Aftermath
of
Domestic Violence Against Women

A Systematic Exploration of
AWAG's Experience
of the
Criminal Justice System
in
Gujarat (India)

by
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FOREWORD

As a student of History, I have repeatedly stumbled on situations of peculiar coincidences that appear frequently to take the form of an orchestrated concert - through events that affect me personally - sometimes in a direct, but far more often in an indirect manner. Not being a believer in such chance coincidences, I have found it more rational to explain such events through the concept of historical necessity. The arrival of Ila Pathak's manuscript, asking me to write a Foreword, coincided pretty sharply with a round of consultations across the country on gender and governance, that the Centre for Women's Development Studies (CWDS) had undertaken to prepare a Country Report on this theme for the UNDP. I was not present in all these Consultations, but going through the papers and the summary report of discussions - members of our Task Force for this project recorded in their Interim Report :

"the issue of dysfunctionality of the law enforcement and the justice delivery system. Its increasing inability to deal with the complexity of rising violence and crimes against women emerged as a core concern in assessing the gender and governance equation. It was felt that attempts at law reform and occasional progressive judgements by the Courts have been too feeble to make any significant impact on these systems - already beset by several other maladies".

One of the major causes for the failure of legislations identified by both representatives of government and various sections of civil society, including the women's movement -was the failure of the state to ensure "the interpretation and implementation of such legislations in a non-discriminatory manner... emanating from the 'inherited and unequal social order' and strengthening cultural norms which continued to contradict the formal equality promised by the Constitution".

In the discussions within the Task Force I was struck by the frequent use of the word **system** while referring to the functions of governance, by very senior and outstanding representatives of the Indian bureaucracy - distinguished by the concern that they have displayed – personally and professionally - about the deteriorating situation of women -ever since the Report of the Committee on the Status of Women in India recorded its grim findings in 1974. Yet when I sought for a clear definition of the 'system', I received fragmented responses. Bureaucrats with distinguished record as policy builders or 'doers' would talk about the crucial importance of the 'delivery' system, while those with equally distinguished records in promoting positive legislations (specifically in favour of women during the last two decades of the 20th century) would highlight the problems of the legal system or occasionally of the justice delivery system.

In the context of a study on domestic violence undertaken by the CWDS in the early 1990s, we had the privilege of advice from an equally distinguished retired officer of the Indian Police Service, with a record of introducing various experiments within the Delhi Police

administration - to strengthen its capacity to respond to the growing menace of violence against women, when he headed the Delhi Police establishment in the second half of 1980s. Confronted with the findings of our colleagues about the outcome of measures introduced by him a few years later, he was ready to explode:

"the first responsibility of the police force is investigation, not counselling!. Why don't you, as social scientists, help to identify causes within the social process for deprofessionalisation of the police force? I put women officers in charge of this cell, in the hope that they will be able to make a difference by bringing in more humane perspectives into the investigations - not to eschew their professional responsibility!".

Ten years later, a senior social scientist who had served as a member of the West Bengal Police Commission (also a man) went a step further in his statement before the Eastern Regional Consultation on Gender and Governance. "We need a far higher proportion of women in the police force to improve the efficiency of the law enforcement system". A young woman police officer in charge of the women's cell in Calcutta however pointed out that merely bringing more women into the force without dealing with the string of systemic inadequacies and maladies was not going to resolve the problem. "There are inadequacies of infrastructure, and inconsistencies within the laws which cannot be corrected merely by 'genderizing' the police force".

Prof. Ila Pathak's systematic exploration of the experience of Ahmedabad Women's Action Group of the Criminal Justice System in Gujarat provides ample evidence of the validity of the statements mentioned above. Prescribed procedures contain too many loopholes enabling investigating agencies to evade their professional responsibilities. The functioning of the legal profession - on the prosecuting as well as the opposite side - display neither legal ethics nor an adequate command over the plethora of laws (often contradicting each other) constitute another major systemic malady that we have to confront. Not all members of the judiciary can be held exempt from biases similar to those afflicting the police force, despite their privileged position - in having received far higher and prolonged education and training, as well as enormous social status.

I hope the results of this painful but professionally objective study by Prof. Pathak and her colleagues from AWAG will receive the appreciation that it deserves from all those who are concerned not only with the rising anomie of crimes against women, but with the increasing evidence of a systemic collapse of crucial elements of the governance systems in India. This is the major challenge facing the country and all its citizens, especially the adults in the 21st Century.

New Delhi,
14 February 2001

Vina Mazumdar
Chairperson
Centre for Women's Development Studies

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I. INTRODUCTION

Domestic violence against women has become such a recurring phenomenon the world over, that often the victim accepts it as inevitable, a way of life. What is more appalling is that the issue, which affects one-half of the human race, is not seen as a human rights problem of magnitude, but trivialised as a family problem. The police, the judiciary and even many non-government organisations (NGOs) do not give it the same consideration accorded to crimes of a different nature. Consequently, many domestic violence cases are either unreported or underreported.

In Gujarat, the situation is especially volatile, given the ingrained belief system of equating a woman with the cow that meekly follows the dictates of its owner, or else is subjugated by force. Indeed, so conditioned are the victims that some women actually believe that abuse on the part of the husband, in a culture that considers him to be the surrogate of God on earth, is proof of the man's love for his wife! Once the woman is given away by the father, she is enjoined to suffer in silence all indignities heaped upon her by her husband or in-laws, who may not think twice about coercing her by means of physical violence. In these circumstances, the only way out for her would be suicide.

It was only in 1983 that the Indian Parliament legislated to deal with the cruelty leading to the unnatural deaths of many women in the country. Under Section 498-A, women could now state they were treated with cruelty within their homes and seek justice against assaults on their bodies. On paper, what was once relegated to the private domain was brought out into the public sphere. In reality, women's organisations like the Ahmedabad Women's Action Group (AWAG) found that attitudes die slowly, even in the face of laws. Women were, and still are, dying of harassment and torture. The system of delivering justice to women has not undergone any change. The 'pro-woman' legislations are meant to help the women of the weaker sections of the society as well. In fact women in Gujarat constitute the weaker section of the society. The established system of delivering criminal justice needs to be re-evaluated.

For many years AWAG has been too active in the cause of women's issues, and for the past 15 years, domestic violence too. Hence for AWAG to raise its voice against this inhumanity and the general apathy of society towards this problem was an organic outcome of its concern for women. AWAG has been a part of this history and has shared and voiced these concerns on various platforms. At the same time, the commitment to treat law as a site of struggle has remained true for the organisation. For AWAG, experience has shown that knowledge of laws and legal procedures have enabled women to negotiate for their rights vis-a-vis the family members, employers or state agencies. Besides many women come to the organisation with the explicit expectation of legal help and therefore it is of utmost import to the organisation to fine-tune its strategies to engage effectively with the law. This study further encapsulates its research into the issue, spurred no doubt by the number of battered women encountered in course of its field work and their plaintive cries for help – both legal and social.

As early as 1956, a state-sponsored study in Gujarat looked into the causes of suicides of young women. NGOs were active on the issue but their perception of the causes of women's suffering was aligned with that of the patriarchal society. It was left to the activists and researchers of the Indian women's movement, to point out the stark realities of women's lives. The experience of violence from a young age and the oppressive environment around eroded women's notions of 'self'. The family was the altar at which a woman had to sacrifice her life and such subservience was demanded in the name of culture, tradition, custom and all aspects of oppression and exploitation of women according to the feminist groups. 'Dowry'

demands, an originally upper class phenomenon, have been linked to violence. But for a large number of women violence is extraneous to demands of dowry.

Many women's groups have worked consistently with battered women to help them challenge domestic violence. While doing so they have earned the scorn of society, which labels them as men-haters, or as those who 'break happy families'. The women's groups have busied themselves in demanding changes in public policies and reforms in existing legislations.

In order to understand the dynamics of the various structures involved in domestic violence against women, AWAG decided to systematically study the problem. So this study is a systematic exploration of the experience of AWAG. It looks at the way the police record women's cases, especially those clubbed with section 498-A and the cases of deaths of women. Judicial pronouncements in magistrates' courts and the judgments in appellate courts were closely studied. It presents the profile of women, which emerges from a statistical analysis of police records of various crimes against them. The study gives the responses of lawyers and NGOs, the two agents of civil society whom, women are likely to approach for help. The police responses highlight the ideological constructs in defining domestic violence and show how these hamper women's access to justice. Through an analysis of police attitudes to domestic violence and judgments, the study brings forth the responses of the criminal justice system in cases of crimes against women. The study tries to question the larger questions of culture and tradition, particularly the culture of non-questioning tolerance, reflected in the processes manned by the police, the prosecutors, and the members of the judiciary and such others.

