

A Study on 498A in Tamilnadu



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Felicitation message

1. I must congratulate EKTA for the study on the Implementation of Section 498A of the Indian Penal Code in Tamil Nadu. This amendment was necessitated because of the widely pervasive violence against women. But it has come in for a lot of flak on the ground that this provision has been abused. In this climate, it is indeed heartening to note that Justice A.K. Ganguly of the Supreme Court while delivering the keynote address at a seminar on “Negotiating Spaces: Gender Concerns in Conflict Zones” has said that this is a law which empowers women “because it gives women a negotiating space”. He has referred to the call for repeal of Section 498A as male chauvinism (The Hindu – Sunday – February 6, 2011).
2. One of the reasons for this study to be undertaken was the systematic and sustained attack by certain groups on Sec 498A alleging that it has broken down the foundation of Indian family system. The report has highlighted the grievances of these groups and their demands. The report has also indicated the perspectives of the Supreme Court and the Higher Courts in this regard and the responses of the Government / Legislatures. People need to know that the Ministry of Home Affairs stated that no false case had been reported. In fact the report shows that the Minister’s own statement was that, “there is no information available with the Government to come to the conclusion that many families in India are suffering due to exaggerated allegation of harassment and dowry cases made by women against their husbands and other family members.” The study was undertaken also to highlight the fact that if the section is made bailable and compoundable, it would dilute the very objective of this provision and weaken its efficacy. EKTA organized discussions with different interest groups to collect and collate their experiences to get a deep insight into the research questions. EKTA also took into consideration the study published by WHO, UNICEF Reports, United Nations Population Fund Report, The British Medical Journal, The Lancet and the National Family Health Survey. From such data, the report has recorded that matrimonial cruelty is the highest contribution in terms of crime against women. A detailed examination of the study report will help the stakeholders understand that dowry is now increasingly perceived as a social capital and cruelty against women has become an accepted practice.
3. In the article written by Homa Khaleeli, “Afghan women fear for the future”, (The Hindu 5th February 2011) while dealing with Afghan Women’s rights, the writer observes that though, “their rights were the prominent part of the rhetoric of invasion, the treatment of women in the Taliban is increasingly being discussed as part of local culture” and that “there is a clear opinion that women’s rights were (a) not that relevant and (b) irreconcilable with peace in Afghanistan.” It is evident that it is so easy to brush away cruelty and violence as accepted practice and thus smother social conscience and the voice of human rights.

4. Sadly it appears that though the struggle for gender equality started several decades ago, we are still at a stage where, all the world over, violence against women is looked upon as a norm of accepted practice. The report underscores the need for sensitizing the All Women Police Station to protect the rights of the women while they are alive. The statistics provided by this report also shows that the manner in which the women's cruelty is being addressed is woefully inadequate and even what is addressed by the present legal system is the mere tip of the iceberg. What is not heard is the voice of the Invisible Women who will probably remain that way and die unwept, unhonoured and unsung. The report also highlights the mismatch between the conviction rate in Trial Court and the Appellate Court and how this works to the disadvantage of the women. The various Tables prepared in this report show the manner in which cases have been disposed under the different acts with regard to the persons arrested under the provision such as Section 498A or Dowry Prohibition Act.
5. The report answers the question whether the charges made by the anti 498A lobbyists are valid and supported by facts. The report concludes that most women prefer to suffer the harassment silently in order to protect the marriage and the family and the report also indicates that almost all Judicial Officers share their experience that in no case, a false FIR is registered out of vested interest.
6. As regards the amendment, the report says that Prosecution Officers were against the amendment and all the Judicial Officers except one were against the amendment because both these groups felt that the deterrent effect will be diluted
7. The report also examines the socio economic profile of the victims. The report highlights the role of the Judicial Officers in Section 498A cases and interestingly give reasons why Magistrates feel that they will be in the safe zone if they pass orders of acquittal and that there seems to be a mental block against conviction.
8. The report is very useful because it shows that judicial education and sensitization to these issues are very necessary if access to justice is to be made easy for women and women are to enjoy the right to equality. The report is quite a comprehensive, free and honest assessment of the ground realities. Recommendations have been given for effective implementation and this is very positive as criticism without constructive recommendation is of no avail. I am sure this report will remove the myths and misconceptions regarding Sec 498A.

I convey my best wishes to EKTA.

9th February 2011.

Chennai.

Prabha Sridevan

Judge, Madras High Court (retd)

Felicitation message

I congratulate EKTA for their efforts to give a fitting reply to those who are opposed to Sec 498A through this excellent study. It can certainly never be our intention to victimise men. It is not patriarchy alone which is the source of oppression to women. Along with patriarchy, the political, economic and social framework of feudalism and capitalism exploit women, as women, as workers and also as citizens. Caste plays a crucial role in gender oppression.

So, what we are trying to tell the world is that family consists of both men and women and “save family foundations” cannot save families at the cost of women’s misery. Social legislations and required amendments do not come on its own. They come after long drawn struggles. Writing them off or diluting them with a single stroke of e-mails or blogs or campaigns shall not pass.

In the history of our struggle to defend the hard-won legal rights of women, this report would certainly make a mark.

Regards

U. Vasuki

AIDWA



Felicitation message

I am proud as former President of Ekta (six years) that such a timely study on Sec 498A is being released. It places evidence against the myth that Sec 498A is widely misused by women, and the recommendations if implemented would be immensely useful.

At the same time, one needs to address the material basis and cultural basis of women's subordination within family, within a socialist feminist perspective. Individual and collective property rights of women have to be strengthened, in a broader context of land reform which TamilNadu Government is yet to do (and should do every three to five years). In urban areas, there has to be a ceiling on how much assets and income the rich can own and slum evictions on the name of 'development' has to stop.

The neo liberal paths of development have to be questioned. At the same time, these global processes are mediated by norms on caste, class, gender, ethnicity, abilities, sexual/gender orientation etc. These also have to be challenged. There is a crisis in humanism. Periyar's soul must not be resting in peace. Let us restore it.

Best Regards,

22nd March 2011
Chennai.

Ranjani K.Murthy,
Independent Researcher,



Foreword

Our experience of the Indian legal system relating to dowry offences has not been good. Since the nineteen sixties, punitive laws have been framed from time to time relating to the practices of dowry and matrimonial violence. But most of us will concede that, four decades after the practice of giving and taking dowry was “prohibited”, the pernicious custom is only increasing – not only amongst communities where it was prevalent earlier, but also among those where the practice was hitherto unknown. It is ironical that on the one hand, the post-1970’s women’s movements in India can truthfully claim many successes in having improved the status of Indian women through successfully lobbying for a range of interventions by the State – but on the other hand, are also forced to face failure on the dowry and dowry-related violence front.

The EKTA report is the result of its painstaking research into all relevant aspects of matrimonial violence and related violence. While the focus remains on Tamilnadu, its relevance as well as the applicability of the women’s experiences reported, to the rest of the country cannot be missed out.

What is quite praiseworthy in the report is the painstaking investigation undertaken by the Researcher Ms P.Phavalam to ascertain the views, opinions, work culture and motivations of key officials of the criminal justice system – on their handling cases of matrimonial cruelty. Questions put to officials – such as police personnel (the investigation officers), prosecution officers, judicial officers (the magistrates) – have elicited responses that are honest and revealing, it also somewhat contradictory *inter-se*, showing the different pushes and pulls that have to be reconciled in the course of investigation, prosecution and adjudication/court trials. Typically, the report notes that the accused do receive a lot of sympathy – from those who prosecute and from those who judge, though this is not a universal feature. There are gender-sensitive judges as well.

The report, however, opines that it is difficult to collect evidence and establish ingredients of cruelty. There are too many lapses and slips on the part of the enforcers of the law as well as the prosecutors that knowingly or unknowingly, result in cruelty not being able to be proved – and there is the ever-present spectre of corruption. There is also the unfortunate tendency to evaluate the successful implementation of laws with the number of cases filed/investigated and neglect the quality of the investigation as a relevant factor, say, resulting in high acquittal. The attempt of reconciliation between the married couples end in creating confusion in the minds of the officials. The underlying acceptance by those who shape the law as well as by those who implement the law, of marriage as a sacred and immutable sacrament comes out clearly.

It is now time – in this new century – for the women’s movements to go in for a measured exercise of collective soul-searching. We may have to admit that the practice of dowry is **a symptom** and not **the cause** of women’s inferior status. We also may have to admit that violence against women is an endemic part of Indian life – whether dowry-related, or matrimonial cruelty, in the existing still largely patriarchal Indian set-up.

Women’s independent economic freedom from birth onwards is not too radical a proposition when we go through the painful stories recounted in the EKTA report by married women who have unsuccessfully relied upon the dowry legislation to enable them to lead pain-free lives within the marital family.

There is now talk of introducing the concept of matrimonial property in our laws relating to marriage. A Parliament Select Committee has made this recommendation recently. There will be the usual huge outcry against this pro-women intervention. Together with the other pending issue of irretrievable break down of marriage as a valid ground for legal divorce, (this is a recommendation made by the Law Commission of India) these new interventions may see a new dawn for Indian women. Lastly, but not the least, the assumption that if educated women have to work outside the home, the responsibility for not only child care but all other domestic responsibilities are still to be carried out by women, has also to be given a second look.

Best Wishes,

25th March 2011
New Delhi

C.P.Sujaya IAS (Retd),



Preface

Violence against women (VAW) is a phenomenon that cuts across boundaries of caste, class, ethnicity, culture and location. The feminist movement of the 70s and 80s had taken the lead in identifying, exposing and fighting the matrimonial violence. The campaign attracted much attention and support and led to the amendment in the IPC and a new Section 498A was formulated to help women in their struggle for justice.

This was the first time that an attempt was made to consider matrimonial cruelty against women a criminal offence. It inherently directs husbands not to ill treat, harass their wives. In addition it prevents and punishes the above act of harassment /cruelty and reasserts women's right to live a violence free life.

The Section 498A IPC has been criticised by a section of the society saying that women are misusing this provision of the law to penalise the husband and his relatives. However, the increasing reports of women's death; be it suicide or murder, and the escape of the perpetrators from the law is a clear indication that the criminal justice delivery system has not taken adequate measures for the implementation of Sec 498A.

In this context EKTA undertook this study to examine the usage of Section 498A IPC by women in the state of Tamil Nadu and evolve recommendations for its effective implementation.

Contrary to the general opinion, the study has brought out that at the National level, there is a significant increase of 65 per cent in 'cruelty' incidents under 498A in the year 2008 when compared to 2002 in spite of Dowry Prohibition Act, 1961 being in force. In case of Tamil Nadu, there is also a significant increase in the number of registered cases under Sec 498A from 620 in 1999 to 1462 in 2009, an increase of 235 per cent. It only shows that both the national figures and the state figures regarding offences of cruelty under Sec 498A is on the rise, which only proves the vulnerable position of the women in the matrimonial homes.

We hope the recommendations brought out in the study shall be of help to various stake holders to effectively address the gaps in implementation and render justice to the victimised women.

25th March 2011
Madurai

Bimla Chandrasekar
Director, EKTA

Acknowledgement

This study is the result of much discussion and debate with large and diverse audience, who contributed through the workshop held in Chennai and Madurai. First and foremost, we thank the judiciary who responded to our queries and helped us to complete this study.

Our thanks are due to the Dowry Prohibition Officers, Prosecution Officers and Police Officials for their contributions through their valuable inputs and comments to enrich the study.

We acknowledge and thank Ms. P.Phavalam for undertaking this pains taking journey of meeting various stake holders at different locations, coordinating this study and for her role in bringing out this final study report.

Our sincere thanks to Ms. A.Gandimathi for her active participation at all stages of the study and her valuable contribution in editing and designing the final draft.

Our heartfelt gratitude to Justice Ms.Prabha Sridevan, Judge, Madras High Court (Retd.), Ms.Ranjani K.Murthy, Former President of EKTA and Ms U.Vasuki , General Secretary , AIDWA for their felicitation messages for this study report. We sincerely thank Ms.C.P. Sujaya IAS(Retd.) for writing the foreword and giving her inputs to complete the study report.

We thank Ms Aasha Ramesh for her support and solidarity. Finally, thanks to the Ekta team for their invaluable support and coordination and CWS - New Zealand for their financial support. Thanks also go to M/s Antony Arts Crafts, Sivakasi for printing this report.

We dedicate this study to the invisible victims of matrimonial cruelty and extend our solidarity to them in using Sec 498A as a legal tool to protect their right to life and livelihood.

25th March 2011

Madurai

Bimla Chandrasekar

Director, EKTA

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Chapter -I

Introduction

1.1.Context

Violence against women is one of the most pervasive forms of human rights abuse in the world. Women and girls, in all societies, to a greater or lesser degree are subjected to physical, sexual and psychological violence. The violence cuts across lines of class, caste, religion, region, sexual orientation, ethnicity and culture.

1.2 Crimes against Women in India

In the early 1990s, **WHO** declared, “violence against women causes more deaths and disability than many diseases put together and violence against women is a common phenomenon in Indian society”.

As per the data published by the National Crime Record Bureau, there is an increase of 37 per cent in incidence of crime against women in 2008 when compared to 2002. Total number of incidents continues to increase except in the year 2003. The offences includes torture, molestation, rape, abduction, sexual harassment, obscenity, dowry deaths, trafficking, cruelty by husband and / or his relatives, dowry death, dowry suicide etc., identified under the Indian Penal Code.

The Indian State has taken various initiatives in the form of policy, legislation and institutional mechanisms to address the issue of violence against women (VAW). This spirit has been reflected in the planning process. VAW was given top priority in the Tenth Five Year Plan. Again, the Eleventh Five Year Plan has included Violence against Women as one of the three aspects relating to the problems of women in the country such as violence against women, economic empowerment and women’s health. Elimination of discrimination and all forms of violence against women and the girl child is one of the objectives of ‘National Policy for Empowerment of Women, 2001’.

In addition, India has ratified various international Conventions and Human Rights Treaties. Key among them are the ratification of the *Convention on Elimination of All forms of Discrimination Against Women* in 1993, *The UN Declaration on Elimination Violence Against Women*, *the Beijing Declaration and the Platform for Action* in 1995.

Our Constitution not only guarantees equality to women vide Articles 14, 15 and 16, but also empowers the State to adopt measures of positive discrimination in favour of women in order to achieve gender equality. Yet, crimes against women in the country continue to be on the increase. In India, studies have shown that one incident of violence translates into losing seven working days for women.

1.2.1 Violence in Matrimonial Relationship

Violence within the matrimonial relationship is all about power, dominance and control. The purpose is not primarily to hurt or harm the victim, but to gain or maintain power or control over the victim. Violence within marriage cuts across barriers of wealth, educational levels, social backgrounds, religion and professions.

The **WHO** reports that the proportion of women who had ever experienced physical or sexual violence or both by an intimate partner ranged from 15 percent to 71 per cent in different countries.

In India, cases of cruelty by the husband and his relatives demanding dowry culminated in the wife being driven to commit suicide or being done to death by burning or in any other unnatural manner were on the rising trend in the 70s to 80s. It became a serious issue and a Joint Committee of Parliament was constituted to locate the causes for the failure of Dowry Prohibition Act 1961 and further suggest effective measures to eradicate this evil of Dowry.

The Committee located several impediments such as the narrow definition of dowry, procedural lapses in filing cases and lack of deterrent punishment against the offenders. It also recommended that the cruel treatment to a married woman for demanding and procuring dowry must be made punishable and stringent punishment is required.

Based on the Committee's recommendations, comments received from the State Governments and Union Territories and different Ministries of the Union on the Committee Report, and the sustained efforts of the women's movements Sec 498 A IPC was introduced in the year 1983. It is a provision for punishment for cruelty against married women with an intention to stop the cruelty by their husbands and/or in-laws and to control the number of dowry deaths. For the first time, violence on women within marriage was made as a criminal offence, which is cognizable, non-bailable and non-compoundable. .

The aggrieved women are enabled to file a complaint under Sec 498A against the offender along with other IPC provisions such as Sec 302, 304B, 306, 406 and Dowry Prohibition Act, depending upon the nature of the offences inflicted on them. Several amendments were made in the Indian Penal Code 1860, the Code of Criminal Procedure 1973 and the Evidence Act 1872. Section 174, 175, & 176 were amended in the Code of Criminal Procedure (CrPC) directing post mortem and inquiry in cases of unnatural death of a woman within 7 years of marriage in order to determine whether it is a 'Dowry Death'. Section 113A was added to the Evidence Act 1872.

Incidence of Crimes Against Women within marriage at the national-level during 2002 – 2008 by National crime bureau reveals that matrimonial cruelty' incidents continuously increase in all these years and accounted for a large share of the total crimes against women. Within matrimonial cruelty, the 'dowry death' incidents in 2008 have increased by 20 per cent over 2002. There is a significant

increase of 65 per cent in 'cruelty' incidents under Sec 498A in the year 2008 when compared to 2002, in spite of Dowry Prohibition Act, 1961 being in force. When analysing the conviction rate of various crimes committed against women, it is found that the conviction rate is the least in cases of 'cruelty by husband and relatives'.

In the case of Tamil Nadu, there is a significant increase in the number of registered cases under Sec 498A from 620 in 1999 to 1462 in 2009, an increase of 235 per cent. It only shows that both the national figures and the state figures regarding offences of cruelty under Sec 498A is on the rise, which only proves the vulnerable position of the women in the matrimonial homes.

Thus, for cruelty within marriage, the legal remedies are either prosecuting and convicting the offenders or severing the marital bond temporarily or permanently. After the enactment of the Protection of Women from Domestic Violence Act 2005 (PWDV Act), the victim women can avail relief in terms of shelter, maintenance, compensation etc.

However, since its enactment of Sec 498A, this provision has been subjected to systematic and sustained attack by men groups. 'Association for Victims of 498A', 'Save the Family', 'Save the Indian Family' are some of the names of the groups headed by men, who are engaged in lobbying against this provision and arrests under Sec 498A. They claim that this provision is victimising husbands and their relatives and breaking the foundation of Indian family system. They allege that women are misusing this provision to threaten their marital partners and in-laws. According to them, this provision was misused to arrest 1,20,645 women in four years from 2004 to 2007.

1.3 Highlights of the lobby against Sec 498A

- Women are filing false cases under Sec 498A and Dowry Prohibition Act and falsely implicating innocent members of the husband's family, including children; Sec 498A is the biggest instrument to abuse elders; and this provision is used against women;
- On an average of 5 members of the husband's family are implicated in each of the case under 498A;
- Women are using Sec 498A with an ulterior motive to extract large sum of money from husbands as settlement;
- Sec 498A is being used as a weapon to obtain a divorce from husbands.

1.3.1. Demands of the Campaign against Sec 498A

- The offences under Sec 498A should be made bailable and compoundable.
- The alleged accused are innocent until proved guilty and hence should not be arrested.
- Women who file frivolous complaints should be penalised.

1.4 Perspectives of the Jurisprudence

The Supreme Court is of the view that there is a growing tendency to come out with inflated and exaggerated allegations, roping in each and every relation of the husband and if one of them happens to be of higher status or of vulnerable standing, he or she becomes an easy prey for better bargaining and blackmailing. The mere possibility of abuse of a provision of law does not invalidate the law. In cases of abuse, it is the “action” and not the “section” that may be vulnerable”.

“It is true that demand of dowry which originally prevailed among a small section of people, has not pervaded the entire society due to the educational advancement. Further, due to the constant attempts by various organisations women started complaining about dowry harassment to the police, of course it is a healthy sign. But at the same time, it is not uncommon that while such complaints of dowry harassment are made, even innocent in-laws are arrayed as accused. When such false complaints are made, some people, unable to bear such false accusations go to the extent of committing suicide. This has to be taken note of by the authorities concerned and there must be restraint regarding such complaints against in-laws”.

Though the Supreme Court has refused to strike down the Sec 498A IPC, the varied perceptions have persuaded the Apex Courts to recommend to the authorities and law-makers to have a review of the situation and legal provision.

1.5 Responses of the Government / Legislators

The Government of India, Ministry of Home Affairs constituted a “Committee on reforms of Criminal Justice System” to make a comprehensive examination of all the functionaries of the Criminal Justice System, the fundamental principles and the relevant laws under the leadership of Dr. Justice V.S. Malimath, former Chief Justice of Karnataka and Kerala High Courts.

1.5.1 In 2003, the Committee came out with the following recommendations

“There is a general complaint that section 498A of the IPC regarding cruelty by the husband or his relatives is subjected to gross misuse and many times operates against the interest of the wife herself (The Committee provides no data to support the statement of ‘misuse’). This offence is non-bailable and non-compoundable. Hence husband and other members of the family are arrested and can be behind the bars which may result in husband losing his job. Even if the wife is willing to condone and forgive the lapse of the husband and live in matrimony, this provision comes in the way of spouses returning to the matrimonial home. This hardship can be avoided by making the offence bailable and compoundable.” Analysis of the report shows that the Committee gives no references to evidence of misuse of Sec 498A anywhere in the report. This proves the patriarchal mindset of the committee.

The Ministry of Home Affairs commissioned a study on “Role of Sec 498A IPC in States of Delhi and Haryana” and the study report was prepared by Mr N.K.Shinghal, a retired police officer. The report agrees that Sec 498A is not abused; it argues that it is being misused. The report stated that no false case had been reported whereas the complainants exaggerated the charges in the complaints. However, in response to a question raised in the Rajya Sabha, the Minister of Home Affairs stated:

“There is no information available with the Government to come to the conclusion that many families in India are suffering due to exaggerated allegations of harassment and dowry cases made by women against their husbands and other family members.”

The Government introduced the Criminal Law (Amendment) Bill, 2003 in the Rajya Sabha on 22 August 2003, based on the recommendations of the Malimath report and an amendment in Sec 498A IPC was passed, making it compoundable with permission of the Court.

Following this, the Government of Andhra Pradesh vide Code of Criminal Procedure (Andhra Pradesh Amendment) Act, 2003 had amended Sec 498A to make it compoundable, which came into force on 1st August 2003. Recently, the Ministry of Home Affairs has written to all the State Governments that arrest for an alleged offence under Sec 498A should be the ‘last resort’.

1.6.The Need for this Study

Despite laws being enacted, registration of a complaint for this cognizable offence in the police station is still a struggle for the victim of matrimonial cruelty. The criminal justice system hardly attempts to render justice to women victims. The conviction rate in offences under Sec 498A is very poor and often, the integrity of the women victims is at stake.

The Court Orders and Directions brought in changes the investigation, arrest and trial procedures. These changes are on par with the demands of men’s groups and the suggestions made by the Malimath Committee to make offences under Sec 498A as compoundable and bailable. Arising to the seriousness of the situation, the national-level women’s organisations recorded their opposition to the proposed amendment to make 498A bailable and compoundable, as it would dilute the very objective of the provision and weaken its efficacy. If Sec. 498A is made compoundable it will only result in the women facing yet more pressure to compromise.

Indira Jaising, the Senior Supreme Court Lawyer, and a member in CEDAW Committee strongly placed her objection to Sec 498A being made compoundable. She argues that sec 304B has to be read with Sec 498A.

At the same time, the government is also contemplating an amendment to the CrPC, providing for a maximum of 10 years imprisonment to any individual who registers a false FIR at a police station. At present, the Government is also making a move to frame a gender neutral law.

The government of Tamil Nadu, through its Law Enforcement Department circulated the guidelines to file cases registered under Dowry Death / Suicide in All Women Police Stations where FIR needs to be registered only on approval of the Dowry Prohibition Officer except in cases of Dowry Death/ suicide and offences of serious nature. The present redressal of grievance mechanism to address the issue of cruelty in matrimonial relationship under Sec 498A is inadequate in terms of both quality and quantity. The data gathered through Right to Information Act (RTI Act) reveals that only 7 cases are registered per year by each All Women Police Station. This data reiterate the under-registration of cases under Sec 498A. There is a mismatch between the conviction rate in trial courts and appellate courts which raises a serious question about justice delivery system and the legal safeguards for women victims.

The above situation really calls for a deliberation to reverse the observation of the Courts to make the provisionailable and compoundable. In the above context, EKTA initiated this study in Tamil Nadu with the aim to investigate the issues related to the implementation of Sec 498A IPC and also to document the validity of the claims made by the judiciary and campaign against Sec 498A that this provision is being underused or misused and to evolve recommendations for effective implementation of Sec 498A IPC.

1.7. Structure of the Study Report

The study report is divided into six chapters. The first chapter deal with the Introduction of the study. Review of Literature forms the second chapter. Chapter three deals with Research Methodology followed by Data Analysis in fourth chapter. The fifth chapter deals with the Findings and Recommendations and the Conclusions of the study forms the final chapter.



2.1 International perspectives on Matrimonial Cruelty

Convention on Elimination of All Forms of Discrimination against Women defines “violence against women” as any set of gender based violence that results in or is likely to result physical, sexual or psychological harm or suffering to women, including threats of such act, coercion or arbitrary deprivation of liberty, whether occurring in private or public life.

The UN Declaration on Elimination Violence against Women affirms that “Violence Against Women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into subordinate position compared with men”.

According to the Beijing Platform for Action adopted at the Fourth United Nations World Conference on Women in 1995, Violence against Women is an obstacle to the achievement of the objectives of equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. The long-standing failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all States and should be addressed.

2.1.1. Violence in Domestic Relationship

Domestic violence is the most common form of violence against women within the home. It is a global issue reaching across national boundaries as well as socio-economic, cultural, racial and class distinctions.

Domestic violence is a serious problem in India. Women’s real life experiences show that they face violence in the form of physical, mental, verbal, psychological, sexual and economical. The social, cultural and religious fabric of our country including the institution of Family is pre-dominantly patriarchal contributing extensively to the subordinate status of women. Thus it increases their vulnerability to all sorts of violence in the family. The girl children, young girls, married women; old aged women are all victims of different forms of domestic violence. Women in India are socialized to accept, tolerate, and even rationalize domestic violence and to remain silent about such experiences. This makes domestic violence more systemic and epidemic.

The UN Declaration on Elimination of Violence Against Women defines ‘Domestic Violence’ as those violence which includes physical, sexual and psychological violence occurring in the family,

including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.

A study published by the WHO in 2005 on the basis of data collected from 24000 women in all regions of Tamil Nadu reveals that between 55 to 95 per cent of women who had been physically abused by their partners had never contacted NGOs, shelter or the police for help.

A nationwide survey by the International Centre for Women's Research shows that 52 per cent of women suffer at least one incident of physical or psychological violence in their life. A 2006 **UNICEF report** says that 69 million children witness violence within homes in India.

According to **United Nation Population Fund Report**, around two-third of married Indian women are victims of domestic violence and as many as 70 per cent of married women in India between the age of 15 and 49 are victims of beating, rape or forced sex.

According to a report published on 2nd March 2009 in the **British medical journal, The Lancet**, over 100,000 young women were killed in fires in India in a single year, a symptom of the gravity of domestic violence. Young Indian women are more likely to be killed by fire. The victims were mainly 15 to 34 years old. The study estimated that out of the 163, 000 fire-related deaths in 2001 (6 times higher than those in police records), 106,000 (65 per cent) were women.

2.2. National Perspectives

The **National Family Health Survey – 3 (NFHS-3) survey 2005-2006**, for the first time, documented the widespread spouse violence and 'culture of silence' observed by the victims.

Violence within Marriage

State	Emotional Violence	Physical Violence	Sexual Violence	Physical or Sexual Violence	Physical or Emotional or Sexual Violence
Tamil Nadu	16.8 %	41.9 %	3.2 %	41.9 %	44.1 %
India	15.8 %	35.1 %	10.0 %	37.2 %	39.7 %

In Tamil Nadu, 44.1 per cent of married women are victims of some form of physical or sexual or emotional violence by their husbands, which is higher than the national average of 39.7 per cent. The percentage of violence is the highest among the uneducated (52.9 per cent) having no schooling and 52.3 per cent amongst women having less than 5 years of schooling. The prevalence is the least amongst women (24.6 per cent) who have completed 10 years of schooling.

