides the PO's office is regularly inspects counseling centers and shelter homes. A quarterly revision of the same was confirmed from both the offices.

The PO's office follows up each case until the dismissal or final adjudication. The conversation at the PO's office then ended on the need for awareness more than anything else.

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<sup>44</sup> See annexures 6.1-6.3

<sup>45</sup> See annexure 6.4.

### **3.2.6 At Legal Services Authority<sup>46</sup>:**

The legal services authority plays an important role in bringing the justice closer to the victims. It is to be noted that often the victim loses any kind of help from the relatives or may not be able to afford a good lawyer. At this stage it becomes important for the victim to identify herself with the District Legal Services Authority (DLSA) whose major purpose is to provide such legal Aid.

The Legal service authority at Nampally is responsible for providing free legal aid to women who cannot afford a lawyer. When contacted the authority informed that the criterion for allotment of lawyers was the financial status of the person approaching the authority. Any person below the income level of Rs. 1 lac can approach the authority for legal aid. In the month of October the district legal service authority for Hyderabad provided legal aid to as many as 153 victims. The center is operational for almost a year now and has recently established legal aid centers for women in collaboration with various NGOs.

The cases approached the service authority through the police stations, protection officers, NGOs or the courts. When asked about the kind of activities the DLSA carries out to reach out to the victims the authorities replied that the victim had to approach the authority and there is no such action from the side of the authority. Further the authority informed that the number of lawyers working with the authority, were very few and this was one of the problems the authority has been facing.

Recently the State Legal Services Authority (SLSA) has started 430 legal aid clinics across the state of which four feature in the two districts. These legal aid clinics will provide the aggrieved with complete details of the remedies available and give an option to the aggrieved for ADR methodology<sup>47</sup>.

The DLSA conducted the *Maha Mahila Lok Adalat* at the Metropolitan court in Nampally which was witnessed the minutes of which are provided as annexure. The *Lok Adalat* was an awareness camp wherein key note speakers including family counselors, police personnel and lawyers introduced to the people the various remedies available to the women in cases of violence. However, the *Adalat* was professing the use of counseling and ADR instead of getting

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<sup>46</sup> See annexures 7.1,7.2.

<sup>47</sup> Again ADR does not imply subjugating the interests of the victim and asking her to not to file a case.

into litigation. It was reiterated during the cases that counseling does not imply reconciliation but an ADR.

The *lok Adalat* took up seven cases which were resolved by arriving at settlements. The reasoning which the experts gave behind the promotion of Alternate Dispute Resolution was that issues regarding marriage required a delicate understanding and also that matrimonial crimes attract the attention of the society and disturb its set up. The key note speakers further confirmed that there was no difference between a poor or a sophisticated family or among various caste groups. The Lok adalat further informed the people of the presence of remedies under the DV act which were more practical and the purpose of the same being to reduce the litigation under criminal law which would involve long epoch of litigations and also have more far reaching consequences.

### ***3.2.7 The High Court of Judicature in Andhra Pradesh at Hyderabad<sup>48</sup>:***

The High court as a forum not only facilitates a correction of a wrong of the lower court but its rulings determine the position of law in the state. It becomes essential to analyze the decisions at the high court to review in its total sense the position of the system in place.

Further, the inherent powers of the court vested in the high court, under section 482 of the Cr PC makes the role played by the high court more critical. Section 482 of the Cr PC allows for the quashing of a case in a lower court which is in abuse of process of the court that is has been wrongly proceeded without substantial grounds. Decisions of the high court of AP in both respects have been analyzed in a case brief form to examine the role played by the APHC in the system dealing with Domestic Violence.

It was observed that the high court had to use the power under section 482 with utmost precariousness and the judgments do take cognizance of this fact. In almost all the rulings delivered by the high court which were examined the court has observed the limit to which the jurisdiction of the high court under this section extended. Further the high court through its decisions has clarified certain important positions.

