
article

In search of justice and care: how women survivors of violence navigate the Indian criminal justice system¹

Anjali Dave, anjali@tiss.edu
Vinita Ajgaonkar, vinita.ajgaonkar@tiss.edu
Yashoda Pradhan, yashoda.pradhan@gmail.com
Radhika M Chakraborty, radhikachakraborty@gmail.com
Tata Institute of Social Sciences, Mumbai, India

The conversation around Section 498A of the Indian Penal Code, a provision that addresses marital cruelty, is saturated with the discourse of 'misuse', and the belief that it is the province of 'scheming wives' making 'false allegations'. However, not all cases filed under Section 498A reach the courtroom at all. Before cases go to trial, the police conduct an investigation, and may close the case if it is found to be 'false' or the result of a 'misunderstanding'. This paper explores the trajectory of such cases through interviews with women and stakeholders, and analysis of police reports. It was found that women approach lawyers and the police when they are facing violence they are unable to tolerate, to leverage police intervention. Lawyers direct them to Section 498A to leverage the pressure of arrest. Women agree to close the case once some degree of 'compromise' has been effected by the police. The number of these 'false' cases paradoxically feeds the discourse of misuse, and judicial reluctance to convict. Women continue to turn to the state for support in ending violence. There is thus an urgent need for a vastly improved network of social services and better connections between multiple women-centric laws.

key words India • marital violence • criminal law and interventions • police

key messages

- Public discourse around Section 498A of the Indian Penal Code, a provision that addresses marital cruelty, focuses on misuse of law.
- This paper traces the journey of women whose cases are closed as 'false', interrogates the discourse of misuse and advocate for social services and connections between women-centric laws to address marital violence.

To cite this article: Dave, A., Ajgaonkar, V., Pradhan, R., Chakraborty, RM. (2017) 'In search of justice and care: how women survivors of violence navigate the Indian criminal justice system', *Journal of Gender-Based Violence*, vol 1 no 1, 79–97, DOI: 10.1332/239868017X14900133026601

Introduction

Violence against women is on the rise in India, and domestic violence is rampant (NCRB, 2015). The Indian women's movements have had a long and complex relationship with the state in its efforts to end violence against women. While the movements have at each stage challenged and identified the state's complicity in perpetuating gender norms and violence, legal reform and justice for women has been a crucial thrust of the movement. As Radha Kumar suggests, many groups and individuals in the movement reached the realisation that 'it is not helpful to view the state as a monolithic entity from a purely oppositional stance, especially at moments of crisis, for it is important for us to assert that we have the right to a voice in the administration of our society' (Kumar, 1997, 180). A crucial dimension of this constant negotiation and struggle with the state, is grappling with the dialectic of justice and care. While often rejecting the protectionist model of governance; the women's movement simultaneously recognises that justice cannot be separated from the ethics of care, even in the context of the state. The evolution of women-centric legislation represents the development and incorporation of an ethics of care into jurisprudence, and increasingly the demand for woman-centric legislation is being accompanied by the demand for the state to invest in the creation of supportive social services for women.

Section 498A was introduced to the Indian Penal Code (IPC)² through the Criminal Law (Second Amendment) Act in 1983, as a result of the women's movement(s) campaign against dowry-related marital violence in the 1970s. Increasing numbers of cases of 'kitchen accidents', 'accidental fires' and deaths of women at the hands of their marital families began to be reported, and the women's movement was able to bring these issues to the notice of the state; the groundbreaking campaign being 'possibly the first time the issue of violence at home was discussed in public' (Jaising, 2009). As a result of this campaign, two separate new provisions were introduced to the IPC in 1983 – Sections 498A and 304B. Though it emerged from the context of dowry, Section 498A more broadly encompasses 'marital cruelty', defined in law as follows: '1. Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical of the woman; or 2. Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.' Section 304B deals specifically with dowry-related death. Section 498A is a non-bailable, non-compoundable offence, with a sentence of up to five years of imprisonment.

The women's movement soon realised that women facing violence also require options for civil redressal, along with legal provisions for prosecution. The Protection of Women from Domestic Violence Act (PWDVA) (2006), was an important landmark in women-centric legislation in India as it emerged from the belief that women seeking an end to violence require options which can be tailored to take into account the specificities of their circumstances. A civil law, the spirit of the Act for the first time encompasses a broad spectrum of reliefs that women facing domestic violence may claim, including the right to residence in a shared household, the right to protection from violence, and monetary relief. The definition of domestic relationship, which is based on the Act's understanding of the 'shared household', was broad enough to

encompass the rights of parents, children, wives, as well as those in live-in relationships. What is most important is that the Act stipulated the creation of a network of supportive stakeholders, including service providers (such as NGOs providing social casework and counseling), shelter homes, hospitals and protection officers – designed to address a wide spectrum of needs. Taken together, Section 498A and the PWDVA offer criminal and civil remedies to women facing domestic violence. The PWDVA offers holistic redressal that can be tailored to women's needs, and Section 498A stipulates criminal prosecution and imprisonment for perpetrators.

The discourse of misuse has come to saturate the conversation around Section 498A. In popular culture, 498A is often called the 'dowry law' (despite encompassing all forms of marital cruelty); and men's rights activists have honed in on this section as one that is exploited by women to harass their husbands and marital families. Data from the National Crime Records Bureau (NCRB) states that in 2015, 122,877 cases of cruelty to married women by their marital family were registered and of these, the police have reported 7,458 to be 'false'. The discourse of 'falsity' and misuse is gaining traction, and these numbers are used to prop up the image of the Indian family under threat from the quarrelsome modern Indian wife. The judiciary has been highly reluctant to convict under this section – a conviction rate of only 14.2 per cent of court cases was recorded in 2015 (NCRB). Sharmila Lodhia (2009, 114) analyses the language and tenor of 498A judgments to conclude that 'it is clear that the law has been drastically undermined by a level of skepticism that has not only permeated societal consciousness, but more perilously, has entered judicial discourses in Section 498A cases'. Repeatedly, talks of diluting this section have been initiated by the state. In 2003 the Malimath Committee, appointed to recommend criminal law reform, recommended making the section bailable and compoundable. In 2015 again, the Union Minister of Home Affairs said that the government is planning to dilute the section (Agnes, 2015, 12). The spectre of Section 498A's supposed misuse haunts the discourse around women's rights and violence against women; being conjured repeatedly by detractors to suggest more legal reform addressing violence against women may not be needed.

Despite the presence of legislation such as Section 498A and the PWDVA, justice through the criminal justice system continues to elude women. Reactionary voices, accusing women of misusing the law, are fast overtaking the discourse around women-centric legislation, and it is becoming increasingly necessary to examine the processes involved in women's access to justice under these laws.