The data shows that the most common form of violence is physical violence. All the women who are subjected to sexual violence are also victims of physical violence in Tamil Nadu.

The survey also reveals the following significant facts

- Two out of three women who have ever experienced violence have also never told anyone about the violence.
- Only one in four women have ever sought help to end the violence.
- Majority women continue to live in marital home and endure abusive behaviour.
- 85 per cent of the married women who have experienced only sexual violence in marital relationship have never told anyone about the violence and only 8 per cent have ever sought help.
- The major source of help sought was from their natal family followed by marital family and neighbours.
- Among those victims of marital violence who sought help, only about 2 per cent sought help from police and 1 per cent from lawyers.

Incidence of Crimes Against Women within marriage at the national-level During 2002 – 2008

Crime Head	Year						
	2002	2003	2004	2005	2006	2007	2008
Offences under the Dowry Prohibition Act	2816	2684	3592	3204	4504	5623	5555
Dowry Death	6822	6208	7026	6787	7618	8093	8172
Cruelty by husband and relatives (Sec 498A IPC)	49237 (34%)	50703 (36%)	58121 (38%)	58319 (38%)	63128 (38%)	75930 (41%)	81344 (42%)
Total No. of Crimes Against Women	143034	140601	154333	155553	164765	185312	195856

Source: *National Crime Record Bureau*

The above table shows that the ‘matrimonial cruelty’ incidents continuously increase in all these years and accounted for a large share of the total crimes against women. Within matrimonial cruelty, the ‘dowry death’ incidents in 2008 have increased by 20 per cent over 2002. There is a significant increase of 65 per cent in ‘cruelty’ incidents under 498A in the year 2008 when compared to 2002 in spite of Dowry Prohibition Act, 1961 being in force.

Percentage of persons convicted to trials completed in the year 2008

Crime Head	No. of persons trials completed	No. of persons convicted	% of persons convicted
Offences under the Dowry Prohibition Act	6616	1765	26.7
Dowry Death	17053	5814	34.1
Cruelty by husband and relatives	96356	23097	23.9

When analysing the conviction rate of various crimes committed against women, it is found that the conviction rate is the least in cases of ‘cruelty by husband and relatives’.

In the case of Tamil Nadu, there is a significant increase in the number of registered cases under Sec 498A from 620 in 1999 to 1462 in 2009, an increase of 235 per cent. It only shows that both the national figures and the state figures regarding offences of cruelty under sec 498A is on the rise,

which only proves the vulnerable position of the women in the matrimonial homes. The situation really calls for a deliberation to reverse the observation of the Courts to make the provision bailable and compoundable.

There are many studies on various aspects of violence against women, domestic violence and violence in matrimonial relationship. However, there are only very few studies regarding the application of legal provision to redress the violence within marriage, i.e. cases of cruelty by the husband and relatives of the husband, these cruelty and harassment culminating into suicide, or murder of the helpless women.

Tata Institute of Social Science carried out a study to understand the experience of eight Mumbai based women's organisations that help the women victims of domestic violence and found that the number of cases registered by these organisations under Sec 498A were miniscule compared to their experience of the prevalence of domestic violence.

A survey of judges in South Asia Region pointed to the fact that 48 per cent of the judges agreed that it was justifiable for men to beat their wives. 74 per cent endorsed the view that even in cases of violence, the preservation of family should be the primary concern. (Report on 'The Varied Contours of Violence Against Women in South Asia' by Radhika Coomaraswamy for the Fifth South Asia Regional Ministerial Conference, Celebrating Beijing Plus Ten)

Centre for Social Research (CSR) carried out a study in 2005 to investigate the issues relating to Sec 498A IPC with the objectives to analyse the prevalence, patterns and trends of domestic violence related cases filed under Sec 498A and to understand and analyse whether this section is being used or misused as indicated in the Malimath Committee Report. This study was carried out in Delhi, Karnataka, Rajasthan and West Bengal. The main findings are that: only in 2 per cent cases, does the accused get convicted; reconciliation takes place at every stage including the police station, Crime Against Women Cells and Courts; the trial process is quite lengthy; it was difficult to prove physical and mental torture; the conviction rate is comparatively higher in cases filed along with Sec 304B or Sec 302 IPC than registered only under Sec 498A; in most of the cases where there is acquittal at the lower court, the matter is not taken up at higher courts whereas if there is a conviction, the cases are taken to higher courts; many of the accused, police, judges and lawyers categorically aid that 'educated and independent minded women' misuses the section; victims find the section somewhat useful; NGOs perceive that Sec 498A is the only provision which acts as an effective redressal mechanism for victims of domestic violence.

Statistics from the Kilpauk Medical College reveals that out of 1277 cases of fatal burns in 2008, 68 per cent (869) were female victims. These were cases from Chennai City and adjoining districts like Thiruvallur, Kancheepuram and Chengalpattu. Dr R.Selvakumar, Professor of Forensic Medicine said that: "There have been numerous instances when we have been told that the woman got burnt while cooking because the stove burst. If this is the case, then the woman should have suffered

burns only on the front portions of her body. Her back would have been spared. If a woman has set herself on fire while standing, then her soles would still remain unaffected.” He further said that by assessing the distribution of burns suffered by the victim, we can classify whether the fatal burns is accidental, suicidal or homicidal. A senior professor of the Department said: “In my opinion, less than 5 per cent of fatal burns cases are caused by dowry harassment. Abetment of suicide forms another 50 per cent . The rest of the cases are suicidal”. (Only 207 dowry death cases were registered in Tamil Nadu in 2008.)

2.2.1. Case laws that reveal the patriarchal mind set of the judiciary

There are important case laws that resulted in the review of Sec 498A and subsequently amendments in the penal provision under Sec 498A. The following case laws clearly reveal the patriarchal mind set of the judiciary at all levels where it has tilted more to the argument of the campaign that women of matrimonial house are to a greater extent victimising their marital side family members by their false complaints and the campaign’s attitude in protecting the institution of marriage and. But, the same judiciary also has commented that the provision in itself is not intended against men but the interpretation / action in handling the provision by the offenders and victims need clear articulation.

In Mohammed Arif vs. State of UP [1999 (2) Crimes 240], the Supreme court has pointed out that there is a general tendency to rope in the entire family members of the husband in dowry harassment case. In many court judgments, the judicial officers made similar statements.

Supreme Court upheld constitutionality of Section 498-A. In Sushil Kumar Sharma vs Union of India and Ors. [Writ Petition (civil) 141 of 2005] before Supreme Court, the petitioner prayed to declare Sec 498A to be unconstitutional.

The Supreme Court (SC), in its July 19, 2005 judgment, refused to strike down Sec 498A IPC as unconstitutional and invalid. The mere possibility of abuse of a provision of law does not invalidate the law. In cases of abuse, it is the “action” and not the “section” that may be vulnerable” - the SC said.

In the same case, the Supreme Court has observed as follows:

“..... the petitioner many instances have come in light where complaints are not bona fide and have been filed with oblique motive. By misuse of the provision a new legal terrorism can be unleashed. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that innocent person is not made to suffer on account of unfounded, baseless and malicious allegations.”

In the judgment of the Delhi high Court on 19th May 2003 in the case of Savitri Devi vs. Ramesh Chand and others (CRL. R 462/2002), the Hon’ble Justice J.D.Kapoor commented upon the misuse of the provisions of Sec 498A/406 IPC by women complainants and the investigating agency.

He commented that it is hitting the very foundation of marriage and has proved to be not so good for the health of the society at large. There is a growing tendency amongst the women which is further perpetuated by their parents and relatives to rope in each and every relative including minors and even school going kids nearer or distant relatives and in some cases grand-parents or as many as 10 to 15 or even more relatives of the husband. The threat of arrest making them run here and there and force them to hide at their friends or relatives houses till they get anticipatory bail as the offence has been made cognizable and non-bailable.

The Justice also affirmed that menace and evil of dowry are still looming large. Yet, suggestions were made that marital offences under Sections 498A/406 IPC be made bailable, if no grave physical injury is inflicted and necessarily compoundable, if the parties decide so.

The Justice ended his order by saying that:

“There is growing tendency to come out with inflated and exaggerated allegations roping in each and every relation of the husband and if one of them happens to be of higher status or of vulnerable standing, he or she becomes an easy prey for better bargaining and blackmailing.

These ground realities have persuaded this court to recommend to the authorities and lawmakers to have a review of the situation and legal provision.

The copy of the order was sent to Law Secretary, Union of India.

While hearing a Bail Application No.1627/2008 seeking anticipatory bail for offences under Sec 498A and 406 IPC, the Hon’ble Justice Kailash Gambhir of the High Court of Delhi observed that:

“...these provisions to a large extent have done incalculable harm in breaking matrimony of the couples.

The Court issued guidelines giving directions to Social Workers/NGOs, Police Authorities, Lawyers and Courts, in order to salvage and save the institution of marriage and matrimonial homes of the couples.

While disposing of petition, the High Court of Madras (Hon’ble Thiru Justice A.K.Rajan) has observed as under:

“It is true that demand of dowry which originally prevailed among a small sect of people, has not pervaded the entire society due to the educational advancement. Further, due to the constant attempts by various organisations women started complaining about dowry harassment to the police, of course it is a healthy sign. But at the same time, it is not uncommon that while such complaints of dowry harassment are made, even innocent in-laws are arrayed as accused. When such false complaints are made, some people, unable to bear such false accusations go to the extent of committing suicide. This has to be taken note of by the authorities concerned and there must be restraint regarding such complaints against in-laws”.

In Tamil Nadu, the Madras High Court in M.P.No.1 of 2008 in Criminal Original Petition No.10896 of 2008, Romaiah vs. State, came down heavily on the Police Officers while handling the matrimonial matters and their enquiry procedure, and made out directions to the Police Department and Government of Tamil Nadu regarding filing of FIR, arrest in matrimonial disputes, filing of charge sheet, enquiry procedure, restoration of property given to wife as 'stridana' etc. The judgment was passed by Justice R.Regupathi, J.

2.2.3. Responses of Investigating Agencies to Court Rulings

Following the order by the Delhi High Court, the then Commissioner of Police of Delhi, R.S.Gupta set up a five-member Committee to study various aspects of the court's order and to streamline the investigation of cases of crimes against women and to dispose them in a time-bound manner. The panel recommended that Crime Against Women Cell be entrusted the task to investigate cases of crimes against women as a specialised unit to minimise allegations of manipulation and mishandling by the district police.

Pursuant to directions given by the Apex Court, the Commissioner of Police, Delhi vide Standing Order No. 330/2007 issued guidelines for arrest in the dowry cases registered under Sections 498-A/406 IPC:

Taking a cue from the Delhi HC judgement, the Chief Police Commissioner of Delhi, issued a circular in June 2008 stating that no arrests would be made in cases of alleged dowry harassment without prior investigation. According to the circular, only the main accused would be arrested, instead of the earlier practice of booking all the kin of the accused.

Pursuant to the direction of the Madras High Court dated 7.7.2008, in M.P.No.1 of 2008 in Criminal Original Petition No.10896 of 2008, Romaiah vs. State, the Circular Memorandum was passed by the Director General of Police, Tamil Nadu in consultation with the Government regarding filing of cases registered under Dowry Death / Suicide in All Women Police Stations.

2.2.4. Reactions of the Government / Legislators to Court Rulings

The Government of India, Ministry of Home Affairs constituted a "Committee on reforms of Criminal Justice System" to make a comprehensive examination of all the functionaries of the Criminal Justice System, the fundamental principles and the relevant laws.

The Committee consists of only male members and headed by **Dr. Justice V.S. Malimath, former Chief Justice of Karnataka and Kerala High Courts**. The Committee submitted its report to the Ministry of Home Affairs in April 2003.

In Part IV, under the Chapter 'Crime and Punishment', the committee discusses about the heartless provision of Sec 498A IPC in paras 16.4.3, 16.4.4 and in para 16.4.5.

The Committee in Part VI, under the Chapter ‘Recommendations’ put forth the following:

“There is a general complaint that section 498A of the IPC regarding cruelty by the husband or his relatives is subjected to gross misuse and many times operates against the interest of the wife herself (The Committee provides no data to support the statement of ‘misuse’). This offence is non-bailable and non-compoundable. Hence husband and other members of the family are arrested and can be behind the bars which may result in husband losing his job. Even if the wife is willing to condone and forgive the lapse of the husband and live in matrimony, this provision comes in the way of spouses returning to the matrimonial home. This hardship can be avoided by making the offence bailable and compoundable.”

Analysis of the report shows that the Committee gives no references to evidence of misuse of Sec 498A anywhere in the report.

The Ministry of Home Affairs commissioned a study on “Role of Sec 498A IPC in States of Delhi and Haryana” and the study report was prepared by Mr N.K.Shinghal, a retired police officer. The report agrees that Sec 498A is not abused, it argues that it is being misused. The report stated that no false case had been reported whereas the complainants exaggerated the charges in the complaints. However, in response to a question raised in the Rajya Sabha, the Minister of Home Affairs stated:

“There is no information available with the Government to come to the conclusion that many families in India are suffering due to exaggerated allegations of harassment and dowry cases made by women against their husbands and other family members.”

The Government introduced the Criminal Law (Amendment) Bill, 2003 in the Rajya Sabha on 22 August 2003, based on the recommendations of the Malimath report and an **amendment in Sec 498A IPC was passed, making it compoundable with permission of the Court.**

The Government of Andhra Pradesh the Code of Criminal Procedure (Andhra Pradesh Amendment) Act, 2003 and amended the Sec 498A to make it compoundable, which came into force on 1st August 2003.

In response to the Men’s Organisations’ Campaign, the then Women and Child Minister, Ms. Renuka Chowdhury admitted that she was open to change the law. “Law-making is a dynamic process. We are ready to change the law but as of now there will be no amendments to it” – she said.

Recently, the Ministry of Home Affairs has written to all the State Governments that arrest for an alleged offence under Sec 498A should be the ‘last resort’.

2.3. State Perspectives

2.3.1. Institutional Mechanism in Tamil Nadu to Address Matrimonial Violence

Tamil Nadu Government has taken various measures to ensure the protection of women from domestic violence including violence within marriage. There are different forums for women to seek help when they face marital disharmony or family disputes which they cannot resolve on their own; different bodies when the differences and disputes takes the shape of harassment, cruelty and torture; different redressal units when women face domestic and matrimonial violence. These include the creation of All Women Police Stations (AWPS), Counselling Centre in All Women Police Station, Mobile Counselling Centres, Women Helpline, Family Counselling Centres (FCC) and Tamil Nadu State Commission for Women. Further, there are statutory bodies such as Protection Officers under 'The Protection of Women from Domestic Violence Act', Dowry Prohibition Officer (DPO) under 'the Dowry Prohibition Act'.

2.3.1.1. Family Counselling Centres (FCC)

The scheme of Family Counselling Centres was introduced by Central Social Welfare Board (CSWB) in 1983. In Tamil Nadu, there are about 60 Family Counselling Centre supported by Central Social Welfare Board, implemented through Voluntary Organisations. The Government of Tamil Nadu is assisting 6 Voluntary Organisations to implement Family Counselling Centre through the Tamil Nadu Social Welfare Board. The main objectives of FCCs are: To provide counselling and guidance services to those prone to exploitation, discord and maladjustment; and to provide preventive, curative and rehabilitative services to women who are victims of atrocities.

Thus, any family members including husband, children and parents in distress can seek the help of FCCs to overcome their problems. The Centre is expected to provide services specifically to women who are victims of violence. To provide professional services to these women, the Centre is supposed to work closely with local administrations such as All Women Police Station, District Social Welfare Office, Courts, Legal Aid Authority, medical and psychiatric institutions, vocational training centres and Short Stay Home.

FCCs, in addition to providing free therapeutic counselling services, rehabilitation and referral services, also provide medical aid, legal aid to women victims of violence in claiming their legal rights and help women to bring the culprits to book.

Individual Counselling, Family Counselling, Legal Guidance, Legal Aid, Legal Education and other supportive services are part of the activities of many NGOs in Tamil Nadu, which have programmes for women development.

2.3.1.2. Women's Helpline

Women's Helpline Service – 1091 was launched in Tamil Nadu by Government of Tamil Nadu on 16.08.2000 with an objective of providing round the clock services to women in distress. It is a toll

free number from any landline of BSNL. Helpline service is provided by women police in All Women Police Station. Women Helpline Units are functioning in almost all the districts in Tamil Nadu.

Their areas of concern are dowry harassment, domestic violence, spouse violence, violence in street, sexual harassment, eve-teasing, problems related to love affairs, promiscuity and arising out of bigamy and extramarital relationship.

The grievances of the victims are supposed to be attended immediately on receipt of the calls. Its functions include: providing counselling services to the distressed women over phone; settling petty quarrels between spouses and other family members amicably through counselling; securing the offenders of eve-teasing and registering cases against the offenders; securing women and young girls who run away from their houses due to torture or misunderstanding with their family members and restored in their families; securing destitute women and place them in appropriate institutions for care and protection.

2.3.1.3. Short Stay Home

42 Short Stay Homes are functioning in Tamil Nadu. These Homes are primarily for those women and girls in the age group of 15 to 45 years who are thrown out of their homes on account of marital discord, harassment by husbands/in-laws and family members and for women and girls who are in moral danger, who face threat in life.

The Home provides temporary shelter from six months to three years, safety and security; offers counselling to cope up with the problems; reunite them in their families; skill development; education; vocational rehabilitation; arrange for medical care, psychiatric treatment, legal services and police help; and other supports, depending upon their need.

2.3.1.4. All Women Police Stations

In 1973, a Women Police Wing was established in Tamil Nadu with the primary purpose of rendering assistance to Policemen in dealing with the problems faced by women in society. In 1992, Tamil Nadu was pioneering in commissioning All Women Police Stations.

At present, there are 196 AWPS spreading in all the districts of Tamil Nadu. Each Station is headed by a women Inspector who report to the Commissioner / Assistant Commissioner / Superintendent of Police. There are two Sub-Inspectors, three head constables and 12 constables under the Inspector. They are given training on counselling to handle problems of marital discord and women in distress due to family dispute. They are supposed to give counselling to the distressed women and their family members to achieve conciliation between the parties. The honorary services of professional counsellors in Family Counselling Centres and NGOs are also sought in this process.

Initiatives have been taken by the Tamil Nadu Social Welfare Board to open up Family Counselling Centres in the Police Station premises with the joint effort of Police Unit. This new scheme was introduced initially in Chennai and in October 2009, it was extended to Trichy.

All the crime cases against women under Indian Penal Code, Dowry Prohibition Act, Tamil Nadu Prohibition of Harassment of Women Act, Protection of Women from Domestic Violence Act, Child Marriage Act, Medical Termination of Pregnancy Act, Immoral Traffic Prevention Act, etc. are investigated by AWPS.

2.3.1.5. Mobile Counselling Centres

In order to create awareness among women regarding their legal rights and to redress their grievances at their doorstep, mobile counselling centres have been formed in each All Women Police Station. These centres are provided with vans with necessary infrastructure fitted with it.

The woman Police accompanied by a Revenue Official, a Lawyer, a Health worker, a Teacher move to the villages in the district in a van fitted with a Public Address system, Colour Television, Video Cassette Recorder etc., to create awareness and to redress their grievances at their doorsteps.

2.3.1.6. Tamil Nadu State Commission for Women

Elimination of violence against women is the mission of the Commission. Its main function is to monitor whether the constitutional and legal rights of women are properly implemented. It takes up cases of violation of the provisions of the constitution and other laws relating to women with appropriate authorities. On receiving complaints from aggrieved persons regarding atrocities, domestic violence, dowry death, sexual harassment, dowry harassment, etc, the Commission take necessary steps to ensure that proper investigations are being carried out by the police authorities and the offenders are prosecuted.

For serious crimes, the Commission constitutes Inquiry Committee, which makes on the spot inquiries, examines various witnesses, collects evidence and submits reports with recommendations for immediate relief and justice to the victims of violence and atrocities. The Commission monitors the implementation of the recommendations.

The Commission visit Women Cell in prison, custodial institutions for women and girls and take up such matters with concerned authorities for remedial action as may be necessary.

The Commission holds Legal Literacy Workshops for Women through NGOs as well as directly. The Commission also conducts workshops highlighting women's issues and networks with NGOs on these issues.

2.3.1.7. Dowry Prohibition Officers

The provision for the appointment of "Dowry Prohibition Officer" was incorporated in Dowry Prohibition (Amendment) Act 1986 for the effective implementation of the Act. In Tamil Nadu, the District Social Welfare Officer of each district is appointed as the "Dowry Prohibition Officer" of the respective district and their main function is to implement the provisions of the Dowry Prohibition Act.

The Dowry Prohibition Officer on receiving any complaint either directly or through the police, scrutinise the complaint and if it found that the complaint attract Sec 3 or 4 or 4A or 5 or 6, she should

immediately conduct an enquiry, carry out spot investigation and collect evidence from the parties for the prosecution of persons committing offences under the Act. If the DPO finds prima facie grounds that an offence had been committed, she can recommend to police for prosecution or she herself resort to prosecution directly by filing a report before the competent magistrate, which is treated as a charge-sheet. However, before recommending for prosecution or resorting to prosecution, every effort should be made to reconcile the matter amicably between the parties and in the whole process, the Officers should take due care to uphold the dignity and harmony of family relationship of the parties concerned. As a preventive measure, the DPOs should create awareness among the public against dowry by organising camps, publicity through Panchayat Raj Institutions, media advocacy, mobilising local people for prevention of dowry. As a pro-active step, the DPOs are expected to monitor the marriages happening within their jurisdiction, to ensure that the provisions of the Dowry Prohibition Act are not contravened.

The government of Tamil Nadu, through its Law Enforcement Department circulated the following guidelines to file cases registered under Dowry Death / Suicide in All Women Police Stations.

- i. Except in cases of Dowry Death/suicide and offences of serious nature, the Station House Officers of the All Women Police Stations are to register F.I.R. only on approval of the Dowry Prohibition Officer concerned.
- ii. Social workers/mediators with experience may be nominated and housed in the same premises of All Women Police Stations along with Dowry Prohibition Officers.
- iii. Arrest in matrimonial disputes, in particular arrest of aged, infirm, sick persons and minors, shall not be made by the Station House Officers of the All Women Police Stations.
- iv. If arrest is necessary during investigation, sanction must be obtained from the Superintendent of Police concerned by forwarding the reasons recorded in writing.
- v. Arrest can be made after filing of the final report before the Magistrate concerned if there is non-cooperation and abscondance of accused persons, and after receipt of appropriate order (Non-Bailable Warrant).
- vi. Charge sheet must be filed within a period of 30 days from the date of registration of the F.I.R. and in case of failure; extension of time shall be sought for from the jurisdiction Magistrate indicating the reasons for the failure.
- vii. No weapon including Lathis/physical force be used while handling cases at the All Women Police Stations.
- viii. Complainants / victims should be provided with adequate security / accommodation at Government Home and interest of the children must be taken care of.
- ix. Sridana properties/movables and immovable to be restored at the earliest to the victims/ complainants and legal aid may be arranged for them through Legal Services Authority for immediate redressal of their grievances.

2) The Commissioners of Police in cities and Superintendents of Police in Districts are requested to strictly follow the above instructions without any deviations.

Chapter -III

Methodology of the Research Study

3.1. Pilot Study

A 'Pilot study' was undertaken to assess the feasibility of this research study. EKTA organised thematic discussions with different interest groups such as police personnel, women advocates, legal activists, Senior Advocates of High Court, Counsellors of Family Counselling Centres and NGOs to collectively reflect on their experiences in dealing with the matrimonial offences and enforcement of Sec 498A IPC and related provisions.

3.2 Methodology

The research study has two essential components. At the theoretical level a systematic exploration through a review of existing literature, articles, feminist writings, was carried out to draw / analyse the International / National / State's perspectives on matrimonial cruelty. At the empirical level, case studies of women who experienced matrimonial cruelty using methods of of systematic observation & in-depth interviews were collected and analysed.

A similar method was followed with the judicial officials, District Social welfare Officers, Police Officers and Public Prosecutors. The personal interactions helped us to gain a better understanding of the prevailing practices and enforcement mechanisms and structured interviews and discussions were enriching and educative and throwing up lot of insights on the issue.

Qualitative research methods were considered appropriate given the nature of the research. The focus was not on gathering quantifiable data from a large sample but on documenting the perceptions and experiences of both victims and representatives of the justice delivery mechanisms from a feminist jurisprudence

3.3 Research Design

The major emphasis of this present study is to describe the existing pattern and to bring out the views and opinions of the respondents to get a deep insight into the research questions. The diverse information are cross-checked, triangulated with the factual data from different sources, interpreted appropriately to find answers to the following research questions. Hence, exploratory research design is adopted.

3.4. Research Questions

- To understand the prevalence and trends of matrimonial offences filed under Sec 498A IPC and related provisions in which "cruelty" is a common component.

- To document the socio-economic background of litigants.
- To examine the implementation of sec 498A IPC and related offences in Tamil nadu through:
 - Analysis of the status of recorded cases filed under Sec 498A, Sec 304B and under the Dowry Prohibition Act
 - Analysis of the perceptions/opinion of the key actors of the criminal justice system such as police, prosecution officers and judicial officers
- To examine the validity of charges put forth by the campaign against Sec 498A IPC and related offences with the help of secondary and primary data.
- To bring forth recommendations for effective implementation of Sec 498A IPC and related provisions in delivering justice to the victims of matrimonial cruelty.

3.5. Sample Size

The universe of the study is Tamil Nadu State. However, the study area is limited to 11 districts out of 32 districts in Tamil Nadu. The State is divided into five clusters such as: east, west, south, north and central. Atleast two districts are selected from each cluster on the basis of the linkages and the incidence of crime registered under Sec 498A. The districts selected for the study are Salem, Coimbatore, Cuddalore, Dindigul, Madurai, Virudhunagar, Sivagangai, Kanyakumari, Vellore, Kancheepuram and Trichy.

3.6. Primary Data

Interview method was adopted to collect the primary data. Separate interview guidelines were prepared for each category of respondents. The research team met the respondents in their places and the purpose of the study was explained and responses were collected.

The responses were recorded accurately and completely without causing embarrassment to the respondents, and at the same time care was taken to avoid bias and omission. A bare minimum direct question was raised while conducting interview with the judicial members.

3.7. Respondents

All the key actors of the Criminal Justice System, who are directly involving in the implementation of the legal provisions related to matrimonial cruelty and related to the subject of the study are included as respondents.

- Station House Officers (SHOs) of All Women Police Stations / Investigation Officers
- Assistant and Additional Public Prosecutors of Judicial Magistrate Court of First Class / Assistant Public Prosecutor of Mahila Court
- Magistrates of Judicial Magistrate Court

Respondents	Size
Investigating Officers / SHOs	22
APPs and DD of Prosecution	30
Magistrates of JM Courts	28

3.8. Ethical Consideration

The respondents were assured that their identity will not be revealed. As many of the respondents are officers of higher authority, questions were not raised to divulge information related to individual case, violating their ethical code.

3.9. Secondary Data

- Secondary data relevant to violence against women, particularly within marriage was collected from different sources.
- Data collected from District Crime Record Bureau under Right to Information Act.
- Crime Review Report of Tamil Nadu for different years, which was compiled by State Crime Record Bureau, Tamil Nadu and reports of National Crime Record Bureau were the important source of secondary data.
- Newspaper Clippings, Government GOs, relevant Court Orders, research reports, various websites which talks about Sec 498A are also sources of information for this study.

3.10. Data Analysis

The primary data collected were qualitative and descriptive in nature. Hence, qualitative analysis was adopted to describe the primary data, and interpreted in the context of secondary data wherever relevant.

Simple frequency and percentage, average analysis are mostly adopted to interpret the secondary data.

3.11. Limitations of the Study

Due to paucity of time, the research team could not cover the interest groups such as medical officers and RDOs as their views are very much restricted to individual cases.