The findings of the study reiterate the gravity and seriousness of domestic violence bringing to light the apathy of the state agencies in registration of such cases. For instance, a major finding of the study was that 63.2% cases of deaths of women were reported as accidents of which 57.2% were kitchen-based accidents! The variation in registration of cases in different police stations, despite the well documented fact that domestic violence cuts across caste, class, religions differences, points at the possibilities of police personnel 'screening' the cases of domestic violence and thus making these "crimes" invisible from official records. The analysis of judgments is startling. In a case where a woman died, the police records stated this, but the registration of the offence was only under section 498-A (IPC). Abetment of suicide was not mentioned at all. The entire trial was conducted without any mention of the woman's life status and the accused was acquitted. One wonders how trials take place without a probe in the absence of the prime witness, the victim ? The legislations passed in 1983 and 1986 have been used by women's groups now for more than a decade. Sections 498-A and 304-B, in the Indian Penal Code (IPC) and sections 113-A and 114-A in the Indian Evidence Act have been depended upon. It is time to take stock of the strategies used and gains made for women. Have the new pieces of legislation been really useful? Have they yielded results as per expectations? Do we go along the same lines or do we want changes? These questions have been raised by women's groups, answers to which were sought through this study.

Recently, men's rights groups have opposed the 'pro-woman' legislation, especially sections 498-A and 304-B of Indian Penal code (IPC) and even section 125 of Criminal Procedure Code (CrPC). The last mentioned is almost a hundred-year-old legal remedy to gain maintenance from a truant husband by the wife made destitute by him. The other two sections, i.e. 498-A and 304-B (IPC) have been introduced in the IPC only in 1983 and 1986 respectively. In Gujarat, the police started using it regularly only as late as 1988. In the span of these ten years the perception of AWAG was that the section could not be fully exploited by women, the police were yet hesitant in applying the section, the prosecutors were not yet

briefing women complainants nor were magistrates clear about the ‘compromises’ reported in courts of the non-compoundable offence that section 498-A denotes. All these had to be studied closely so that AWAG could support its perception.

The judges of the higher court lament that though the cases of cruelties on women are increasing, the law does not allow them to convict an accused under sec.306 (IPC) (as abettor of suicide) though 'cruelty' by him was proved under section 498-A (IPC). That leads AWAG to wonder if a subsection is needed for section 306 (IPC)? Or could the evidence be appreciated differently? Findings such as these cry out for a need of urgent reform in the systems and everyday processes of adjudication.

The study thus throws open many arenas for political action at various fronts. It is aimed to add to the many consistent efforts to non-legitimize domestic violence.

II. GUJARAT SCENARIO

i. NGOs in Gujarat :

Gujarat has a large number of NGOs working on women's issues. Most of these came into existence during the twenties and thirties. Branches of the All India Women's Conference (AIWC) were formed in Gujarat in 1920s while other organisations also came up during the nationalist wave. The objectives then were to support the nationalist movement and to bring about reforms in society. After 1947, the emphasis changed, and the well being of women and children was given priority.

Out of concern for women, the activity of rescuing women from violent circumstances was initiated in Jyoti Sangh by Ms. Mridula Sarabhai. Jyoti Sangh was established in 1934. When Ms. Charumati Yoddha was soon trained to take charge of rescue section and as she became more active on the issue, a need to shelter rescued women was felt. In 1937, through the efforts of Ms. Sarabhai and Ms. Pushpavati Mehta, a shelter home, known as Vikas Griha was established. These organisations also ran training classes for women for imparting various skills like tailoring and typewriting, and provided them with income-generating opportunities by marketing their preserves and spices and other eatables.

These organisations set the tone of women's activities in Gujarat. Branches of AIWC and other organisations established later followed the pattern so that in Gujarat women's NGOs became synonymous with sewing classes and shelters for the deserted wife, the widow, the unmarried mother, i.e. the women who were thrown out of their homes. As many as ten shelter homes came up in Gujarat and 130 organisations were members of 'Akhil Gujarat Samajik Sanstha Madhyastha Mandal', a network organised by Pushpavatiben.

After 1947 these organisations included the government's grant-in-aid programmes in their work pattern. Nationalistic ideology was at the root of women's NGOs so that the political leaders at the helm during the initial years after independence were close to the leaders of NGOs. The NGOs accepted government programmes like Family Planning Centers and the government provided the NGOs grants to run classes or shelter of women. Pushpavatiben Mehta, who was also politically active, asked for a probe into a large number of reported suicides of young women in Gujarat. A committee was set up and a report was prepared in 1956. With this concern for women's woes and suicides, it came to be understood that Gujarat had the highest number of women committing suicide in the country. This is not borne out by the study; the number of suicidal deaths recorded in Rajasthan and Madras was no less at that time. However, the concern in Gujarat of the NGOs for women's well being was much more than anywhere else as is reflected in the number of shelters established in the state.

The NGOs working for women had stereotyped programmes and worked as per routine. Obscene portrayals of women in mass media and increasing atrocities on women disturbed social workers, but they did not see these as areas where they could intervene. It was left to new groups organised in the seventies and eighties. Their perception of the poverty, unemployment, illiteracy etc. that was the women's lot is shown in the report 'Towards Equality'. The issues raised, the target groups organised, the methods used by the NGOs of the '70s and '80s were different from those of the NGOs of the '20s and '30s. Women's oppression and subordination were the prime concern of the groups organised towards the last decades of the century. Ostensibly, both the traditional NGOs and the newer ones were using similar means but they were geared towards different kinds of outcomes. For example, pre-schools for children were run by the NGOs for the welfare of the children who came to be enrolled. The newer NGOs used pre-schools as stepping stones to reach out to a community. Protest demonstrations against a stage-play would be joined by the social

workers of older organisations because the play was obscene. The social activists of the later generations protested because the play showed the woman as a plaything of men and showed women being beaten and browbeaten. The play was seen as demeaning the status of women and insulting them in many ways.

Differences in thinking of the older and later generations became more visible in protests against violence on women. Running counselling centres and sheltering women in distress is widespread in Gujarat. But these did not seem to contribute to a decrease in the number of cases registered at counselling centres or a decrease in the number of unnatural deaths of women. Three case studies are presented to show how the approaches of the old and new differed from each other and how a lack of understanding of the concepts concerning woman's subordination boomeranged on women who sought counselling and shelter in 'homes'.

[a] There is a case of a mother who had the custody of her child. She went to an organisation to sort out differences between herself and her husband. At the end of a number of sessions the organisation asked her to return to her husband with their child. She was reluctant to go as she was being beaten by her husband. She had a job and the child was with her. The advice was that she must return for the sake of the child and in the process accept a 'little' beating. At the end of the counselling process the woman lost the custody of her child; the organisation sided with the husband.

The woman then went to the new group. She was asked to file a 'habeas corpus' petition in the High Court as per the advice of the advocate. She now has the custody of the child and lives on her own.

[b] A woman had been sheltered by a home when she walked out of her husband's. He had been beating her for more than 18 years of their married life. In a couple of weeks' time the husband found out where she was and went to the organisation to claim her. Against her wishes and those of her grown up four children, she was persuaded to return with her husband. She then contacted the new group. She was advised to get a job, be economically independent and then move to live separately. She did so.

The handling of the above cases by different organisations revealed their attitude to the woman. Each case indicated that the counsellors and managers of 'homes' considered women as appendages to men. Further if a woman had to undergo a humiliating experience she was to be lifted out of the general stream of life only to stagnate in a closed corner.

[c] A woman was raped in Gandhinagar's government run guest house by a police officer and two employees. This news when published in dailies generated a lot of political heat. The women's organisations that went to see the State Home Minister asked that her custody should go to a 'home' meant for such victims. If she were considered an individual the demands would have been different. The new group asked that the minister should assure the woman that she would be able to retain the job. It also asked what steps were taken against the guilty policeman who misused his authority and gun though he was not in uniform. The new group could not agree that the woman should be lifted from the main-stream of life to live in an isolated corner.

The traditional concept that holds sway is that of saving the family and the woman's wishes have to be subordinated to that end. Rape is seen as an atrocity but the victim is not seen as an individual whose rights must be protected. On the contrary, she is seen as a 'poor' victim who should be protected from further evil.

Charumatiben Yoddha of Jyoti Sangh had established a specific style of rescuing a person and returning her to her marital home. She had been aggressive in her early years, went

inside homes where she had learned that the woman was oppressed, pulled the woman out of her surroundings, put her in a shelter and waited for her in-laws to reach out to her. As and when they came, she took them to task and made them promise that they would behave better if the woman was returned to them. They promised. The woman was then called in their presence, an agreement in writing was made and then the woman returned to her in-laws. This method was followed in Gujarat's family counselling centres since then.

In the early eighties i.e. almost half a century later, Charumatiben was full of remorse about the outcome of the work she had started as it did not yield the desired results. She used to speak of incidents of women having died after their return to the marital home. More often than not the news of the woman's death reached her within a fortnight of her return. This upset her and made her deeply unhappy but the system she had set up continued throughout Gujarat, because everyone respected her and were not aware of her sorrows. Moreover, the system that was established by her won the approval of society. That a woman's place was in the family and she had to subordinate herself to the well-being of the family was the concept that was reinforced by returning the woman to the family.