One such example was in a case where the high court was approached by the petitioner accused for quashing of proceedings on the grounds of inconsistency of evidence forwarded from the prosecution whereby the high court said that the same was the job of the trial court to decide and

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<sup>48</sup> See annexures 8.1,8.2.

not of its own and that it did not form a ground for quashing of the petition. In the same judgment the High court also clarified that a case was liable to be quashed when the charges per se did not contend the ingredients of the crime<sup>49</sup>. For example in yet another case wherein the parent had filed a case on the grounds which were general and omnibus and fell short of any cruelty being alleged, the High Court quashed the proceedings<sup>50</sup>. Further wherein the cause of the victim is per se speculative the high court has quashed the proceedings in the interests of justice. In this case the respondent complainant had filed a complaints against the appellant accused four years after the original charge sheet was submitted on the grounds that their omission from the charge sheet was not known to her. The High court found the litigation speculative and therefore quashed the same.

Further cases as to revision were also examined at the high court where the high court has again clarified that the High Court is not a court of establishing facts but can only re-adjudicate on the facts established. This brings to light the importance of role played by the fact finding courts where the evidence would have to be produced. Cases relating to dowry death were also examined by the researchers wherein it was found that most cases which otherwise would have been acquitted were successfully convicted under the section and its presumption. However the survivors had to establish cruelty preceding the death. In one such case the High Court also observed that such cruelty should be substantial cruelty and not a mere difference of opinion persisting between the victim and her in-laws.

It was again noted that all the cases examined again had their roots embedded in issues relating to Dowry.

### ***3.2.8 Lawyers and round table conference<sup>51</sup>:***

Legal practitioners are often referred to as the officers of the court. While on one hand the victims and the accused have their own versions of the case, legal practitioners at the court are capable of giving a more neutral opinion on the system though they cannot be said to be free from bias<sup>52</sup>. The researchers interacted with as many as ten lawyers at each court and a few more lawyers practicing in the area at the high court.

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<sup>49</sup> **2010(2)ALD(Cri)61**

<sup>50</sup> **MANU/AP/0559/2010**

<sup>51</sup> See annexures 9 and 10.

<sup>52</sup> Reasons for skipping over victims and choosing legal practitioners has been aforementioned.

At the Hyderabad Metropolitan Court, lawyers were more or less not in favor of terming the section as a tool of misuse. Most of the lawyers admitted that the cases of domestic violence were true most of the times while a few lawyers were of the opinion that the section was largely misused, however the lawyers at the Ranga Reddy court were of the opinion that the section was prone to misuse with many lawyers claiming the section to be a tool of misuse and harassment and that the cases so filed were largely built up stories.

According to the lawyers the success of the petition did not depend on the truthfulness of the case but the ability to bring home the guilt. The evidence adduced was the determining factor of the success of the case. This seems to be well in link with the observations from the data collected from the courts whereby most of the cases were dismissed due to lack of an evidence to bring home the guilt.

When asked about the acceptability of the evidence given by the relatives of the victim, the lawyers disclosed that as the crime is within the four walls of the house the absence of other substantial evidence makes such people as important factors for adjudicating the case. While there was no specific safeguard care had to be taken during cross examination and if any contradictions were recorded the evidence would be discarded. Experience and skill of the lawyer and the judge were the only safeguard however it was to be noted that there could not be a case where the evidence could be undervalued as in most cases it forms the majority of the evidence. If the court at any point during the cross examination is of the opinion that the evidence adduced is exaggerated it disregards the same immediately.

According to the lawyers again there was no hard and fast rule nor could there be any when it came to establishment of safe guards against misuse. However they were of the opinion that counseling process can be an effective mode of controlling fake cases as most of such cases end up in a compromise. Further there had to be a personal wisdom exercised by the lawyers who were taking up cases. It was further opined that a more vigilant police department could also help at the same. At the end of the day in their opinion the fake case could not succeed due to lack of evidence. The burden of proof presumes innocence upon the victim and the court moves ahead on the presumption. Therefore the principle of proving guilt beyond doubt is one of the most effective safeguard against wrongful conviction however it does not anyway help decreasing the initiation of spurious litigation.