A study was conducted in two districts and two cities in a northern state in India, at the invitation of the state government, to explore cases filed under Section 498A which were closed before reaching the court. It sought to explore cases which filed under Section 498A, but closed as 'false' or 'misunderstandings' by the police after investigation, and understand the processes these women who approach the legal system undergo in their journey through the criminal justice system, and how their cases come to be deemed as 'false'. Through this, the study attempted to highlight's women's circumstances, experiences and expectations to shed light on how women are using the law. Through unpacking these 'false' cases, it was found that 'falsity' was not an indicator that violence had not occurred, but a code for a settlement outside the court having been reached under the auspices of the police by the complainant and perpetrator; prompted both by the woman's own desire to return to her marital family, or by pressure from the natal family, community or police itself.

Methodology

This study, completed in 2015, explored secondary data from the year 2013 of a total of 337 cases from two districts and two cities in a northern state of India, along with interviews with women complainants and other stakeholders (including the police, witnesses, lawyers and *panchayat* members).

Specialised *Mahila Thanas* (all-women police stations) were instituted in certain states (including the one selected for study) to increase the police's responsiveness to women's issues. The state government commissioned this study due to the observed trend of a high number of 'false' cases filed under Section 498A specifically. Thus, this study was conducted on 498A cases registered at four of these Mahila Thanas. Due to state support for the study, the police were more receptive to facilitating research. Women were approached to seek their participation in the study through the intermediation and introduction by only the police personnel of the Mahila Thanas, and no other external or unfamiliar intermediary. Women's permission and consent was sought before data collection was undertaken, and measures were taken to ensure this research did not renew or trigger the trauma of violence that they underwent.

Due to slight differences in the data collection tools and the period of data collection, the study comprises two separate datasets – Dataset 1 (from the two districts, henceforth DS1) and Dataset 2 (from the two cities, henceforth DS2). A total of 232 cases were studied under DS1 and 105 cases under DS2. A total of 39 women in DS1 and 24 women in DS2, 9 police officers, 27 witnesses, 4 lawyers, 2 panchayat members and 2 women's rights activists/NGO workers (all in DS1) were interviewed for the purpose of this study. Simple random sample was used to select women to contact for interviews, based on police records. Following this, purposive sampling was undertaken when the sample size was not met based on the availability of women and their willingness to participate in the study. Purposive sampling was used for interviews with stakeholders.

Both secondary and primary data sources were employed in the study. Secondary data comprising the Final Reports (registered by the police to mark the closure of a case under 498A, before a case reaches the judiciary) and corresponding women's statements to the police, were examined for information about the case and coded for content as well as language (codes were developed around demographic details, types of violence, help seeking, circumstances of filing and reasons for closure). As primary sources, women were interviewed to understand in-depth the circumstances of their lives, what led them to Section 498A, and the impact these legal proceedings had on their lives; along with interviews with police officers, witnesses, lawyers, activists and community stakeholders to gauge their attitudes and role in supporting women to end violence. Participants' responses were recorded by hand on structured interview schedules (developed separately for women and for each category of stakeholder, which contained a mix of closed and open ended questions), and data was subsequently coded and analysed after being processed through SPSS software.

The anatomy of a 'closed' case

While some amount of research has been undertaken on judgments under 498A and the language and content of judicial pronouncements (see Lodhia, 2009; Agnes, 1992; 2015; ISWSD, n.d.), this study focused on cases that did not go through the court

processes at all, because before court processes began, police investigations reported the case to be 'false' or arising from a 'misunderstanding'. Thus, the universe of this study is limited to cases that were closed as 'false' or 'misunderstanding' at the stage of police investigation. Women's voices and narratives contributed to create a picture of the journey women undergo through this law. In all of the cases examined in this study, women faced significant physical and mental violence before taking the decision to file a case under Section 498A. The case was labelled as 'false' at the time of closure, because the police had effected a negotiation with the perpetrator, and the only avenue to legally close a case at this stage (because this offence is non-compoundable) is to register it as 'false' or as a 'mistake of fact'. When women faced severe violence and intervention attempts from family and community failed to provide relief, she, along with her natal family, turned to the state and the criminal justice system. Figure 1 charts the journey of women through Section 498A to a false case, based on the narratives collected through this study. Here we see that women enter the system either through a lawyer or through the police. Women often first approached the police, who, as they reported, did not take their complaints seriously and did not file an FIR (First Information Report, which marks police cognisance of a case). The women then turned to a lawyer, who filed the case in court. The court then directed the police to investigate the claims made by the complainant in her application.

The police investigate by collecting evidence, and meeting both complainant and respondent, most often at the police station itself. When the police investigate, they often believe that the case would be best settled outside of court, and they hold joint meetings between both parties in which they 'counsel' them for reconciliation. Once the police complete their investigation into a woman's claim, they either file a charge sheet for the case to proceed to court if they find the claims to be 'valid' or are unable to effect reconciliation, or a Final Report (FR) detailing the reasons for closure of the case at this stage (if reconciliation is successful). The FR marks a woman's exit from the criminal justice system; and this exit is dependent almost entirely on the police. Whether a woman files a case at court or through the police, the police must, once the case is filed, submit one of three kinds of final reports to the court. Final Report A is for cases in which the police are unable to continue with the investigation (for example, if the perpetrator has absconded). Final Report B is filed when the police judge that the case is not valid, either because the case is false or a result of a 'misunderstanding' (implying that the woman has overstated the extent of the violence). Final Report C is filed for cases in which the police deem the complaint to be a result of a 'misunderstanding'; and that the case is to be closed at this stage. Thus, after the 'counselling' is deemed successful, one of these two reports are submitted to the court, thus effectively ending the role of the criminal justice system in this case. Although the FR is to be scrutinised by both the superintendent of police and the court, this is rarely done due to a heavy workload, leaving the complainant with only the option of filing a 'protest petition' in court to complain against police inaction (Khora, 2014, 17). Complainants who lack the resources and knowledge to pursue the case in this way, fall off the radar of the system entirely. It is important to keep in mind that the police under the IPC have only investigatory and not judicial powers under Section 498A. The delivery of justice is the province of not the police but the court. However, we see that in these cases, the police's role evolves beyond investigation – to encompass investigation, intervention, and finally the sealing of a

case with an indictment of falsity or invalidity, and effectively expelling the woman from the criminal justice system.

Through this study, it was seen that 152 cases were filed by the police as ‘false’, and 185 as ‘a misunderstanding’ in the Mahila Thanas of the four selected regions. When the police label a case as ‘false’, the complainant becomes liable for prosecution under Sections 182 and 211 of the IPC. Section 182 of the IPC addresses cases in which a complainant provides ‘False information, with intent to cause a public servant to use his lawful power to the injury of another person’, and Section 211 addresses ‘False charge of offence made with intent to injure’; however, such cases are rarely followed up and the police did not recommend these sections being applied in a majority of FRs. The very fact that the label ‘false’ was given without the corresponding Sections 182 and 211 accompanying it, in itself should be an indicator that all is not what it seems.