Pushpavatiben Mehta was the guiding spirit behind the establishment of ten shelters for women in Gujarat; most of them are located in Saurashtra. The region is known for domestic violence against women. Eventually the shelter homes came to be the refuge of the women thrown out of their marital homes. By the eighties all the homes were full. Pushpavatiben kept reflecting whether more 'homes' were needed in Gujarat or was there any other way of assuaging women's woes. Ten homes were not found to be enough after forty years of having built the first. Curiously enough the largest donations to the shelters built with the help of Pushpavatiben came from a caste which threw out a large number of women from their marital homes. This indicated that the rich saw the shelters as repositories of the women whom the society did not want as in some subtle way these women had gone against the dictates of society. In 1984 on 8th March, Pushpavatiben called a meeting of all NGOs working on the issue of violence against women, where this point was one of the many on the agenda. Women's rehabilitation was discussed but nothing came of it thereafter.

Both Charumatiben and Pushpavatiben were for reassessing the methods that were used for almost half a century. But, they themselves could hardly do anything about them in the last years of their lives. The Family Counselling Centres (FCCs) are primarily run for the family and not for women in distress. The family being at the centre, the woman is asked to adjust to its demands. The FCCs almost seem to follow the 'judicial' system of calling both the parties and hearing them out to fix the wrong. The parties then sign a paper of compromise. The conciliatory approach is the only approach. The men promise in writing that they would behave better and the women are asked to accept their word. This method does not challenge the subservience of the woman nor the dominance of males. So over 50 FCCs are active in Gujarat, but the number of deaths of women dying unnatural deaths has continued to increase.

AWAG's thinking was that a woman in distress needed a friendly atmosphere to unburden herself and get an assurance of support in any option that she chose for her future life, to respect her individuality and assert her equality. We thought that this was the minimum necessary service that FCCs must provide to women in distress. We named this approach as woman-centered / pro-woman approach. It was also necessary to provide social and legal support to the woman in distress. AWAG took up the task of sensitising the counsellors working in the FCCs run by NGOs in Gujarat to a woman-friendly approach. To arrest the unnatural deaths of more than fourteen women per day such pro-woman counselling was necessary, so we discussed that in workshop after workshop with counsellors working in FCCs in Gujarat. We also spoke to them of the pro-woman legislations. The procedures to

be followed at police stations and the legal procedures at courts were explained to the counsellors. Most of them responded positively and started practicing the pro-woman approach.

Moreover, during the last decade, the traditional organisations that run the FCCs have also changd gradually in their work pattern. Not that they have given up stereotyped activities or developed concern over many crucial women's issues. But the programmes proposed for grant-in-aid by the Central Social Welfare Board asked for a change in their approach and work pattern. FCCs were run by most NGOs; now they also run Legal Aid Centres for women in distress. They run Adolescent Girls' Development Centres to reach out to needy girls. Awareness raising camps and workshops are organized under the guidance of the department of Woman and Child Development. Gender sensitisation workshops are organized. The scope of grant -in-aid has widened and everything else has to be fitted in.

ii. Involvement of AWAG on the Issue of Domestic Violence Against Women : 1984-1995

In the last quarter of 1983 AWAG became active on the issue of domestic violence against women. We were fully aware that in Gujarat NGOs were active on the issue from 1934 onwards, that there was a home for the destitute women established as early as 1937. However, in the eighties it was obvious that many young women died mysteriously within their homes and the deaths were ascribed to accidents in the kitchen like 'bursting of the stove' or 'catching fire while heating water' or 'while making tea'. This could not be accepted. So AWAG decided to study the phenomenon to understand its causes, extent and aspects. The study was completed in 1985.

The study in 1985 :

Our findings were that the forces against the woman's well-being were (i) the attitude of the family into which she had migrated on marriage (ii) and the non-responding parental family when she reached out to them for help. The long suffering, battered wife, feeling useless, given suggestions that her sacrifice was necessary to make her husband happy, rejected by the natal family, moved towards suicidal thoughts. The husband's impotence, or birth of a daughter or of two daughters consecutively or the husband's suspicions about her behaviour or her superiority to her husband in intellect, looks, earnings etc. could also bring about the 'accident' that caused her death.

Analysing the causes of the rejection by the natal family, it was found that the parents did not want to be maligned that their daughter could not be acceptable to the marital family or that her brother did not want to be burdened with her presence and the care of her livelihood for life. Underlying this was also the fear that youthful woman was sexually vulnerable and so could be a liability.

The hospital to which a woman was admitted on receiving serious burns injuries became the site for the relatives of both the sides to reach an agreement as to the stance they would take before the police and the society about her death. Both parties persuaded the dying woman to give her 'dying declaration' in such a way that no one was implicated in her death.

The police stepped in as soon as the dying woman reached the hospital or the news of unnatural death reached them. Our team was appalled by the perfunctory manner in which the police handled cases. Their attitude to the 'dying woman' or to the 'unnatural death' appeared to be casual, some of them kept saying, `women burn themselves away, why bother about them!' The investigations done by them were shockingly inadequate. For example, in a case in which the case papers mentioned death by catching fire while heating water for a bath,

the family used to heat water with an electric heater ! The police maintained that they had 'no time' to waste on women's deaths as they had other more pressing duties. They were very rude to relatives and neighbours whose statements they had to take. Worst of all was the ignorance of these policemen about the legislations concerning women. This irked us so that we decided to organise a demonstration against the police.

Demonstration Against the Police :

It was on 20th March, 1984 that we organised a demonstration against the police. We were joined by sixteen organisations of the city and a crowd of almost four hundred women and men gathered. The demands were:

(i) The police investigate the cases of unnatural deaths of women thoroughly,

(ii) The police learn to behave respectfully to women,

and (iii) The police force be trained in legislations concerning women.

These were the early months of 1984 and section 498-A, added to the Indian Penal Code (IPC) in December 1983, was not known to the policemen of the city. The only response from the police, at that time, was to register deaths under section 174 of the Criminal Procedure Code (CrPC).

To us, the inclusion of sub section `A' to section 498 of the Indian Penal Code was important. This sub section 498-A was supported by another addition in the Indian Evidence Act where sub section 'A' was added to section 113. To combat the menace of dowry deaths in 1983 (Act 46 of 1983) section 113-A was added to raise a presumption regarding abetment of suicide by a married woman was that her husband or any relative of her husband had abetted her suicide.

The two viz., 498-A (IPC) and 113-A (I. Evi. Act) together would ensure protection to women suffering from torture in their marital homes. The punishment contemplated by the legislators would prove a deterrent and lead to positive changes in the society.

The offence to be registered under sec. 498-A (IPC) was made into 'a cognisable offence'. A cognisable offence is one which is taken cognisance of by the police so that `a police officer may arrest without warrant'. Since the police were assigned the burden of inquiry the police could arrest the person/persons named by the victim in her complaint.

The offence is also 'non-bailable'. This could ordinarily mean that the person / persons who are taken into custody are not released on bail by the police. However, in practice, the judicial magistrate can grant bail to the persons taken into police custody.

The offence is also 'not compoundable'. Once the complaint is filed, the case cannot be compounded by any authority as per provisions of section 320 of the CrPC. It has to go to the court, get the hearing done and finally get the order of the court.

AWAG considered this a very useful piece of legislation for domestic violence against women. Battered and tortured wives could get their complaints registered. This would activate the police to arrest the perpetrators of the crime. So AWAG decided to make women as well as police officers aware of it.

Actions Planned on the Findings of the Study :

The study led us to plan our strategy :

(i) To raise the self -image of women from the present low state.

(ii) To respond through counselling centers, to the cry for help of women suffering domestic violence,

(iii) To publicise the injustice done to women within their homes and the inhuman attitude of the society towards their untimely, unnatural deaths,

(iv) To raise a voice against wife-battering within families,

(v) To ask for training of the police in legislations concerning women and to establish dialogue with the police to change their attitude to women,

(vi) To oppose the subservience and submission taught to girls by parents, schools, textbooks, mass media etc.

This made us active in various directions. To publicize the issue of young women's unnatural deaths and wife battering AWAG used the street theatre. An awareness raising workshop was put together to address groups of women so that their internalised subservience could be countered and their self-image raised. We continued raising our voices against the inadequacies of the police, so by 1989 in refresher courses for police, the legislations concerning women were included. Gender sensitization of police was taken up more than twelve years later. Textbooks published by Gujarat State Text Books Production Board were scanned and reports were submitted. Discussions led to changes in the textbooks.

During the first year of our involvement in the issue of domestic violence, the news of a labourer woman, who was a member of a union organised by us, burning herself to death consequent to a quarrel with her husband set us thinking about the issue in all its hideousness. The woman's husband had not only taken to alcohol and beating her but had also taken another woman. The day she had burned herself alive, he had come to ask her for money and had quarreled with her. She was fending for herself and her children with difficulty and the quarrel appeared to have made her feel deeply frustrated. She burned herself within minutes of the husband leaving her hut.

When we were going through the case, we were told that many slum women had burned themselves away like this. Amongst the sweeper women's groups we were organising, similar assertions were heard. This alerted us to the fact that poor women suffered domestic violence and succumbed to it quite frequently. The generally held belief that domestic violence and consequent suicides by women was a middle-class upper-caste phenomenon was till then shared by us.