The lawyers who have claimed the misuse of the section in certain instances have variously assigned motives of the complainant in such cases. These ranged from blackmail, scaring the husband or making divorce easier in case of a dislike for the marriage. When asked whether making the offence bail-able would be of any help almost all lawyers rejected the idea as that would lead to chaos for genuine complainants and that it would not in any case reduce misuse. There were fears raised that the accused in genuine cases may turn more violent and things would become more grim for the victim. Certain lawyers informed that there have been restrictions placed by the police on the length of the FIR whereby the incident is not correctly reported and when the woman adds her experience to the petition her evidence is denied relevance on the grounds of improvement in statement. Further the husband post arrest is presented before the magistrate within 24 hours of his arrest. There by in case of a completely false case there cannot be harassment as has been alleged. Further the lawyers have also told us that the accused in most cases applies for an anticipatory bail to save himself against arrest.

Besides consulting the lawyers the researchers attended the conference held by the AIDWA around the section. Key note speakers at the conference observed youngsters had to understand the value of the institution of the marriage. It is to be noted that this does not in any ways imply that the woman should understand the issue and settle it down rather demands an improved understanding from both parties. Moving away from the utopian ideas the conference stressed on how the ideology of 'its being normal to hit the woman' has to change failing which the law could do no good. The representatives and heads of various organisations spoke too, defying the prevalent conditions and misnomers. While some spoke of the nuances of S. 498(a) in practise, others spoke specific to the significance of the section and its importance in helping distressed women.

In the end, the hearts of all spoke the same message. Irrespective of its weaknesses, S. 498(a) has played a very important role in preventing harassment. It must not be diluted. If anything, the transfer of dowry must be stopped. Although various laws have been laid down, the transfer of dowry is still greatly prevalent in Indian society. This is the root cause of most marital issues. A bigger aspect of this issue that has to be questioned is about the due action to be taken when the dowry is not returned to the woman after divorce. This was raised as one of the most important questions to be answered. The conference further demanded that there must be a more

sensible approach from the side of the lawyers and the police towards the issue and highlighted again the importance maintaining the status quo.

## **PART IV**

### **RESEARCH ANALYSIS**

The very first purpose of every legal system is to make it available to its subjects. It is necessary for the effective functioning of any legal system that it delivers service to its objectives. The statement of objects and reasons of the criminal amendment act stresses on the fact of serious rise in cases of dowry deaths and harassment of women. It is now necessary to determine whether the section rather in our case the whole system designed around protection for women does at all cater to the objectives.

It is to be noted that the approachability of a subject to the legal system has to be a simplistic procedure but at the same time must be capable of safeguarding the system against misuse. The research was carried across 45 police stations and it was observed that the maximum work was done at the WPS. The officers at the police stations were aware of the seriousness and the sensitiveness of the issue. While in most cases the cases were sent to the WPS this was mostly done so to facilitate infrastructure availability to the victim. It was however admitted that if need be the police station did take the case by itself. It is pertinent to observe that the police stations which have mythically been characterized as corrupt offices and tools of harassment by the influential few are concerned about the heinous nature of the crime. The ice between the police and the people needs to be broken first to make any system of law implementable and effective. It was observed that the police authorities had shown a deep sense of concern about the entire system. It was reported by the police that most of the cases registered were true as at some instance there would be an incident of violence however most cases fail as the evidence cannot be availed. The offence being a private one it becomes difficult to adduce evidence. Further the police also reported that many women filed the complaint merely to stop her husband from harassing her any further and they take back the case then. Though it may sound wrong but then to them it serves the purpose as also family becomes an important consideration for the women<sup>53</sup>.

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<sup>53</sup> The point might not be appreciated by women activists but somewhere the point is that these women prefer to keep their families intact and further the institution of family undeniably holds magnificent importance in the Indian arena and an important consideration for the women too.

It would be wrong on the part of the researchers to blame the non implementation part of the section upon the police authorities. In an interview with the head officer at WPS Basheerbagh, the officer observed that the police were bound to take cognizance of the offence if at the level of the inquiry the evidence even slightly suggests so. Though they do inform the victims about the option of counseling they do not insist on it. However the officer admitted that the parallel system under the DV act was not informed of by them to the victim.