While ‘false’ is a final and damning term, the term ‘*galatfahmi*’ or ‘misunderstanding’ or more literally ‘wrong impression’ is an equally loaded one. ‘*Galatfahmi*’ implies a fuss over nothing, and in effect, rather than implying that violence did not occur, trivialises and reduces violence to a misunderstanding or overreaction on the part of the woman, and places the onus of misapprehension on the woman complainant by calling her judgement and ability to assess her circumstances into question. Both of these terms thus construct the woman complainant, who is facing violence that is in fact a crime under the law (as suggested by this study), as ‘hypersensitive’, a troublemaker, or unable to make rational assessments of their situation, and in doing so dismiss the notion that the violence they face deserves redressal under the law.

This study thus followed the trajectory of women complainants through their experiences with this law, through the filing of their cases as ‘false’, and the impact of this process on their daily lives.

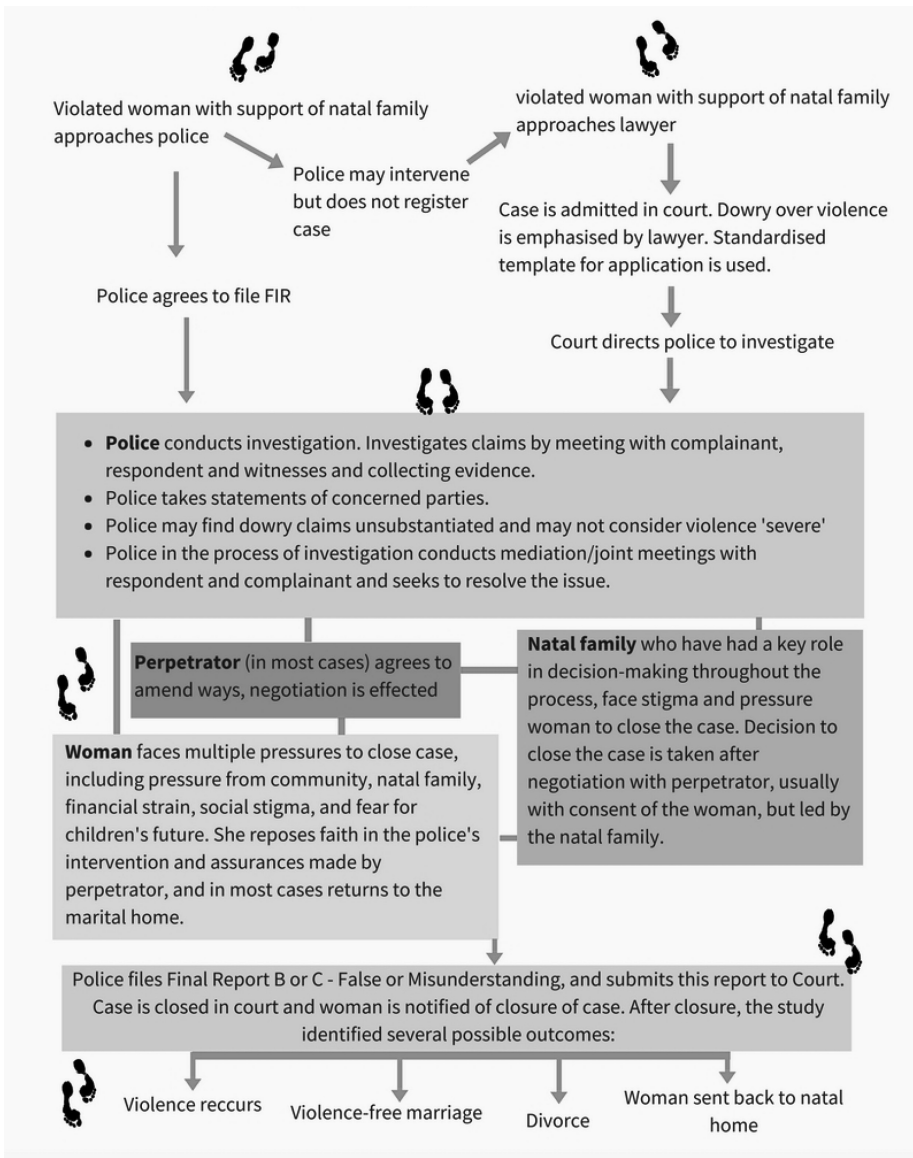
Violence in the familial space

Interviews and secondary data revealed that while women’s socio-economic profiles reflect broader regional demographics, most women were entirely financially dependent on natal or marital families for daily sustenance, and that this financial dependence played an important role in their decision-making and ability to seek help. Women are deeply entrenched in familial structures, and are dependent on their families for social and material support and sustenance. However, family spaces often turn hostile and violent, and all women who were interviewed for the study reported facing a range of violence, from daily taunts to grave harm.

Women using Section 498A whose cases were explored in this study, largely came from lower socio-economic backgrounds. A majority of women were Hindu, reflecting the demographic composition of the regions. Women from a mix of caste backgrounds were evident in the secondary data, reflecting that women from all castes are using section 498A. Socio-economic categories in DS1 were taken from the classification of the income of the natal family, as many women could not confidently answer questions about the income of the marital family. Seventy-seven per cent of women in DS1 came from lower socio-economic backgrounds. In the secondary data of DS1, 32 per cent of the complainants were from the General Category, 25.1 per cent from the Scheduled Caste category and 24.7 per cent from the Other Backward Caste category. Very little information on caste was available in DS2.

This study revealed that most women relied primarily on their marital families for material support. Primary data shows that most complainants were engaged in non-remunerative work (74.4 per cent in Dataset I; 83.3 per cent in Dataset II) and a majority of these women were homemakers. Thus, most women were entirely dependent on their marital families for financial support. Interestingly, most women (69.2 per cent in DS1) were unable to answer questions about the income and financial status of their marital families, but were able to clearly articulate the income of their natal families (82 per cent in DS1). This suggests that women are excluded from financial decision-making in their marital families, and lack of access to and any control over their husband's income. However, though they were more aware of the details of their natal family's resources, this does not indicate that they were able to access or control them.