Chapter -IV

Data Analysis

To derive real situation and information regarding the issues in implementation of relevant legal provisions related to matrimonial offences, the quantitative **data culled out from Crime Review Report of State Crime Record Bureau, Tamil Nadu** for different years and from **data collected from District Crime Record Bureau under Right to Information Act** were used. Simultaneously, interviews were held with the direct implementers of legal provisions connected with matrimonial offences such as police, prosecution and judiciary and their views and opinions were documented. These qualitative and quantitative data were discussed to bring out authentic and evidence based findings for many of the research questions.

4.1. RESEARCH QUESTION NO.1

What are the trends and patterns in matrimonial offences filed under Sec 498A IPC and related provisions where 'cruelty' is a common component?

The women subjected to 'cruelty by husband and his relatives' may also have experienced other violence such as 'dowry harassment', 'molestation by family member' and other harassments by family members that affect the modesty of women. In such incidences, in addition to Sec 498A, Sec 4 of the Dowry Prohibition Act, Sec 354 IPC, Sections under the Tamil Nadu Women Harassment Act are being invoked, depending upon the nature of offences. Yet, for the statistical purposes, these crimes are classified under the head 'Cruelty by Husband and His Relatives'. Similarly, Sec 498A is invoked in many of the cases registered under Sec 304B IPC and put under the category of the crime 'Dowry Death'.

The individual case records can give better picture about the nature of crime and the different provisions invoked in each case. However, for this study, the data based on the broader classification of nature of crime is being used for analysis.



Table-1

Cases of crime against women registered in Tamil Nadu during the years 1999 – 2009

Nature of Crime	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Sexual Assault (Rape)	430	538	432	501	557	618	571	457	523	573	596
Molestation	1959	1948	1773	1866	2022	1861	1764	1179	1540	1705	1242
Kidnapping and abduction	1000	805	659	720	632	692	783	618	1097	1160	1131
Sexual Harassment	1316	2167	1012	1766	881	1081	665	852	875	974	501
Dowry Death (Sec 304B of IPC)	197	191	194	247	220	225	215	187	208	207	194
Cruelty by Husband and Relatives (Sec 498A IPC)	620	837	815	966	1565	1437	1650	1248	1976	1648	1460
Offences under the Dowry Prohibition Act	226	287	41	219	175	294	193	81	316	262	207

The above table reveals the registered cases of crime against women including violence in matrimonial relationship. The incidences in cases of 'dowry death', 'cruelty by husband and relatives' and cases registered under 'the Dowry Prohibition Act' are crimes against women in matrimonial relationship and incidences of other crimes are categorized as crime against women in public domain. **Among the crimes against women in private domain, 'cruelty by husband and his relatives' accounted for the highest number.** Similarly, among the crimes against women in public domain, 'molestation' accounted for the highest.

Regarding data on registration of cases under 'Dowry Prohibition Act', sharp declines were observed in the years 2001 and 2006. 287 cases were registered in the year 2000 and declined to 41 in the year 2001, a decrease by 86 per cent. Similarly, 193 cases were registered in the year 2005 and declined to 81 in the year 2006, a decrease by 56 per cent. The case registration again jumped to 219 from 41, an increase of 439 per cent and to 316 from 81, an increase of 290 per cent in the years 2002 and 2007 respectively.

Regarding the crime in matrimonial relationship, the incidence of cases registered under '**cruelty by husband and his relatives**' in Tamil Nadu, there is a striking hike of 135 per cent in the year 2009 when compared with 1999 and the hike was 219 per cent in 2007 over 1999. The data shows a marginal decline of 11 per cent in 2009 over the previous year 2008. Significant shifts in trend are being observed during the years 2004, 2006 and 2009. In all these three years, the number of incidences registered show a dip when compared with the respective previous years and it is noteworthy to discuss the reasons for the decline.

Important verdicts and judicial pronouncements were made in these years. Malimath Committee's recommendation to amend Sec 498A of IPC as a compoundable offence, the enactment of 'The Protection of Women from Domestic Violence Act (PWDV Act), 2005', the stricture passed by the Madras High Court to the Police Officers to file cases other than cases registered under Dowry

Death / Suicide and matrimonial disputes in All Women Police Stations with the permission of the Dowry Prohibition Officers influenced the police in registering cases under Sec 498A and the same is evidently reflected in the data. Further, the table pictures that the offences under Sec 498A took the top position amongst different categories of crimes against women from 2006 onwards and the trend continues till 2009 except in the year 2008.

The incidence of '**dowry death**' cases registered in 2009 under Sec 304-B IPC shows a decline of 1.5 per cent over the year 1999 and a decrease of 6 per cent over the year 2008. The highest number of cases (247) was registered in the year 2002.

While analysing the data on incidence of dowry death cases registered by the police, it is significant to corroborate this data with the actual number of fatal burns cases handled in Government Medical Hospitals. Statistics from the Kilpauk Medical College alone shows that out of 869 fatal burns cases of female victims from Chennai and three neighbouring districts in the year 2008, less than 5 per cent of fatal burns cases are caused by dowry harassment and abetment of suicide forms another 50 per cent. **Thus, it is clear that 'abetment of suicide' (a crime under Sec 306 IPC) accounted for the bulk of the crime against women in the matrimonial relationship.**

If data recorded in all the medical institutions treating fatal burns and other methods of suicides such as poisoning, drowning, hanging, taking sedatives etc., are consolidated and put to analysis, the number of dowry murder, dowry death and abetment of suicide due to matrimonial cruelty would be many folds. **Thus, the data clearly reveals the under-reporting and under-registration of genuine cases of dowry death, dowry murder and abetment of suicide.**

Further, the scanning of 'Crime Review Reports of Tamil Nadu' for different periods, a report prepared by a State Crime Record Bureau, Tamil Nadu shows that **the abetment of suicides due to matrimonial cruelty, a grave offence against women is not categorised as a separate 'crime head', and the data is suppressed under the category of 'suicides'. As per the report, 4718, 4893, 4569, 4872, 5124 and 5337 females committed suicides in the year 2003, 2004, 2005, 2006, 2007 and 2008 respectively, which shows an increasing trend.**

The staggering amount of data relating to 'abetment of suicide' due to 'cruelty' warrants the need to include a separate column for this grave offence in the Crime Review Report of SCRB.

To sum up, matrimonial cruelty is the highest proportion in terms of crime against women in the later years.

Table-2
Registered Cases of Cruelty by Husband and His Relatives under Sec 498A
for the years 2001 – 2008 in the study districts

District	2001	2002	2003	2004	2005	2006	2007	2008	Total
Chennai City	111	106	159	154	236	213	323	165	1467
Coimbatore	77	26	121	96	178	97	213	177	985
Cuddalore	21	27	35	25	40	25	50	50	273
Dindigul	8	24	30	38	33	43	66	99	341
Kancheepuram	12	24	23	6	10	22	10	8	115
Kanyakumari	29	32	50	54	40	28	70	71	374
Madurai	93	76	98	64	87	73	173	117	781
Salem	18	24	164	272	172	55	117	128	950
Sivagangai	9	44	34	40	28	32	63	56	306
Trichy	20	96	88	74	66	79	64	53	540
Vellore	5	6	17	11	28	92	75	49	283
Virudhunagar	20	36	62	49	93	51	48	69	428

In the period from 2001 to 2008, the highest incidence of cases under Sec 498A were registered in Chennai City followed by Coimbatore, Salem, Madurai and Trichy. A sharp incline in registration of cases under Sec 498A was observed in Chennai, Coimbatore, Salem and Madurai in the year 2007 when compared to its previous year 2006, whereas a sharp decline was observed in Chennai, Coimbatore and Madurai in the year 2008 when compared to the previous year 2007. Salem recorded the highest number of cases in the year 2003 and 2004. Though the PWDV Act came into force in 2006 and people started making complaints under the new legislation, yet, the data shows that out of the 11 study districts, the registered cases under Sec 498A shows upward trend in 8 districts, as it has a clearly articulated institutional mechanism to deal with the matrimonial cruelty.

Among the study districts, the least number of cases were registered in Kancheepuram followed by Cuddalore and Vellore Districts.

Dindigul shows a steady increase in incidents from 2001 to 2008 and this category of crime has increased manifolds from 8 cases registered in 2001 to 99 cases in 2008. The increase was 50 per cent from the year 2007 to 2008. Sivagangai is another district in which the registration of cases manifolds in 2008 when compared to 2001. Further, the registered cases galloped to 44 in 2002 from 9 in 2001.

In Chennai, the cases of '**cruelty by husband and his relatives**' have increased by 191 per cent in the year 2008 over the year 2001 and decreased by 49 per cent over the previous year.

To sum up, the increasing trend from 2001 to 2008 with exception in few districts needs further investigation. But the increasing trend could be attributed to the shift in the perception of dowry as a social capital and with the societal sanction, cruelty against women has become an accepted practice of norm against women.

Table-3

Registered Cases of Dowry Death under Sec 304B for the years 2001 – 2008 in the Study Districts

District	2001	2002	2003	2004	2005	2006	2007	2008	Total
Chennai City	13	20	18	23	30	32	43	25	204
Coimbatore	21	28	18	11	11	13	15	14	131
Cuddalore	9	6	10	6	13	8	3	1	56
Dindigul	8	2	3	7	5	4	3	3	35
Kancheepuram	6	9	11	5	12	12	13	7	75
Kanyakumari	5	11	4	0	1	4	7	6	38
Madurai	17	14	23	12	7	6	21	14	114
Salem	11	9	13	21	20	13	8	10	105
Sivagangai	4	3	4	7	8	2	3	4	35
Trichy	7	19	7	9	9	12	6	10	79
Vellore	8	13	6	6	12	7	8	7	67
Virudhunagar	2	4	3	3	2	1	3	3	21

In the period from 2001 to 2008, the highest number of 'dowry death' cases under Sec 304B IPC were registered in Chennai City followed by Coimbatore, Madurai, Salem and Trichy Districts. The least number of cases were registered in Virudhunagar District followed by Sivagangai, Dindigul and Kanyakumari Districts. Of the 12 districts, the increasing trend in registration of cases was observed in 3 districts in the year 2008 when compared it with the year 2007 and in 5 districts when compared it with the year 2001. The increase was sharper in Chennai City (49 per cent) whereas the decline was sharper (89 per cent) in Cuddalore district in the year 2008 over the year 2001.

The strong connection between Sec 498A and Sec 304B is established by reading this table and 'Table 2' together. Kancheepuram District recorded minimal number of incidents of 'Cruelty by Husband and his Relatives'. But on the contrary, the dowry death cases recorded high. The ratio of 'dowry death' cases to 'cruelty by husband and his relatives' in Tamil Nadu State for the year 2008 was 1:7. This ratio varies between 1:2 and 1:20 in many of the districts. However, **in Kancheepuram District, ratio of 'dowry death' cases to 'cruelty by husband' was 1:1.5; in Vellore District, this ratio was 1:4 and Cuddalore District had the ratio 1:5. The inference is that the lower the registration of cases under Sec 498A, higher is the number of dowry deaths.**

The data affirms the statement of Indira Jaising, the Senior Supreme Court Lawyer, and member in CEDAW Committee that “If the matrimonial cruelty is not dealt in time, it will lead to death”.

The officers of the AWPS in these districts should be sensitized and alerted to raise to the alarming situation and protect the rights of the women from violence in matrimonial relationship, when the victims are alive.

Table-4
Registered Cases for offences under the Dowry Prohibition Act
for the years 2001 – 2008 in the study districts

District	2001	2002	2003	2004	2005	2006	2007	2008	Total
Chennai City	NA	0	0	0	5	2	0	NA	7
Coimbatore	NA	74	1	1	0	0	1	NA	77
Cuddalore	NA	9	15	16	0	0	15	NA	55
Dindigul	NA	0	0	0	0	0	0	NA	0
Kancheepuram	NA	0	18	12	14	16	25	NA	85
Kanyakumari	NA	0	0	0	0	0	0	NA	0
Madurai	NA	0	9	8	15	11	1	NA	44
Salem	NA	14	1	0	0	0	0	NA	15
Sivagangai	NA	0	4	2	3	0	1	NA	10
Trichy	NA	0	0	1	0	0	1	NA	2
Vellore	NA	46	78	125	110	21	63	NA	443
Virudhunagar	NA	0	0	0	0	0	36	NA	36

Of all the districts in Tamil Nadu, Vellore District accounted for the highest number of registration of cases under the ‘Dowry Prohibition Act’. This data was zero or very minimal in many districts, in all the years from 2002 to 2008. Even in Chennai City, the total number of cases filed in the seven years was only seven. Coimbatore has registered 74 cases in the year 2002 and decreased to 1 or 0 in the subsequent years. No case has been registered under this Act in Virudhunagar District except in the year 2007. Kancheepuram and Madurai are the other districts, which had registered cases in most of the years.

The least number of registration of cases under the Dowry Prohibition Act shows the poor implementation of the Dowry Prohibition Act and insensitivity of the police and the Dowry Prohibition Officer. From field experience, we learned that there is an underreporting and under-registration of cases, as these cases are reconciled in the presence of the police and the Dowry Prohibition Officers.

Table-5

Registration / investigation of Cases under Sec 498A in each All Women Police Station of the study districts in the year 2008

District	No. of All Women Police Stations (AWPS)	No. of Cases filed u/s 498A	Approx. No. of cases dealt by each AWPS in a year
Chennai City	27	165	7
Coimbatore	7	177	25
Cuddalore	6	50	8
Dindigul	6	99	17
Kancheepuram	5	8	2
Kanyakumari	4	71	18
Madurai	8	117	15
Salem	8	128	16
Sivagangai	5	56	11
Trichy	8	53	7
Vellore	7	49	7
Virudhunagar	6	69	12

The above table pictures the workload of each AWPS in carrying out the investigation on cases registered u/s 498A. The least number of cases under Sec 498A were investigated by AWPS in Kancheepuram District and each Station investigated only one case in every six months. Among the study districts, the highest number of cases under Sec 498A were investigated in Coimbatore District and approximately about 2 cases were being investigated by each AWPS, in a month. Only in 6 districts, each Station carries out investigation at the rate of atleast one case in a month.

Data and interview with the police and the Dowry Prohibition Officers reveal that the complaints registered under the 'Dowry Prohibition Act' are enquired by the Dowry Prohibition Officer and if found genuine, the petitions are referred to police with a recommendation to initiate investigation and prosecution. Thus, **the investigation of cases under the 'Dowry Prohibition Act' are investigated and charge-sheeted by the police though the DP Act empowers the DPOs to investigate and file charge-sheets**, needless to say they are ill-equipped to do so.

Though the 'Dowry Death' cases are supposed to be investigated by the Deputy Superintendent of Police, during the interview, the SHOs of AWPSs shared that they assisted the DSP in carrying out the investigation and filing up of charge-sheet is vested with the DSPs.

Even if all the cases under Sec 498A, the Dowry Prohibition Act and Sec 304B are brought together, each AWPS investigated not more than 2 cases per month. But the Courts often complain that a large number of cases under Sec 498A IPC are being filed and the courts are flooded with such complaints relating to cruelty and dowry harassment.

All the Station House Officers (SHOs) of All Women Police Stations interviewed admitted the increasing trend in the incidents of matrimonial dispute, matrimonial violence/cruelty. Almost all of them shared that they used to receive on an average 25 to 30 complaints of violence against women every week, including kidnapping, sexual assault, desertion by lovers, cheating by lovers, eve-teasing, outraging the modesty of women in the public places etc. Amongst the complaints, matrimonial disputes and matrimonial complaints comprises about 30 per cent.

Thus, **on an average each AWPS receives approximately 30 petitions per month regarding matrimonial issues.** They also admitted that the number continues to increase in the later years. **But actually, less than 3 per cent of the complaints related to matrimonial issues are converted into FIRs.**

Filing up of cases under AWPSs needs deliberation and from field experience, the study team felt the necessity to include a separate wing of investigation in each AWPS.

4.2. RESEARCH QUESTION NO. 2

The socio-economic background / profile of litigants

The answers for this research question was found out by interviewing the Station House Officers of All Women Police Stations, as they are mostly the first persons coming into contact with the victims when they seek help for the cruelty.

Nature of complaints and background/profile of the complainants

The complainants are from all educational background from illiterate to professionals. Mostly, the illiterate and less literate are subjected to physical cruelty. Mental cruelty is generally prevalent among the educated. Sexual torture, the most sensitive issue is the underlying factor in many of the mental cruelty. Alcoholism, extramarital affairs added fuel to the mental cruelty. Many women are victims of paranoid behaviour of the husband,

The economically well off women rarely approach the police station and they prefer to settle the issue directly through court.

Women from all religions are victims of cruelty. In some district, the muslim petitioners are higher in proportion when compared to actual muslim population in that district. The dowry demand and harassment, threat of desertion and remarriage, cruelty by in-laws are generally high in muslim community. The complainants from Christian religion is significantly less when compare with the proportion of Christian population.

Higher number of complaints is received from petitioners within one or two years of marriage. This needs further investigation and this finding should be corroborated with the age of the couple.

Many of the SHOs shared from the experience that the economic independence of women enhances their emotional and psychological capacity and they do not want to remain submissive in the oppressive environment and decide after a meaningful time to break free from an abusive marriage relationship.

A small percentage of the SHOs interviewed opined that educated and employed young married girls are becoming self-centred due to their economic self-reliant. They are too sensitive and highly emotional as they don't share the ethos and values imbibed by the members of the matrimonial family. They have less tolerance level and are against joint family system. Many complainants prefer to live separately with their husbands and as a result arises conflict with husbands and in-laws. Their parents rather than advising her, mostly fuel their daughter's emotions and supported her decisions. But all the complaints from such complainants are classified as matrimonial dispute and there is no question of framing charges on such complaints.

The illiterate, lower economic status and economically dependents are more vulnerable to torture by their husbands. The demand for more dowry is high amongst them as the husband's earning capacity is poor and the lack of livelihood resources forced the husbands to harass the wife and moreover dowry is being perceived and institutionalised as social capital to be extracted from the wives. Yet, they want to live with the abusing husbands as they have little option to live independently. Such complainants approach the police station with a request to threaten the husbands to mend themselves and refrain from inflicting cruelty on their wives. They are not opting to file cases against their husbands. The societal expectations of preserving family relationship on the wife, welfare of the children and the low status attached with living separately are some of the factors which compel women to stay in abusive marriages.

The SHOs also shared that the women develop an attitude that if they incorporate dowry component in the complaint petitions, it increases the severity of the offence. People develop a wrong perception that only dowry complaints are entertained by the police. Even the advocates have similar views, misguide their clients and prepare the petitions with a tone of dowry harassment.

4.3. RESEARCH QUESTION NO. 3

TO STUDY THE IMPLEMENTATION OF SEC 498A IPC AND RELATED OFFENCES IN TAMIL NADU:

1. Analysis of the status of recorded cases filed under Sec 498A, Sec 304B and under the Dowry Prohibition Act:
2. Analysis of the perceptions/opinion of the key actors of the criminal justice system such as police, prosecution officers and judicial officers

4.3. 1. Analysis of the status of recorded cases filed under Sec 498A, Sec 304B and under the Dowry Prohibition Act

Table No. 6

Disposal of cases under 498A –IPC by Police during 2003-2008 in Tamil Nadu

Year	Total No of cases for Investigation including pending cases	Cases Withdrawn	No of Case in which				No of cases pending investigation	
			Investigation refused	Charge Found False / Mistake of fact or Law	Final Report True submitted	Charge Sheet Submitted		Total
2003	1779	15	37	183	58	1158	1399	343
2004	1765	0	51	106	44	1316	1466	248
2005	1898	0	8	180	66	1307	1553	337
2006	1585	4	32	83	68	1081	1232	317
2007	2293	0	10	133	132	1489	1754	529
2008	2177	0	0	150	121	1477	1748	429
	11497	19	138	835	489	7828	9152	2203

Investigation Refused:

The police Officer can refuse investigation after the filing of FIR if the complaint does not disclose the commission of offence or if there are no sufficient grounds to investigate the case.

Charge Found False / Mistake of fact or Law:

If during investigation, the investigating officer comes to know that the allegations of the complainants as recorded in the police station is not true, the investigating agency submits a report before the Court in final form to discharge the case as 'mistake of fact, mistake of law or charge found false'.

Final report in True:

If, after the completion of an investigation, the Investigating Officer considers that in spite of all steps taken, there is no prospect of obtaining any further clue and that nothing more can be done in the case, or if it is found that no witness is available to substantiate the contention of the complaint, then the investigation agency submit a 'final report in true', treating the case as undetectable.

1779 cases were with the Investigating Officers in the year 2003 for investigation, which includes the pending cases from previous years. During investigation, 15 cases were withdrawn; investigation was refused in 37 cases; charges were found false in 183 cases and 'Final Report in True (FRT)' was submitted in 58 cases and in 1158 cases the charge sheets were submitted before the Courts. Thus, of the total cases in which investigation was completed, 'investigation refused' accounted for 2.6 per cent, 'charge found false' accounted for 13 per cent and FRT accounted for 4 per cent in the investigation. This data shows that in the investigation process, the investigating agency dispensed with almost 20 per cent of the FIRs in the year 2003.

The investigating agency dispensed with 51 FIRs in the year 2004. Being a cognizable offence, the police filed FIR and while carrying out investigation the investigating agency found no sufficient

grounds to investigate the case. The 'refusal of investigation' accounted for 3 per cent in the year 2004; 2 per cent in 2006 and 0.4 per cent in 2007.

The rate of completion of investigation by the investigating agency was 78.6 per cent in the year 2003. The rate of completion of investigation was 83 per cent in the 2004, 81.8 per cent in 2005 and reduced to 71.7 per cent and 64.9 per cent in the subsequent years and moved to 80.3 in 2008.

The consolidated data for six years shows that 7.3 per cent of the FIRs during investigation were dispensed with as the charges were found false (Interview with the investigation agency revealed that in considerable number of cases, the parties of litigation compromised themselves and such cases are marked under the category 'charge found false / mistake of fact or law') and in 4.3 per cent of the cases, 'FRT' were submitted. **Thus, in the study period of six years, 12.9 per cent of the cases under Sec 498A were dropped between FIR and Charge-sheeting Stage.**

It can be interpreted that the investigating agency tries their efforts to make the cases under Sec 498A IPC as watertight cases. It can also be inferred that the victims of 'cruelty' in matrimonial relationship on whose complaints FIRs were filed, find it difficult to provide sufficient evidences to the investigation officers, to validate their complaints in the investigating process.

Thus it is very clear that the victims are at the disposal of the investigating agency when they seek legal remedy. It is proved beyond doubt that the present legal system is only dealing with the tip of the ice berg. In other words, the present redressal of grievance mechanism to address the issue of cruelty in matrimonial relationship under Sec 498A is inadequate in terms of both quality and quantity.

'The present mechanism is addressing only 7 cases per year. The data reiterate the under-registration of cases under Sec 498A.

Table-7

Disposal of Cases under Sec 498A IPC (Cruelty by Husband and His Relatives) in Tamil Nadu by Trial Courts during 2003 – 2008

Year	Total No of Cases for trial including Pending Cases	Cases withdrawn by Govt.	No of Cases				Pending Trail
			Compounded or withdrawn by parties	In which Trials were completed / Accused Discharged			
				Convicted	Acquitted	Total	
2003	2968	34	0	93	472	565	2369
2004	3685	0	96	181	621	802	2787
2005	4094	0	12	196	1028	1224	2858
2006	3939	0	15	162	808	970	2954
2007	4443	0	7	206	766	972	3464
2008	4941	0	10	307	818	1125	3806
	24070	34	140	1145	4513	5658	

The Assistant Public Prosecutor may withdraw any person from the prosecution of any person or withdraw the case with the consent of the Court, at any time before the judgment is pronounced, after receiving instructions of the Government regarding the withdrawal and the APP has to make out grounds for withdrawal.

2968 cases filed under Sec 498A were pending before the Trial Courts in the year 2003 and 34 cases were withdrawn by the Government. **Though Sec 498A IPC is a non-compoundable offence, the amendment passed in Sec 498A IPC in the end of the year 2003 made it compoundable with permission of the Court. The response to the amendment seems to be high. The data for the year 2003 shows the number of compounded case as 0. But, 96 cases were withdrawn or compounded by parties in the year 2004, including the pending cases from previous years.** The compounded cases reduced to 12, 15, 7 and 10 in the subsequent years.

Trials were completed in 565 cases and of which accused were convicted in 93 cases in the year 2003. **Thus, the convicted rate of the cases under Sec 498A IPC was 16 per cent in the year 2003.** The conviction rates were 23, 16, 17, 21 and 27 per cent respectively in the successive periods. **The average conviction rate for the offence under Sec 498A IPC for the six years in the Trial Courts was 20 per cent, which is much less than the average conviction rate of 27.3 per cent in ‘dowry death’ cases.**

The ‘trial courts’ completed the trial and pronounced judgments only in 20 per cent of the cases in the year 2003, 24 per cent in 2004, 30 per cent in 2005, 25 per cent in 2006, 22 per cent in 2007 and 23 per cent in 2008. **The average disposal rate of cases under Sec 498A IPC in the Trial Courts for the discussed six years period is 23.5 per cent. The inference is that the Trial Courts take approximately four years for a case to complete the trial and pronounce the judgment in cases registered under Sec 498A.**

Table-8

Disposal of Persons arrested under 498A IPC (Cruelty by Husband and His Relatives) by Trial Courts During 2003 – 2008

Year	Total No of persons arrested under trial including those from previous year	No of persons Whose			No of persons convicted	% of persons	
		Cases compounded or withdrawn	Trial Completed	Trial pending		Whose trials remained pending	Convicted to trial completed
2003	5526	139	1330	4057	349	73.4	26.2
2004	6812	77	1945	4790	359	70.3	18.4
2005	7174	28	2069	5077	338	70.8	16.3
2006	7432	19	2444	4969	480	66.8	19.6
2007	8114	13	2249	5852	431	72.1	19.2
2008	9040	10	2097	6933	602	76.7	26.2
	44098	286	12134	31678	2559		

The average conviction rate of persons by the trial courts in the six year periods amounted to 20 per cent.

By reading this table and previous table together, the data shows 349 accused were convicted in 93 cases in the year 2003. Thus, approximately 3.75 persons were convicted in each case under Sec 498A IPC in the year 2003. But the approximate convicted number of persons in each case of 'cruelty by husband and his relatives' came down to 2.0 in the year 2004 and further declined to 1.7 in 2005 and raised to 2.9 in 2006 and dipped to 2.1 and 2.0 in the years 2007 and 2008 respectively. Thus, the number of convicted persons in each convicted case was on the high in the years 2003 and 2006. **In all the six years, 2559 accused were convicted in 1145 cases in the trial courts, which shows the average number of persons convicted amongst the pronounced convicted cases was 2.2 persons in each convicted case.**

Table-9

Disposal of Persons arrested under Sec 498A IPC (Cruelty by Husband and His Relatives) by Courts at different levels including Trial Courts during the period 2003 – 2008, in selected districts

Districts		2001	2002	2003	2004	2005	2006	2007	2008	Total
Chennai	Regis. Cases	111	106	159	154	236	213	323	165	1467
	Con. Persons	10	13	11	7	4	5	0	0	50
Coimbatore (City)	Regis. Cases	28	0	24	29	31	30	50	62	254
	Con. Persons	1	10	0	3	4	4	0	13	35
Cuddalore	Regis. Cases	21	27	35	25	40	25	50	50	273
	Con. Persons	0	15	6	5	4	7	0	0	37
Dindigul	Regis. Cases	8	24	30	38	33	43	66	99	341
	Con. Persons	0	3	1	1	0	1	0	0	6

Districts		2001	2002	2003	2004	2005	2006	2007	2008	Total
Kanchipuram	Regis. Cases	12	24	23	6	10	22	10	8	115
	Con. Persons	2	4	1	4	3	7	4	6	31
Kanyakumari	Regis. Cases	29	32	50	54	40	28	70	71	374
	Con. Persons	9	4	0	0	0	2	0	0	13
Madurai	Regis. Cases	93	76	98	64	87	73	173	117	781
	Con. Persons	9	3	5	3	1	1	2	0	24
Salem (City)	Regis. Cases	11	0	13	18	18	18	42	33	153
	Con. Persons	0	0	1	5	0	2	0	0	8
Sivagangai	Regis. Cases	9	44	34	40	28	32	63	56	306
	Con. Persons	0	3	8	4	1	0	0	0	16
Trichy (City)	Regis. Cases	18	25	44	32	23	27	33	25	227
	Con. Persons	0	8	2	0	0	1	0	0	11
Virudhunagar	Regis. Cases	20	36	62	49	93	51	48	69	428
	Con. Persons	1	6	9	7	16	0	0	0	39

Final Conviction Rate at the level of Appellate Courts

Chennai	Coimbatore	Cuddalore	Dindigul	Kanchipuram	Kanyakumari	Madurai	Salem	Sivagangai	Trichy	VirudhuNagar
1.9 %	7.7%	7.5%	1.0%	15%	1.9%	1.7%	2.9%	2.9%	2.7%	5.1%

If the lower court/trial court recorded conviction against the accused, the aggrieved persons opposing the conviction generally make an appeal in the higher courts, challenging the said conviction and sentence. Similarly, the prosecution too can file an appeal against the judgment of the trial court. The Higher Courts may confirm or reverse the orders of the trial courts or lower appellate courts. The above table explains the data in selected districts whether the orders of the lower Courts were reversed or confirmed and whether the justice is delivered to the victims.