The second important forum is the SHRC which corrects the inefficiency of the police authorities in taking an action. The SHRC in AP has been an effective functionary and it has served its purpose well. In case of nonfeasance, malfeasance or misfeasance of the police authorities the aggrieved can approach the SHRC with a complaint.

The third important sub system is the Protection Officer's office which plays the pivotal role in the implementation of the legal system in place under the PWDVA. The protection officer's office provides the victim with all necessary remedies including shelter homes, counseling, medical aid, retrieval of *streedhan*, et al. the PO's office provides the woman provides the victim with a more practical remedy which is also quicker. However the number of cases that approach the protection officer are sharply low and this could possibly attributed due to the lack of awareness. It is to be remembered that the remedy under the PWDVA was provided for the reason of avoiding the chaos under the penal law. However one of the disappointments was that the PO's office does not have any machinery to co ordinate with the Police stations and the SHRC which makes it necessary that it be the victim's initiative to take a step forward.

Another important office which determines the efficacy of law at this stage is the State Legal Service Authority which provides legal aid to those who cannot afford a lawyer themselves. Most women who take a step forward are looked down upon by the society and it often becomes difficult for them to approach the legal system in a more professional manner. Further many women who wish to take an action do not know of the remedies available due to lack of education and exposure. It is here that the importance of the awareness campaigns, legal aid clinics and legal aid of the SLSA plays its role in bringing the legal system closer to the subjects. The question which now arises is what could be done to make the system more user friendly. It was observed during the research that the three sub systems lack a co-ordination. There was a certain unawareness among the police authorities about the existence of the parallel

system or many times they did not find it important to inform the victim of the same. It is suggested that the systems be set up in an integrated format whereby every user is aware of the entire system.

The question now arises as to what is the safeguard to the system in case of a misuse. The police authorities claim that there is no false case registered as if it were false preliminary inquiry would clear the mess up. However it is a noted fact that the preliminary inquiry generally does not form a strong base and that the police fail to gather sufficient evidence at that stage. The police authorities claim that there is however an element of violence which often is not proved due to lack of evidence. The lawyers have a different version. One such lawyer has told that the information recorded at the FIR stage is done in a haphazard manner and that is one reason why many cases are dismissed for improvements in the statements. Further the lawyers have confirmed that there have been cases wherein the husband has applied for an anticipatory bail. Anticipatory bail makes good the chances of misuse alleged.

Things were reported differently by the PO's office whereby the officer told that the story of the woman would clarify if there has or has not been any harassment. Further the process of counseling is preferred and suggested in cases with minor causes and therefore the process under the PWDVA was more secure.

The second question which now arises is about the efficacy of the system. It is to be noted at this juncture that successful remedy need not in all cases end up in conviction of the accused. That would be undermining the objective behind the designing of the system. Therefore the efficacy of the system would be seen in the light of DVC cases, Compromise and settlements, counseling and ADR besides the conviction rate in the petition.

During the research it was found that the system of anti domestic violence laws does not work as a system. This has lead to a decreased efficacy in the system. This is one of the major factors for the failure of the system in meeting its objectives.

The integrated working of the system is necessary as it would then be a balanced system and the use and abuse of the system would be sharply reduced. This is clear from the data recorded. Most of the cases which were pursued by the victims failed on the grounds of lack of evidence. This was so because the standard of proof is set high in criminal litigation. On the other side the remedy under the PWDVA does not require that standard of proof. Further the implications of the remedy are much more mild and the remedy much more practical. Therefore

if the system works as one whole it would be easier for the victim to ascertain the remedy for her. At this stage the important role of the authorities is thus to inform the victim of all the remedies.

As of now the efficacy of the system is far too low. Most of the cases fail due to the high standard of proof. While on side this plays as a safeguard against misuse on the other side it may play as deterrent in convicting the guilty. While it is true that the interested parties such as the parents of the victims do have weight-age given in the system to overcome the problem of burden of proof it is to be remembered that in a criminal prosecution the benefit of doubt is always given to the accused and therefore if the witnesses slightly improve their statements or if they fail to present the case properly it is highly probable that they may lose their side. In such a case a remedy under the PWDVA could be a rescue wherein the burden of proof is not set high.