Figure 1: Women's journeys through Section 498A to a closed case



Delivered by Ingenta
 IP : 5.10.31.210 On: Sun, 06 Jun 2021 09:12:04
 Copyright The Policy Press

For women thus lacking material control, and entering a space replete with new social expectations, the marital home very quickly turns into a site of violence, perpetrated by their husbands and in-laws. In women's statements from DS1, 94 per cent women had named their husbands as the aggressor, while 78 per cent had also identified their in-laws as the perpetrators of violence. The primary as well as the secondary data from DS2 shows the husband and in-laws (87 per cent and 93 per cent respectively) as the primary perpetrator of violence. A majority of women in DS2 reported facing violence within two years of marriage (91 per cent). In DS1, nearly 45 per cent of women had been married less than four years at the time of filing the case, with a majority of women (25 per cent) having been married for one to two years before filing the case. A majority of women faced mental violence from their husbands and marital families (95 per cent in DS1, 87.5 per cent in DS2), in the form of daily taunts for bringing inadequate dowry, derogatory comments about not living up to the expectations of the husband, threats of their husband having a second marriage, or constant violence triggered by criticism about daily household chores (such as the quality of food prepared at home). In most cases, women's husbands were not providing any financial support (87 per cent in DS1), leaving them precariously without means of survival. A large majority of these women were forced to return to their natal family (58 per cent in DS1) in order to escape violence or for material survival. In fact, one *Sarpanch* interviewed for the study observed that this was a widespread problem in that area, estimating that out of the 200 households in the village, in 20, the woman had returned to her natal home as she had been thrown out of the marital house. Over half of the women in DS2 reported facing physical violence. While in DS1 only about one-fourth of the women cited dowry as the reason for violence, in DS2 three-fourths reported dowry demands as the reason for violence. Excessive consumption of alcohol by their husband was also reported to be a triggering factor for the occurrence of violence in nearly one-third of the cases. Women's statements also mention the violence inflicted upon their children. Thirty-four per cent of women said that their children were also experiencing violence; including physical violence, deprivation of food, and deprivation of medical care.

Interviews with the police revealed the police's insights into the causes of violence in these cases. In DS1 many police officers identified alcoholism and relationships outside the marriage of women's husbands to be the primary reasons for violence. However, most of them described 'adjustment problems' between women and their in-laws or husband as the cause of familial 'disputes'. When asked in an interview why such problems occurred, one policeman replied, '*rasi me bartan toh khanakte hi hai!*' (In a kitchen, pots and pans are bound to rattle!), thus trivialising and normalising everyday violence.

The police had also categorised violence differently than did women in secondary data, reporting 'minor differences' as the type of violence in 75 per cent of Final Reports of cases in DS1 and 39 per cent in DS2. As revealed through interviews with the police, this was because they did not consider the violence reported as 'severe'. The women's activists interviewed said that the police documented violence only when it was immediately physically visible to them in the form of bruises/injuries at the time when women first approached them; without which they did not take her case seriously. However, since women rarely approached the police immediately after an incident of violence, as approaching the police is a decision taken after much deliberation (and as discussed later in this paper, after consulting a lawyer and filing

a court case), not much evidence of violence was physically visible at the time of registering the complaint.

Approaching the criminal justice system

Women seek help from institutional sources when they have exhausted other avenues of help. Women's statements in police records showed that in 72 per cent of cases in DS1 and 96 per cent of cases in DS2, prior to approaching the police, they had sought intervention from their families and communities. In 60 per cent of cases the natal family had intervened, while the *thok* or community had intervened in 24 per cent of the cases. However, in almost all these cases their intervention had not succeeded in stopping the violence in the women's lives. Thus, we see that often women seek police help as the last resort, only when efforts by other sources fail to resolve their problems.

As seen from the data, most women had been thrown out of the marital home at the time of filing a case. Only a small fraction of women were residing with their marital family (just 6 per cent in DS1 and 5 per cent in DS2 according to women's statements); most women were living with their natal families. Women reported that they had either been thrown out of the marital home by the marital family (60 per cent in DS1), or were forced to leave to escape the severity of violence (36 per cent in DS2). Living with the natal family often prompts the woman and natal family to take more direct and effective action to bring about resolution, as the woman's return creates financial and social strain for the natal family. No women in this study reported turning to friends or neighbours for support.

It is pertinent to note that going to the police was not solely the woman's decision. In most cases, it was revealed that the natal family made the decision to approach the police (57 per cent in DS1) as well as to file a complaint (59 per cent in DS1). In DS2, 70 per cent of women said that they filed the case with the help of the natal family. Thus, we see that women's increased dependence on their natal families' support, also leads to greater influence of the natal family over the decision-making process. This is reflected at a later stage as well, where we see that the natal family is also instrumental in the closure of a case and as part of the pressures women cited to agree to closure at the stage of police investigation.

Researchers also sought to understand how women had selected Section 498A as the course of action. Seventy-one per cent of women from DS2 and 44 per cent in DS1 said that they became aware of Section 498A and its provisions only through their lawyer. Thus, women do not directly approach the police, but have approached the criminal justice system itself through the mediation of a lawyer, and are dependent on the lawyer for legal information. Additionally, most women had filed a case first at the court, and had been referred to the police by the court itself, although cases under this section can be registered directly in the police station. When interviewed, some women shared that they had taken this longer route, because of the apprehension that '*police to mahilaon ki sunti hi nahi hai* (the police do not listen to women)'. The police records from DS1 reflected that a majority of cases were registered not at the police station, but were referred to the police station from court. In DS1, 84 per cent of cases were filed through the court and only 15 per cent came directly to the police station. In fact, in one district, no cases came directly to the Mahila Thana. In DS2 as well, a majority of the cases (59 per cent) were filed through court whereas very few cases

(22 per cent) had come directly to the police station. Mahila Thanas were instituted precisely to instill confidence in women approaching the police, and create a space where women's issues and voices were prioritised, and it is pertinent to note that even with Mahila Thanas in place, women still did not approach the police directly, but through the court. This could be because when the police refuse to register a woman's complaint, the woman must take the longer route of approaching the court through the lawyer – after which the court sends a notice to police to investigate, forcing the police to take an active role.

According to the police's Final Reports, women largely file complaints to 'punish' their husband and his family, or to create pressure on the husband to gain re-entry into the marital home. In DS1 in one district, according to police reports, 36 per cent of complaints were registered by women to 'pressure' their husbands to take them back into the marital home while almost an equal percentage of complaints (35 per cent) were 'filed in anger' and to 'punish the husband and his family'. Police records of the second district state that 70 per cent complaints were 'filed in anger' to 'punish the husband and his family', while a similar number of complaints (72 per cent) were filed in the first district in order to create pressure on husbands so that they can go back to the marital home. In DS2, police records state that, over one-third (38 per cent) of the cases were 'filed in anger' to 'punish' the husband and the marital family members. Thus, these cases in the Final Reports, through the language of the police are represented as impulsive overreactions on the part of vengeful wives. The high frequency of these phrases ('filed in anger', 'to punish husband') in the Final Reports reflects how these reports follow a standard template. However, we see that this construction of revenge and impulsiveness is not borne out in data from women, who have chosen to file a case after much consideration and after exhausting other options for redressal. From interviews, we see then that the 'anger' that is represented as impulsive in the Final Reports, can more constructively be understood as being filed in pain, after experiencing marital violence.