In the period from 2001 to 2008, a total of 1467 cases were registered in the Chennai City alone under Sec 498A IPC. As the number of accused in each case is around 1.8 persons, approximately 2640 persons might have been charged under the offence. But the appellate Courts confirmed conviction only on 50 persons. **Thus, the final conviction rate in the case of ‘Cruelty by Husband and His Relatives’ in Chennai City is only 1.9 per cent. Dindigul recorded final conviction rate as 1.0. The highest of 15 per cent was recorded in Kancheepuram District. The average conviction rate after the charges being tried in the appellate courts, in the selected districts was 3.2 per cent.**

Though the Conviction Rate for the offence under Sec 498A in Trial Courts is 20 per cent, the final conviction rate declined to 3.2 per cent, which shows that the appellate courts released majority of the convicted, sentenced by the lower Courts and in many cases the appellate Courts reversed the order of conviction pronounced by the lower Courts. The mismatch between the conviction rate in trial courts and appellate courts raises a serious question about justice delivery system and the legal safeguards for women victims.

4.3.2. Analysis of the perception/opinion/view of the key actors of the criminal justice system such as Judicial Officers, Prosecution Officers and Police Officers

Reasons for High Acquittal

4.3.2.1. Perception/Opinion/View Of Judicial Officers

4.3.2.1.a. Investigation Agency’s vi-a-vis Acquittal of the offenders

- Police are the primary law enforcing agency. They are the first wing of Criminal Justice System who received information about the incidence of cruelty through the complaints of the victims. Complaint petition is an important document, which when registered is converted into an FIR. The complaint petition should be prepared meticulously, focusing only the necessary details. The police who receives the complaint petition should explain to the complainant how to prepare the complaint petition sharply and precisely; briefing the incidence of cruelty, date and time and location of the incident, true facts of the incident as it occurred, name of the perpetrators, who witnessed

it; any material proof; in case of sequence of events, briefing with correct linkages; narrating coherently etc, avoiding vague or unclear statements. The weakness of the prosecution case commences if there are lapses in the complaint petition. Even one incident with concrete proof and evidence is suffice to establish the guilt.

- Generally, the complaint petition is prepared by lawyers, which runs pages together, detailing many incidences of harassment/cruelty and all the incidences are not supported by sufficient evidences to prove, thus the first document of the case itself becomes weak. When the investigation is being carried out, it is difficult to collect sufficient evidences and witnesses to prove all the occurrences of the offence, which ultimately weakens the prosecution and favours the defense.
- The flow of the case starts from registering FIR. Within 24 hours of registering, it should reach the Court. On many instances, there is a gap between the day of registering FIR and submission of the same in the concerned court. The police strategically delay the filing of FIR with an intention to restrict the move of the alleged accused to get Anticipatory Bail. Sometimes, the FIR is used as a tool to put pressure on the accused to negotiate and enter into a settlement, to recover the jewels of the complainant; the police collude with the accused to give them time to move the court to get bail. The illegitimate act of collusion weakens the prosecution side and the police become the main culprit for the denial of justice to the victims.
- The FIR is the base of a case, an important document and is considered as a primary evidence under the Evidence Act. It corroborates the testimony of the person lodging the complaint during the trial. It is the base of the case and hence has to be prepared with the utmost care and accuracy and with all available details. Lapses starts from FIR. Many cases failed in the Court as the FIR is not recorded properly. If the base of the case itself is shaken, the building of the case that had been structured on that base would not be expected as strong.
- If there is an unreasonable time delay between lodging the complaint and registering FIR, when the case will be heard in the court, it raises a suspicion over a matter of converting the complaint to FIR and favour the defense.
- One of the Magistrate shared about the problem in territorial jurisdiction which causes discharge of the case at the time of framing charges in the Court or during the trial proceedings. Territorial Jurisdiction is one of the key aspect of the Criminal Justice System which should be taken care of by the investigating agency. If the victim is subjected to cruelty in one place and following the incident the victim is residing in another place having different territorial jurisdiction, and if the woman preferred to lodge a complaint in the police station where she resides, the problem of territorial jurisdiction arises. If the complaint petition needs to be filed in the police station where the cruelty incident occurred, the registered FIR should be transferred to the Police Station where the incident took place. But simply because they want to keep the case at their own Police

Station, they will make up some facts as though the husband's family came to the complainant's place and they made hue and cry and harassed her demanding dowry. These additional charges are created by the police to shift the jurisdiction. But the complainant could not spell out the whole thing when they get in the witness box and give evidences based on the real facts alone and the whole investigation process became invalid and the court has to discharge the case. Thus, mistakenly or wilfully shifting the jurisdiction to other police station unit limit is violation of law. At the time of framing charges, if it was found that the jurisdiction is not correct, the case would be discharged, because the court could not transfer the case. The court cannot convict even the guilt against the offender is proved beyond all reasonable doubt. This shows that the enforcement agency has the option of colluding with the parties of litigation either for want of money or to engage their political pressure.

- The manner in which police carried out the Investigation is important to the functioning of the justice system. Investigation needs professional skills and intelligence. The main objective of the investigation is to bring out the truth scrupulously and the investigation officer should have the eagerness to find out the truth. To corroborate the statement of PW1, examine the witnesses, record the statement of the witnesses and collect evidences related to the commission of offence with supportive material and documentary evidences. The court fully relies on the evidences and witnesses to decide the case. So the investigation has to be done meticulously with an eye on court process. It is also their responsibility to see to it that innocent persons are not implicated falsely. ***But many a time, investigations are being done mechanically and the IO hardly makes spot visits and collect evidences provided by the parties. They mostly prepare the statements of the witnesses on their own, based on the complaint petition and FIR. The real statements of the witnesses hardly find its place in the investigation. The investigating agency fails to collect sufficient evidences to sustain the case. Failure of the investigation agency to bring out the truth denies the delivery of justice. It only reveals the patriarchal mindset of the investigation agency where the dowry deaths are not seen as murders and they are not given due important as in the case of other murders listed under IPC.***
- **Lack of commitment, poor knowledge about the law, lack of investigation skills and acumen, insensitivity to the seriousness of the offence, corruption, and failure to build the case, paves way for the acquittal of the cases.**
- **Due to heavy work load related to bandobust and maintenance of 'law and order', the investigating agency generally takes long time to complete the investigation. With the passage of time, vital evidences for investigation are lost as the accused can tamper evidences to create false defense, resulting in imperfect investigation and contribute to acquittal.**

- **Even newly appointed Sub-Inspectors who are supposed to do the investigation, mostly delegate their role to their subordinate staff who lack the necessary training and experience mostly call the witnesses to their place and prepare the statements of the witnesses as their own will and wish, which weakens the prosecution case.** Many of the witness statements seem to be xerox copies of the FIR.
- On completion of the investigation, the investigating officer should build the case on the available evidences and witnesses with an intention to prove the guilt of the offenders so as to drive a case to successful prosecution. They have to link up different pieces of evidences and frame the charge-sheets for successful prosecution. This is a skilful exercise and expertise is needed to carry out this task. Further, the prepared charge-sheets should be laid before the court within a reasonable time. ***The Case Diary file shows that the statements of the witnesses were documented on the second week of filing of complaint but the investigating agency actually submits the charge-sheet in the court after a year.*** Such a span of delay weakens the prosecution, for which there is no inbuilt monitoring and regulating mechanisms.
- ***Most of the magistrates commented that the complainants in some cases generally include maximum number of persons as accused in their complaints, in their over enthusiasm and anxiety to seek conviction for maximum people.*** The investigation officer has the power to eliminate the names of persons on whom the charges cannot be framed, based on the findings of the investigation and strengthen the case by filing charge-sheets against those who perpetrate the offence. But many investigators neglect this role and include all the accused mentioned in the complaint petition, which weakens the case (Table 21 does not support this view). ***When, the prosecution fails to establish the guilt against any of the offenders, it will give the impression that the case itself is filed on false charges, which weakens the case of the prosecution even against the real accused and the real culprits go scot-free. If the complaint is against the husband or limited family members, the cases could have been withstood and the chances of conviction could have been great.***
- Many magistrates commented that the investigating officers are generally including more number of witnesses to strengthen the case including hearsay evidence which has only secondary value and not a strong witness. The magistrate cannot dispense the witnesses whereas prosecution witnesses can be dispensed only by the prosecution officer. Without examining all the witnesses, a fair judgment is not possible. Even if two persons give evidence, there are possibilities for emergence of contradictions. More number of witnesses means more number of contradictions and it creates doubt about the facts of the case and weakens the prosecution case.
- Further, producing all witnesses to the court takes time. So if we want to prove the case, the number of witnesses should be limited. This also quickens the judicial proceedings and disposes the case at the earliest.

- **The above discussed procedural and technical lapses due to imperfect investigation results in collapse of the prosecution and ultimately the benefit of doubt is given to the accused and the accused easily escapes from the punishment. This only reveals the lack of guidance to carry out the investigation procedure, which is paramount to insensitivity of the investigation officers to gender violence.**

4.3.2.1.b. Parties of Litigation and Witnesses vis-à-vis high acquittal

- Most of the magistrates commented that the complainants are implicating the in-laws, distant relatives and married sister-in-laws residing in distant places as accused. This indiscriminate roping of many of the family members from the husband's side certainly affects the case of the prosecution and the real culprit escapes from the punishment and they will be at lost. Their legal advisors and the police should guide the complainants properly.
- **Many victims feel that registering the complaints and converting them into FIR itself is a great success because it is such a difficult exercise for them to convince the police, the first law enforcement agency acknowledging the cruelty they suffered in the matrimonial houses. When the perpetrators of cruelty are arrested, the victimized women perceived it as a great achievement. In this process, many victims exhaust all their energy. They do not make consistent follow-up to see that the investigation process is moving in the right direction.**
- For the accused, getting bail itself is a success. From the minute of receipt of notice from the investigating agency to report to police station for enquiry, almost all the offenders seek the legal system to get anticipatory bail. Tension and anxiety mount only till they bailed themselves out. After that, lawyers usually assure them of acquittal and not to worry about the case; convince them that the case is nothing. Since the conviction rate is so poor of about 2 to 3 per cent, the accused have no fear or tension about the case.
- **Once the accused is enlarged on bail, the accused takes all efforts to weaken the case.** They prevent the investigating agency from collecting the evidences and tamper the evidence and luring the witnesses to their favour through threat or coercion. They delay the court proceedings by asking unnecessary adjournments. The magistrate could not reject the petitions for their absence in the court. **They purposefully delay the proceeding so that the memory about the incidences of violence and related information evades from the minds of the witnesses.** The possibility of money playing in turning the witnesses to hostile cannot be ruled out.
- It is a general practice that the chief of the witness is taken on one day and the defense counsel intentionally cross-examines the witness after a gap of many days so that the witness gets confused and contradicts one's own statement, leaving room for suspicion in favour of defense.
- **Many times, PW1s contradict their statements and turned hostile when both the parties of litigation compromised themselves either by way of settlement or decided to live together.**

'Compromise-acquittal' is high in Sec 498A cases. In such cases, the witnesses too turned hostile to safeguard their position. The compromise-acquittal may be in the form of reunion, or settlement. Thus, full trial does not takes place in such cases and all such cases ended in acquittal. As crime under Sec 498A is a non-compoundable offence, they cannot compromise and compound the case legally. However, both the parties file compromise petition before the court, which is generally rejected by the magistrate. Then the complainant and other witnesses turned hostile. The following factors drive the parties of litigation to enter into compromise.

- ***If there are sufficient evidences and proofs to establish the guilt and there are higher chances for conviction.***
 - ***Many complainants are ready to compromise if they are assured of return of their jewels and other properties given to them as dowry.***
 - ***The parties entered into an agreement on conditionality – dissolution of marriage, willing to give a compensation, withdrawal of pending cases in other courts etc.***
 - ***Frustration and disappointment due to prolonged trial proceedings forced the litigant to accept the settlement offer imposed by the accused.***
 - ***Pressure from the accused and his family members for compromise.***
 - ***Pressure from natal family: The fear that the legal effort may act as a hindering force for the marriage of her siblings and her own remarriage.***
- During trial, the PW1 being the complainant has to corroborate her allegations made in the complaint. If PW1 failed to say as stated in the statement given before the police and her deposition is contradictory, the case weakens. If many of the other witnesses also fail to corroborate the statement of PW1, the case will be disproved.
 - **But approximately two third of the magistrates inclusive of women magistrates rationalized and justified these contradictions, discrepancies and inconsistencies between the deposition before the court and statement given before the investigation officers, which are unavoidable. They were sensitive to the position of the litigants and witnesses and accepted that the open court environment and the presence of lawyers, prosecution officers, public, accused is so fearful and threatening and many bewildered themselves and cut short their statement and leave many significant points relevant to the case, inspite of being tutored by the prosecution officer and investigating officer and mentally prepared to face the trial proceeding. The above view was also reiterated by the IOs.**
 - **But majority of the judicial officers shared that the way the litigants put forth their testimony before the court, their emotions and feelings behind their tone and words, facial expression are the indicators to understand their plight, inner mind and truth behind the case.**

- About one third of the judicial officers were insensitive to the distress and apprehensive position of the litigants and the anxiety status of the witness and believed that the facts of the incident cannot be erased from the minds so easily. They strongly believe that if they really experienced the harassment, violence and cruelty, they could speak out their mind clearly and they could withstand the cross-examination of the defense counsel and the time delay is a non-issue for the real victims. The judicial officers also believe that the same attributes are applicable for other witnesses too.
- Cruelty within marriage need not at all times be associated with dowry harassment. Even physical and mental cruelty can invoke Sec 498A. But in many complaints, the litigants include dowry component and cannot establish the charges before the court beyond reasonable doubt, leading to acquittal of the case.
- If the evidence is not perfect, court cannot do anything in favour of victim even though there were factual incidence. The Judicial Officers have to act as per CrPC. All the lower courts and trial courts, lower appellate court should not overstep the CrPC procedure.

4.3.2.1.c. Judiciary vis-à-vis high acquittal

The role of judicial officers is to evaluate the facts and circumstances of the case based on the evidence produced and determine the guilt; and on the basis of gravity of violation of law, the quantum of punishment shall be prescribed through the order.

- **Delay in trial procedure pave way for the accused going scot-free as the witnesses forget events and are unable to repeat their statements made before the police during the time of investigation, thereby leaving room for contradictions and doubts about the authenticity and reliability in their statements, resulting in low conviction rate.**
- **There are different types of judicial officers. There are magistrate who are not for convicting the accused. The magistrate uses the axiom of 'proof beyond reasonable doubt' and pass acquittal orders against all the accused, even in the well investigated cases, which sustain and complete full trial and the prosecution prove the guilt of the accused. These magistrates believe that the hardships the accused experienced during the trial proceedings itself is a punishment for them. The mental agony experienced by the victim in silence are under-weighed by the judicial officers and they sympathized with the accused.**

They also view that even if they pass order of conviction, the aggrieved parties generally make an appeal in the Higher Courts and there are about 99 per cent chance for reversal of conviction orders (Table 9 and 14 also prove this statement). They are too bothered about the appeals filed against their judgments, the review of their judgments by the appellate courts and reversal of their orders.

If the order of acquittal is passed, the prosecution due to painstaking procedure do not show interest to go for appeal. Even if the prosecution tries, mostly their efforts do not reaches the desired stage. The litigants hardly go for appeal against the acquittal order. Thus, to remain themselves in the safer zone, the end is definite with acquittal order. Some of the Judicial Officers do not want to punish the offender even if guilt is proved. Even if they continuously reject the bail petition of the accused, the concerned advocates through the Bar Council makes complaints against them and even send complaint petitions making baseless allegations. They also fear that they may be transferred unnecessarily or branded as 'convicted-type magistrate'. They want to be tension free and their main aim is to complete their tenure peacefully and accomplish the norm assigned to them per month.

Thus they fail to uphold their professional ethics and their divine duty and responsibility. They are unfit to hold the office of public trust. They fail to provide justice to the victims and victimizing the victims by letting the accused scot-free. They are prejudiced, pre-determined and fail to do justice for the post they hold. One of the magistrates interviewed told that in his 10 years services as Magistrate, he has not convicted a single offender charged under Sec 498A.

- There are another category of 'Judicial Officers' pronouncing orders by strictly restricting within the boundaries of Criminal Procedure and Evidence Act. If the guilt is proved beyond doubt as per the Criminal Procedure and Evidence Act, an order of Conviction is pronounced and the period of sentence is based on the gravity of the offence. About 20 per cent of the magistrates interviewed shared that they feel frustrated as they cannot overstep the CrPC and the offenders easily escapes through the loopholes and the justice is evasive for the victims.
- There are yet another category of Judicial Officers who is ready to convict if there is a minimum of 50 per cent reliability in the evidence and witness with acceptable contradiction, discrepancies and inconsistencies. They very well know that the order passed by them will be reversed in the Apex Court. Yet, in order to render justice to the victim, make the offenders to reform themselves and to produce the desired deterrence impact to contain the crime, an order of conviction was passed against the offenders. Though they expect pressure from the Bar Council, they face them and try to uphold the judicial integrity.
- Generally, if the guilt is established against one offender and guilt is not established against the remaining offenders, the offender against whom the guilt was established was convicted and the rest were acquitted. Where as there are few judicial officers who let all the offenders scot-free.
- Two judicial officers shared that though Sec 498A is a non-compoundable offence, if arrived to the conclusion during the trial process that the chances of conviction is high, they suggest the idea of compromise between the parties through their counsel and in some cases, the parties of the litigation reunited. These judicial officers are of the opinion that it is a win-win deal.

- One of the magistrates interviewed narrated the pressure imposed on him by the Bar Council. A girl registered an FIR in the police station and subsequently, her husband was arrested and sent to judicial custody. His family members filed bail application on the next day and the magistrate dismissed the bail petition. The victim girl was in a pathetic situation. She was subjected to mental cruelty and her head was forcibly shaved to shatter her image and psychological health. The three bail petitions submitted within a month were rejected by the magistrate. The legal counsel of the accused filed a complaint petition against the magistrate before his higher authorities. He was enquired by the higher authorities and he ought to convince the authorities why he had rejected the bail petitions.
- There are yet another category of Judicial Officers who punish the offenders even if most of the witnesses retract their statements given before the police during investigation and turned hostile and atleast one of the witnesses corroborates the testimony of the person who had lodged the complaint.

On many occasions, the SC held that the statement of PW1 - the victim alone, if strong enough to prove the guilt of the offence is enough to punish the offender. However, most judicial officers insist that the other witnesses should corroborate the PW1 statement.

About 20 per cent of the magistrates interviewed acknowledged the prevalence of dowry harassment / matrimonial violence episodes either in their own family or closed relatives or friends and they assess each case coming before them subjectively. If they were the victims of cruelty in that episode, they sympathise with the victims in their profession as judicial officers; if they were with the offenders in that episodes, they take sides with the accused.

Thus, the justice delivery system operates, depending upon the mind set, attitude and conviction of the individual magistrates and justice is evasive for many victims of cruelty.

4.3.2.1.d. Prosecution Agency vis-à-vis high acquittal

- The prosecution officer has to well read the case in prior and prepare the witnesses in what manner he/she is supposed to depose and how to respond during the cross-examination. Due to lack of coordination between the investigation agency and prosecution agency, many prosecution officers and the investigating agency failed to carry out this role and blame each other.
- There are also allegations that the prosecution officers are taking sides with the accused.
- The vacancies for the appointment of prosecution officers are yet to be filled in some courts. In the case of petty offences, the judicial officers can play the prosecutor's role. But for offences under Sec 498A, in which the fact of the case has to be determined based on material and documentary evidence, the judicial officers cannot in addition perform the prosecution officer's role. When the court is not having prosecutor, and when the witness comes to the box, the judicial officer can only record what the witness says. But if the prosecution officer presents, she/he can cut short the unnecessary things and strengthen the validity of the witnesses.

4.3.2.1.e. Lawyers vis-à-vis high acquittal

- The lawyers neglect their duties to their clients and indulged in strike or court boycott and doing injustice to their clients and also causing undue delay in the trial proceedings and denying justice to the victims. **Almost all felt that long delays in trial result in evading of justice to the victims.**
- The defense counsel for one reasons or another asks for adjournments and endlessly prolonging the trial, leaving hardships to the witnesses.
- **Generally, defense counsel fails to cross-examine the witness on the same day of deposing before the Court, thus unnecessary causing hardships to the witness as he/she has to repeatedly present before the court for no fault of theirs and the witness may confuses her/his own statement due to time lapse.**

4.3.2.2. Views / Opinion / Perception Of Prosecution Officers regarding acquittal

The Prosecution Officers are the verifying officers, who scrutinise whether the conclusion arrived by the investigation officer is correct or not. The real work of the prosecution officers commence when the trial starts.

The role of the prosecution officers is important in presentation of the investigation details before the Court of law in a convincing manner and pleading for justice. This requires wisdom, knowledge of laws, eloquence in arguments and presence of mind. Inadequacy of any of these factors or corruption can ruin the prospects of many a well investigated case.

4.3.2.2.a. Complainants and witnesses influence the fate of the case in the following manner

- Court proceedings generally take 2 to 4 years and for many of the witness the memory traces about the incidents go dim. Further, the witnesses lost interest. Sometimes, they switched over their loyalties in favour of the offenders and turned hostile.
- Contradictions and inconsistencies exist between the statements of the witnesses recorded before the court during chief-examination and the statement given before the I/O and chief-examination and cross-examination.
- Sometimes, the witnesses shift their places and their current whereabouts could not be traced and therefore could not be examined during the course of trial.
- All the family members, including extended members of her husband are roped in by the complainant, which weakens the genuineness and the reliability of the complainant.
- Most of the prosecution officers interviewed stated that they are tutoring the witnesses how to depose and how to respond during cross-examination. Yet, when the witnesses enter into the witness box, the inconsistencies, contradiction and omission could not be ignored. Some witnesses convince the prosecution officers assuring to give corroborate evidences in favour of the case and when such witnesses enter the witness box, to the shock of the prosecution officer, completely

contradict their statements and turn hostile. The real intention of the witnesses is hard to be predicted.

- The witnesses turning hostile is high if the witnesses are relatives of both the parties.
- The complainants are unnecessarily including many number of family members as perpetrators.
- The complainants generally include complaint of dowry harassment even in the absence of dowry factor, as a substitute in lieu of the physical and mental cruelty.
- **30 per cent of the cases filed under Sec 498A ended in compromised acquittal.** Both the parties entered into a settlement on conditions. Only 70 per cent of the cases complete the full trial proceedings. The delay and prolonged trial proceedings pushes the parties to enter into compromise. The parties enter into compromise for various reasons. If the complainant or/and the accused wants to go for remarriage and cannot wait till the disposal of case, both the parties enter into compromise. The compromised acquittal rate is comparatively high, if the complainant and the accused were relatives, even before marriage. On many instances, the complainant has little say in the compromise process. The pressure from her natal family and marital family pushes the victims to accept the terms. **Many a times, the terms of compromise are violated by the parties and the women rarely get benefited at the end.**
- **Though the general belief is that the chances of reunion is 'almost nil' in cases of criminal offences under Sec 498A, there are incidents of reunion, particularly high in areas having jurisdiction of taluk-level Judicial Magistrate Courts.** When the criminal case was pending before the Court, both the parties were living together. They were quoting many incidents in which the I/O prepare charge-sheets without even knowing that they live together. When the summons is served for their presence before the Court, they both appear together. Petition to compound the offences is generally filed to protect themselves from the possible legal action against them and such cases certainly ended in acquittal.
- Due to delay in court proceedings, though the case is pending before the court, the complainant and/or the accused get remarried and such cases mostly ended in acquittal.
- The prosecution officers also commented that the complainants are not showing any interest to know the status of their case. They hardly meet and discuss the case with the prosecution officer, who represents their case in the court. There were instances where the prosecution officers were identified by the complainants as defense counsel and fail to have confidence on the prosecution officers. The I/Os should orient the complainants and direct them to meet and discuss with the prosecution officers to know the status of the case, how well they and the prosecution witnesses could contribute to prove the case before the court of law.

4.3.2.2.b. Investigation Agency vis-à-vis fate of the case

- In some cases, even aged persons, minors and unmarried females, married sisters of husbands, pregnant women and women with baby in hands, living away from their parental home are summoned and brought to police stations in the name of investigation/enquiry. Such treatment of the police generated negative attitude towards the complainants. It is difficult to collect evidence and establish ingredients of cruelty against all the alleged accused. At the same time, the accused derive sympathy from the prosecution officers and judicial officers. Ultimately, even if cruelty is felt obviously, and established against few accused, the benefit of doubt is extended to all the accused and lead to collapse of the case.
- Sometimes, the Station House Officers show delay in filing FIRs and extending counseling services to the parties in the name of 'petition enquiry'. **If the counseling efforts fail, then FIR is being filed without mentioning the reasons for the delay in filing the FIR. This lapse is mostly favourable to the defense counsel.**
- **Investigative agency is always subjected to allegations of corruption charges.** Even to file FIR, Station House Officers in some police stations are demanding money from the petitioners, some to the tune of Rs.10,000/-. The allegation that the I/Os are hand in gloves with the accused cannot be ignored.
- They lack the necessary qualification and expertise to carry out the investigative role and as a result the quality of the investigation is poor.
- **Even police personnel of lower cadre are delegated to participate in the investigation process and they lack efficiency, capacity and professionalism to investigate the case perfectly.**
- **The superior authority of the police, the Home Department is very much concerned about the number of cases registered, charge-sheeted and pending investigation, cases completed trial etc., and not showing concern about the quality of the investigation, the number of cases ended in acquittal, category of offence ended in heavy acquittal, reasons for the high acquittal etc.**
- The prosecution officers are accountable to Deputy Director of Prosecution and are supposed to submit monthly report explaining the number of cases completed trial, orders secured, reasons for acquittal; number of cases convicted etc., which will be reviewed in the periodical meeting. Similarly I/Os are supposed to report to their higher officials. Of late, **this review meeting become a mere ritual and critical analysis and discussion and rectifying the fault are missing and the higher officials are not asking the reasons for the acquittal.**
- **The I/Os are supposed to present in the Court when the prosecution witnesses are being heard, so that the tutoring of the witnesses could be ensured. But generally, the court staff in the police station present with the case file, who is in no way connected to the**

case and investigation done and she had little knowledge about the detail of the cases. These affect the quality of the deposition of the witnesses.