As has been recorded the success ratio of the suit under section 498A has been very low while that under PWDVA has been better. It is a matter of concern however that the PWDVA has almost crept into a silent mode and the efficacy of the system is further at stake.

Again, while we do say that the conviction rate of the section is too low the police authorities believe that this does not reduce the efficacy of the system. Most women as has been reported do not file a formal case and the mere threat of a criminal proceeding sorts out the mess for her.

This would not be so under the PWDVA. The researcher in no way appreciates the idea however it is a matter of fact that the many women intend to keep her family intact at all costs<sup>54</sup>. It would be too idealistic to say that the patriarchal attitude of the society at large should change. The report being a status report the practicality of the situation has to be kept in mind while a change is always welcome. This could well be one of the reasons why many women reportedly did not pursue the case and the suit was dismissed. During the interaction with lawyers it was further found out that the success of litigation under the section was largely based on evidence produced and further that most of the victims could not afford a good lawyer due to which most petitions fail.

The third question which now comes for consideration is of the misuse of the provision. It is necessary for us to limit what we mean by misuse before we proceed with discussion on the misuse. By misuse, we mean a total abuse of the process by filing a fake case and falsely alleging

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<sup>54</sup> It is important to note here that the researcher does neither favors nor objects to this fact but is stressing on the point that this aspect is a FACT FINDING and not any opinion.

the crime and nothing else. This becomes essential because any other 'misuse alleged' would not constitute misuse if the section is seen through the lens of its purpose.

The police authorities reported that the misuse of the section was very low. Most cases lacked evidence and therefore they could not succeed in litigation. The same was confirmed by the counselors as well. The counselors informed that the offence being continuous, there have been cases where there has been no immediate cause of action but always has been a cause. However there have been counter claims not only from the accused but also the apex court which cannot be overlooked. According to the police authorities the chances of the registration and progress of a false case are low because unless there is inclining evidence a case is not registered. The police confirmed that in almost all cases there is always some amount of violence which in most cases fails to prove itself. However when we looked at the judgments of the trial courts, in various cases the court has observed that the victim has used the section for giving an impetus to her divorce proceedings or to end the marriage which she has never liked. Another claim which raises serious concerns is the misuse of the section against the NRI population whereby they are stuck in litigation for years together. Many lawyers have claimed that the offence being cognizable it is easily misused to secure malicious objectives.

It is really depressing to admit the existence of such cases which have blemished the sanctity of the objectives of the law. However it is pertinent to note that the section though not completely safeguarded does have requisite protection against misuse in the form of the high standard of proof being one which would rarely allow a gross misuse. The second safeguard in the system as a whole is the process of counseling. While counseling is not compulsory, it is often used by women to cut down on the harassment. The system of counseling reveals the true facts of the case and hence a case which undergoes counseling will have to pass the test of its truthfulness. The counselors however note that there is no false case as there is always an element of violence. Though counseling is not opted for in many cases it can still prove to be an effective check on the misuse. It is necessary to mention here that the evidence of the counselors is not called on by the court making their position helpless.

Though admittedly there has been a misuse of the section, it cannot be ignored that there is a majority of cases which are genuine instances. Though all may not end up in conviction the criminal trial is capable enough of teaching a lesson to the perpetrator of violence. It is necessary for the system to make the 'man' realize as Rekha Mirchandani says that hitting is not 'manly'

and to take back with him a sense of guilt in his act. The process of counseling becomes an important part of this process. As has also been reported by the counselors that besides bringing the couple together the counseling centers have been successful in making the man realize his fault and feel guilty for the same. Further it is to be noted that the continuous allegations against the counseling centers as being forums of unwarranted compromise should not be given any attention. It is pertinent to note here that the counseling centers have their own methodology against protection from the misuse of the process. The entire process is carried out under strict surveillance and the interests of the victim are given the first priority. Moreover the counseling centers are further not forums of making the woman forcefully take back a case but rather a form of ADR whereby the requirements of the woman are looked into and bargained for.