Understanding the role of the police

The police's mandate under Section 498A is to investigate the veracity of the complainants' claims, and file a report that is to be provided to the court, and used as evidence during the case. However, this has transfigured into a more active role, with the police intervening and seeking to 'resolve' cases themselves before the case goes to court.

Researchers asked women what they expected from the police when they filed 498A cases. It became clear from interviews that women expected support from the system in challenging and stopping violence, and had turned to the police and the court when other avenues had failed. Rather than expecting prosecution and incarceration of the perpetrators, women approach the police with the faith that the state will lend its weight in their fight to end the violence in their homes, and will take action to ensure an end to violence. Women are themselves deeply entrenched in familial structures and dependencies, and many wish to continue to live peacefully and without violence within the marital home itself.

The police respond, in part, to this expectation by undertaking an intervention in which they counsel the woman and her husband through a meeting at the police station; but with the crucial difference that their express motive is to 'save the family'

rather than ending violence. The action taken by the police typically consisted of summoning the complainant and her husband to the police station and holding meetings with them. Once the case was registered, and FIR was filed, both the parties were called again for a ‘face to face’ meeting, in which, according to the police, the ‘truth of the matter’ was revealed. During this meeting, the parties were both made to accept their mistakes, were counselled by the police, and were expected to arrive at a decision mutually – either reconciliation or mutual consent divorce. If they were successful in their attempt at reconciliation, the complainant would state in writing that she wanted to return to the marital home, and an FR was filed and the case was closed. If the parties failed to arrive at a mutual decision about the course of action, then a charge sheet was filed. Apart from this, witness interviews or photographs were considered as evidence.

As shared by the police in interviews, since cases under Section 498A of IPC were largely sent to them by the court, they were compelled to file an FIR against their better judgement. They were sensitive to the fact that since there was a dearth of NGOs or counselling centres to support survivors of violence, filing a case under Section 498A was often the only recourse available for women to negotiate a ‘compromise’. The police maintained throughout the interviews that even though they had no legal mandate to conduct counselling, they did so on their own initiative, for the ‘betterment of society’, and to ‘save the family’.

In DS1, in spite of their apprehensions, nearly half of the women interviewed said that they found the police cooperative (44 per cent), at least initially; though some found that later the response of the police changed (18 per cent). A few women accused the police of demanding bribes, either from them (3 per cent) or from their husband (5 per cent). Some reported that the police were very reluctant to register the case when they had approached them directly, so they had to file their case through court (13 per cent) while some others had found the police ‘rude’ (15 per cent). Some women reported that the investigation had not started immediately after filing the complaint and that no reason was given for the delay (37 per cent); that the perpetrators were immediately released on a minimum amount of bail (12 per cent); and that some perpetrators named in FIR were not called even once to the police station (12 per cent).

Thus, we see that the once a case comes to the police, their primary effort is to arrange for a meeting akin to mediation. The woman is thus using Section 498A and the pressure of arrest and legal proceedings, to bring the perpetrator of violence to the police station, and to the point of willingness to effect a change. However, the police intervention is geared towards saving the family, as they too believe (as reflected in their interviews) that the violence is simply a ‘misunderstanding’ or ‘dispute’, which should not endanger the sanctity of the family. The ‘counselling’ that they undertake is thus for the good of society at large, and their efforts at mediation are less towards strongly condemning and challenging violence, than effecting speedy reconciliation.

Closing a case

Women complainants faced both direct and indirect pressure to close cases. In DS2, we see that half of the women interviewed reported that members of the community had tried to effect a compromise, rather than allowing a case to be filed, and very few had found the community members (community leaders/elders and panchayat

members) supportive of their decision to file a case (only 12 per cent). The community thus acts as a deterrent for women seeking legal action; even though community interventions themselves failed. Relatives urged women to compromise in more than half the cases. In interviews, 43 per cent of women in DS1 reported that their natal family had led the process of closing the case. Thus, we see that the natal family plays a major role in the woman's journey through, and exit from, the criminal justice system, and seems to steer the process. In a majority of cases, however, closure was initiated with the consent of the women, though women often felt powerless to advocate for its continuation. In DS2, the husband agreeing to a divorce, accepting the woman's return to the marital family, and pressure from relatives were some of the reasons for closure mentioned by women.

When women seek to end marital violence, doing so without a support system becomes extremely challenging. When families and communities exert their influence on women to end criminal proceedings, this creates enormous pressure as women are dependent on them for emotional, financial and social support. As NGO workers and women activists observed, when women realised that the initial support offered by the natal family was dwindling, women begin to feel the pressure to compromise. This was corroborated by interview data, in which women presented some of the following reasons: '*bhai kehne laga, isko kahan rakhenge? Kya khilaenge?* (My brother started saying, where will we keep her? What will we feed her?)', and cultural norms dictating that '*shadi shuda ladki apne sasuraal me hi achhi lagti hai* (The proper place for a married girl is in her marital home).' In many cases (21 per cent in DS1), prominent members of the community, neighbours and relatives had attempted to persuade the woman to go back to the marital home. Some women had accused the police of putting pressure on them to compromise (25 per cent in DS1), and of telling them that they would become a 'burden' to their parents.

In DS1, some women in interviews said that they were aware of the fact that everybody wanted the case to be closed once the opposite party showed willingness to compromise, and they fell in with their wishes. Thoughts about future of their children were another factor that made women consider reconciliation. Women were apprehensive about being an economic burden on their natal family, about the effect of the case on their siblings' prospects of getting married, and about the strain of the court case on their family members. One of them shared that her neighbours gossiped about her, while another said that she simply gave up – 'If ultimately I have to go back to the same household, what is the point of pursuing the case?'

In a majority of the cases in DS1, the woman had agreed to withdraw the case after the husband had agreed through the process of negotiation mediated by the police, to amend his ways – to stop violence (46 per cent), stop drinking (28 per cent), bring her back into marital home (44 per cent), take responsibility for household expenses (49 per cent) and return her *streedhan*³ (18 per cent). In some cases the case was closed when both parties had agreed to a mutual consent divorce (26 per cent). The husband had agreed to provide a lump sum amount or a share in the property to the woman in half of such cases (13 per cent). Two women reported being duped into closing the case, one by her brother and another by the police. However, the police have no means of ensuring that these promises will be implemented after the case is closed.