- Few prosecution officers interviewed justified the act of the I/Os in including more number of witnesses. The real experience is that only 50 per cent of the witnesses turn up to court to give their testimony. Even if many witnesses turn up and if three or four witnesses corroborate, the prosecution officers have the power to dismiss the remaining witnesses.
- Sometimes, during the process of investigation, **the I/O may be transferred to other stations and the subsequent officer may not show the same interest in that case, which affects the quality of the investigation and there are high chances for acquittal.**
- Many prosecution officers complained about the role of the Dowry Prohibition Officers. If a woman comes with a complaint of dowry harassment by her husband and his relatives, many Station House Officers reduced the petition as offence under the Dowry Prohibition Act and forward the petition to the Dowry Prohibition Officer (DPO) in their respective district. **Few prosecution officers explained to the research team that if the offences complained by the petitioner fall under the Dowry Prohibition Act and during enquiry if the case attracts any of the sections of penal code such as Sec 498A, Sec 406 etc., the DPO has no power to deal such petition. In such a case, the only competent authority to take up the whole case for investigation and for filing the charge-sheet is vested with the Deputy Superintendent of Police.** Entrusting the work to any police officer below the rank of DSP is violative of the statutory rules framed under the Dowry Prohibition Act. But, in real life situation, if the petition attracts any of the provision of the Dowry Prohibition Act, and Indian Penal Code, the Inspector, sometimes the staff of lower rung are doing the investigation.
- The Act confer upon the DPO ample powers to enquire all persons concerned and witnesses, collect evidence orally or in writing and strive for reconciliation between the parties and for the preservation of the marital tie to the best of her ability and only if all her efforts fail, he has to recommend or resort to prosecution. The DPO confuses the characteristics of the 'enquiry' and 'investigation'. If the DPO carries out the investigation, she can resort to prosecution. If she restricts her role with enquiry, the investigation has to be carried out by the police officers. The DPO confuses both the tasks and prepares records and documents, and forward the file to the police. When the police officer does the investigation and prepares the case file, there were contradictory statements and records, which many times turn against the victims and weaken the prosecution case.
- The prosecution officers also complained that **the DPO lacks the skills, interest, commitment and legal knowledge to carry out the professional task of enquiry and investigation.**
- **Delay in investigation not only frustrates the victim but also provides an opportunity to the accused to use his clout in influencing the investigation.**

- If the evidence collected during the investigation is not collated properly with an eye on court procedure, the entire exercise of investigation become futile and the guilty easily escapes from the clutches of justice
- They opined that a greater number of accused are acquitted simply due to lapses in investigative procedure on the part of the I/O.
- In some districts there is better coordination between the investigation agency and the prosecution agency. In such districts, the I/Os seek the guidance of the prosecution officers - the Assistant Public Prosecutors in Magistrate Courts, at every stages of their work right from the stage of filing FIR, till preparation of charge-sheets. The Prosecution Officer interviewed remarked that only 50 per cent of the I/Os are seeking their assistance in the process of investigation and framing of charge-sheets.
- Even if the I/Os file 'action drop out report' with a note that it was a case of 'mistaken of fact', few prosecution officers interviewed shared that they would question the I/Os, the reasons for such drop out. If not satisfied, the prosecution officers have the practice of asking the I/Os to bring the complainant along with the CD file, to check it with the complainant. This practice is being adopted, as the I/Os in some instances take sides with the accused and intentionally prepared 'action drop out report' without the knowledge of the complainants.
- **Till recently the approval of the prosecution officer before filing the charge sheet was the norm adopted by the I/Os. But of late, as per the Supreme Court direction, the investigating officer is empowered to submit the charge-sheets directly in the court after getting the endorsement from their superior officers and the approval of prosecution officers is not needed.** Thus, in the formal system, even if the prosecution officers played no role during the investigation process, they could exercise their control at the time of filing the charge-sheet, when the I/Os approaches them to get the approval. The prosecution officers could check whether appropriate legal sections are used, gravity of the crime is not minimized, investigation has been carried out in the right direction, whether investigation covered all the offences charged, whether evidence collected are perfect and collated well, whether all the perpetrators of the offence are included in the charge-sheet, in case of deletion of any perpetrator whether the grounds for deletion are recorded properly etc., and if found any lapses, the file will be returned for necessary corrections, after pointing areas of lapses and the area for further investigation.
- Of late, the Supreme Court Direction vested this responsibility on the Judicial Officers and this is an addition burden for them. However, the Judicial Officers insist the I/Os to get the approval of prosecution officers. If this role is not played by the prosecution officers, case file and the charge-sheet have to be verified by the Judicial Officers before taking up on file. **Yet, 10 per cent of the I/Os file the charge-sheets without their approval. They lamented the falling standards of**

investigation which contributes for failure of prosecution case. If there is better coordination between the investigation agency and prosecution agency, the chances for limitations in the charge-sheet preparation and final report submission could be corrected and strengthen the case in the Court of law.

- One of the prosecution officer shared that In the joint meeting of the Police department and Prosecution Department held in one district, the Commissioner and SP in that district were telling the prosecution officers not to return the file to rectify the lapses in the investigation / in the charge-sheets unless the mistakes are so grave. ***They were also passing comments not to expect perfection and not to look at the CD file with the legal knowledge of the prosecution officers. The Investigating Agency fails to understand the fact that they are doing injustice to the victims by their imperfection, poor commitment and lack of professionalism. They fail to understand their accountability to their profession and to the complainants. It is their duty to ensure proper justice to those who seek it and successfully getting the offenders being punished with imprisonment.***
- Many a times, the victim in addition to the charges under Sec 498A also makes complaints that the ornaments and other valuable items given to her for her marriage as dowry was with her husband or with his parents and if this charge has not been given legal effect, a criminal of offence of 'breach of trust' at the time of filing an FIR, it will be difficult to recover the property at the later stage. Often, the I/Os ignore such complaints.
- One of the Prosecution Officers also pointed out the mistakes often made by the Investigation Officer in the case of dowry death or abetment of suicide due to matrimonial cruelty. If a married woman is subjected to cruelty or harassment by her husband or his family members, Sec 498A would be attracted. If such harassment was inflicted by the husband or his relative for, or in connection with, any demand for dowry immediately proceeding unnatural death within seven years of marriage such husband or relative is deemed to have caused her death and is liable to be punished under Sec 304B. In such a case, to avoid technical defects and for the safer side, FIR should cover Sec 498A and Sec 304B and charge-sheet should be prepared covering both the sections. Many a times, the I/Os failed to include Sec 498A, presuming that Sec 304B is a major offence. Such technical defects could be corrected, if the prosecution officers are consulted in the process of preparation of charge-sheets.
- ***About 20 per cent of the respondents appreciated the investigation function of the investigation officers, their efficiency and proficiency. They shared that the investigation officers should be given freedom to do the investigation freely without interference and influence.***
- Many prosecution officers felt that the I/Os of AWPSs are overburdened and much of their valuable time is being spent for bandobust and in maintaining law and order. They enumerated the number

of tasks to be performed: VIP Security Duties; Escorting of women prisoners from jail to the court and back; temple bandobust duties; eve-teasing bandobust in schools, colleges, bus-stands, bus-stops and other key places; maintenance of law and order; attending public meetings, religious and political processions; court duty; night duty; tapal duty; escorting petitioner and witnesses to court; and other duties assigned by the senior officers. Thus, the I/Os cannot spend quality time for investigation. **They suggested that the special investigation team should be set up in each station which should be delineated from the law and order wing.**

4.3.2.2.c. Judicial Officers vis-a-vis fate of the case

- There are Supreme Court's and High Courts' rulings in matrimonial offences under Sec 498A which held that if the testimony of PW1 - the complainant before the Court when she deposed and cross-examined supported the allegation, **it would be suffice to prove the guilt of the accused and no corroborative evidence of the witnesses is necessary. Yet, all the judicial officers expect corroborative evidences to support PW1's statements.**
- Some of the judicial officers are conducting trial with the pre-conceived view that women are misusing Sec 498A and justice to victims cannot be expected from such judicial officers.
- In the case of offences under the Dowry Prohibition Act, **the 'burden of proof' is vested on the accused. The accused are supposed to prove that he / his family members are innocent. On the contrary, the judiciary expect the prosecution to prove the guilt of the accused.**
- The prosecution officers shared with frustration that the verdict of the judicial officers cannot be put to acid test whether the orders passed by them are just or not. **Judgment of different judicial officers on a single case is so different from each others. If justice is delivered based on the merit of the case, then there cannot be more than one order. If justice delivered is based on the individual who is ultimately delivering the order, then whose judgment is just and fair?**

If we consider that the order passed by one judicial officer is correct and if the same order is reversed by another judicial officer, who is wrong?. If the judicial officer passed an order of conviction or acquittal, he/she has to give adequate reasons for arriving to that conclusion. They have to analyse how for a witness spoke to the facts of the case or contradicts; how far the witness sustains one's own statement in the cross-examination to what she/he had stated in the chief examination. **Many a times, the orders pronounced by the Judicial Officers are based on their background, their belief system, their values, attitude, notion and their frame of mind. Their judgment is pre-determined. If they decided not to punish, the order ended with a brief "the prosecution failed to prove the guilt beyond reasonable doubt and the benefit of doubt is given to the accused". Many of the judgments are not reasoned judgments with clear cut findings.**

They also remarked that it is easier for the judicial officers to prepare the orders of acquittal, which requires few hours. But to prepare an order of conviction, it requires quality time – a minimum of two days, acumen, application of mind, commitment, accountability, desire and firmness to punish the guilty.

Norms are fixed for the judicial officers and they have to complete the norms prescribed for each month. All the newly appointed judicial officers are anxious and tensed in completing the norm. Their focus is only on quantity rather than quality and ultimately, justice is evasive to the victims.

- The prosecution officers interviewed admitted that there are two types of judicial officers – the ‘acquittal type’ and the ‘conviction type’. **Even the well investigated and well presented case, which established the guilt against the accused ended in acquittal as the judicial officers are against conviction. There are many factors that push them to secure that attitude. They justify their attitude by saying that the physical and psychological hardships experienced by the accused during the case proceeding itself is a great punishment for them.**

The prosecution officers interviewed in one district said that the judicial officers in their district are for convicting the accused if the guilt is proved, particularly in the cases of matrimonial cruelty.

- Few shared their negative experience with the women judicial officers. They shared that the men judicial officers are little more sensitive to the plight of the victims when compared with the women judicial officers and the men judicial officers boldly convict the accused.
- Few prosecution officers shared their frustration about the functioning of the judicial officers. Though many of the judicial officers have worked as prosecution officers before assuming their new role, they conveniently forget the hardships they experienced as a prosecution officer and fail to understand the plight of the prosecution officers in establishing the prosecution case.
- Few prosecution officers shared that the judicial officers lack the quality of courage and firmness, required for their profession.
- About 20 per cent of the respondents shared that about 60 per cent of the judicial officers are not for acquittal, particularly in matrimonial cruelty. But, the in-laws are acquitted generally.
- Few prosecution officers shared that the judicial officers could not act freely. The political pressure, pressure from higher judicial officers, pressure from Bar Council influences their function. Advocates create unnecessary problems and try to damage the judicial integrity of the judicial officers. **Few respondents highlighted how their career path and the judicial officers’ image were tarnished by false allegations of the members of the Bar Council, when they are loyal in their profession and fair in complying the professional code of ethics and fail to heed to the demands and expectations of the members of Bar Council;** the trauma they experienced due to department enquiry, suspension, transfer etc., based on baseless allegations.

4.3.2.2.d. Limitation in the Justice System

- **Filing an appeal petition against the order of acquittal is a long and tedious process.** The concerned prosecution officer should prepare his/her opinion and submit it before their immediate higher authority, the Deputy Director of Prosecution. The said superior officer of prosecution forwards the same to the Senior Police Officer, the Commissioner of Police or Superintendent of Police. It is the Investigating Agency which should be interested in filing appeal against the judgment. The Prosecution Agency could convince the Investigating Agency but ultimately the investigating agency has to take a decision to file an appeal. The Investigating Agency should forward the papers of investigation along with the opinion of the prosecution officer to the Director of Prosecution through their Senior Officers – Commissioner of Police or Superintendent of Police. If the Director of Prosecution is convinced, he has to forward the file to the Home Department for their permission. The file will be processed and the Secretary of the Home Department in turn will send the file to the Public Prosecutor of High Court for opinion to assess the veracity of the case and the possibility of successful outcome on appeal. On getting positive response from the PP of High Court, the investigating agency takes necessary steps to file an appeal petition in the lower appellate court within the stipulated limitation period. In the above laborious process, there are high chances at each stage to quash the appeal process. It generally takes three months period to successfully complete the appeal process. **The prosecution agency could not afford sufficient time to prepare opinion for all the acquittal cases, even if it is a fit case to move for appeal. They suggested that a special prosecution officers can be appointed to initiate and proceed appeal procedure against the orders pronounced in the trial courts. They also suggested that the appeal procedure should be simplified.**
- One of the prosecution officer shared that in his Magistrate Court, the Judicial Officer continuously pronounced order of acquittal in 6 cases. The High Court Judge came for inspection noted the continuous acquittal and he randomly pulled out a case file and questioned the judicial officer why accused warrant was still pending to be served and wrote a note to speed up the trial proceeding and report the result of the case to him. The prosecution officer shared that that was the first case convicted by the Judicial Officer. Thus, **monitoring and supervision has its own value to bring the desired result in the justice delivery system through its fair and just order.**
- Out of the 6 cases acquitted in 2009, the prosecution officer selected one case which he thought fit for appeal and prepared his report in consultation with a Senior Advocate as a step toward appeal process against the pronounced order of the judicial Officer. When the file reached the Public Prosecutor of the High Court for opinion, the file was returned with a note “not fit for appeal”. He lamented that all this efforts and sincerity ended in futile. All his efforts to convince each and every authority above him to move the petition from one stage to stage became meaningless. He blamed the justice delivery system which evades justice to the victims and frustrates all the

actors of the system. The acquitted persons easily influence the High Court Public Prosecutor and subvert the appeal process.

- **Only in the rarest of rare cases, the aggrieved victim goes on appeal against any order passed by the court acquitting the accused, whereas all the convicted accused go on appeal against the conviction orders passed by the court.**
- In many courts, the post of prosecution officers remains vacant. One of the prosecution officer interviewed told that he was supposed to look after two magistrate courts. Because of over work, he said, he was planning to take leave for 15 days. All these affect the justice delivery to the victims. He insisted that the vacant posts should be filled up immediately.
- The criminal justice system is in favour of the accused. On the basis of the axiom “Let hundred guilt be acquitted and one innocent should not be convicted”, **the benefit of doubt is always given to the accused.**
- Many of the respondents shared their frustration in their profession and the limitation in the justice delivery system. The young prosecution officers initially show more enthusiasm and conviction in their profession and the spirit gradually dissuade as their experiences go high and started working mechanically. One of the respondents, who stood first at the state-level in the written examination for Prosecution Officer, joined the work with much aspiration and enthusiasm. He said that all his spirit soon drained as he had to work in the system that is so corrupted, unfair and unjust. He said that he was repenting for choosing this profession and on the verge of quitting the job and prefers to identify himself as judicial activist. He also said that he is ashamed to be part of the corrupt judicial system. Many of the prosecution officers are in such a state of mind. They continue to work but for their survival.
- Corruption prevails at all levels in the judicial system. **Even the Office Assistant in the Court needs to be bribed of Rs.50/- to get official information or help. 99 per cent of court staff are corrupted.** Even the judicial officers are not free from corruption charges.
- Pressure from politicians and influential persons could not be denied. The prosecution officer in one court went on for a month leave as there was a pressure from the local MLA. Rather than requesting the prosecution officers to present the prosecution case efficiently, he insisted the prosecution officer that the particular case he recommended should be convicted.
- Most of the prosecution officers interviewed questioned the selection process of the Judicial Officers in the Magistrate Courts and the Prosecution Officers. All appointments of the Prosecution Officers and Judicial Officers are made through competitive examination. The qualification and years of experience for both the officers varies. The prosecution officers shall have seven years of practice where as even the freshers, who has just completed are eligible to sit in the examination for Judicial Officers, though Judicial Officer is the post of high honour. Many Judicial Officers do not have the legal knowledge and the professional expertise needed for such a prestigious post.

As a result, they cannot perform their roles with confidence and courage. The researcher also observed some truth in the accusations of the Prosecution Officers. During the interview with one of Judicial Officers, the officer spelled out that Sec 498A is a non-cognizable offence and the concerned police can investigate the case after getting an order from the Magistrate.

- The Prosecution Officers appointed are not posted in the Home district to which she/he belongs where as such restriction is not applicable to the Judicial Officers. They commented that such discriminatory proposition, mistrusting the Prosecution Officers should be reframed and they too should be allowed to work in the Home District.
- In Tamil Nadu, the Public Prosecutors and Additional Public Prosecutors are directly appointed from the Bar Council who have ruling political party affiliation. The APPs cannot be promoted as Public Prosecutors. This practice should be changed. The APPs should be promoted to the posts of Additional Public Prosecutors and Public Prosecutors, as practiced in other States.
- The immediate Appellate Court for the prosecution is High Court whereas the respondent can file their appeal in the Sessions Court. There are many factors that restrict the prosecution agency from going for an appeal. **If the immediate Appellate Court for the prosecution is designated as Sessions Court, in the event of failure of the prosecution, the aggrieved complainant herself could go for an appeal against the order passed by the trial court.**

4.3.2.3. Views / Opinion / Perception of Police Officers

Police are the primary law enforcing agency. They have to collect and present evidences in proof of violation before the court to assist in the delivery of justice. The case is built based on their investigation. Their role, commitment, sincerity, expertise and justness determine the outcome of the case.

Opinion about high acquittal rate

- Adjournments are given endlessly prolonging the trial. The longer trial proceedings and delay in delivery of justice dampen the spirit of the complainants and the witnesses.
- The witnesses despites summons do not turn up on time and thus causing unnecessary delay in the trial proceedings.
- Trial proceedings generally starts after two or three years. Many witnesses vacate their houses and difficult to trace their whereabouts.
- Witnesses often retract in the chief and cross-examination from what they had said during the investigation before the police and during chief examination.
- The complainants, many times, because of fear, fail to tell major points in the deposition.
- Lack of material evidences available with the complainants to establish the case.

- Poor quality of the investigation. Many I/Os neglect their duties and responsibilities and have no commitment in investigation and preparation of Case Diary File.
- The prosecution officers are not seriously reading the case file and hence they cannot present the case before the court of law in a convincing manner.
- Many judicial officers are not showing interest to conduct the cases of matrimonial offences and many of judicial officers are against convicting the offenders particularly in matrimonial cases.
- Many judicial officers are not sensitive to the plight of the victim and their feelings.
- The prosecution agency and the judicial officers place a total distrust on the police. The act of investigation and arrest are always viewed with suspicion and that influences the fate of the case.

Table-10

Disposal of Cases under 304-B –IPC by Police During 2003-2008 in Tamil Nadu

Year	Total No of cases for Investigation including pending cases	Cases Withdrawn by Govt.	No of Case in which				No of cases pending investigation	
			Investigation refused	Investigation Completed				
		Charge Found False / Mistake of fact or Law		Final Report true submitted	Charge Sheet Submitted	Total		
2003	308	0	0	2	7	217	226	82
2004	307	0	0	0	10	213	223	84
2005	299	0	0	5	2	212	219	80
2006	267	0	0	1	4	169	174	93
2007	301	0	0	1	0	189	190	111
2008	318	0	0	5	1	187	193	125
	1800			14	24	1187	1225	

308 cases were with the Investigating Officers in the year 2003 for investigation, which includes the pending cases from previous years. Deputy Superintendent of Police is generally the Investigating Officers in 'dowry death' cases. During investigation, the investigating agency found that in 2 cases the charges were found false and in 7 cases 'final reports in true' were submitted. The investigating agencies were able to submit the charge sheets before the Courts in 217 cases in that year, after getting the necessary documents from the Forensic Department. Thus the rate of completion of investigation by the investigating agency was 73.4 per cent in the year 2003. The rate of completion of investigation was 72.6 per cent in the 2004, 73.2 per cent in 2005 and reduced to 65 per cent, 63 per cent and 61 per cent in the subsequent years.

In all the six years, no case was withdrawn by the government and in no case the investigation was refused. Cases in which 'charges were found false' were found maximum in 2005 and 2008. The 'final report in true' was submitted in a maximum of 10 cases in the year 2004. **Thus, in the six years, 2.1 per cent of the cases were dropped between FIR and Charge Sheeting Stage.**

Table-11

Disposal of 304B IPC (Dowry Death) Cases in Tamil Nadu by Trial Courts during 2003 - 2008

Year	Total No of Cases for trial including Pending Cases.	No. of Cases withdrawn by Govt.	Compounded or withdrawn by parties	No of Cases Trials were completed / Accused Discharged			Pending Trial
				Convicted	Acquitted	Total	
				2003	815	1	
2004	783	0	0	42	134	176	607
2005	819	6	0	71	171	242	571
2006	740	0	0	48	116	164	576
2007	765	0	0	64	154	218	547
2008	734	0	0	44	140	184	550
		7	0	335	893	1228	

815 cases filed under Sec 304B were pending before the Trial Courts in the year 2003 and one case was withdrawn by the Government. Sec 304B being a non-compoundable offence, that column for all the years shows zero. In the year 2003, trials were completed and judgments were pronounced in 244 cases. In 66 cases the accused were convicted and in 178 cases all the accused were acquitted in the year 2003. Thus the conviction rate in the grievous crime of dowry death cases is only 27 per cent and in 73 per cent of the cases, the accused were let off. The trial courts recorded conviction rates as 24, 29, 29, 29 and 24 per cent in the years 2004, 2005, 2006, 2007 and 2008 respectively. **The average conviction rate in the grievous crime of dowry death cases for the 6 years period was 27.3. The data shows that the trial courts could complete the trial and pronounce the judgment only in a maximum of 29 per cent of the cases every year. The inference is that the trial courts take an average period of more than three years to complete the case.**

Table-12

Disposal of Persons arrested under 304B IPC (Dowry Death) by Trial Courts during the period 2003 – 2008

Year	Total No of persons arrested under trial including those from previous year	No of persons Whose			No of persons convicted	% of persons	
		Cases compounded or withdrawn	Trial Completed	Trial pending		Whose trials remained pending	Convicted to trial completed
2003	1726	0	535	1191	139	69.0	26.0
2004	1736	2	456	1278	116	73.62	25.44
2005	1785	0	540	1245	152	69.75	28.15
2006	1648	0	544	1104	98	66.98	18.01
2007	1561	0	430	1131	117	72.42	27.21
2008	1564	0	463	1101	114	70.40	24.62
		2	2968	7050	736	70.36	24.79

The previous table explains the details of disposal of cases under Sec 304B IPC whereas this table talks about the details of disposal of persons tried under Sec 304B IPC in trial courts.

If there are more than one accused in a case, the prosecution might have proved the case against all the accused persons of the case beyond reasonable doubts or it might have proved against few

respondents. Thus, in any case, few may be convicted and others may be let off. To understand the approximate number of persons convicted in each ‘dowry death’ case, in which conviction was pronounced, the data of this table and the previous table need to be read together. In the period of six years from 2003 to 2008, 736 accused were convicted in 335 cases, which shows that **the average number of persons convicted amongst the pronounced convicted cases for the six years was 2.2 person per case.**

Table-13

Details of arrested and convicted persons in Trial Courts under Sec 304B IPC (Dowry Death)

Details	2003	2004	2005	2006	2007	2008	Avg. for six years
Accused in each case	2.2	2.3	2.3	2.4	2.4	2.4	2.3
Convicted per case, in which conviction was pronounced	2.1	2.8	2.1	2.0	1.8	2.6	2.2

The average number of accused arrested in ‘dowry death’ cases for the six years from 2003 to 2008 is 2.3 persons whereas the average number of persons being convicted in the pronounced convicted cases for the said period was 2.2 persons. Thus, there is a difference between number of persons arrested and convicted, which shows the proportion of alleged accused being acquitted in each case, in which conviction was pronounced. **It is inferred that all the alleged accused in the ‘dowry death’ cases are not convicted.**

Table-14

Disposal of Persons arrested under 304B IPC (Dowry Death) by Courts at different levels including Trial Courts during the period 2003 – 2008, in selected districts

Districts		2001	2002	2003	2004	2005	2006	2007	2008	Total
Chennai	Regis. Cases	13	20	18	23	30	32	43	25	204
	Con. Persons	2	1	2	1	0	3	0	0	9
Coimbatore (City)	Regis. Cases	5	21	1	4	3	5	4	6	49
	Con. Persons	0	0	0	7	3	8	5	0	23
Cuddalore	Regis. Cases	9	6	10	6	13	8	3	1	56
	Con. Persons	2	1	3	0	1	0	1	0	8
Dindigul	Regis. Cases	8	2	3	7	5	4	3	3	35
	Con. Persons	2	2	0	0	0	1	0	0	5
Kancheepuram	Regis. Cases	6	9	11	5	12	12	13	7	75
	Con. Persons	2	2	3	3	2	1	0	2	15
Kanyakumari	Regis. Cases	5	11	4	0	1	4	7	6	38
	Con. Persons	1	0	0	0	0	0	0	0	1
Madurai	Regis. Cases	17	14	23	12	7	6	21	14	114
	Con. Persons	3	0	1	5	0	0	0	0	9
Salem (City)	Regis. Cases	3	6	3	9	6	6	2	7	42
	Con. Persons	0	1	1	4	0	0	0	0	6
Sivagangai	Regis. Cases	4	3	4	7	8	2	3	4	35
	Con. Persons	0	0	0	0	0	0	0	0	0
Trichy (City)	Regis. Cases	4	8	0	4	2	6	2	5	31
	Con. Persons	0	0	0	0	1	2	0	0	3
Virudhunagar	Regis. Cases	2	4	3	3	2	1	3	3	21
	Con. Persons	3	1	2	0	1	0	0	0	7

Final Conviction Rate at the level of Appellate Courts

Chennai	Coimbatore	Cuddalore	Dindigul	Kanchipuram	Kanyakumari	Madurai	Salem	Sivagangai	Trichy	Virudhunagar
1.9 %	20.4%	6.2%	6.2%	8.7%	1.1%	3.4%	6.2%	0%	4.2%	14.6%

As per the previous Table, the average number of accused in each 'dowry death case' is little more than 2 persons (2.3). In the period from 2001 to 2008, a total of 204 cases were registered in the Chennai City alone. So, approximately 469 persons might have been charged under the offence. But the appellate Courts confirmed conviction only on 9 persons. **Thus, the final conviction rate in the case of 'Dowry Death' in Chennai City is only 1.9 per cent. In Sivagangai recorded final conviction rate as 0. The highest of 20.4 per cent was recorded in Coimbatore City followed by 14.6 per cent in Virudhunagar District. An abysmal low of 1.1 per cent was recorded in Kanyakumari District.**

Though the average rate of conviction of persons at the state-level in 'trial courts' for the said period was 27 per cent, the average conviction rate for the period from 2001 to 2008, in the case of 'Dowry Death' in the selected 11 districts, after being tried in the 'appellate courts' was only 5.3 per cent. So, it is evident that those convicted in the trial courts are largely let off from conviction in the appellate courts.

The blemished record proves the status of justice delivery system in providing justices to the deceased families of dowry victims.