So when we were to launch Awareness Raising Workshops, we chose the poor women as target groups. The workshops raised their self-image so that questions arose in their minds. If they had every right on self, i.e. both mind and body, why were they beaten ? Why were they always asked to subordinate themselves to the wishes of others ? So they came to seek answers and we had to respond by starting counselling centres in the areas in which we held the workshops. Some women chose to walk out of oppressive homes. That called for a Short Stay Home. Rehabilitation strategies had to be worked out.

Many of these women needed legal assistance. So we busied ourselves with cases of women who reached out for help to our counselling centres. To us section 498-A(IPC) was very important and we had hoped that the number of women dying unnatural deaths would certainly decrease over the next few years if this section was widely used. We also hoped that the use of the section would have a deterrent effect on violent husbands. But that did not seem to happen over the years.

Gradually we learned that when we asked women to go and get a complaint registered under section 498-A (IPC) they could not get it registered. When one of us escorted a victim to the

police station, the result was the same. A woman had come to our counselling centre. A week before, she had a quarrel in her marital home during which boiling hot tea was poured on her head severely scalding her forehead and left cheek. She was rushed for medical attendance. On the day that she came to the counselling centre, she was to leave for Bombay with her mother who had come to Ahmedabad to fetch her. She wanted to file a complaint against her husband and his younger brother who had scalded her, so one of us escorted her to the police station. The policeman on duty, a PSI, refused to register her complaint under section 498-A (IPC). He abused the AWAG member, accusing her of breaking families, of bringing miseries to women, of making men unhappy etc. Both the complainant and AWAG member insisted that the complaint be registered under section 498-A (IPC). The PSI then said that he would do so if the complainant so wished but the escort must wait outside . That appeared to be a good compromise so she waited outside. When the registration of the complaint was done and a copy of the same was received, the AWAG member asked again if it was registered under Sec. 498-A (IPC). The PSI replied in the affirmative, the escort heaved a sigh of relief and came away. At the AWAG office next day, when the copy of the complaint was given to a senior person, it was noticed that the complaint was registered under Sec. 323 (IPC) and not under section 498-A (IPC). The illiteracy of the complainant was taken advantage of and the escorting AWAG member felt that she had been taken for a ride. So deep rooted are the negative attitudes of the policemen that despite the visible signs of burns on her face the complaint of physical torture was not registered.

Another example. The woman was harassed by the educated husband who was a government employee. He would have water heated, then drink it and vomit profusely. She would be asked to clean up. Another method to harass her was to get water heated in a large quantity and when it was brought to him, he would drop it all on the floor. Thereafter he would ask her to mop up immediately. The time chosen was usually after midnight. She was advised by our counsellor to go to the police station at the time no matter how late it was. The woman then did muster enough courage to go and get the complaint registered. The police officer advised her to get a surety also the next morning to get him released on bail and asked the three to attend the court next morning. The advice was given to save the job of the husband, the police officer said. The woman dutifully did so to the utter surprise of the counsellor !

Pursuing dying women's cases, our counsellors came up against inadequacies in investigation so they made it a point to be a part of the 'panchnama', to get all details recorded. When a dying woman requested that she be allowed to tell what caused the 'unnatural' accident, the police opposed the proposal of getting a second 'Dying Declaration' (DD) taken. The question is yet being debated : which statement is the DD, one taken soon after the hospitalisation of the patient when she still was under trauma, or the one taken before death? The lawyers say that since these are contradictory, they nullify each other. If these were ordinary statements, they would, but a dying declaration is specifically the declaration made before death. It is considered a valid piece of evidence because the thinking behind it is that human beings would always tell the truth when they find themselves on the verge of death.

All this is about the initial hassles that women and NGOs face while taking the case of a battered wife to the police station. The mutual relationship between husband and wife has so far been seen as private. When this is brought to the police station it is catapulted into the public arena. Men, that the policemen are, seemed to resent it. This was our experience.

The courts did not provide a better experience for women. Apart from the inordinate delays, the mystifying behaviour of the men on the dais, off the dais and those around it including

prosecutors and lawyers gave the women no clue as to why the cases were not being heard, when the order would be passed, what it would be like etc. Moreover, some magistrates appeared to have deep seated prejudices against women and the NGOs who wanted to protect them. They would express their resentment from the dais, which in turn would make it clear to the women and the NGOs that they need not hope for justice.

From 1984 onwards AWAG made efforts in various directions but they did not reap any positive results. That led us to pursue the issue with renewed efforts and make a study that would probe as many aspects of the issue as possible.

iii. <u>The Gravity of the Situation</u> :

A look at the registered offences under section 498-A (IPC) shows that the number of registered crimes was increasing year after year. The number of unnatural deaths registered under section 174 (CrPC) was also increasing year after year. Our experience with women showed that those who did not complain, chose death as a way out of the tortuous lives they were leading.

The number of cases registered under section 498-A (IPC) was important to us. We wanted to find out if the section had proved helpful. The number would point to the cases who came forward to get police help. It would also show that the police had started using the section. In 1984, and even in 1985 we had noted that the section was not commonly known to those manning police stations in Ahmedabad.

While discussing the use of sec. 498-A (IPC) with senior police officers, in 1987, we had often brought to their notice that the police personnel used sec. 498-A (IPC) only when the death of a woman was reported but they were very reluctant to use the section when a woman reached the police station with complaints of mental and physical torture. Later, while scanning the police records we noticed that our contention was borne out by the entries in the registers, as the following table shows :

Table No.1
No. of Offences registered under sec. 498-A (IPC) in years from 1984 to 1995 in Gujarat[1]

Year	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
No	-	-	250 with section 304-B (IPC)	348 with section 304-B (IPC)	479	899	822	1097	1576	1540	1596	1950

No case was registered under sec.498-A (IPC) in 1984 and 1985. In 1986 and 1987 the section was counted with sec.304-B (IPC) indicating dowry death.

From 1988 onwards the number of cases registered under sec.498-A (IPC) appeared to be increasing unevenly. There are large increases in 1989, 1992 and 1995. Was it because more and more NGOs were actively supporting battered women? However, there was no corresponding decrease in the number of unnatural deaths of women.

During the years of struggling to get the complaints under sec. 498-A (IPC) registered and assisting the women with their cases in courts we also kept a watchful eye on the cases of

[1] Figures culled from records provided b y Gujarat Police.

unnatural deaths registered at the police stations. Year after year we noted that the number of such deaths was increasing. The following table shows the number of deaths of women dying unnatural deaths as per the registers maintained by the police in Gujarat. The total number of deaths noted here are found under five different heads as Murder (sec.302 IPC), Dowry death (sec.304-B IPC) Abetment of suicide (sec.306 IPC) and accidental deaths recorded under sec.174 of Cr.PC subdivided as suicides and accidents.

Table No. 2
No. of Unnatural Deaths of women from 1984 to 1995 as per police Records[1]

Year	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
No. of deaths per year	1418	1024	2132	2220	4116	4254	3986	3862	4016	4521	4838	5112
No. of average deaths per day	3.88	2.8	5.84	6.0	11.27	11.65	10.92	10.58	11.0	12.38	13.25	14.0

The sudden spurt in the number of deaths in the year ending December 1988 was quite surprising. We tried to find the causes for such an increase in the records and interviewed senior police officers. We were told that there was an increase in population and this was reflected in the number of crimes. To us it did not appear to be the only reason. Could the additional reason be the raised awareness of the people and the police through the efforts of the NGOs?

A woman suffering domestic violence at times approaches an NGO, an advocate or a police station and a court directly or through any of these. The section 498-A (IPC) was introduced more than ten years ago and we could examine its implications. Was the battered woman any better off ? How did the NGO fare in guiding her to get justice ? What did the advocates think of the section, how did they deal with cases under the section? How did the police use it ? What was the role of the police in registering the offence of domestic violence ? The questions were quite pertinent in the light of our experience with the police. Did the police care enough to get the evidence that was needed to support the complaint of the tortured woman ? Was the police ready to accept that a private beating be registered publicly as a crime ? What happened to the cases registered under sec. 498-A (IPC) in the courts ? Did the magistrates (metropolitan or others in the mofussil areas) give the crime any weighty consideration ? How many convictions were there ? Did battered women get justice ? Did the women who came to get their complaints registered under sec. 498-A (IPC) become destitute ? Were they thrown out of their social set-up or were they rehabilitated ? Was there any punishment meted out to the husbands, the perpetrators of violence within homes ?

How were we going to answer such questions? So a study became necessary. The system is such that there is no scope for women to be heard, let alone get justice. We needed to check our growing understanding of the system so that we could be sure of what women were up against. There were police records to be looked into, there were orders of the magistrates and other judges which would provide insight into the interpretation of pro-woman legislation, there were individuals who were important players as their own personal

[1] Figures culled from Records provided by Gujarat Police.

perception of the offence committed against women became important to the complainant women's lives or the justice they would ultimately get. We needed to explore the systems and the perceptions of the individuals closely connected with the systems to check whether our growing understanding was borne out by the study.

The government of Gujarat was approached on the issue of violence against women by women's NGOs as well as AWAG a number of times. Policy changes were made from time to time, institutions were brought into existence, councils were organised and disbanded. Such steps needed to be looked into and assessed as to whether they have been helpful to women.