According to police reports, a majority of the cases ended in reconciliation (84 per cent in DS1 and 97 per cent in DS2). A few ended in mutual consent divorce and *streedhan* retrieval (4 per cent in DS1 and 3 per cent in DS1), and 11 per cent

resulted in separation (DS1). After the negotiation process, most women agree to close the case, and an FR is filed. However, these closures obscure the processes that have been undertaken by the police up to this point; as the only terminology available to document a closed case at this stage is that of ‘false’ or ‘mistake of fact’. In the first city ‘mistake of fact’ was the primary reason given for closure (91 per cent), and very few cases (9 per cent) were closed as being ‘false’. The data from the second city shows that a majority of cases (65 per cent) were closed ‘due to mistake of fact’ while the number of cases closed as ‘false’ (35 per cent) was also sizable. In the first district, a majority of cases were closed as ‘*galatphahmi*’ or ‘misunderstanding’ (89 per cent), whereas in the second all cases were closed as ‘false’.

Afterlife of a closed case

The experience of filing and closure of a 498A case, for most women in the study had more negative impacts than positive. The cost of filing and closing a case for women often outweighs the benefits. Although in popular discourse it has been suggested that women ‘impulsively’ file cases to seek ‘revenge (see Malimath Committee, 2003)’, the reality of women’s lives after filing a case suggest otherwise. Although the police report that in a majority of cases, ‘reconciliation’ was negotiated between the woman and the perpetrators, a worrying number of women interviewed confirmed that the violence they had approached the criminal justice system to end, still continued after the closure of their case. Women not only face a recurrence of violence, but also added stigma from the community and their marital family because they had resorted to filing a case. In the absence of proper training, and a limited scope of work, the police are unable to create safety plans for these women or follow up after the case is closed.

A large percentage of women believed that the police had ‘not put enough pressure’ on the perpetrators, and that they had got away very lightly (56 per cent) – as one succinctly put it, ‘*Woh toh sar uncha karke, muchhe tight karke ghoom rahe the* (They were roaming around with their heads held high, flaunting their mustaches)’. Forty-eight per cent of women in DS1 reported that the violence had recurred after the FR was filed. When the present study was conducted, less than a year after the cases were closed women in DS1 reported that they were back to square one: ‘Even now the same pattern continues – one or two months I stay in the marital home, then again I am sent back to my natal home’; or their situation had worsened: ‘As soon as I signed the FR, the violence recurred. I returned to the natal home. Now I want a divorce, but the husband is not ready for this. He says he will see me rot to death.’ DS1 police data showed that out of the cases that had ended in reconciliation, only 31 per cent of women were living in a violence-free marriage. In over 50 per cent of the cases violence had recurred, and in 50 per cent the woman had been sent back to the natal home.

In DS1 out of the 28 women who had reconciled with their husband at the time of filing the FR, one had been widowed, four had filed cases for divorce, and seven had been forced to return to the natal family. Out of those who stayed married, only in nine cases did the reconciliation proved to be nonviolent. Fifty-nine per cent of the complaints interviewed were either divorced or separated from their partners at the time of data collection.

Researchers asked women what effect filing a 498A case had on their lives. A majority in DS2 said that filing a case under Section 498A IPC had adversely affected

their family (62 per cent). Twenty-nine per cent said that their mental health was affected after filing the case. Women also spoke at length about how their children had suffered because of the case (21 per cent), and were worried about the effect that the case would have on their children's future (37 per cent). Some women said that they had no money left even for their children's medical needs (12 per cent).

Filing a case often places severe strain on women's familial support systems. Some women faced even more anger from in-laws after filing the case, though they said that they had the support of their natal families (28 per cent). However, the responses of others indicate that not all members of the natal family were supportive, and there were fights within the family over the issue. In one case, the joint family had dissolved due to the case. Some women spoke about the financial losses incurred by their families because of filing this case (15 per cent). Some women shared that the community blamed them for taking this step (18 per cent), and an equal number said that the reaction of their friends and relatives was mixed (although some accused them of creating unnecessary trouble, others were supportive). One woman shared that after filing the case, her husband started spreading rumours about her character by way of retaliation. Another woman shared: 'I have become notorious in the community as the girl who filed a dowry case.' However, two other women reported a positive change in their in-laws, who started behaving in a more polite manner, indicating that the police intervention did have some degree of impact.

The police, when interviewed, largely admitted that they had no means of ensuring the safety of the complainant once reconciliation was effected. No safety planning is done with women facing violence and re-entering violent homes. Due to the scope of their work, they are often unable to personally follow up to ensure that violence does not recur. Though almost half of the police officers interviewed (44 per cent) described various ways in which they tried to create mechanisms for follow-up (this included giving women their phone number, asking a member of the community to follow up, 'counselling' to prevent recurrence of violence), almost an equal number admitted that given the existing workload, it was not possible for the police to follow up and ensure continued support to such women. Most women interviewed (84 per cent in DS1) reported that no measures were taken by the police to prevent the recurrence of violence, and all women in DS1 reported that the community/panchayat had also not taken any measures to stop the recurrence of violence. Less than 10 per cent of the women interviewed reported that the police had told them to approach them again in case of recurrence of violence.

Caught at the crossroads: intersecting patriarchies and the myth of misuse

Section 498A, has become for the criminal justice system and lawyers, a one-stop solution for women facing marital violence. Women are not aware of other options (such as the PWDVA), and as a result, are able to use this law alone to negotiate for their rights. Lawyers direct women to 498A as a means of creating pressure on the perpetrators of violence, and this law thus becomes a means for women to seek support and the authority of the state, and leverage police authority to create pressure on their marital family to end violence. Because of multiple factors, women do not wish to, or are unable to break free of their matrimonial home and their network of relationships. Data from this study – suggests that the conversation around 'mis'-use

needs to be redrawn – women facing violence are using the law, but are, in these ‘false’ cases, leveraging the law not for the delivery of criminal justice but for negotiating an end to violence within the space of the marital family. However, despite the fact that many women do not wish to prosecute, the closure of the case comes at great personal and social cost, with women being derided by the community and subject to further violence from their families.