Table-15

Disposal of Cases under Dowry Prohibition Act by Police in Tamil Nadu during 2003-2008

Year	Total No of cases for Investigation including pending cases	Cases Withdrawn by Govt.	Investigation refused	No of Case in which Investigation Completed				No of cases pending investigation
				Charge Found False / Mistake of fact or Law	Final Report True submitted	Charge Sheet Submitted	Total	
2003	206	0	1	6	4	163	173	32
2004	326	0	5	24	0	233	257	64
2005	257	0	1	13	6	233	252	4
2006	85	0	0	2	12	44	58	27
2007	395	0	2	16	11	293	320	73
2008	335	0	6	25	10	228	263	66
	1604	0	15	86	43	1194	1323	266

Under 'The Tamil Nadu Dowry Prohibition Officer and Advisory Board Rule, 1998', and 'The Tamil Nadu Dowry Prohibition Rules, 2004', the District Social Welfare Officers of the District were appointed as the Dowry Prohibition Officers and they continue to play their role Dowry Prohibition Officers. They alone are the authorized persons to scrutinize the dowry complaints. If the contents of the complaint is within the purview of the Dowry Prohibition Act, they conduct an enquiry to collect evidence from the parties to ascertain the genuineness of the complaint. Then the role of the Dowry Prohibition Officers is to try to take up remedial measures to bring reconciliation. If the remedial measures fail,

then the DPOs themselves can resort to prosecution or recommend the police to initiate prosecution. If the DPO decide to resort to prosecution, then she is entitled to investigate the case and lay charge-sheet.

Reading of the above table with the data of the Table No.16 (titled 'Disposal of Cases under Dowry Prohibition Act by Courts during 2003-2008') **reveals that in no case the Dowry Prohibition Officers laid charge-sheets before the Courts. All the dowry complaints if found genuine were transferred to the police for investigation and the police laid the charge-sheets before the Courts.**

206 cases were with the Investigating Officers in the year 2003 for investigation, which includes the pending cases from previous years. During investigation, only in one case investigation was refused. **It is surprise to know that even after receiving reports from the Dowry Prohibition Officers that the complaints were genuine, charges were found false by police during investigation in 6 cases. The number of charges found as 'false/mistake of fact' raised to 24 in the year 2004, 16 in the year 2007 and a maximum of 25 in the year 2008.** In all these six years, the percentage of cases in which charges found 'false/ mistake of fact or law' to total number of cases in which investigation completed was 5.4 per cent where as this percentage in the case of dowry death was 0.7 per cent and that of 'cruelty by husband and his relatives' was 7.3 per cent.

The consolidated data for six years shows **on complaints under the Dowry Prohibition Act, 9.0 per cent of the cases were dropped between FIR and Charge-sheeting Stage even after receiving reports from the Dowry Prohibition Officers, where as this was 2.1 per cent in the case of 'dowry death' and 12.9 per cent in cases under Sec 498A IPC.**

Of the 206 cases pending in the year 2003, investigation was completed in 173 cases. Thus, the percentage of investigation completed to total number of cases was 84 per cent in the year 2003. The rate of completion of investigation was 79 per cent in the 2004, 98 per cent in 2005 and reduced to 68 per cent in 2006, 81 per cent in 2007 and 78.5 in 2008.

The efforts of the investigation officers need to be appreciated as the number of cases pending investigation was only 4 by the end of 2005. It is observed that only 81 new cases were filed in the year 2006, which may be due to the implementation of the Protection of Women from Domestic Violence Act, 2005.



Table-16

Disposal of Cases under Dowry Prohibition Act in Tamil Nadu by Trial Courts during 2003 – 2008

Year	Total No of Cases for trial including Pending Cases.	Cases withdrawn by Govt.	No of Cases				Pending Trail
			Compounded or withdrawn by parties	In Which Trials were completed / Accused Discharged			
				Convicted	Acquitted	Total	
2003	461	0	3	8	36	44	414
2004	647	0	3	125	145	270	374
2005	607	0	3	68	79	147	457
2006	501	0	1	104	107	211	289
2007	582	0	0	28	91	119	463
2008	691	0	1	30	126	156	534
	3489	0	11	363	584	947	2531

461 cases filed under the 'Dowry Prohibition Act' were pending before the Trial Courts in the year 2003. If both the parties arrived into a compromise with a condition to withdraw all the civil and criminal proceedings against each other, then on the basis of the said compromise, the complainant may withdraw the case. As such, 3 cases were withdrawn by the parties in the year 2003. The number of withdrawn cases remained as 3 in the years 2004 and 2005. One case was withdrawn in the year 2006.

Trials were completed in 44 cases and of which accused were convicted only in 8 cases in the year 2003. Thus, the convicted rate of the cases under the provisions of 'Dowry Prohibition Act' was 16 per cent in the year 2003. The conviction rate jumped to 46, 46, 49 per cent in the successive years 2004, 2005 and 2006 respectively and again dipped to 23.5 per cent in the year 2007 and 19 per cent in 2008. **The average conviction rate for the offence under the Dowry Prohibition Act for the six years in the Trial Courts was 38 per cent, which is much higher than the average conviction rate of 27.3 per cent in 'dowry death' cases and 20 per cent in 'cruelty by husband and his relatives'.**

The 'trial courts' completed the trial and pronounced judgments only in 9.6 per cent of the cases in the year 2003. But the trial completed percentage moved to 42 per cent in the year 2004, 24 per cent in 2005, 42 per cent in 2006 and reduced to 20 per cent in 2007 and 22.6 in 2008. **The average disposal rate of cases under the 'Dowry Prohibition Act' in the Trial Courts for the discussed six years period is 27 per cent. The inference is that the Trial Courts take approximately three to four years for a case to complete the trial and pronounce the judgment.**

Table-17

Disposal of Persons arrested under Dowry Prohibition Act by Trial Courts during 2003 – 2008

Year	Total No of persons arrested under trial including those from previous year	No of persons Whose				% of persons	
		Cases compounded or withdrawn	Trial Completed	Trial pending	No of persons convicted	Whose trials remained pending	Convicted to trial completed
2003	1175	3	165	1007	27	85.7	16.4
2004	1332	5	427	900	195	67.57	45.7
2005	1443	3	310	1130	147	78.31	47.0
2006	1297	3	706	588	596	45.34	84.4
2007	1441	0	346	1095	75	75.99	21.7
2008	1712	6	556	1150	130	67.17	23.4
	8400		2510	5870	1170	69.9	

The average conviction rate of persons by the trial courts in the six years period was 46.6 per cent.

By reading this table and previous table together, the data shows 27 accused were convicted in 8 cases in the year 2003. Thus, approximately 3.4 persons were convicted in each case under the Dowry Prohibition Act in the year 2003. But the approximate number of convicted persons came down to 1.6 in the year 2004 and moved to 2.2 in 2005 and raised to 5.7 in 2006 and reduced to 2.7 in 2007 and went up to 4.3 persons in 2008. Thus, the number of conviction per convicted case was on the high in the years 2006 and 2008. In all the six years, 1170 accused were convicted in 363 cases in which conviction was pronounced in the trial courts, which shows **the average number of persons convicted under the ‘Dowry Prohibition Act’ amongst the pronounced convicted cases was approximately 3 persons.**

4.3.2.4. Perception of Judiciary regarding conviction period

The punishment is supposed to be decided depending upon the gravity of the offence, how the offence was committed; the situational position of the accused at the time of commission of offence and critical analysis of the situation on humanitarian ground.

The Act does not spell out the minimum punishment for the offence under Sec 498A. However, the maximum punishment period is prescribed as three years. Application of law in individual’s mind varies. **So the minimum punishment prescribed by magistrates varies depending upon the individuals and their minds.**

The punishment awarded generally varies from 6 months to 1 year. Very minimal (about one percent of the punished) number of offenders got the maximum punishment of three years. About 5 per cent of the punished were sentenced for 2 years.

The present Criminal Justice System is accused friendly. The Criminal Justice System focuses on protecting the rights of the accused than protecting the rights of the victims. Court system is for the accused and advocates. It is for the survival of lawyers and not for the public or for the victims.

The Justice Delivery System is based on the principle of 'due process'. As per this principle, every one is presumed to be innocent unless the guilt against him is proved beyond reasonable doubt. A citizen should be given fair and reasonable opportunity to challenge the accusations against him and to establish his innocence. In case of doubt, the benefit should always go to the citizen.

The newly appointed judicial officers, mostly women are of the attitude that those who done offences should be punished.

Magistrates interviewed also shared that the punishment given at the trial courts are not at all viewed as punishment. The counsel for the accused gives hope and assurance that the case is shifted from this court to another court in the same campus or in the same district where acquittal is assured. The counsel also assures their clients that even if the case fails in the lower appellate court, there are chances to contest the case in the High Court. On the day of delivery of judgment, bail petition is generally being filed and hence there is no arrest and judicial custody. If the bail petitions are dismissed or not heard on the same day of submission, Bar Council will come to their rescue.

4.3.2.5. Experience of the Judicial Officers while recording the Dying Declaration

All the magistrate interviewed **unanimously stated that their experience of recording the Dying Declaration was very painful and some said that day of taking DD is a sleepless night for them. 99 per cent of the matrimonial cruelty victims in their death conditions or victims of abetment of suicide in the dying declaration, put the blame on themselves for their attempt and always protect the husbands.** The dictum that every woman is sacrificing their life for others is clearly evidenced when their DDs were recorded was the answer of many respondents. There could be many reasons for protecting the husband and his family members. If she survives, she has to live with her husband. Even if she knows she cannot survive, she does not want to push the children's fate to become fatherless and motherless and for the sake of living children she puts the blame on herself. **From the nature of injury, the magistrate recording the DD could ascertain the truth behind the incident whether it was accident or homicide. But the magistrate cannot add the perceived fact in the DD.**

Doctors can record DD. Even in serious cases, the doctors are waiting for the magistrates to record DD. **If doctors record DD, the immediate mind of the victims could have been recorded;** can start the treatment at the earliest if the patient needs sedation. It takes normally 4 hours for them to visit the hospital after receiving the communication. This prime time may be used by the accused to tutor the victims. But, the doctors failed to take up the responsibility to shun themselves from judicial proceedings. They lack moral responsibility and not to take risk themselves. They throw the responsibility on the magistrates.

4.3.2.6. Opinion about guarantee of justice to the victims of matrimonial cruelty

All the magistrates interviewed accept that the justice is evasive to the victims of matrimonial cruelty. They suggested that all the wings of the Criminal Justice System should work in coordination to ensure justice to victims.

4.3.3. Procedure followed by police to register the complaints in the AWPS, particularly the complaints related to matrimonial issues

Interviews were held with the SHOs to understand the procedure adopted to process the complaint petition, their opinion and actual situation about various issues related to implementation of Sec 498A and their suggestions for the effective implementation of the legal provision and ensuring justice to the victims of matrimonial cruelty.

From the interview, the research team observed that there is no uniform procedure being followed in the AWPS. Different procedures are in practice.

Different responses are as follows

- Mostly written complaints are accepted. If any woman comes with the complaint of violence inflicted by her husband or his family members, then the Station House Officer (SHO) conducts a preliminary enquiry on the petition. The expectations of the woman are elicited and accordingly, the action is taken. In many AWPSs, all the complaints received are treated as petitions and recorded in a separate register called "Community Service Register". Enquiry is being carried out. Notice is served to the offender to appear for the enquiry. Conciliation efforts are made initially in 2 or 3 sessions to reconcile the warring couple and family members and counselled to correct themselves. If both the parties decided to lead a congenial life, written statements are obtained. **Some AWPSs have a team of counsellors, representatives of NGOs.** These counsellors are being invited to counsel the parties.
- If the petitioner insists to file her complaints as FIR, the petition will be forwarded to the Dowry Prohibition Officer (DPO). Even if the petition has ingredients for a cognizable offence and to invoke Sec 498A, and even if the petition has no statement about the dowry demand or harassment, the petition is forwarded to the DPO and FIR is registered based on the report of DPO. Unless a green signal is received from the DPO, no FIR is filed under Sec 498A, by the SHO. This procedure is followed strictly by many, since the issue of Circular Memorandum by the Director General of Police in pursuant to the Direction of the High Court in M.P.No.1 of 2008 on 7.7.2008. On filing the FIR, investigation starts and as a part of the investigation process arrest of the accused is made. The SHO who explained the above details stated that in the period of past seven months, no FIR has been filed under Sec 498A.
- In some AWPS, the SHOs classified the petitions into matrimonial disputes which includes issues such as marital discord, incompatibility between the couple, behaviours problems, personality

issues, conflict with -in-laws, and matrimonial cruelty as defined in Sec 498A. Counselling services are extended if the complaint is related to matrimonial disputes. If the complaint is related to matrimonial cruelty, preliminary inquiry is being conducted to assess the genuineness of the complaint and to find out whether the FIR to be lodged has any substance of cruelty as defined in Sec 498A so that frivolous complaints could be screened at the threshold. Based on the preliminary inquiry, FIRs are registered. After registering FIRs, some SHOs are not mechanically arresting the offenders and purposefully give time for the accused to move for bail. Some SHOs use 'not arresting' as a technique to put pressure on the accused to return the stridhan properties of the victims in their possession.

- **In the name of petition enquiry, many times, long panchayats for months together are being held in some stations. The long panchayats forced them to enter into a settlement or the spirit to file FIR subsides during the course of period.**
- Some SHOs if on preliminary inquiry concluded that a prima facie case is made out, then they carefully planned for the arrest of the accused. Even if the accused come with an advocate, they let the accused to go off with the advocate. If necessary, fresh complaint petition is being collected from the victim, to rectify the lapses due to delay in filing FIR. Then, the Investigation Officer prepares remand report quoting the reason for the arrest and get the permission of the Senior Officer for arrest after convincing him/her. On getting the order of arrest, the SHO visits the place of the accused and arrest them.
- One of the SHOs in one district says with frustration that all the cases she filed u/s 498A in that district got acquitted even if she had carried out the investigation perfectly and framed the charge-sheets meticulously. She said that **the arrest and the judicial custody for a minimum of two days atleast should be a punishment for the accused to self-retrospect and repent for his/their act and behaviour and to correct himself/themselves.** Towards this, she shared that she used to plan the arrest strategically at the weekends so as to restrict the move of the accused to apply for bail. She also shared that they were the first one in the criminal justice system with whom the victim pour out all the experiences related harassment and cruelty and inner most feelings and naturally anyone who listens to her plight would certainly show interest in delivering justice to her.
- Few SHOs interviewed shared that if they had concluded to file FIR, **all the names mentioned in the petition would be included as accused as they feared that elimination of anyone would generate suspicion in the minds of the complainant that they took side with the accused and got money from them.**
- Due to delay in filing FIR or refusal to file FIR, many of the victims if educated pursued their complaints with higher authorities immediately and the SHOs have no way but to file FIR as per the directions of the higher authorities.

- Some complainants if they are resourceful enough to hire an advocate, as soon as they file complaint petition before the police, they approach the court, seeking directions to the police to lodge an FIR. The hesitation and delay in lodging the complaint as FIR by the police and the fear that the gap between the filing of complaint petition and registering FIR would at later stage be a ground for the defence to weaken the case are the factors that drive the complainant to seek court direction. Most AWPSs have atleast one court-directed FIR lodged in their stations and the number increases in Madurai and surrounding districts since the functioning of Madurai Bench of Madras High Court. The response of the SHOs towards such complainants varies. One of the SHOs interviewed commented that she felt put down when she was ordered by the Court to register the FIR and remarked that the case would certainly ended in acquittal. The tone is that she feels resented and makes her apathy towards the complainant, which would reflect in her commitment in that case and quality of the investigation.

Thus, it is clear that generally the SHOs hesitate to register FIR if the complaints fall under Sec 498A. It may be due to overburdened work, fear of investigation and more paper work, fear of the statistics, fear of questions from higher authority, frustration due to high percentage of acquittal etc. In one of the districts, the SHO interviewed shared that **the judicial officer made a request not to register matrimonial cruelty cases mechanically as all the cases ended in acquittal due to inadequate evidences and many cases ended in compromised acquittal.**

- **The Supreme Court many times held that the police is duty bound to register FIR on receiving complaints which has ingredients for a cognizable offence. Genuineness of the complaints need not be assessed at the time of submission of petition. The police incharge should not enter into enquiry to find out whether the information mentioned by the victim is reliable and genuine. Failure of the police to register a case or lodge FIR means inaction on the part of the police and abdicating their duties and they have to face imprisonment for their inaction.** Some respondents shared that whenever the victim seeks the High Court for order of direction to lodge an FIR, they received instructions from the High Court and High Officials to register the complaint if it is a cognizable offence and has ingredient to invoke Sec 498A, and the merits of the complaint can be determined at the time of the trial and the credibility of information is not a condition for registering a case. Further, the I/Os have the power to drop action on FIR during the investigation process, based on the findings. In 2008, the High Court of Judicature at Madras in CrI.M.P.No. 1 of 2008 held that the AWPSs should act as a Conciliation Centre and every effort should be made to reconcile and reunite the family; if the complaints made could not be resolved within a period of one week, case can be filed and investigation proceeds. **The understanding of the staff of AWPSs is that ‘petition enquiry’ is allowed for a period of one week and if could not be resolved then the complaint petition can be converted into FIR. Some SHOs while registering FIR, mentioned clearly that the ‘petition enquiry was held and hence the delay**

in filing FIR'. But, such attempt of 'petition enquiry' weakens the prosecution side during the trial. If the victim is really subjected to cruelty, why she participated in the conciliation process was the question raised by the defense counsel. Thus, the different guidance from Higher Courts and the court practices confuses the staff of AWPSs and they have mixed up understandings: Can I file FIR, if the complaint petition made out a cognizable offence under Sec 498A?; Should I carry out preliminary inquiry to assess the bonafide of the complaint? Should I initiate 'petition enquiry' and try for reconcile and reunion?

Another important area that confuses the staff of AWPSs is the order of the High Court in M.P.No.1.2008, which says: "Except in cases of Dowry Death/Suicide and offences of serious nature, the Station House Officers of the AWPSs are to register FIR only on the approval of the Dowry Prohibition Officer". **The correct explanation is that the 'matrimonial cruelty by her husband and his relatives' is a criminal offence of serious nature and hence it should be handled by the AWPSs.** Even if the offences complained of falls under the Dowry Prohibition Act (DP Act) and also under the Penal Code, the police have authority to deal with such offences as police alone are competent to carry on investigation of offences under the Penal Code. As the offences come under the Dowry Prohibition Act, in addition to Penal Code, the Deputy Superintendent of Police is empowered to take up the whole case for investigation and for filing of the charge-sheet. **To entrust the work to any police officer below the rank of DSP is violative of the statutory provisions in the Act and Rules of DPAct.** (But in practice, it is the Sub-Inspector of Police or Inspector of Police who carry on investigation. Even in severe offences such as dowry death and dowry suicide, which are to be investigated by the DSP is generally done by the police of lower rung such as Inspector or sub-inspector) If the offence complained of falls under the DP Act alone, the DPO is the competent person to carry out enquiry. Because of confusion prevails amongst SHOs of AWPSs, some SHOs refer all the complainants to the DPOs and waiting for their approval to file FIRs where as few SHOs do not refer any complaint to the DPO.

Yet another area which confuses the investigation agency is the arrest of the accused. The Circular Memorandum issued by the Director General of Police in pursuant to the Direction of the High Court in M.P.No.1 of 2008 says that: "Arrest in matrimonial disputes, in particular arrest of aged, infirm, sick persons and minors, shall not be made by the Station House Officers of the All Women Police Stations. If arrest is necessary during investigation, sanction must be obtained from the Superintendent of Police concerned by forwarding the reasons recorded in writing". Though it is lawful for the police officer to make arrest of the accused, there are often allegations against the SHOs that they are arresting all the accused persons randomly and mechanically; making unnecessary arrest; misusing the power of arrest; etc., and the power of the arrest need not be exercised at all times. It is a general practice that arrest of the accused and even the suspected persons is part of the

investigation process in any criminal offences. But the need of arrest has to be justified before the Senior Officers only in the cases of matrimonial offences. Few SHOs interviewed shared that the approval of senior officers is not necessary to arrest the husband of the victim, if he is one of the accused. Many responded that the arrest is necessary to gain the confidence of the complainants, and to infuse confidence in them. If arrest is not made, the complainants criticise that the SHOs are biased, taking sides with the accused and fall prey to the money power of the accused. To avoid such criticism, some SHOs routinely try to get arrest orders from higher officials but not actually implement the order of arrest and give time for the accused to get bail from the court. Most of the accused routinely moved the court for anticipatory bail as soon as the complaint petitions are filed against them and immune them from arrest.

The above responses show that the investigating agency is in critical situation. If on petitions, if the SHOs take efforts for reconciliation, the complainants may demand for filing FIR or they move to higher authorities or Higher Courts to get order for registration of FIR. Police has no option but to file FIR. In case, if they file FIR and tries to remand the accused, again they are answerable for taking legal action without making efforts for reunion. If they arrest the accused they are being criticised for misusing the power of arrest. If fail to arrest the accused, again the SHOs are criticised and corruption charges are made against them. They expect clear and concrete directions in all these matters. In the absence of clear and concrete directions, each SHOs adopted their own procedure, which affect the quality of their investigation and prosecution case.

4.4. Research Question No. 4

Whether the perspectives put forth by the Campaign against Sec 498A IPC and related offences are valid or not. (An analysis of primary and secondary data)

The widespread accusations and demands of the Campaign are:

- a) Biggest instrument for elder abuse and used against women; even minors are being arrested
- b) On an average 5 members of the husband's family are implicated in each case
- c) Cases are being filed under false charges
- d) Used as a strategy to extract money from husbands as settlement
- e) Used as a weapon to obtain a divorce from husbands
- f) The alleged accused are innocent until proved guilty and hence should not be arrested
- g) Offences should be made bailable and compoundable and women who file frivolous complaints should be penalised

4.4. a) Accusation regarding widespread arrest of elders, women and minors

Table-18

Age and Sex-wise Distribution of Persons Arrested under 498A IPC
(Cruelty by Husband and His Relatives) during 2003 – 2008

Year	< 18 yrs		19-30 yrs		31- 45 yrs		46-60		> 60		Total		Grand Total
	M	W	M	W	M	W	M	W	M	W	M	W	
2003	0	1	764	129	646	243	353	278	85	59	1848	710	2558
2004	1	0	807	135	805	298	310	130	19	35	1942	598	2540
2005	0	1	825	87	793	212	384	175	97	32	2099	507	2606
2006	0	0	734	106	645	274	366	211	35	21	1780	612	2392
2007	0	0	1316	146	879	319	461	299	59	59	2715	823	3538
2008	1	1	784	237	1140	351	371	300	124	42	2420	931	3351
	2	3	5230	840	4908	1697	2245	1393	419	248	12804	4181	16985
	5		6070		6605		3638		667				
% to total			35.7		38.9		21.4		4.0				
% of female to total in each year			13.8		25.7		38.3		37.2		24.6		

32This table details the age and sex-wise distribution of persons arrested for the offence under Sec 498A IPC. Accused in the age group between 19-45 accounted for 74.6 per cent of the total arrest, in the six years period from 2003 to 2008. Consolidated data for six years shows that **only two males and three females below 18 years were arrested and thus the arrest of minor prevailed though negligible.** 35.7 per cent of the accused were in the age group of 19 to 30 years; 38.9 per cent were in the age group of 31 to 45 years; 21.4 per cent were in the age group of 46 – 60 years **and 4.0 per cent were senior citizens. Amongst the arrested, 24.6 per cent were females and the rest were males. Thus, approximately for every arrest of three men, one female was arrested.** Totally 16985 persons were arrested in 9524 cases in the six years period. In these 9524 cases, a total of 4181 females were arrested. **The inference is that for every two cases, there was an arrest of one female. Of these females, 840 were in the age group of 19-30. Certainly, these 840 females were relatives of the husband excluding mother-in-laws, constituting 5 per cent of the total arrest.** Of the 12804 males arrested in six years, 10138 were in the age between 19 and 45. They must be husbands or other male relatives of the husbands excluding father-in-laws. On assumption that the husbands are arrested in each case, about 614 arrested males were male relatives of the husbands in the age group of 19 – 45. In all the 9524 cases, 4305 persons arrested were beyond 45 years and they were supposed to be parents-in-laws. **If we consider that both the parents-in-laws were arrested together, it took place one in 4 cases. Even if we consider that only one of the parents-in-laws, either mother-in-laws or father-in-laws were arrested, data did not reflect the implication of parents-in-laws in all the registered cases. Thus, parents-in-laws were not roped in all the cases.**

Thus,

- The arrest of children under 18 years was negligible.
- The arrest of senior citizen constituted 3.9 per cent.
- Approximately for every arrest of three men, one female was arrested.
- Parents-in-law are not roped in all the cases

Table -19

Age and Sex-wise Persons Arrested under 304B IPC (Dowry Death) during 2003 – 2008

Year	< 18 yrs		19-30 yrs		31- 45 yrs		46-60 yrs		> 60 yrs		Total		Grand Total
	M	W	M	W	M	W	M	W	M	W	M	W	
2003	0	0	167	21	125	43	67	46	7	8	366	118	484
2004	0	0	210	22	174	40	28	30	5	5	417	97	514
2005	1	0	164	23	43	57	44	32	18	10	270	122	392
2006	0	0	138	12	166	40	54	40	4	3	362	95	457
2007	0	0	191	25	98	47	60	55	20	7	369	134	503
2008	0	1	173	28	107	63	43	55	11	7	334	154	488
	1	1	1043	131	713	290	296	258	65	40	2118	720	2838
	2		1174		1003		554		105				
% to total			41.4		35.3		19.5		3.7		74.6	25.4	
% of female to total in each year			11.2		28.9		46.6		38.1		25.4		

This table details the age and sex-wise distribution of persons arrested for the offence under Sec 304B IPC. Majority of the arrested were in the age group of 19 – 45 years, constituting 76.7 per cent of the accused in the six years period from 2003 to 2008. Consolidated data for six years shows that **only one male person and one female below 18 years were arrested and thus the arrest of minors was almost negligible.** 41.4 per cent of the accused were in the age group of 19 to 30 years; 35.3 per cent were in the age group of 31 to 45 years; 19.5 per cent were in the age group of 46 – 60 years and 3.7 per cent were senior citizens. **Amongst the arrested, 25.4 per cent were females and the rest were males. Thus, approximately for every three men arrested, one female was arrested.**

On considering the average age of marriage of men in Tamil Nadu, the husbands of the deceased generally falls in the age group less than 45, in the ‘dowry death cases’. 1756 men were arrested in this group in 1055 cases filed under Sec 304B, which means that male relatives of husband’s family other than husbands and father-in-laws were included as accused. The female accused in those 1055 cases were 720 of whom 554 were in the age group of 46-60, the highest percentage of females were arrested, **which means that approximately one mother-in-law was arrested in every two cases.** 131 females in the age group of 19 - 30 were arrested, which means that female relatives of the husband’s family other than mother-in-law were included as accused. Generally, father-in-laws must be in the age greater than 45. The data shows 361 males arrested were in the age greater than 45, **which means that approximately 1 father-in-law was arrested for every three cases.**

Thus,

- The arrest of children under 18 years was negligible, in the cases of dowry death.
- The arrest of senior citizen constituted 3.7 per cent.
- Approximately for every arrest of three men, one female was arrested.
- Approximately one mother-in-law was arrested in every two cases and one father-in-law was arrested for every three cases.
- Parents-in-law are not roped in all the cases

Table-20

Age and Sex-wise Persons Arrested under Dowry Prohibition Act during 2003 – 2008

Year	< 18 yrs		19-30 yrs		31- 45 yrs		46-60		> 60		Total		Grand Total
	M	W	M	W	M	W	M	W	M	W	M	W	
2003	0	0	25	7	84	63	61	61	28	24	198	155	353
2004	0	0	97	7	119	38	46	38	4	7	266	90	356
2005	0	0	178	74	80	94	40	35	5	6	303	209	512
2006	0	0	58	8	51	15	28	26	1	6	138	55	193
2007	0	0	211	69	245	113	139	108	50	36	645	326	971
2008	0	0	135	42	161	73	99	74	12	17	407	206	613
	0	0	704	207	740	396	413	342	100	96	1957	1041	2998
	0		911		1136		755		196				
% to total	0		30.4		37.9		25.2		6.5				
% of female to total in each year	0		22.7		34.9		45.3		49.0		34.7		

The Dowry Prohibition Officers are the competent authority to enquire the complaint petitions attracting the ingredients for offences under the Dowry Prohibition Act alone. If the complaints are bonafide, investigation may either be carried out and charge-sheet be filed before the Court by the Officers themselves or forward the same to the Police Officers along with her enquiry report for further investigation and filing of charge-sheets. However, the alleged accused in each petition were ascertained by the Dowry Prohibition Officers.