We have wondered how women were going to take advantage of the pro-woman legislations. If what we understood was corroborated by the study, may be, women will have to wait long before they get any justice. May be the women's movement will have to look for other measures to get justice for women in distress.

iv. Objectives:

The following objectives were then decided upon:

(1) To ascertain the impact on women's lives of the inclusion of section 498-A and such others in IPC and other criminal codes through a study of the responses of the executive and judicial wings of the state.

(2) To examine supportive policy changes made in the State of Gujarat in the wake of the pro-woman legislations.

(3) To recommend changes in the prevalent systems toward more effective functioning of the CJS.

III. METHODOLOGY

i. Sample Selection:

Police Records:

Despite newly added legislation in force, the registration of crimes against women had not diminished. On the contrary it was increasing, and a large number of young women were ending their lives violently, unable to suffer torture in silence within their homes.

To us section 498-A (IPC) was important but the section was hardly used by itself. It was largely bracketed with other death indicating sections or sections indicating torture / violence. So we had to study a very wide area in the police records which included the deaths of women and other complaints made by women. The incidence of violence was too large to be studied fully. We could not study the whole of Gujarat. So, initially, we looked at the police records of offences registered against women in Gujarat. The largest number of crimes against women were committed in Ahmedabad, the metropolitan city of Gujarat (see Table No. 3).

Table No. 3 : No. of Offences against women in Gujarat in 1995[1]

	Ahmd City	Rajkot City	Surat City	Vadodara City	Ahmd Rural	Kheda	Anand	Sabarkantha	Gandhinagar	Banaskantha	Mehsana	Patan	Surendranagar	Kutch	Rajkot Rural	Jamnagar	Amreli	Bhavnagar	Junagadh	Porbandar	Vadodara Rural	Bharuch	Panchmahals	Surat Rural	Valsad	Dangs	Dist. Vadodara	Total
1 Murder 302	30	4	7	8	7	15	18	14	4	10	17	8	12	6	14	5	11	12	13	5	24	13	23	21	18	5	2	326
2 Attempt to murder 307	16	-	3	3	3	3	6	5	4	4	3	1	4	-	8	3	5	2	6	1	2	5	9	-	4	-	1	101
3 Grievous Hurt 325	6	2	7	8	5	4	13	12	3	-	8	8	3	2	6	3	8	7	12	1	40	38	48	21	-	2	-	26
4 Hurt 324	55	19	20	36	67	7	48	36	29	-	24	36	10	5	65	13	38	43	46	7	67	106	58	23	-	2	8	868
5 Rape 376	4	4	13	5	9	3	19	15	5	8	4	6	20	8	10	15	6	8	14	1	12	19	25	2	13	-	3	251
6 Eveteasing 354	39	25	20	10	48	67	104	58	11	46	66	42	28	24	58	60	13	33	32	11	105	66	111	10	20	3	18	1124
7 Kidnapping 363	99	21	23	27	29	26	36	20	12	33	23	5	20	19	29	12	16	32	28	3	26	24	48	16	28	-	5	627
8 I.P.C. 509	38	6	2	4	-	-	2	5	-	-	-	-	-	1	2	-	1	1	6	1	-	1	3	-	-	-	1	74
9 Abetment of suicide 306	35	16	17	14	10	4	25	21	9	28	22	5	37	21	44	18	19	37	31	5	17	3	7	2	7	-	1	455
10 Child Marriage	-	1	2	-	-	1	5	6	1	2	-	-	1	10	3	2	4	2	-	1	9	-	-	-	-	-	-	90
11 Dowry death 304-B	4	3	4	3	-	-	2	1	3	1	-	-	4	10	7	1	-	2	5	2	-	-	1	-	2	-	-	53
12 Physical & mental torture 498A	283	112	85	51	47	92	158	64	23	53	128	45	133	74	105	29	45	49	167	42	22	35	75	7	18	3	9	1950
13 Attempt to commit suicide 309	17	4	6	2	2	1	-	3	2	-	3	-	3	1	-	-	-	1	4	10	25	12	2	-	-	-	-	100
14 I.P.C. 337 etc.	32	22	14	41	4	-	19	6	1	10	1	-	10	2	47	3	55	39	21	2	6	18	9	2	-	3	5	5372
15 BPACT 110/117	46	20	138	23	4	-	28	14	4	-	8	5	3	3	12	4	65	22	56	9	9	15	32	4	1	1	2	2548
16 Suicides	175	90	95	61	31	40	58	37	15	40	40	14	112	77	43	70	60	153	120	31	36	55	34	38	6	4	28	1523
17 Accidental death	305	52	134	169	96	77	156	64	30	52	97	28	188	165	55	38	86	252	140	77	59	113	89	83	48	19	91	2953
Total	1184	361	610	465	349	340	697	381	156	287	444	203	588	428	504	276	432	695	697	209	459	523	572	229	153	42	174	

1. As per records provided by the Dept. of Crimes and Rlys, office of the Director General of Police, Gujarat State, Gandhinagar.

Table no.3 also includes the number of complaints registered under section 498-A (IPC) in Gujarat. Largest number of such complaints were registered in Ahmedabad.

Then, we took a closer look at the incidence of deaths of women in the same year in various regions of Gujarat. The total number of deaths were totaled from the details given under five heads, i.e. under sections 302 (IPC) (Murder), 304-B (IPC) (Dowry death), 306 (IPC) (Abetment of Suicide) and 174 (Cr.PC) (accidental deaths under the heads of 'suicide' and 'accident'). The largest number of deaths were registered in Ahmedabad city. (see Table No. 4).

Table No. 4

No. of offences against women distributed as per regions and sections indicating unnatural deaths in Gujarat in year 1995[1]

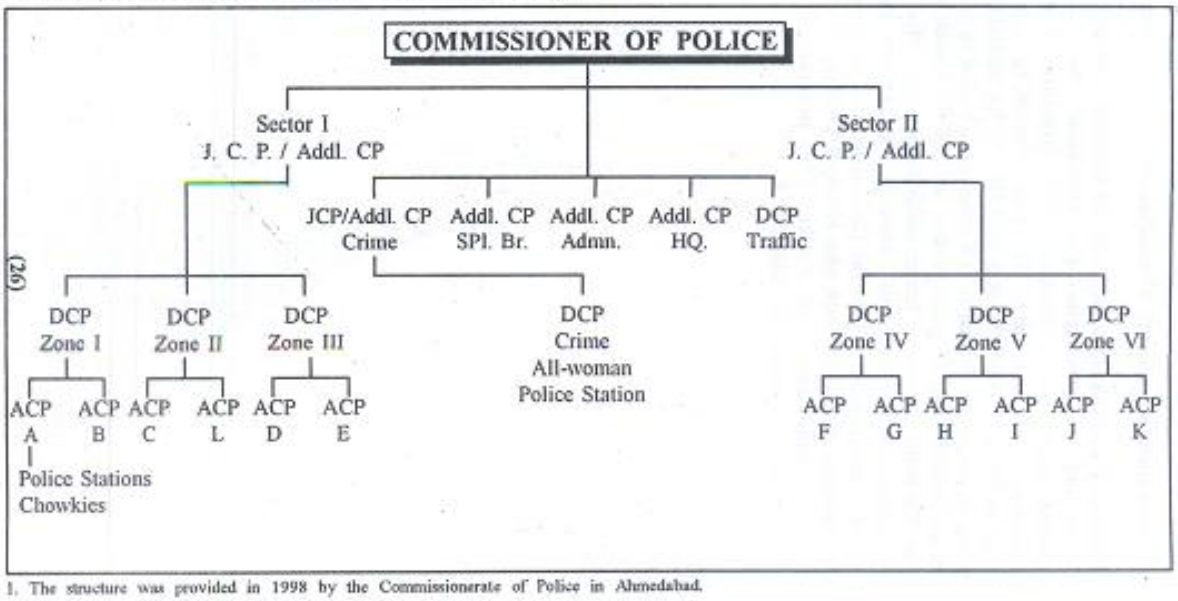
	Ahmedabad City	Rajkot City	Surat City	Vadodara City	Ahmedabad Rural	Kheda	Anand	Sabarkantha	Gandhinagar	Banaskantha	Mehsana	Patan	Jamnagar	Kutch	Rajkot Rural	Surendranagar	Amreli	Bhavnagar	Junagadh	Porbandar	Vadodara Rural	Bharuch	Panchmahals	Surat Rural	Valsad	Dangs	W.Rly. Vadodara	Total
1 Murder 302	30	4	7	8	7	15	18	14	4	10	17	8	12	6	14	5	11	12	13	5	24	13	23	21	18	5	2	326
2 Abetment of suicide 306	35	16	17	14	10	4	25	21	9	28	22	5	37	21	44	18	19	37	31	5	17	3	7	2	7		1	455
3 Dowry death 304-B	4	3	4	3			2	1	3	1			4	10	7	1		2	5	2			1		2			55
4 Suicide 174	175	50	95	61	31	40	58	37	15	40	40	14	112	77	43	70	60	153	120	31	36	55	34	38	6	4	28	1523
5 Accidental death 174	305	52	134	169	96	77	156	64	30	52	97	28	188	165	53	38	86	252	140	77	59	113	89	83	40	19	91	2753
Total	549	125	257	255	144	136	259	137	61	131	176	55	353	279	161	132	176	456	309	120	136	184	154	144	73	28	122	5112

1. As per records provided by the Dept. of Crimes and Rlys, office of the Director General of Police, Gujarat State, Gandhinagar.