The NFHS-3 studied help-seeking behaviour of women, and found that only one in four women who reported experiencing domestic violence sought help for the same. Only 2.1 per cent of the already small portion of women who sought help, sought the aid of the police. A majority sought help from their natal family (71 per cent), followed by their husband’s family (28.4 per cent) (Ministry of Health and Family Welfare, Government of India, 2006). Thus these ‘false’ cases represent but a fraction of the women who sought help at all from the criminal justice system, which in turn is a fraction of the women who reported facing spousal violence. One of the most important aspects of Section 498A is that under this section, the law recognises marital violence and cruelty as a criminal offence, bringing it firmly into the public sphere and within the jurisdiction of the state. However, the state in its practice and application of the law, serves to push domestic violence back into the sphere of the private, and delegitimises many women’s narratives of violence, by the practice of labelling cases as false. The police (as evidenced in this study) believes that saving the family and its ‘honour’ is key, and as a result ‘compromise’ becomes the driving force behind their interventions for gender-based violence. This is not limited to cases of 498A alone but is also practiced by the police in cases of domestic violence, and even rape (Baxi, 2010). Kethineni and Srinivasan (2009) in their study of the police handling of domestic violence cases discover that the police employ a two-tier system to address such cases, and files an FIR only if grave injury is evident. Other cases which the police perceive to be less severe, are filed under ‘community services’ and the police attempt to effect a ‘compromise’.

Baxi, in her study of rape cases, explored the unspoken emphasis on ‘compromise’ in rape trials. This compromise is legally impermissible as rape is a ‘non-compoundable’ offence (meaning that mediation is not allowed); however, she argues that the performance of this compromise in the public space of the courtroom becomes an act of ‘public secrecy’; all those involved including the judiciary are not only aware but are in various ways active participants in this process. However, through the socio-legal processes of this ‘compromise’, the woman complainant becomes produced and presented to the public as a ‘hostile witness’ once she retracts her case due to compromise/settlement being effected – as this is the only label available in this non-compoundable law for the retraction of a case before conviction. Thus, this hostile witness is created by the legal system’s own complicity and processes; yet the category of ‘hostile witnesses’ and their high number, then becomes entrenched in public discourse as proof that women are generating ‘false’ cases and misusing the law (Baxi, 2010). Mediation is not legally permissible for non-compoundable offences, such as rape or marital cruelty under 498A. However, ‘hostile witness’ and ‘false cases’ are produced through the invisibilised processes undertaken by the state itself, in contravention of what the law legitimises on paper. Because of the dictates of the law, the only way these cases can be documented for the public eye is through these categories; and it is these categories that feed into and perpetuate myths of misuse and generate more hostility towards women-centric legislation.

Judgments on Section 498A have over the years reflected the bias and patriarchal underpinnings of judicial pronouncements (see Lodhia, 2009). Justice Kapoor, in 2003 remarked that ‘I feel constrained to comment on the misuse of the provision of Section 498A to such an extent that it is hitting at the foundation of marriage itself and has proved to be not so good for the health of society at large’ (Savitri Devi vs. Ramesh Chand). The notorious judgment delivered by the Supreme Court in *Arnesh Kumar vs. State of Bihar* (2014) states that ‘the fact that Section 498-A is a cognisable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives’. The image of 498A as a ‘weapon’ that is being misused to ‘harass’ husbands, has taken hold of the public imagination, and the anxiety that has crystallised around this vision reflects a growing fear of loss of patriarchal power and dissolution of the patriarchal family structure. As Lodhia suggests, ‘abstract notions of the liberal subject... mask women’s uneven access to legal protections’. She suggests that this law has been constructed as a ‘metaphorical monster, one whose power exceeds the boundaries imagined by its creator and which wreaks havoc on the sacred order of the Indian family’ (2009, 115). The image of this monstrous armed Indian woman thus appears in sharp relief to the ideal Indian wife as described in the Malimath Committee report; who ‘true to the Indian tradition... quietly suffers without complaining, many inconveniences, hardships and even insults with the sole object of making the marriage a success’ (2003).

Women experiencing domestic violence find themselves at an intersection of crosscutting patriarchies; caught between the family, police and judiciary. Turning first to social networks, community groups and their own natal families, they find that these kinds of interventions do not succeed in stopping violence. Women then eventually turn to the state to challenge the violence that they are facing and create a space within which negotiation can be carried out for her rights – to the residence, financial support and mental wellbeing. This process of negotiation and reconciliation is entirely obscured from public view when a case is closed as ‘false’, and becomes simply another statistic in the arsenal of men’s rights activists and public prejudice. When such negotiation is carried out with the express motive of saving the family rather than advocating for her safety and wellbeing, women’s lives return to the same patterns of violence and abandonment.

Justice and care: connecting laws and social services to challenge domestic violence

Interviews with women enabled insight into their encounters with the criminal justice system and provided perspective on their expectations and needs from the system. When a woman approaches the state, she is always-already carrying the weight of the family and community, and the state’s response, rather than empowering the woman in the face of these pressures, only serves to reinforce the patriarchal structures that tie women to violent situations. Women are deeply tied to the webs of relationships and dependencies, and find love and support in spaces that may also perpetrate oppression and violence. Women themselves internalise the pressure to keep a marriage and family afloat, and are often unable to find avenues outside reconciliation. Section 498A is caught in a vicious cycle; with the result being that when cases do reach the court, they must contend with judicial reluctance and suspicion that has been bolstered by the circulation of public opinion and the discourse of misuse and falsity.

Returning to the connected discourses of justice and care, we see that women use this law not to ‘destroy’ relationships and families, but to seek support and care from the state in navigating their relationships to end violence. This points towards the need for the state to take on the role of not simply *delivering* legal justice, but actively engaging with women and creating services and mechanisms to support her in ending violence. This study seeks to provide insight into how women grapple with the law to find ways through and around it towards redressal, justice and care.

The PWDVA (2006) and Section 498A, taken together represent a wide spectrum of legal options for women survivors of domestic violence, encompassing both criminal and civil provisions. The PWDVA presents women with options for civil redress with its focus on providing women with access to a range of reliefs, whereas Section 498A presents women with the option of prosecution and imprisonment of perpetrators. However, Section 498A is plagued with judicial reluctance and a poor conviction rate, and the implementation of the PWDVA across the country has been fragmented, with the state having failed to create and sustain the wide network of supportive stakeholders and services as envisioned in the Act (see Sakhrani and Panchal, 2013).

Through this study, we see that instead of presenting women with multiple options and directing women who do not seek prosecution towards civil relief such as the PWDVA or social services, the justice system and lawyers are able to direct women only towards criminal law. This is, in part, because the pressure of arrest is seen as most effective, as opposed to the long-drawn-out procedures of the PWDVA. The disposal of PWDVA cases is very rarely done in the stipulated 60-day time period, and cases stretch from anything between one to six years (Sakhrani and Panchal, 2013). These limited options to contribute to the failure of the system to effectively end the violence women face, and in the face of limited and ineffective alternatives women turn to 498A to harness it to negotiate for an end to violence.