This table details the age and sex-wise distribution of persons arrested for the offence under the 'Dowry Prohibition Act by Police.

Consolidated data for six years shows that no person below 18 years was arrested and thus the arrest of minors was nil. Accused in the age group between 19-45 accounted for 68.3 per cent of the arrest, in the six years period from 2003 to 2008. 30.4 per cent of the accused were in the age group of 19 to 30 years; 37.9 per cent were in the age group of 31 to 45 years; 25.2 per cent were in the age group of 46 – 60 years and 6.5 per cent were senior citizens. Amongst the arrested, 34.7 per cent were females whereas the per centages were 25.4 and 24.6 in 'dowry death' cases and cases under Sec 498A IPC. Thus, approximately for every arrest of two men, one female was arrested in cases under Dowry Prohibition Act.

Totally 2998 persons were arrested in 1321 cases in the six years period. In these 1321 cases, a total of 1041 females were arrested. The inference is that approximately for every 5 cases, there was an arrest of 4 females. **Of these 1041 females. 207 were in the age group of 19-30. Certainly, these 207 females were relatives of the husband excluding mother-in-laws, constituting 7 per cent of the total arrest.** Of the 1957 males arrested in six years, 1444 were in the age between 19 and 45. They must be husbands or other male relatives of the husbands excluding father-in-laws. On assumption that the husbands are arrested in each case, about 120 arrested males were male relatives of the husbands in the age group of 19 – 45. In all the 1321 cases, 951 persons arrested were beyond 45 years and they were supposed to be parents-in-laws. Even if we consider that only one of the parents-in-laws, either mother-in-laws or father-in-laws were arrested, data did not reflect the implication of parents-in-laws in all the registered cases.

The arrest of senior citizen constituted 14.7 per cent in the year 2003; 3.1 per cent in 2004; 2.1 per cent in 2005; 3.6 per cent in 2006, 8.9 per cent in 2007 and 4.7 per cent in 2008.

Thus,

- **The arrest of children under 18 years was nil in cases registered under the Dowry Prohibition Act**
- **The arrest of senior citizen constituted 6.5 per cent.**
- **The arrest of family members other than parent-in-laws was only 11 per cent.**
- **Approximately for every arrest of two men, one female was arrested in cases under the Dowry Prohibition Act.**
- **Parents-in-law are not roped in all the cases**

See the Appendix 1 to view the sex-wise classification of number of persons arrested under Sec 498A IPC, Sec 304B IPC and the Dowry Prohibition Act during 2003 – 2007 in the study districts.

4.4.b). Whether more number of husband's family members are being implicated in each case

Most of the magistrates interviewed commented that the complainants are implicating the in-laws, distant relatives and married sister-in-laws residing in distant places as accused.

The Station House Officers of AWPSs shared that generally the accused in each case is approximately 2 or 3 persons. Some of the SHOs shared that even if the complainants marked many as accused in their complaint petitions, they used to explain the need for restricting the number of accused, insist them to restrict only the real accused and not to include the extended family members and see to it that not more than 2 offenders are included as accused in the complaint petitions.

Table-21

**No of Cases, No of Persons Arrested and Average Persons arrested
under 304B IPC, 498A IPC and Dowry Prohibition Act in Tamil Nadu during 2003-2008**

Year	Cruelty by Husband			Dowry Death			Dowry Prohibition		
	No. of cases	Person arrested	Average no of Person in each case	No. of cases	Person arrested	Average no of Person in each case	No. of cases	Person arrested	Average no of Person in each case
2003	1565	2558	1.6	220	484	2.2	175	353	2.0
2004	1437	2540	1.8	225	514	2.3	294	356	1.2
2005	1650	2660	1.8	215	492	2.3	193	512	2.7
2006	1248	2392	1.9	187	457	2.4	81	193	2.4
2007	1976	3538	1.8	208	503	2.4	316	971	2.6
2008	1648	3351	2.0	207	488	2.4	262	613	2.3
	9524	17039	1.8	1262	2938	2.3	1321	2998	2.3

This table gives answers to many of the comments/remarks raised by the campaign against Sec 498A and judiciary. The courts often complain that a large number of cases under Sec 498A IPC are being filed and the courts are flooded with such complaints relating to cruelty and dowry harassment. Another widespread charge is that the petitioners are exaggerating the incident and implicating all the innocent family members as accused causing immense suffering to the innocents.

Almost an equal number of cases were filed under Sec 304B for dowry murder and under Dowry Prohibition Act. The number of accused in both the incidents of dowry murder and offences under the Dowry Prohibition Act was little more than 2 persons (2.3). The number of accused was 1.8, less than two in the incidents of 'cruelty and dowry harassment under Sec 498A'.

The Hon'ble Justice J.D.Kapoor of Delhi High Court commented upon the misuse of the provisions of Sec 498A/406 IPC by women complainants and the investigating agency in his order and observed that there is a growing tendency amongst the women to rope in each and every relative including minors and even school going kids nearer or distant relatives and in some cases grand-parents or as many as 10 to 15 or even more relatives of the husband.

Thus, the data is not supporting the charges made by the campaign against Sec 498A and the judiciary that more number of persons including distant relatives, friends are being implicated in matrimonial offences. May be in rarest of the rare case, the number of accused may be more than 5 persons.

4.4. c) Filing of cases under false charges

Views of key actors of Criminal Justice System, the direct implementers of legislation pertaining to matrimonial Offences such as police, prosecution officers and judicial officers regarding false complaints/cases relating to cruelty and dowry harassment from a gender lense.

(i) Views of Station House Officers of All Women Police Stations

Almost all the SHOs of AWPSs opined that no woman without experiencing actual harassment approach the police station and insist to file a case against the offenders and distress themselves in the fight to acquire justice for the sufferings.

Some sections of people seeking the help of police for their matrimonial cruelty but do not want to file FIR as they cannot sustain themselves economically. Their deep rooted values and culture do not permit them to adopt the legal option. They also fear the consequences of registering a complaint as their partners will further harm them. A high percentage of petitioners, the women victims of petty quarrels, marital discord, ego clashes, marital incompatibility, sexual abuse by family members, experiencing violence without major injury and violence by husbands under the influence of alcohol and drugs are counselled and persuaded to reconcile.

Many women suffer the harassment and cruelty silently to preserve the marriage and protect the family. They refrain themselves from speaking out to others, even to parents. Once the violence level exceeds their capacity to tolerate, such women approach the police in the heat of the moment, but lack evidences.

There are very few women who do not want to continue the marriage because of incompatibility. They are guided by their counsel to use the provision of Sec 498A and the Dowry Prohibition Act. But such complaints are mostly not converted into FIR and the petitioners are counselled to resolve the areas of incompatibility. Even if such petitions are registered as FIR, during the investigation such charges are found false and will not reach the stage of charge-sheet. Thus, there may be false complaints, inflated charges but not false cases.

They all stated that the conviction of the offenders is determined mostly by the courts and judicial officers and **shared that acquittal cannot be equated to false complaints.**

(ii) Views of Prosecution Officers

About 30 per cent of the respondents shared that the education and economic independence of the women reduces their tolerance capacity to the indifferences with the family members and acts as a catalyst to seek legal remedy. However, they do not deny the increasing incidents of matrimonial violence and cruelty in the families. Yet, they blamed that rather than making efforts to resolve the underlying causes for the violence and safeguarding the family unit, the aggrieved women prefer to take legal recourse.

Some of the prosecution officers interviewed have one or other case histories to quote the misuse of Sec 498A and passed a generalized statement that women are misusing the provision. About 10 per cent of the prosecution officers interviewed shared that the complainants are misusing Sec 498A. On delving further, they shared that they misuse the section by implicating large number of their husbands' family members **But the actual data discussed earlier does not support their statements (Table 21).**

All the prosecution officers accepted that 99 per cent of the cases were filed by genuine victims of matrimonial cruelty. There may be innocents other than husbands included as accused which may extend to 5 per cent of the total accused. The investigation officers could identify such innocents and dismiss them from the cases based on their investigation, for which the investigation officers (I/Os) have the powers.

(iii) Views of Judicial Officers

Women in our country prefer not to report domestic violence, particularly matrimonial violence to others so easily as they want to keep their families together. They suffer in silence for the sake of their children and fear that they will lose their family if they seek help from others. Even if her husband and his family members demand for additional amount or jewels, her parents used to meet the demands more often by selling the family property to save the marriage of their daughter and to protect her from violence. When the harassment and cruelty goes beyond the threshold limit of her tolerance level, she used to speak out her plight and that too as a last resort she will seek the outside agencies for help. But, this threshold limit may vary from individual to individual. Thus, only a minimal percentage of the victims of matrimonial violence are coming out to file a case in the police station. She may not know the court procedure and the nuances of the law. But she very well knows that the path to seek justice is not smooth. Yet, the attitude to seek legal remedy shows the confidence she has on the justice system. She believes that the offender could be successfully prosecuted in court of law.

Almost all the judicial officers shared that in no case, the complainants register a false FIR at a police station against others out of vested interests. **There is no case under Sec 498A, without ingredients of cruelty. But in order to express their intensity of the harassment they had in their matrimonial life, the victimised women (5 to 10 per cent) weave an additional charge of demand of dowry.** This is true when the complainants was actually subjected to physical and mental cruelty, and they implicate more family members in addition to the real perpetrators, in order to question the family sanction to implicate violence on her. But, in reality, the victims cannot prove this invisible consent for the visible torture.

Acquittal does not mean that the accused are innocents and the charges filed against the accused are false and not genuine. Being a matrimonial cruelty, the complainants have little

evidence as proof. If complainants are pre-planned to seek legal remedy, they might have created the evidences systematically. **Thus, the cases get acquitted just because the prosecution fail to prove the guilt due to lack of evidence or the prosecution cannot prove the guilt beyond reasonable doubt.** When suspicion arises due to contradiction, the benefit of doubt is always given to the accused. **Thus, even if the trial proceedings made it clear that the charges were made out, it failed to support legally due to technical and procedural lapses.**

This is evident from the rate of acquittal (20 to 25 per cent in the lower court and about 3 per cent in the appellate courts).

4.4.d). Misusing Sec 498A as a strategy to extract money from husbands and to obtain divorce from husbands

(i) Responses of Prosecution Officers

30 per cent of the cases filed under Sec 498A ended in compromised acquittal. Both the parties entered into a settlement on conditions of return of dowry and compensation for dissolution of marriage and other terms. About one percent of them file petitions before the court to compound the case as a legal remedy, stating that they have entered into compromise. They prepare documents as if the dowry had been returned and the compensation amounts were settled.

The reality is that many a times, the terms of compromise are violated by the husbands and their family members and the women rarely benefit at the end. With the witnesses and PW1 turning hostile, the accused easily get acquitted from the case and the women hardly get back the jewels and compensation as stated in the settlement deed.

All the prosecution officers also affirmed that it is the right of the women to claim compensation from husbands on the event of settlement based on dissolution of marriage.

One of the prosecution officers interviewed shared that the complainant had a case pending before the Family Court for dissolution of marriage. Her husband rejected her plea and the case remained pending for many years. She used Sec 498A as a weapon so as to put pressure on her husband to be yielded to her demand of dissolution of marriage. This has to be viewed as an extended violence exerted on the women which justify the application of the provision of Sec 498A.

The out of court settlements (30 per cent) only indicate that women are willing to free themselves from the ongoing matrimonial cruelty. Though, the breaking of the relationship adds their vulnerability, they prefer to come out of the marriage in lieu of the compensation given by the respondents. This figure only indicates the intensity of the violence on which the institution of marriage exists. If woman wants to continue matrimonial relationship, she has to subjugate herself to the violence. **Thus, we need to interrogate the very nature of the jurisprudence, which is not always in favour of women.**

(ii) Responses of Judicial Officers

There may be very minimal number of complainants, for about 1 to 2 per cent who register a case under Sec 498A, to put pressure on their husbands to settle the cases pending in other courts seeking relief of divorce.

While the case is pending before the Court, the parties of litigation compromised among themselves by way of settlement with or without informing the court. In such cases, the compensation amount and other terms of settlements are decided by the parties themselves. **Almost all the judicial officers stated that the charge against women that they are using Sec 498A as a strategy to extract money from husbands is unjustifiable as the women are entitled to claim compensation from her husbands in case of dissolution of marriage.**

4.4. e). *The alleged accused are innocent until proved guilty and hence should not be arrested*

(i) Responses of the Station House Officers

Most of the SHOs interviewed referred the Circular Memorandum issued by the Director General of Police in pursuant to the Direction of the High Court in M.P.No.1 of 2008, which says that: "Arrest in matrimonial disputes, in particular arrest of aged, infirm, sick persons and minors, shall not be made by the Station House Officers of the All Women Police Stations. If arrest is necessary during investigation, sanction must be obtained from the Superintendent of Police concerned by forwarding the reasons recorded in writing".

Though it is lawful for the police officer to make arrest of the accused, there are often allegations against the SHOs that they are arresting all the accused persons randomly and mechanically; making unnecessary arrest; misusing the power of arrest; etc.; and the power of the arrest need not be exercised at all times.

Many shared that it is a general practice that arrest and judicial custody of the accused and even the suspected persons is part of the investigation process in any criminal offences, cognizable in nature. But the need of arrest has to be justified before the Senior Officers only in the cases of matrimonial offences. Few SHOs interviewed shared that the approval of senior officers is not necessary to arrest the husband of the victim, if he is one of the accused. Many SHOs responded that the arrest is necessary to gain the confidence of the complainants, and to infuse confidence in them. If arrest is not made, the complainants criticise that the SHOs are biased, taking sides with the accused and fall prey to the money power of the accused. To avoid such criticism, some SHOs routinely try to get arrest orders from higher officials but not actually implement the orders of arrest and give time for the accused to get bail from the court. **They also shared that most of the accused routinely moved the court for anticipatory bail as soon as the complaint petitions are filed against them and thus they immune themselves from arrest.**

(ii) Responses of Prosecution Officers

The police is not using their 'power to arrest' judiciously. Some Station House Officers are using their power to arrest as a tool to extract money from both the parties. Some Station House Officers are strategically planning to arrest the accused at the weekend, so as to restrict their move to apply for bail.

(iii) Responses of Judicial Officers

Most of the magistrate severely criticized the role of police on their power to arrest. No doubt, an offence under Sec 498A IPC is cognizable and hence the police has the power to arrest the offenders without a warrant. But the CrPC provision clearly states that only if necessary, the police should arrest the offender. The provision says that '**the police officer may arrest without warrant**'. The usage of word 'may' and not '**shall**' clearly shows that the police need not arrest. "Just because, they have the power to arrest, they mechanically arrest all the persons mentioned in the complaint petition; the routine act of arrest closes all the doors for conciliation"- were the statements of many respondents.

Many Magistrates stated that the power of arrest vested with the police should be judiciously used only if they strongly opined that the arrest is needed to carry out the investigation process without obstruction and the non-arrest of the offenders will influence the investigation overtly or covertly. Even if the police arrive to the conclusion that the complaint is bonafide and genuine, they need not use the power of arrest, as such act would complicate the issue. Hence, the power of arrest should not be used mechanically in all the cases. They also commented that the power of arrest was one of the sources of corruption in the police and not serve as deterrence in the minds of the offenders.

4.4.f). Offences should be made bailable and compoundable and women who file frivolous complaints should be penalised

(i) Opinion of Prosecution Officers:

All the prosecution officers were against amending Sec 498A as a bailable offence since such amendment will remove the fear component in the society, particularly the perpetrators of matrimonial violence.

About half of the respondents were against making the offence as compoundable. By doing so, much pressure will be exercised on the already victimised women to enter into compromise.

(ii) Opinion of Judicial Officers:

All the magistrates except one are against amending Sec 498A to make it as a bailable offence. By doing so, the minimal deterrent effect it has gets depreciated. Already, the incident of matrimonial cruelty is increasing and by amending it as bailable reduces the gravity of the offence. The removal of fear of arrest intensifies and further increases the incidence of matrimonial violence. Further, the very purpose of introducing Sec 498A gets diluted.

They also admitted that many get anticipatory bail and immune themselves from arrest. **Supreme Court has instructed the Sessions Court and the High Courts to grant anticipatory bail anytime as long as the accused has not been arrested for an offence and not to deny bail.** Even if the alleged accused are arrested and remanded, on the same day the accused file bail petitions and sooner they get bail.

Already amendment in Sec 498A IPC was passed, making it compoundable with permission of the Court. Hence, majority opined that there is no need to make the offence compoundable. Others are of the opinion that it can be made compoundable to save the institution of marriage.

Thus, the above discussion disprove the campaign arguments against Sec 498A IPC.



Chapter -V

Findings and Recommendations

5.1. Key Findings

5.1.1. Prevalence and Trends of Matrimonial Offences

- Within the data of crime against women from 2003-2008, the incidence of matrimonial cruelty is the highest and there is an increasing trend. (Table 1)
- ‘Abetment of suicide’ (a crime under Sec 306 IPC) accounted for the bulk of the crime against women in the matrimonial relationship. Yet, this grave offence against women is not categorised as a separate ‘crime head’, and the data is suppressed under the category of ‘suicides’. (Table 1)
As per the police report, 4718, 4893, 4569, 4872, 5124 and 5337 females committed suicides in the year 2003, 2004, 2005, 2006, 2007 and 2008 respectively, which shows an increasing trend. The above finding needs further investigation as it is different from the statistics from the Kilpauk Medical College and the opinion given by a senior professor of the Department. According to him “less than 5 per cent of fatal burns cases are caused by dowry harassment. Abetment of suicide forms another 50 per cent. The rest of the cases are suicidal”.
- An increasing trend in the range of 50 per cent to 200 per cent in registration of cases of ‘cruelty by husband and his relatives’ under Sec 498A from 2001 to 2008 in 8 districts out of 11 study districts was registered. (Table 1)
- On an average only one dowry death case is being registered by the police in each district for every two months. (Table 1)
- On an average approximately 7 cases under Sec 498A were filed in the period of 12 months in each AWPS, less than a case per month (Table 6).
- Even if all the cases under Sec 498A, the Dowry Prohibition Act and Sec 304B are brought together, each AWPS investigated not more than 2 cases per month.
- The investigations of cases under the ‘Dowry Prohibition Act’ are investigated and charge-sheeted by the police though the DP Act empowers the DPOs to investigate and file charge-sheets.
- On an average each AWPS receives approximately 30 petitions per month regarding matrimonial issues. But actually, less than 3 per cent of the complaints related to matrimonial issues are converted into FIRs.

- The strong connection between Sec 498A and Sec 304B is established. The district-level data of many districts affirm that “If the cruelty is not dealt in time, it will lead to death of the women”. Lower the registered incidents of “cruelty by husband and relatives”, higher the registered incident of dowry death under Sec 304B was observed in many districts (Table 2 & 3).

5.1.2. Socio Economic Background of the Litigants

- The complainants are from all religious and educational background. Mostly, the illiterate and less literate are subjected to more physical cruelty. Mental cruelty is generally more prevalent among the educated. Sexual torture, the most sensitive issue is the underlying factor in many cases of the mental cruelty. Alcoholism, extramarital relationships added fuel to the mental cruelty. Many women are victims of paranoid behaviour of their husbands.

The illiterate, lower economic status and economically dependents are more vulnerable to torture by their husbands. Yet, they want to live with the abusing husbands as they have little option to live independently. Such complainants approach the police station with a request to threaten the husbands to mend themselves and refrain from inflicting cruelty on their wives. They are not opting to file cases against their husbands.

- The economically well off women rarely approach the police station and they prefer to settle the issue directly through court.
- Higher number of complaints is received from petitioners within one or two years of marriage.

5.1.3. Efficacy of the implementation of Sec 498A IPC and related offences in Tamil Nadu

- About 3 per cent of the complaints related to matrimonial issues are converted into FIRs by the Station House Officer in each AWPS. **The data reiterate the under-registration of matrimonial offences.**
- The average conviction rate for the offence under Sec 498A IPC in the Trial Courts was 20 per cent (Table 7). The final conviction rate in the ‘appellate’ court declined to 3.2 per cent, which shows that the appellate courts in most cases reversed the orders of conviction pronounced by the lower Courts (Table 9).
- The average disposal rate of cases under Sec 498A IPC in the Trial Courts is 23.5 per cent in each year. The Trial Courts take approximately four years for a case to complete the trial and pronounce the judgment (Table 7).
- The average number of persons convicted amongst the pronounced convicted cases under Sec 498A IPC was 2.2 persons in each convicted case (Table 8).
- The average conviction rate in trial courts for offences under Sec 304B (Dowry Death Case) was 27.3 (Table 11). However, the average conviction rate in the case of ‘Dowry Death’ after being

tried in the 'appellate courts' was only 5.3 per cent (Table 14). Thus, it is evident that those convicted in the trial courts are largely let off from conviction in the appellate courts.

- The trial courts could complete the trial and pronounce the judgment only in a maximum of 29 per cent of the cases each year. Thus, the trial courts take an average period of more than three years for each 'dowry death case' to complete the trial (Table 11).
- The average number of persons convicted amongst the pronounced convicted cases for offences under Sec 304B was 2.2 persons per case (Table 13).
- The average conviction rate for the offence under the Dowry Prohibition Act in the Trial Courts was 38 per cent (Table 16).
- The average disposal rate of cases under the 'Dowry Prohibition Act' in the Trial Courts is 27 per cent. Thus, the Trial Courts take approximately three to four years for a case to complete the trial and pronounce the judgment (Table 16).
- The average number of persons convicted under the 'Dowry Prohibition Act' amongst the pronounced convicted cases was approximately 3.2 persons in each case (Table 17).
- 12.9 per cent of the cases filed under Sec 498A, 2.1 per cent of the cases filed under Sec 304B and 9.0 per cent of the cases filed under the Dowry Prohibition Act were dropped by the Investigation Officers between FIR and Charge Sheet Stage (Table 6, Table 10 and Table 15).
- In no case the Dowry Prohibition Officers laid charge-sheets before the Courts. All the dowry complaints if found genuine were transferred to the police for investigation and the police laid the charge-sheets before the Courts (Table 15).
- The data does not support the Judicial Officers' view that 30 per cent of the cases ended in compromised acquittal. As per record, only about 1 per cent of the cases under Sec 498A were compounded legally.

5.1.3.1. Procedural lapses and the victimisation of women litigants

- Failure on the part of the Station House Officers to register the complaint petition from the victims of matrimonial cruelty lead to abetment of suicide or dowry death.
- The filing of FIR and the investigation process act as a deterrent force which drive the parties of the litigation to enter into compromise and in such instances, the investigation agency submits the report before the Court as 'mistake of fact / mistake of law or charge found false', thus giving a picture that the victim of cruelty filed a false complaint.
- A greater number of accused are acquitted simply due to lapses in investigative procedure, technical and procedural lapses on the part of the I/O, failure to prove the guilt beyond reasonable doubts due to lack of evidence and failure of witnesses to support the case.

- Delay in delivery of judgments as well as denial of justice has been plaguing the Criminal Justice System. Delays in the administration of justice also pave way for the accused going scot-free as the witnesses forget events and are unable to repeat their statements made before the police during the time of investigation, thereby leaving room for contradictions and doubts about the authenticity and reliability in their statements.
- The chief of the witness is taken on one day and the defense counsel intentionally cross-examines the witness after a gap of many days so that the witness gets confused and contradicts one's own statement.
- Frustration and disappointment due to prolonged trial proceedings forced the litigant to accept the settlement offer imposed by the accused.
- On many occasions, the SC held that the statement of PW1 - the victim alone, if strong enough to prove the guilt of the offence is enough to punish the offender. However, most judicial officers insist that the witness should corroborate the PW1 statement.
- Only in the rarest of rare cases, the aggrieved victim goes on appeal against any order passed by the court acquitting the accused, whereas all the convicted accused go on appeal against the conviction orders passed by the court.
- The judicial officers are not sensitive to the pain and plight of the victims and carry out the trial proceedings without sensitivity.
- The certainty of punishment for violating the laws, for inflicting cruelty on the women alone can make a citizen abide by the law. By not punishing the offender, the poor victim women are denied justice. Majority of the victims who have been denied justice suffer untold agony in silence, feeling helpless.
- The problems of lack of proper infrastructure and insufficient staff supports in courts puts tremendous burden on every judicial officers and it hampers the justice delivery system.
- Till recently, there were periodical review meetings for the Judicial Officers headed by their higher authorities. The judicial officers will be questioned if found higher percentage of acquittal. The fear of 'order of transfer' persists in their mind. Such review meetings are not taking place at prese and the reasons for acquittal are not analysed and reviewed.
- Each wing of the criminal justice system should understand their roles and limitations and act lawfully without violating their profession code of ethics. It is sad to note that, due to lack of coordination and failure to uphold their duties and responsibilities, justice is denied to the victims.
- The scanning of 'Crime Review Reports of Tamil Nadu' shows that the data related to abetment of suicides due to matrimonial cruelty, which attracts Sec 306 IPC is suppressed under the category of 'suicides'.

- All the marriages are not registered and the litigants find it difficult to prove the marriage in the court of law, before establishing the matrimonial cruelty against the offenders.
- Due to workload and time consuming procedures, many of the fit cases for appeal lost its due consideration.

5.1.4. Validity of the claims made by the Campaign against Sec 498A

- Majority of the arrested for the offence under Sec 498A IPC were in the age group of 19 – 45 years, constituting 74.6 per cent of the accused. Only 2 male and 3 female below 18 years were arrested and thus the arrest of minors was almost negligible. 4.0 per cent were senior citizens above 60 years. Approximately for every three men arrested, one female was arrested. Parents-in-laws were not roped in all the cases (Table 18).
- Majority of the arrested for the offence under Sec 304B IPC were in the age group of 19 – 45 years, constituting 76.7 per cent of the accused. Only one male and one female below 18 years were arrested and thus the arrest of minors was almost negligible. 3.7 per cent were senior citizens above 60 years. Approximately for every three men arrested, one female was arrested (Table 19).
- In the period of six years, two males and three females below 18 years were arrested for the offence under Sec 498A. Amongst the arrested, 4.0 per cent were senior citizens and 24.6 per cent were females (Table 19).
- No person below 18 years was arrested for offence under the Dowry Prohibition Act. Amongst the arrested 6.5 per cent were senior citizens and 34.7 per cent were females. Approximately for every arrest of two men, one female was arrested in cases under Dowry Prohibition Act. Parents-in-laws were not roped in all the cases (Table 20).
- The number of accused in the incidents of dowry murder and offences under the Dowry Prohibition Act was approximately 2.3 persons. The number of accused was 1.8, less than two in the incidents of 'cruelty and dowry harassment under Sec 498A' (Table 21). Thus, **the data is not supporting the charges made by the campaign against Sec 498A and the judiciary that more number of persons including distant relatives, friends are being implicated in matrimonial offences. May be in rarest of the rare case, the number of accused may be more than 5 persons.**
- All the representatives of the Criminal Justice System interviewed shared that no woman without experiencing actual harassment approaches the police station or court to redress the grievances. All opined that there **may be false complaints, inflated charges but not false cases.** They all shared that acquittal cannot be equated to false complaints. Acquitted does not mean that the accused are innocents and the charges filed against the accused are false and not genuine.

- Most of the accused routinely moved the court for anticipatory bail as soon as the complaint petitions are filed against them and thus they immune themselves from arrest.
- All the prosecution officers were against amending Sec 498A as a bailable offence since such amendment will remove the fear component in the society, particularly the perpetrators of matrimonial violence.
- Majority opined that there is no need to make the offence compoundable as amendment in Sec 498A makes it compoundable with the permission of the Court.
- The punishment awarded generally varies from 6 months to 1 year. Very minimal (about one percent of the punished) number of offenders got the maximum punishment of three years. About 5 per cent of the punished were sentenced for 2 years.