So, for this study, we selected Ahmedabad as the area of study.

Ahmedabad is a metropolitan city, large in size and population. We could not study the cases registered in Ahmedabad fully. We had to choose again. So we looked at the structure of police commissionerate of Ahmedabad. The population of the city was reported to be more than 35 lakhs in 1991. So for administrative purposes the police has divided it in 6 zones each headed by a DCP, which are subdivided in 30 police stations and one All-Woman Police Station. The police stations are further subdivided into Chowkies. Each police station is headed by a Police Inspector (PI) and each chowky by a Police Sub-Inspector (PSI). The Commissionerate is headed by a Commissioner of Police, which also has Joint Commissioners of Police. The structure of the Commissionerate is indicated in Table No. 5.

Table No. 5
Structure of the Commissionerate of Police in Ahmedabad[1]



1. The structure was provided in 1998 by the Commissionerate of Police in Ahmedabad.

The commissionerate was requested to provide us with the number of cases concerning women registered at the police stations in the city. The information was received as per 6 zones of DCPs which also were sub divided as 10 Divisions of ACPs. Tables No. 6 and 7 present the information received from the zones and sub divisions for the year 1995.

Table No. 6
No. of Offences registered at Police Stations under DCP Zones 1, 2 and 3 in Sector - I

	D.C.P. Zone - 1						**D.C.P. Zone - 2**			
	A.C.P. A Division			**A.C.P. B Division**			**A.C.P. C Division**			
No.of Police Stations	Vejalpur	Ellis-bridge	Satelite	Navrang-pura	Naranpura	Ghat-lodia	Sabar-mati	Madhu-pura	Shahpur	Karanj
No.of offences registered from 1984 to 1985	63	31	35	20	45	26	98	179	24	20

D.C.P. Zone - 3						
A.C.P. D Division			**A.C.P. E Division**		**A.C.P. F Division**	
No.of Police Stations	Kalupur	Shehar Kotada	Astodia	Ga. Haveli	Dariyapur	Shahibag
No.of offences registered from 1984 to 1985	107	66	102	17	42	260

Table No. 7
No. of Offences registered at Police Stations under DCP Zones 4, 5 and 6 in Sector - II

	D.C.P. Zone - 4			D.C.P. Zone - 5				
	A.C.P. G Division			A.C.P. H Division			A.C.P. I Division	
No.of Police Stations	Sardarnagar	Naroda	Meghani-nagar	Gomtipur	Bapunagar	Rakhial	Odhav	Amraiwadi
No.of offences registered from 1984 to 1985	71	40	135	131	117	11	78	43

D.C.P. Zone - 6				
A.C.P. J Division				
No.of Police Stations	Kagdapith	Maninagar	Dani Limda	Vatva
No.of offences registered from 1984 to 1985	78	04	27	35

It was decided to get detailed information on the cases from those police stations where the total number of cases registered exceeded 100. This was found in police stations falling under ACP Divisions C,D,E,F,G and H. Only in H Division two police stations had more than 100 cases registered. To keep our sample representative of the population we chose one of the two police stations which had a larger number of cases.

The criteria applied was that of population mix. If two police stations from the same area of the city were chosen, the population would be similar and so different groups may not be well represented. Ahmedabad is so structured that ACP division A and B are on the west of Sabarmati river. ACP Divisions C,D,E,F and part of J are largely within the old city on the east of Sabarmati and ACP Divisions G,H,I and part of J are beyond the railway line, known more as the industrial part of the city or the third Ahmedabad. The police stations chosen were Astodia, Gomtipur, Kalupur, Madhupura, Meghaninagar, and Shahibaug.

Police stations in the city are in charge of senior Police Inspectors (PIs). When a complaint is registered in a police station the PI decides which sections of the Indian Penal Code or other Penal laws of India are to be applied. The PI therefore, is an important decision maker in the criminal justice system. If he decides that a woman's complaint is to be registered, it gets registered. It was important to interview the PIs of these six police stations to know how they viewed domestic violence against women, whether they saw it as a private matter between two members of a family or as a punishable offence considering the woman as a human being with human rights.

Advocates in criminal courts have an important role to play. Women's cases are largely handled by the government appointees, the advocates who are known as police / public prosecutors (PP). Some women do get the help of private advocates while making complaints at police stations or in the courts. In most cases the advocates defend the male

counterparts. It was decided to interview some advocates active in the criminal courts of Ahmedabad to find out their responses to section 489-A (IPC).

To find out the final outcome of complaints registered under section 498-A (IPC) and other sections we decided to get some judgments. Usually a case takes long to decide so we tried to find judgments of cases from earlier years. The study of judgments would also provide us with some insight into the perception of the judiciary with reference to the complaints of women.

ii. <u>Data Collection</u> :

Data for registered complaints of domestic violence in police stations was to be collected from the office of the Commissioner of Police, Ahmedabad city. So a proforma was made out and a formal application was made to the Commissioner of Police, the Chief Police Officer of the city. With his permission, the Deputy Commissioners of Police (DCPs) were approached. The DCPs then passed orders to the Police Inspectors (PIs) in charge of police stations. The PI then detailed the 'crime writer' to provide the information as per the proforma.

We had asked for information from 1984 to 1995. The 'crime writer' had to find out the relevant records and that took a very long time. It took so long that we had to get data for two more years again !

Ordinarily, to find a PI at his table is a difficult task. His office hours are different from those of an NGO. The 'crime writer' is also difficult to locate. Both have to be cajoled for information. With so much delay the research assistants are disheartened.

Idiosyncrasies of the 'crime writer' affected the collection of data. From one police station the record concerning 'accidental' deaths of women was not received. The PI was contacted again and again. Finally a research assistant contacted the 'crime writer' personally. His response was lukewarm. Again months elapsed. Finally in December, 1998 the research assistant sat near him to write the details from the records he had kept on his table. On the third day he joined her and thereafter completed the job himself.

Inspite of all this, the data was collected over two years and some more months. Official records were accepted as they were provided.

The police records received by us were vast and detailed. From the six police stations we had received records of 1652 offences registered from 1984 to 1995 as per the following table .

Table No. 8
Number of offences registered against women as per police stations from 1984 to 1995

Police Stations	Astodia	Gomtipur	Kalupur	Madhupura	Meghaninagar	Shahibaug	Total
No.of offences registered	115	333	108	303	379	414	1652

As the quantitative data was much delayed, so was the qualitative one involving the police personnel. We had decided to interview the Police Inspectors (PIs) who are the decision-makers in police stations that they head. Each complaint is assigned relevant sections of the criminal code of the country and then the process takes specific direction. So how the PI views the complaint becomes important for any complaint to be registered or to be processed further. In the absence of the PI, ordinarily decisions to register any complaint are hardly taken. Negative decisions, especially about women's complaints are taken very quickly by

even a police station officer (PSO) who is generally a Head Constable. Above him in rank a police station may have PSIs and PI of the second rank.

Chasing a PI for an interview is a formidable task. Permission of the superior officers was obtained and the individual PIs had consented on phone. But it is not always within his powers to honour an appointment. He is usually on the move. Only six PIs had to be interviewed. To find them at their desks was a challenging task and turned out to be a disheartening one. Once they met the researcher, they spoke elaborately. But it took long to complete the interviews.

A large number of battered women approach NGOs before they go to police stations. The counsellors of more than fifty Family Counselling Centres and the social workers of more than fifty Legal Aid Centres run in Gujarat, help women in reaching out to police stations. Their experience in providing support to women is varied and so a questionnaire was sent out to them. Their experiences could add a valuable dimension to the study.

It was expected that they would respond to them. Some Chief functionaries of these NGOs did so while some others passed these on to their counsellors looking after the Family Counselling Centres. Direct experience of working with women in distress and the police made the counsellors respond with authenticity. Very few chief functionaries are involved in day to day work, so when they responded they did so in consultation with their counsellors. The responses of NGOs were received quickly and the replies were elaborate.

The advocates practicing in the criminal courts of Ahmedabad were approached. The intention in getting their responses was to understand their attitude towards section 498-A (IPC) and to gauge the impact of their approach on judicial decisions. The interviews were done with difficulty. The advocates were reluctant to make statements. Some asked for questions in writing, some rejected the written material outright. The reported interviews are uneven in the sense that some advocates specifically gave their opinion with regard to the operation of the law while some answered perfunctorily, some others joined together to give their response in writing.

We had decided to get judgments of some cases. These were selected from the police records made available to us. Guided by a senior police officer, the researcher picked the cases which were reported as completed. The police records showed the registration numbers of the complaints. The case numbers known in short as CCN were to be located. This meant repeated visits to the relevant police stations, waiting for the response from the crime writer who waited in turn for a nod from the PI. Having collected these, the next step was to make applications for the copies of judgments.