It is crucial for bridges and connections to be built between multiple laws and services, and for the lawyer and the police to present women with diverse options which can be tailored to their own circumstances; including referral to social services as well as information about other relevant laws. Only 15.4 per cent of women (DS1) had also taken recourse to the PWDVA, and a majority of women were not aware of its provisions. Women were clear in their assertion that they found value in Section 498A, reflecting the important role the state and legal system can play in ending violence. Through interviews, it emerged that women saw this law as their only, and best, option to end violence. Twenty-three per cent in fact regretted the filing of an FR, and wished that they had taken the case to court, and 12 per cent of women wished that they had agreed to the filing of the FR only after getting either a divorce, a share in the property, or lump-sum maintenance. Thus, we see that women continue to repose faith in the potential of the state and the law; however, its implementation and outcomes for them are lacking. The lack of connections between various laws and the overwhelming consensus of misuse is limiting the effectiveness of the criminal justice system in holistically addressing violence.

In the absence of supportive services, women and families often turn to the police with the expectation that the police space will create pressure on the respondent, and enable the police to effect or negotiate a solution (Brereton, 2017). The counselling undertaken by the police is geared towards reconciliation and keeping the family structure intact. However, when women return to marital homes, in the absence of any safety planning or follow-up to the intervention, they face a recurrence of violence

and further stigmatisation. It is important that trained professionals with a pro-woman, rights-based approach should undertake such work. A range of coordinated social services is required to form a strong base to counter the multiple patriarchies women face in their attempts to end domestic violence.

It is crucial to understand and contextually unpack how legal systems work for women. While it is vital that the state engages with addressing violence against women, the modes of this engagement must also be understood and questioned. This study provides a window into the processes in which the state and its functionaries have an active part, yet which become obscured or invisibilised to the public eye; presented only 'false cases', projecting the woman survivor of violence as the one at fault. By understanding what it is that women need from the law, and what the law provides instead, we can gain insight for future advocacy at both the national and international stage.

Over the years, feminist philosophy has grappled with the principles of justice and care ethics. The broader consensus that 'prevailing approaches to justice should pay more attention to values like care, empathy and trust' has emerged, and there has been a move towards 'taking care seriously' in developing just policies (Kiss, 2000, 492). Experiences from this study remind us that women seek justice that is contextual, accounts for the circumstances of their lives, their webs of relations, and addresses the inequities and violence which they face in these spaces and relationships. What we see through these women's narratives is contextual evidence of the interconnections between law, care and supportive services which must be developed in order for women to experience justice and an end to the violence they face. The evidence this study provides enables us to identify journeys and pathways through the law, and locate the obstacles in this journey towards justice with greater clarity. Feminist revisionings of justice emphasise building ideas of justice from the ground up, from concrete experiences and standpoints. Women's voices from this study remind us that women continue to seek justice and support from the state, but this justice must be tailored to addressing violence and inequities within the context of their lived experiences. What is most important is that better connections between laws and services would go a long way in dismantling myths of misuse, and in supporting women seeking to end violence.

Acknowledgments

The authors would like to thank Dr Rimple Mehta for her invaluable suggestions, Ms Manisha Kande for her work on the statistical analysis for this study, and Mr Balwant Singh for his help with data collection. We would also like to thank the institutions that supported us in doing this research.

Notes

¹ This study was undertaken by the Resource Centre for Interventions on Violence Against Women, at the Tata Institute of Social Sciences, Mumbai.

² The IPC is a comprehensive criminal code for the country, dating back to the colonial era. Several amendments have been made to the code over the years. The Second Amendment brought in Sections 498A and 304B, due to campaigning by women's groups against dowry violence.

³ ‘Streedhan’ are assets brought to the marital household over which only the woman, not the marital family, has ownership. Typically, this includes jewellery and gifts given to the woman at the time of marriage.

References

- Agnes, F. (1992) Protecting women against violence? Review of a decade of legislation, 1980–89, *Economic and Political Weekly*, WS19–WS33
- Agnes, F. (2015) Section 498A, Marital Rape and Adverse Propaganda. *Economic and Political Weekly*, vol 1, issue 23, pp 12–15
- Baxi, P. (2010) Justice is a secret: *Compromise* in rape trials, *Contributions to Indian Sociology*, vol. 44, iss. 3, pp. 207–233. London: Sage, doi: 10.1177/006996671004400301
- Brereton, Z. (2017) Perpetuating myths of women as false complainants in rape cases in India: Culture v. the law. *International Journal of Comparative and Applied Criminal Justice*, vol 41, issue 1–2, pp 41–62
- ISWSD (Indian School of Women’s Studies and Development) (n.d.) *Marital Cruelty and 498A: A Study on Legal Redressal for Victims in Two States*. National Commission for Women, http://ncw.nic.in/pdfReports/Marital_Cruelty_and_498A_A_Study_on_Legal_Redressal_for_Victims_in_Two_States.pdf
- Jaising, I. (2009) Bringing rights home: Review of the campaign for a law on domestic violence. *Economic and Political Weekly*, vol. 44, iss. 44, pp. 50–57
- Khora, S. (2014) Final reports under Sec-498A and the SC/ST Atrocities Act. *Economic and Political Weekly*, vol. 49, iss. 41, pp. 17
- Kethineni, S., and Srinivasan, M. (2009) Police handling of domestic violence cases in Tamil Nadu, India. *Journal of Contemporary Criminal Justice*, vol. 25, iss. 2, pp. 202–213
- Kiss, E. (2000) Justice, in: Jaggar, A. M., Young, I. M. (eds.) *A Companion to Feminist Philosophy*. Oxford: Blackwell Publishers
- Kumar, R. (1997) *The history of doing: An illustrated account of movements for women’s rights and feminism in India 1800–1990*. Zubaan.
- Lodhia, S. (2009) Legal Frankensteins and Monstrous Women: Judicial narratives of the ‘family in crisis’. *Meridians*, vol. 9, iss. 2, pp. 102–129 Indiana University Press Available at <http://www.jstor.org/stable/40338788>
- Malimath Committee (2003) *Committee on Reforms of Criminal Justice System 2003*. Report. New Delhi: Ministry of Home Affairs, Government of India
- Ministry of Health and Family Welfare, Government of India. (2006) National Family Health Survey–3, 2005–2006.
- NCRB (National Crime Records Bureau) (2015) *Crime in India: 2015*. New Delhi: Government of India, <http://ncrb.nic.in/>
- PWDA (2006) Protection of Women from Domestic Violence Act 2006. Available at http://chdsla.gov.in/right_menu/act/pdf/domviolence.pdf
- Sakhrani, M., and Panchal, T. (2013) *Quest for Justice: A Study of the Implementation of the Protection of Women from Domestic Violence Act 2005*. Mumbai: Tata Institute of Social Sciences

Judgements

- Arnesh Kumar v State of Bihar and Others*. 2014. Supreme Court of India.
- Savitri Devi v Ramesh Chand and Others*. 2003. Delhi High Court.