5.1.4.1. The major impediments in the implementation of Sec 498A which favours the accused than the victims

- The prime investigation wing AWPS lacks clear direction to investigate and prosecute the offences.
- There is overlapping roles between the Dowry Prohibition Officer and SHOs.
- There is clear lack of gender and legal perspectives on the part of the investigation team to guide the victim; they are either directed to compromise, file case under the Dowry Prohibition Act. The onus of proof for the violence underwent is indirectly vested on the victims and in case of failure to provide the evidences, Sec 498A is never sought to deal with the situation of the client, even if there are enough ingredients to evoke Sec 498A.
- The investigation agency lacks perseverance, professional skills to strengthen the case from FIR to charge-sheet, even if there is prima facie evidence.

Discussion

- At the cost of the petitioner, the respondent is able to seek legal remedy in favour of himself in spite of having committed the offence due to systemic or inbuilt lacunae in the procedural aspects and the apathy prevailing in the minds of the investigation team, to view matrimonial cruelty as a human rights violation. In other words, the present system denies justice to women at the stage of investigation itself and it is further reiterated by the judiciary and prosecution.
- In cases of death or suicide, the victims never give their consent to penalise the offender. While giving dying declaration, 99 per cent of the victims never disclose the abettor (husbands and his family members) and erase the evidence by their own testimonies. When this is the situation, the campaign against Sec 498A claims that women are penalising the husbands and relatives.
- From converting the complaint petition to FIR and further to charge-sheet, there is no diligence or professionalism in collecting material evidences, conducting enquiries to validate the claims made

by the victims. The complaint is mostly reduced to settlement or compromise or pushing the women to the arms of the court. This takes time for both the complainants and the respondents. But the respondent gains sympathy as there is a sanction for matrimonial cruelty in the society and the case gets diluted to the level that it is seen as the respondent was unnecessarily dragged for a false case. There needs to be serious overhauling of criminal justice delivery system. The above analysis clearly disproves the claim that all the acquitted are innocents. In this process, the women victims are doubly victimised.

5.2. Recommendations

‘Truth’ is the very soul of justice. But unfortunately, when the investigating agency, prosecution agency and the judicial system is unable to arrive at the truth or uphold it for various reasons, delivery of justice is denied to the victims. To ensure justice to victims of matrimonial cruelty and to strengthen the effective implementation of Sec 498A of IPC the following recommendations are made based on the findings and the experiences of the study team.

5.2.1.To the Police / State Administration

- Police should ensure to register the FIR, if the complaint petition provides sufficient grounds (physical and mental cruelty) for filing it under 498A. The concerned SHOs must educate the complainants about the need for documenting the facts of the incidences in the petitions.
- The SHOs should guide them with concern to implicate limited members as accused, with an intention to deliver justice to the victims.
- Advocates and petitioners should be guided not to include dowry charge in their complaint petitions in the absence of dowry harassment.
- The SHOs of AWPSs should be made clear that the approval of Dowry Prohibition Officer to file FIR is essential in offences that attract only the provisions of the Dowry Prohibition Act.
- Investigation of matrimonial offences should be undertaken by higher police officials not below the rank of Sub Inspector.
- As a measure to strengthen the investigating machinery and expedite the process of investigation and enhance the quality of the investigation by capacitating their skill, the investigating wing should be separated from law and order wing.
- The investigating wing should have a law professional so that a procedural and technical lapse that weakens the prosecution could be checked at the earliest.
- The investigation team should be supervised by higher officials and should be provided with necessary infrastructure, adequate personnel and logistics to carry out their role.

- Investigating agency should limit the number of witnesses.
- To prevent the witnesses from turning hostile later, the statement given by the witness before the investigation officers may be signed by the witnesses and a copy of the same may be allowed to be given to the witnesses and appropriate action should be taken against the defaulting I/Os.
- In the same way, there must be space for the parties of litigation for compromising themselves during the investigation process after registering FIRs with the permission of Superior Authority of the Police to avoid concluding the case as mistake of facts. Video recording of statements of witnesses should be encouraged.
- The investigating agency should come forward to request the court to record the statement of important witnesses during investigation to strengthen their case and to avoid being tampered.
- Appearance of Investigation Officers should be made compulsory during the trial proceedings to identify the lapses in the investigation process.
- Police should be properly trained to carry out the investigation in a professional and scientific manner, avoiding technical and procedural errors which favour the acquittal of the offenders.
- Social Workers / mediators with experience in counselling and conciliation skills and legal knowledge should be appointed in each AWPS along with Dowry Prohibition Officers and they should be part of the investigation team.
- Effective coordination between the investigation agency and prosecution agency should be ensured and the approval of APP before filing charge-sheet should be made mandatory to correct the limitations in the investigation and preparation of charge-sheet and to enhance the veracity of the case in the trial proceedings.
- Time limits should be prescribed for filing of charge-sheet, framing charges, completion of trial proceedings and pronouncement of order and the prescribed time limits should be strictly followed.

5.2.2. To the Judiciary

- In-camera trials should be adopted as the victims of cruelty hesitate to share many of the sensitive issues related to the offence in the open court due to modesty and repressing the valuable information weaken the case and question the bonafide of the testimony.
- With the permission of court, the victim should be permitted to engage her own counsel to help the prosecution officer.
- Nowhere in the law pointed out that the presence and participation of offenders in the trial proceedings is the punishment for the offenders to reform themselves. The judicial officer who is given authority to determine the guilt and punish the offenders should enforce the law in letter and spirit so that it has its deterrent effect and ensure justice to the victims.

- The law should be enforced firmly without fear, favour, malice or vindictiveness. The judicial officers should recognise and respect their powers and functions with a conviction to deliver justice.
- The judicial officers should not insist that the PW1 statement should be corroborated by the witnesses.
- The witnesses are entitled to claim witness bata and the witnesses should be ensured of witness bata.
- The witnesses should not be treated as criminals and the judicial officers should control the cross-examination of the defense counsel.
- Trial must be conducted continuously on a day to day basis and the deposition of the witness and cross-examination of the witnesses should be taken place on the same day.
- Just and appropriate punishment adequate to reform the criminals and to uphold judicial integrity should be ensured. The punishment should act as a deterrent force for the public not to indulge in matrimonial violence

5.2.3. To the Policy Makers

- A specific complaint format and a standard format to record the statement of the witnesses must be developed.
- The Dowry Prohibition Officers should be specially appointed in each All Women Police Station. The Dowry Prohibition Officers should have an educational qualification in law.
- Gender training should be imparted to all the key actors of Criminal Justice System.
- Kerala and Karnataka have the practice of filing the FIR in the court and based on the FIR, the trial follows. The I/Os need not prepare a CD file and thus, the workload of the I/Os is reduced considerably. If the witnesses give proper evidence to establish the guilt of the accused and the case was proved, the accused is convicted. Such practice may be adopted in Tamil Nadu too.
- 'Victim Fund' should be generated from the corpus fund given by the State and the fine amount collected from the accused and the victim of matrimonial cruelty should be entitled to claim compensation from the 'victim fund'. The procedure to fix the amount should be framed. The victims should be educated that they are entitled to claim compensation from the 'victim fund'.
- Doctors should be instructed to record the Dying Declaration at least in times of emergency.
- The minimum punishment for offences under Sec 498A should be prescribed and should not be less than one year. Maximum punishment for offences under Sec 498A should be enhanced to five years and the Magistrate Court should be empowered to try all offences having punishment period of maximum five years.

- The maximum fine amount limit of the Magistrate Court is Rs.5000/-. This amount was fixed long back. Considering the present situation, the fine amount limit should be revised and enhanced.
- There is gross inadequacy of judicial officers to cope up the backlog of cases and the ever increasing number of new cases. The vacant judicial officers' posts should be filled up immediately.
- The qualifications, experience, qualities and attributes for the judicial officers should be prescribed. In addition to the academic qualification, their aptitude for the profession should be assessed.
- The court should be provided with sufficient staff and necessary infrastructure. The educational qualification of the supportive staff should be fixed as 'graduate' for smooth functioning of the court. They should be knowledgeable on criminal justice system.
- Exclusive Court to deal all the matrimonial violence, with an objective to uphold the objectives of the matrimonial laws for which it was enacted to be set up in all the districts, to avoid backlog of cases, to ensure speedy trial and disposal, timely and fair justice to the litigants. Women should be appointed as judicial officers in these special courts.
- Each wing of the criminal justice system should hold periodical meetings separately and Joint Meetings of different wings of Criminal Justice System such as police, judicial officers, prosecution officers should be held periodically to have a better understanding, review the reasons for high number of acquittal, to review the lapses in the justice delivery system, each wing's role for the lapses and acquittal, whether they sabotage their professional code, and how to strengthen their coordination, in the larger interests of the society, particularly to protect the rights of the victims to justice.
- Being a grave offence, the abetment of suicides due to matrimonial cruelty, which attracts Sec 306 IPC should be categorised as a separate 'crime head'.
- The State Commission of Women should be directed to assess the implementation of Sec 498A IPC and other provisions related to matrimonial cruelty and bring to the notice of the government the loopholes and mal-functioning, need for amendment, and change in procedures.
- All the marriages must be registered for establishing the matrimonial cruelty against the offenders.
- The Assistant Public Prosecutors should be promoted to the posts of Additional Public Prosecutors and Public Prosecutors, as practiced in other States.
- The immediate Appellate Court for the prosecution should be designated as Sessions Court, so that, in the event of failure of the prosecution, the aggrieved complainant herself could go for an appeal against the order passed by the trial court.
- The superior officer of All Women Police Stations shall be a woman officer to ensure better working relationship between the Inspectors of AWPSs and the superior officer.

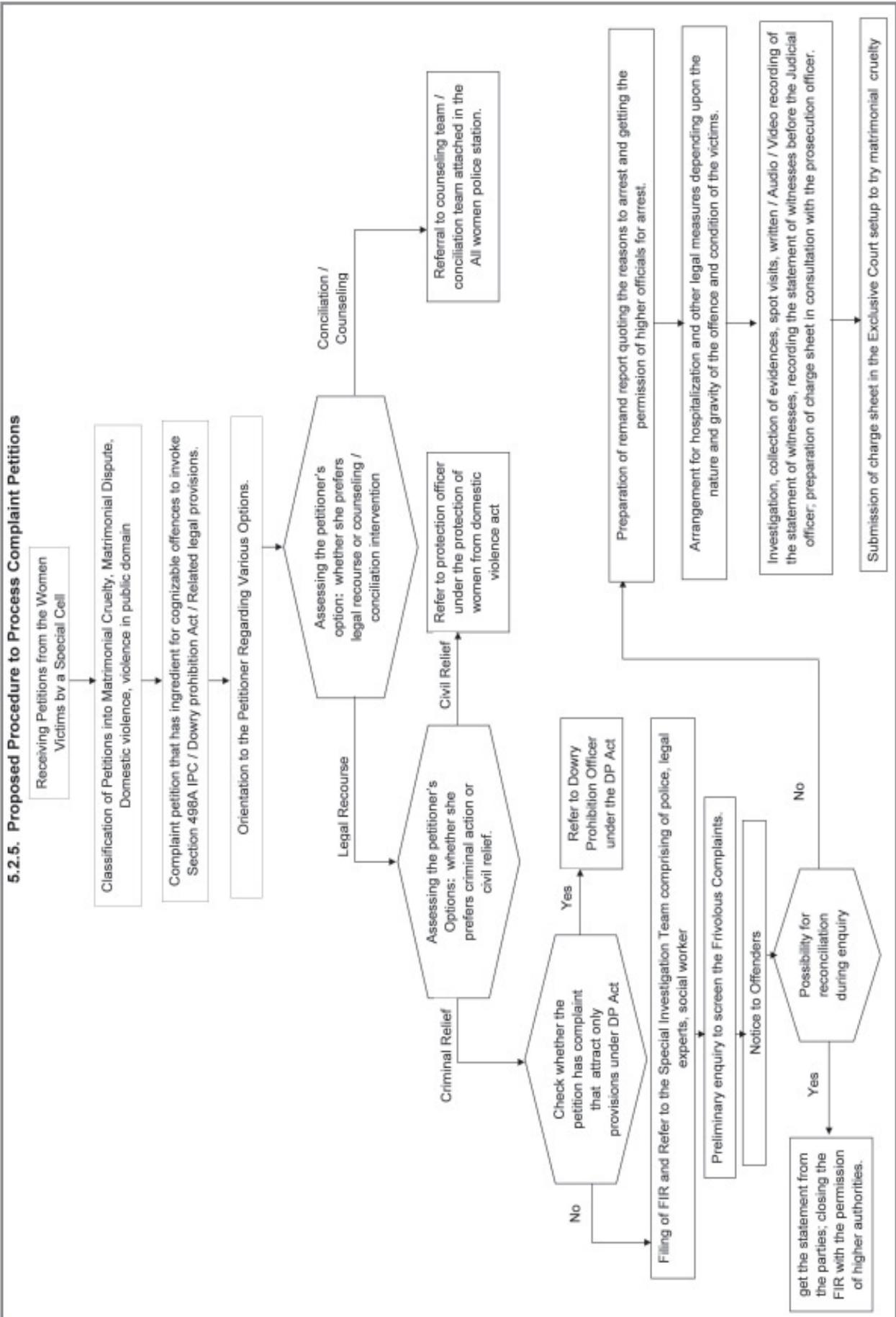
- Norms fixed to the judicial officers need to be reviewed.
- Separate APPs should be appointed to make appeal petitions in fit cases against the orders pronounced in the trial courts and the appeal procedures should be simplified.
- Corruption prevails in each of the wing of the Criminal Justice System should be checked.

5.2.4. To the Civil Society Organisation (CSO)

- Women should be educated that they can approach the court directly for the cruelty and argue for their own, to increase the credibility and genuineness of the complaints. An amendment to that effect may be introduced.
- Legal awareness should be imparted to the women to use the law as a weapon to protect them from matrimonial violence.
- The CSOs should advocate with the State to improve the economic and educational standards of women to protect themselves from matrimonial hardships.
- CSOs should lobby and advocate for the strict enforcement of all the provisions of the Dowry Prohibition Act. The public should be educated to record the list of articles given to the bride at the time of marriage, signed by both the parties in the presence of witness.
- The CSOs should lobby and advocate for the effective implementation of Sec 498A of IPC in its original form(Non Compoundable, Non bailable)



5.2.5. Proposed Procedure to Process Complaint Petitions



Chapter -VI

Conclusion and Way Forward

6.1. Conclusion

The NFHS survey for the year 2005-2006 reveals that 44.1 per cent of married women are victims of some form of physical or sexual or emotional violence by their husbands in Tamil Nadu, which is higher than the national average of 39.7 per cent. Among the victims of marital violence who sought help, nearly 2 per cent sought help from police and 1 per cent from lawyers. Of these two per cent women victims who seek help from police, 3 per cent of their complaint petitions are turned into FIRs. Of these minimal cases filed in court under Sec 498A, the conviction rate is about 20 to 25 per cent in the trial court and the conviction rate reduced to 3 per cent in the appellate courts. The statistics clearly proves that only miniscule percentage of victims of matrimonial violence are using this legal provision. Yet, justice is evasive to these miniscule class of women and disproves the claim that Sec 498A is a deterrent against men. Therefore, the demand to make Sec 498A compoundable and bailable offence must be rejected by the State.

The charges raised by the campaign against 498A were disproved in the study. On an average only 2 to 3 persons are being arrested in matrimonial cruelty cases and related offences. The arrest of minors is almost nil. The in-laws are not arrested in all the cases. The arrest of mother-in-laws are one in three registered cases. All the enforceable authorities of criminal justice system are against amendment in Sec 498A, making it bailable and compoundable.

Those who advocate against 498A refuse to believe that violence exists within the matrimonial relationship and believe that law has no role to play in the private sphere. In other words, the argument was that the use of criminal law for matrimonial cruelty wasn't appropriate. This amendment in IPC was made for sections of society which are dispossessed such as homeless (no right to property) women, bonded labour – it is because they have no stake in the system, because the system offers them nothing and they have to fight and struggle every inch of the way.

The study also exposes the mindset of the police, prosecution and judiciary. They claim that delays in registration and arrest under Section 498A are “totally bonafide and in the interest of preserving/ restoring marital harmony and keeping the marriage going”. Referring to the low rate of complaints that get converted into criminal cases (as low as 3 per cent), the report attributes it in part to efforts made to bring about a settlement between the parties through counselling or advice which is justified by police officers as being in the interest of the family/ society in preventing a break up of marriage and preserving and restoring marital/ family harmony. It does not seem to bother police officials that marital counselling is neither the primary role of the judiciary nor the role of the police.

Related to this is the notion of marriage and over-arching concern to save the marriage. To our lawmakers and the law implementers this seems to be the primary motive – far more important than assisting the victim/ complainant in their quest for justice. The prevailing view is that since matrimonial cruelty impacts mainly the victim and not the values of the society, once a woman who has been a victim of such cruelty is awarded a divorce; there is no requirement for the criminal case to continue. But the issue is to save the life of women who becomes an expendable commodity in the matrimonial relationship.

6.2. Way forward

The solution does not lie in dismissing the law or taking away its teeth completely by making it compoundable and bailable. The study has suggested many measures for the effective implementation of the law. In patriarchal society women needs both a civil remedy and a criminal remedy. The former is to claim her rights and the later is to save her life which is guaranteed not only by the Constitution of India but also by many of the International Covenants. Let women have a stake in raising their voices against the injustices in their matrimonial home through the legal tool of Sec 498A IPC.



Appendix -I

Sex-wise distribution of Persons Arrested under Sec 498A IPC during 2003 – 2007 in the study districts

District	2003			2004			2005			2006			2007		
	M	W	T	M	W	T	M	W	T	M	W	T	M	W	T
Chennai City	124	56	180	60	39	99	133	35	168	210	60	270	325	97	422
Coimbatore City	42	24	66	18	4	22	32	16	48	49	26	75	52	27	79
Cuddalore	39	16	55	47	23	70	82	15	97	26	20	46	88	23	111
Dindigul	46	6	52	33	0	33	0	0	0	7	0	7	97	0	97
Kancheepuram	25	9	34	3	0	3	10	0	10	22	0	22	10	0	10
Kanyakumari	53	11	64	65	3	68	32	3	35	42	21	63	24	10	34
Madurai	165	68	233	127	53	180	110	17	127	162	27	189	351	44	395
Salem City	24	5	29	16	8	24	15	5	20	27	12	39	25	10	35
Sivagangai	33	12	45	43	13	56	27	12	39	18	3	21	43	15	58
Trichy City	34	16	50	51	27	78	19	14	33	48	19	67	63	59	122
Vellore	14	3	17	11	3	14	21	0	21	85	17	102	90	85	175
Virudhunagar	56	38	94	56	34	90	101	8	109	92	31	123	87	35	122

Sex-wise distribution of Persons Arrested under Sec 304 B IPC during 2003 – 2007 in the study districts

District	2003			2004			2005			2006			2007		
	M	W	T	M	W	T	M	W	T	M	W	T	M	W	T
Chennai City	31	16	47	31	10	41	52	14	66	61	14	75	86	28	114
Coimbatore City	1	0	1	6	6	12	3	2	5	9	3	12	11	0	11
Cuddalore	21	0	21	18	0	18	17	0	17	24	0	24	2	0	2
Dindigul	9	3	12	16	0	16	0	0	0	16	0	16	7	0	7
Kancheepuram	16	7	23	4	2	6	26	11	37	15	11	26	24	15	39
Kanyakumari	4	0	4	0	0	0	1	0	1	15	2	17	4	0	4
Madurai	30	15	45	18	13	32	23	3	26	21	1	22	51	13	64
Salem City	5	2	7	18	1	19	11	0	11	6	6	12	4	2	6
Sivagangai	9	0	9	4	3	7	14	3	17	2	0	2	3	0	3
Trichy City	0	0	0	5	1	6	2	4	6	9	3	12	5	2	7
Vellore	18	0	18	6	5	11	18	18	36	9	5	14	10	9	19
Virudhunagar	8	0	8	5	3	8	2	0	2	6	0	6	4	1	5

Sex-wise distribution of Persons Arrested under Dowry Prohibition Act during 2003 – 2007 in the study districts

District	2003			2004			2005			2006			2007		
	M	W	T	M	W	T	M	W	T	M	W	T	M	W	T
Chennai City	0	0	0	0	0	0	23	13	36	19	6	25	0	0	0
Coimbatore City	0	0	0	1	0	1	0	0	0	0	0	0	1	0	1
Cuddalore	10	6	16	10	9	19	0	0	0	0	0	0	15	0	15
Dindigul	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Kancheepuram	21	17	38	11	5	16	26	15	41	15	18	33	56	19	75
Kanyakumari	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Madurai	9	3	13	6	3	9	7	0	7	5	0	5	7	3	10
Salem City	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sivagangai	5	0	5	6	0	6	2	3	5	0	0	0	1	0	1
Trichy City	0	0	0	2	2	4	0	0	0	0	0	0	2	2	4
Vellore	100	74	174	140	33	173	190	140	330	42	0	42	164	82	246
Virudhunagar	0	0	0	0	0	0	0	0	0	0	0	0	56	26	82



Appendix -II

Interview Guide for Investigating Officers

Number of complaint petitions received per month; nature of complaints; nature of cruelty faced by the women; socio-economic background of complainants; procedure in processing the complaint petition, conciliation/counselling efforts; investigation; coordination between police station and Dowry Prohibition Officer; support and guidance of prosecution officer; reasons for high acquittal; false complaints; suggestions for effective implementation of Sec 498A in addressing matrimonial offences.

Interview Guide for APPs/ Prosecution Officers

Opinion about the investigating Officers in matrimonial offences, their competency and commitment in the investigation and collecting the evidence; ethical aspects of investigation; reasons for high percentage of acquittal, cooperation between investigation officer and prosecution officer; prosecution officers' role in the judicial process; opinion regarding amendment to make Sec 498A as a compoundable and bailable offence; use and misuse of Sec 498A; percentage of misuse; external pressure/intervention in the judicial process and prosecution officers' role; suggestions to strengthen the justice delivery system.

Interview Guide for Judicial Magistrates

Reasons for high percentage of acquittal; opinion about misuse of Sec 498A; punishment awarded; experience while recording dying declaration of women; opinion regarding the recommendation of the Malimath Committee making the offence as bailable and compoundable; suggestion for effective implementation of Sec 498A and justice delivery system to ensure justice to victim women.

Appendix -III

DEFINITIONS OF IMPORTANT LEGAL PROVISIONS

Sec 498A IPC: Husband or relative of husband of a woman subjecting her to Cruelty

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

Explanation:- For the purposes of this section “cruelty” means

- (a) Any wilful conduct which of such a nature as is likely to drive the woman to commit suicide or to cause grave injury of danger to life, limb or health (whether mental or physical) of the woman; or
- (b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or any person related to her to meet such demand.

Sec 304B IPC: Dowry Death

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

Explanation:- For the purposes of this sub-section, “dowry” shall have the same meaning as in Sec 2 of the Dowry Prohibition Act, 1961.

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

To make the offence under Sec 304B IPC the following ingredients must be covered.

- The woman's death must have been caused by burning or bodily injury or otherwise than under normal circumstances;
- Such a death must have occurred within 7 years of marriage.
- Soon before her death, the bride must have been subjected to cruelty or harassment by her husband or any relation on the husband.
- Such cruelty or harassment should be for, or in connection with demand of dowry.
- Such a harassment and cruel act must have been shown to be meted out soon before death.

Sec 113B of Evidence Act

Presumption as to dowry death:- When the question is whether a person has committed the "dowry death" of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, **the court shall presume that such person had caused the dowry death.**

Explanation:- For the purpose of this section, "dowry death" shall have the same meaning as in Section 304B of the Indian Penal code.

Sec 306 IPC: Abetment of Suicide

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to 10 years, shall also be liable to fine.

Sec 113A of Evidence Act: Presumption as to abetment of suicide by a married woman

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation:- For the purposes of this section, 'cruelty' shall have the same meaning as in Sec 498A of the Indian Penal Code.

Sec 107 IPC: A person abets the doing of a thing who

First:- Instigates any person to do that thing; or

Secondly:- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the thing of that thing; or

Thirdly:- intentionally aids, by any act or illegal omission, the doing of that thing.

Sec 498A, Sec 304B, Sec 306 are not mutually exclusive. The three provisions deal with the three different offences. But “cruelty” is a common essential in all the three sections.

Sec 2 of Dowry Prohibition Act: Definition of “dowry”

“Dowry” means any property or valuable security given or agreed to be given either directly or indirectly –

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Sec 4 of Dowry Prohibition Act: Penalty for demanding dowry

If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees;

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

Explanation for important terms

Compoundable and non-compoundable offences: Compoundable offences are such offences in which the victim of the offence would be at liberty to compound the matter with the accused and if the victim makes a statement before the court of this effect, the court is bound to acquit the accused. Whereas in non-compoundable offences the victim cannot compound the offence and the accused cannot be acquitted on the sole statement of the victim that he has forgiven the accused or compounded the offence.

Only the aggrieved party or the victim may compound an offence. Not even the public prosecutor has the power to compound an offence.

Cognizable Case

A **cognizable case** means a case in which a police officer may, in accordance with the First Schedule of Cr.P.C. (1973), or under any other law for the time being in force, arrest without warrant.

F.I.R. means First Information Report, made to police, about commission of a cognizable offence, In effect, it amounts to putting law in to motion by giving information relating to the commission of a cognizable offence to an officer in charge of a police station, (which shall be reduced into writing and read over to the informant) and shall be signed by the person giving such information.

Bailable and Non-bailable Offences

Under the Code of Criminal Procedure 1973 (first shedule), offences have been classified as 'bailable' and 'non-bailable' offences.

In non-bailable offence, the police can not grant bail and bail can be granted by a Judicial Magistrate/ Judge only. In such cases, the Investigating Officer must produce the accused before the Judicial Magistrate / Judge concerned within 24 hours of his arrest. At that time, the accused has a right to apply for bail.

In the case of bailable offences, it is binding upon the investigating officer to grant bail. In such bailable offences, if the accused produces proper surety, and fulfills other conditions, it is binding upon the Investigating officer to grant bail.



Bibliography

Indrani Chakraborty, (2005) Section 498A – used or misused; Study Report of Sanlaap, Guided by Centre for Social Research.

Narayana, P.S. Justice (2006) Laws Relating to Dowry Prohibition, Hyderabad, Gogia Law Agency.

Sambandham , S (2006) A Handbook of the Dowry Prohibition Act, 1961, Chennai, c.Sitaraman & Co. Pvt. Ltd.

Crime Review Tamil Nadu (2003, 2004, 2005, 2006, 2007, 2008), State Crime Records Bureau, Ministry of Home Affairs

Crime in India (2006, 2007, 2008), National Crime Records Bureau, Ministry of Home Affairsa

National Family Health Survey (2005 – 2006), Ministry of Health and Family Welfare, Government of India

Recommendations of the Malimath Committee on Reforms of Criminal Justice System

Medha Bisht, Women as Victims of Violence: Emerging Nuances and Interventions, Women's Link Vol.10.No.4, New Delhi, Social Action Trust

Lakshmy Ramanathan, TNN (22nd January 2009), The Times of India

Rajalakshmi T.K. (January 4, 2008), Woman as Victim, Frontline

Srilakshmi Prasaad IPS., (Vol.V, Issue: IV, April 2007) Criminal Investigation Department Review, Tamil Nadu

Venkatesan V. (January 4, 2008), Lacunae in Law, Frontline

Radhika Coomaraswamy, (May, 2005), The varied contours of Violence Against Women in South Asia, Fifth South Asia Regional Ministerial Conference

Aawaaz (6 May 2009), Misuse of 498A – Much ado about nothing? Together The News in Proportion

www.498a.org

www.tn.gov.in/police