It occurred to the researcher then that the higher judicial authority needed to be approached to get these quickly and easily. That also became a time consuming affair and the outcome was nothing else but the directive to follow the rule, make an directive application, pay a nominal stamp fee and wait for the response. Waiting was long. Waiting time could be counted in months because nobody wanted to look for papers in dustcovered bundles of papers. The task involved the peon, the typist and the senior clerk. To us it appeared to be a miracle that we could collect as many as 22 judgments. But for the persisting efforts and cajoling of the research assistant we could not have collected any. One of the researchers was disheartened enough by the police and the courts to quit the study.

IV. POLICE RECORDS

i. Recording System of the Police :

From 1984, the year in which AWAG started interventions in the area of domestic violence, police authorities have been requested to provide from their records the number of offences registered with reference to violence against women. Year after year these were received and at times three years' records were also put together and sent. There were discrepancies in reports of the same year sent at different points of time. The following table brings out how the figures varied. Figures in brackets show the data received from the same source later, at another point of time.

Table No. 9
No. of Offences registered under section 498-A (IPC) in years from 1984 to 1995

Year	1984	1985	1986	1987	1988	1989
Section 498-A (IPC)	-	-	250 with section 304-B	348 (346) with section 304-B	479 (485)	899 (874)

Year	1990	1991	1992	1993	1994	1995
Section 498-A (IPC)	822 (878)	1097 (1164)	1576 (1574)	1540 (1540)	1596 (1556)	1950 (1809)

Figures culled from the records provided by Gujarat Police

These figures lead us to the conclusion that no offences were registered under section 498-A (IPC) till 1986 and that for two years, i.e. in 1986 and 1987 section 498-A(IPC) was clubbed with section 304-B indicative of dowry death. It also shows that from 1988 the section was used in itself and more widely.

The discrepancies however were not such that the trends could not be noticed. All figures tended to show that more and more offences were being registered under section 498-A (IPC).

The discrepancies in the records received from state police authority became more glaring when we turned to the data collected from the police stations for this study. A different set of figures emerged. The section 498-A (IPC) was first used in 1985 at some police stations. The following table shows when the section was first used at the six police stations under study.

Table No. 10
The date of the first use of section 498-A (IPC) in the police stations under study

Sr.No.	Name of the police station	Date of the first use of section 498-A (IPC)
1.	Astodia	15.05.1988
2.	Gomtipur	06.08.1985
3.	Kalupur	18.10.1989
4.	Madhupura	13.07.1985
5.	Meghaninagar	24.04.1988
6.	Shahibaug	15.08.1985

Meghaninagar police station came into being in year 1988. In three police stations viz. Gomtipur, Madhupura and Shahibaug, offences under section 498-A (IPC) were registered in 1985. Section 498-A (IPC) was not used till 1988 in Astodia and till 1989 in Kalupur.

The state police records also indicated that in 1986 and 1987 the offences registered under section 498-A (IPC) were clubbed with the section indicating dowry death viz. section 304-B (IPC). However, the data collected from the police stations indicate that either section 498-A (IPC) was used by itself or was clubbed with other sections of IPC and not only section 304-B (IPC).

The following tables show how many offences were registered under section 498-A (IPC) and other sections clubbed with it during the years 1985 to 1987 at the three police stations and how variously were the sections clubbed together.

Table No. 11
No. of offences registered under section 498-A (IPC) and other sections at police stations during 1985, 86 & 87.

Sr. No.	Name of the police station	Year 1985	year 1986	Year 1987	Total
1.	Gomtipur	1	3	6	10
2.	Madhupura	2	2	2	6
3.	Shahibaug	2	1	1	4
	Total	5	6	9	20

Table No. 12
Details of sections clubbed with section 498-A (IPC) in offences registered at the three police stations in years 1985, 86 & 87.

Sr. No.	Name of the police station	Year 1985	Year 1986	Year 1987
1.	Gomtipur	498-A +306+107	498-A+114, 498-A+114, 498-A+324+506	498-A,498-A, 498-A, 498-A,114,498 B+114, 498-A +324+114+BPA 135(1)
2.	Madhupura	498-A+114, 498-A	498-A, 498-A +114	498-A+306+114, 498-A+306
3.	Shahibaug	498-A+114, 498-A+323+504 +506(1)+114	498-A + 342+323	498A + 306

The tables make the discrepancies clear. Section 498-A was clubbed together with other sections of IPC and BPA and not with the dowry related section 304-B. The table points to the fact that even section 498-B is also mentioned which is not yet a coded section at all.

What made the police use section 498-A (IPC) by itself, or with sec.114 (IPC) or with other sections of IPC or any other legislation like the Bombay Police Act was sought to be understood by perusing the remarks noted about each registration. These are presented in the following table.

Table No. 13
Details noted in the records pertaining to years 85,86 & 87 provided from police stations
Shahibaug Police Station :

Sr. No.	Name of the deceased	Age	Religion & Caste	Date & Year	Crime Reg.no.	Sections	Outcome	Remarks
1.	Ramaben Mulshankar Srimali	-	Hindu Brahmin	15.08.85	423/85	498-A, 114	-	For some time the in-laws of the complainant were torturing her leading her to commit suicide.
2.	Narmadaben Vijaykumar Patel	-	Hindu Patel	27.09.85	490/85	498-A, 323, 504, 506 (1), 114	Not proved	The complainant was mentally tortured by her husband and in-laws who threatened to burn her and beat her up leading her to commit suicide.
3.	Krishnaba W/o Arjunsingh	-	Hindu Rajput	13.04.86	160/86	498-A,342,323	2 years's punishment	Accused no.1 has two wives, of the two, complainant's parents had not provided dowry so the first wife, accused no.2 and accused no.1 together tortured her physically by battering her locked her up in bathroom, did not provide food, leading her to commit suicide.
4.	Kaliben Chanduji Fulaji	-	Hindu OBC	23.04.87	232/87	302, 114	Chanduji Fulaji sentenced for 10 years.	The woman poured kerosene on herself and committed suicide on account of torture by husband and mother-in-law and long illness.
5.	Sitaben Madhavlal Patel	-	Hindu Patel	07.12.87	746/87	307, 114, 342, 302	Released as not guilty	The complainant lived with husband & parents-in-law with whom there were quarrels, husband had left home after instructing parents so the mother-in-law poured kerosene and father-in-law lit with match thus attempting murder, later the woman died while receiving treatment.

Madhupura Police Station :

6.	Nanduben Vaghela	23	Hindu OBC	05.08.85	263/85	498-A	Proved	The husband frequently battered and tortured her without reason, she had suffered a fracture of the leg, was scalded by lighted Bidi, was locked in toilet, thus leading her to commit suicide. Nanduben committed suicide.
7.	Nasratbanu Mohammad	29	Muslim	23.05.87	92/87	309	The woman died	The co-wife abused her which led her to end her life so the accused poured kerosene on self and lit with match thus trying to commit suicide.
8.	Muliben Alias Masurbanu	-	SC/Muslim	23.05.87	95/87	306, 498A, 114	-	Muliben had converted to Islam and married the accused. Quarrels had ensued between her on one side and husband as well as co-wife on the otherside, leading her to mental torture and committing suicide.
9.	Gajiben W/o Bhagvandas Ranchhoddas	-	Hindu OBC	12.10.87	309/87	306, 498A	Not proved	The accused had quarreled with the complainant who could not return Rs.10/- borrowed by her. Tired of the quarrel the complainant poured kerosene on self thus committing the crime.
10.	Jashiben Amthaji Marwadi	15	Hindu OBC	18.10.87	319/87	309	The woman died	The accused because of evil influence or unstated reasons wanting to end life took poisonous chemical thus attempting suicide.

Gomtipur Police Station :

11.	Smitaben Nimroj Silas	-	Christian	20.10.84	441/84	324, BPA 135(1)	-	The husband hurt the complainant on account of baseless suspicion.
12.	Najmabanu Anwarali Rajabali	-	Muslim	01.08.85	320/85	324, 504	-	The complainant's husband scolded so his younger brother hurt her.
13.	Shashikala Bhumaiya Bengali	19	Hindu	06.08.85	360/85	306, 498-A,B, 511, 107	Compromise	For any reason.
14.	Savitaben Parsottam	32	Hindu SC	16.03.86	140/86	498-A, 324,506	Compromise	For not bringing money from parental home.
15.	Kamlaben Dineshbhai Parmar	28	***Hindu SC***	26.06.87	186/87	324, 114, 498-A BP Act 135(1)	not proved	The husband, mother-in-law and sister-in-law committed the crime of torturing her by scalding her private parts by hot iron rod.

While perusing data like this, questions arose in our minds. Some are noted below:

Why was section 306, abetment of suicide, not used in cases noted at no.1, no.2, no.3, no.6 and no.7, when it could be used in case noted at no. 8 ? The remarks and the notings in the outcome are suggestive of suicide. In case sec. 306 is proved the punishment could be upto 10 years, in 498-A (IPC) it is upto 3 years. The woman in each case appears to have died so the offence could be seen as more serious.

Why was sec. 498-A (IPC) not used in case noted at no 5 ? Not that the sentence or arrest could have been affected if 302 were proved. But 302 is difficult to prove and if 498-A (IPC) were bracketed, may be the guilty could have had some punishment !