It is submitted that the researchers believe that the legal system is in a situation of a cleft stick. If there is an amendment further strengthening the section there is a possibility of further misuse of the law rather a more professional misuse of the law. If there are amendments which limit its applicability or introduce further compliances there is a strong possibility of increasing violence against the women and leaving them with a remedy, difficult to be pursued. In this situation of choosing between the devil and the deep sea it would be better to maintain the status quo and try to improve the implementation of the existing system.

## **PART V**

### **RESEARCH SUGGESTIONS AND JUSTIFICATIONS**

Every legal system is tested empirically on the consequences it lays out. Results need not necessarily be successful convictions under the section but a substantial reduction in violence and the punishment of the occurrence of any. Before we move forward with the conclusive suggestions we would first enumerate the important research findings.

1. The system of law protecting women against violence fails to deliver service as one unit. The system which is supposed to work as a system functions in a haphazard disjoint manner.
2. A serious lack of awareness among the women about the existing remedies is still prevalent. This is evident from the drastic difference observed between the number of people opting for remedy under 498A and under DV Act.
3. Success rate of a petition under the section 498A is starkly low and this happens due to two reasons, firstly absence of evidence and secondly lack of professional help or deficiency in the quality provided.
4. While there are possibilities of misuse, such possibilities are low, while there is also a possibility and in most cases which are dismissed there have been instances of violence according to the police which do not have sufficient evidence to be adduced. The view was confirmed by many lawyers.
5. There have been enough safeguards provided in law to control the abuse of law beyond which a safeguard would eclipse the efficacy of the provisions.

The researchers do not suggest any change in the law. We do not ask for a fine being levied on a fake case as it is difficult to adjudge which case is lacking evidence and which one is a fake. This would further discourage the few women who come forward to take a step. The researchers do not wish to suggest that the section be made gender neutral as this would become a system of perpetrating legal violence on the woman.

The researcher would not suggest a case of making the offence bailable<sup>55</sup> as this would render the section useless of providing any remedy at all. Women would not have any formidable tool to reduce harassment within the four walls of the house. We do agree that there has been a certain misuse of the section but at this juncture it is a necessary evil which cannot be avoided. As we have already observed it is a situation of choosing between the devil and the deep sea and the next best alternative is to not to choose.

The only available remedy which we can now look forward to is a self check mechanism whereby the police authorities make a more keen investigation, the lawyers be more diligent and most importantly two things, firstly that the entire system should work as a single unit in coordination whereby a mutual check and balance system will be in place. This does not in any case mean that the acquittal under 498A be deemed to be as dismissal of DVC case but that the victim should be in a position of seeking both the remedies together and the investigation and counseling system coupled with the DIR be together taken as evidence in both forums on the pre set standard of proof.

Therefore if a woman fails to prove guilt beyond reasonable doubt she should be able to immediately seek remedy under the law on the basis of the evidence if the court deems fit. Any finding of the counselors should be taken into concern by the court as in many cases it has been noted that the husband accepts to the guilt. However if the couple wishes to continue (both sides agreeing before the magistrate) the offence should be made compoundable.

It is pertinent to note that the Indian society is still dominated by the patriarchal values wherein to hit is a right and to be hit is a duty. This attitude is so built in the minds of the women by the society that even today most women find no wrong in being hit. Further circumstances surrounding the woman are not supportive of her reacting which may end up in her being thrown out of the society. Another reason why most women do not object is the sustenance of the family institution which holds more importance than individual himself in the Indian back drop.

Lastly women may face financial crisis as even today many women are not independent earners and depend on their husbands for their survival. In the light of these circumstances and also in the light of the misuse of the process of law it is suggested that the system remains in status quo but with a better implementation mechanism.

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<sup>55</sup> The offence is already bailable in the state of AP.

Misuse of law would be omnipresent and this is summarized in a few lines by a federalist as under

*"If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls of government would be necessary. In framing a government which is to be administered by men over man, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."<sup>56</sup>*

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<sup>56</sup> James Madison , "The Federalist No. 51", Clinton Rossiter (ed.), 322 (1961).