Why was sec. 498-A (IPC) not used in cases cited at 11 and 12 ? Both the cases were of the nature of family feuds, the husband and his family members torturing the women. The use of sec. 498-A (IPC) could have converted the cases into those of cognisable offences thus leading to the arrest of the accused which could have had some semblance of justice done to the complainants.

Section 498-A (IPC) is surprisingly used in the case cited at no. 9. The case was of quarrel between two women neighbours and it was not a family feud.

Are the cases quoted at no.7 and no.10 similar to merit similar treatments ? Sec.498-A(IPC) could have been used in case cited at no.10 making it more convincing. The remarks state that co-wife abused the complainant. Could the co-wife have been present alone ? Where could the husband have gone ? In any case the perception of the police authority is final in such decisions.

Then we took a closer look at the twenty registered offences (table no. 12) from the point of view of the outcome as noted in the police registers. This was to see if the trend of dealing with such registered offences at the police stations and at courts could be noticed.

Table No. 14
Details of the offences registered under section 498-A (IPC) and other sections by way of its outcome:

Details	Pending	Proved	Not proved	Compromise	Total
No.of cases	4	3	9	4	20

In the three offences in which the accused was proved guilty of the charge, the outcome is different in each. In one case under sections 498-A (IPC) and 306 the accused was sentenced to rigorous imprisonment (RI) for 3 years and was fined Rs.1000/-. The details indicated that the accused was asking for dowry repeatedly so the woman committed suicide. In the second case under sections 498-A (IPC), 342 and 323, the accused were found guilty and were sentenced to two years' punishment. In fact, this noting in the police records is not borne out by the order of the court. The accused were given the benefit of Sec. 4/1 of Probation Offenders' Act. In the third case the police records show that the accused charged of offence under section 498-A (IPC) was found guilty but do not mention the order of the court.

The analysis of these twenty cases made the following points clear to us.

We had hoped to find out how section 498-A (IPC) made a difference to the lives of women. Our understanding of the section was obviously not the understanding of the police. The section was used variously, either by itself or clubbed with the section indicating death like 306 (IPC) or not with section indicating death like 323 (IPC) or 324 (IPC) and so on. So it

was clear that we had to take cognisance of the difference in perception. A police officer justifiably says that if a woman committed suicide as a result of disputes within the home, both sections 498-A (IPC) and 306 (abetment of suicide) would apply. So the offence is registered as per the understanding of the IPC by the concerned police officer.

However, the police authority on the spot decides which section is to be applied. Later some changes could be made through the recommendation of senior officer e.g. the DCP, but ordinarily this is seen as final. Unfortunately we found the decision of the police officer was not upto the mark. Dissimilar sections assigned to similar offences or assigning sections where these did not apply were routine mistakes. So the impression was created that the system trivialised violence. Torture and death are looked upon merely as one more entry in registers. The other lesson we learned was that we had to wade through records like these and study them. The outcome of each case could not be known from these records. For that we had to find another source, i.e. the courts' records. Even then all court records could not be acquired. Whatever little could be acquired points to the fact that the police records are at variance with the case papers received from courts.

To look at the way in which section 498-A (IPC) has been used over the years, we had to accept the perception of the police and had to analyse the data accordingly. The offences registered either indicated death or though not indicative of death, indicated domestic disputes, or torture or hurt. These offences, while being registered were either clubbed with 498-A (IPC) or not so. This led us to group the sections in four different ways. One category was of the use of section 498-A (IPC) with sections indicative of death, another was of section 498-A (IPC) with sections not indicative of death. Then there were a large number of offences registered which were indicative of death. These were largely registered under section 174 of Criminal Procedure Code (Cr.PC) as suicides and accidents, known as AD in police jargon. In such cases the files are closed as there is no way of knowing the how or why of the death. We decided to look into these and so it made the 3rd group. The 4th group was of offences registered under sections not indicative of death, but of quarrels, hurt etc. and section 498-A (IPC) was not added. Four groups could be briefly stated as follows :

Group I	:	498-A (IPC) and sections indicating Death
Group II	:	498-A (IPC) and sections not indicating Death
Group III	:	Sections indicating Death.
Group IV	:	Sections not indicating Death.

Table No. 15
Offences recorded in six police stations as per various groupings of sections

Section Groups	Madhupura	Shahibaug	Gomtipur	Meghaninagar	Astodia	Kalupur	Total	%
I	27	22	40	39	02	07	137	8.3
II	49	42	83	111	11	14	310	18.8
III	188	310	139	220	102	86	1045	63.2
IV	39	40	71	09	-	01	160	9.7
Total	303	414	333	379	115	108	1652	100.0

It is obvious that cases registered under group I are the least in number. Death indicating sections like 302 and 306 are clubbed with section 498-A (IPC). When the police arrive at the decision that the evidence and statements gathered about a particular complaint point to a murder or abetment of suicide, then only the sections are applied. The sections are called 'heavy' in the parlance of the police stations. Section 498-A (IPC) could have been added extra. A number of cases registered under sections 302 / 306 and 498-A (IPC) could be of women aged 30 or more years. Women of such ages could be married more than seven years earlier. So in such cases, addition of section 498-A (IPC) is superfluous. The sentence in case of offence under sec.302 if proved would be 'heavier' than the one under sec.498-A (IPC) if proved.

Group II indicates clubbing of 498-A (IPC) with other sections not indicative of death. Most of the sections thus clubbed indicate voluntarily causing hurt, getting together to cause hurt, fighting and causing injury and so on. The indication largely is that the woman who had suffered violence had gone to the police station to register her complaint. The police officer on duty, having heard the details of the case, chose specific sections that he thought would apply. So at times the section is clubbed with sections 114 / 323 / 504 etc. The use of these sections indicate that the woman suffered, reached out to the police station and survived.

The largest number of cases fall under group III. These are cases recorded as Accidental Deaths (ADs) or suicides under section 174 of Criminal Procedure Code (Cr.PC). This group does not include section 498-A (IPC). The primary objective of this study was to ascertain the use and efficacy of section 498-A (IPC) towards mitigating domestic violence against women. But as we scanned these records we realised that as many as 63% of the offences recorded fell within this category. Not only that, these are the records of deaths of women so we could not resist analysing the data and adding it to the study.

ii. <u>ADs in Police Records</u> :

The cause of death of nearly 63% of women is shown as kitchen accidents. Women seem to die of catching fire while making tea, heating water, cooking etc. As a women's NGO we have wondered at the gullibility of these policemen who note such records as cause of death. It is fairly well known that girls are taught to make tea/cook before they are ten years old and are also taught to save themselves from fire. What is learned at the parental home cannot be unlearned at the marital home. So this does not reflect the reality of women's lives.

The police claim to check for a number of things at the scene of death. In cases of burns, these are: whether the door was closed from inside, whether the injuries sustained resulted from pouring kerosene by self or by somebody else, whether the person was alone at the time of catching fire or some others were present in the house, how and when did the neighbours come to know about the happening etc. They also try to find out whether the neighbours

were willing to give statements to the police. The police arrives at a hypothesis and visits the person in the hospital. Arrangements are made to get the person's Dying Declaration (DD). An executive magistrate is called in, who notes what the victim has to say. If she says that she caught fire by accident then papers are made out as per accident, if she says that she did it herself then it is noted as a case of suicide, and if she says that she was driven to set herself on fire, then the papers are made out for abetment of suicide under Section 307 of the IPC and the abettor is seen to be the guilty person.

In the case of death by hanging, the police follow certain guidelines. The first hypothesis is confirmed or reversed by the Post Mortem (PM) note. Before concluding on the cause of death, PM note is awaited. In case of death by poisonous drugs it is very difficult to determine who administered the drug/poison. An inquiry is made to find out who bought the poison and when. If the person concerned bought it the intention of suicide becomes explicit. Insecticides/pesticides could be lying around for other purposes also, so who bought these becomes irrelevant. The police are concerned with a dead body or a severely burned dying person. The DD of a dying person becomes important. Dead body could be subjected to expert inquiry so PM note is awaited. Forensic science can help to a certain extent only when the DD explicitly says that the crime was committed by some other person. In such cases the case is investigated under Section 302 of IPC concerning the offence of committing murder.

Still the question remains. How could one say that so many women die of hazards in the kitchen especially when the use of the stove is taught to girls early. One keeps wondering why such explanations are accepted.

Policemen largely consider these deaths as results of over sensitivity of women while to us the deaths are caused on account of the women's inability to bear with surrounding circumstances, their feeling of hopelessness generated by their unhappiness at the marital home coupled with rejection from the parental home.

The following table shows the total number of ADs registered at the six police stations alongwith other offences registered under other sections of the criminal code.

Table No. 16
Offences registered under sec.174 and under all other sections at the six police stations.

Sr. No.	Police stations	Cases registered under section 174	Cases registered under all other sections	Total	% of cases registered under sections 174 to total no of cases
1.	Astodia	101	14	115	87.8
2.	Gomtipur	136	197	333	40.8
3.	Kalupur	88	20	108	81.5
4.	Madhdupura	172	131	303	56.8
5.	Meghaninagar	212	167	379	55.9
6.	Shahibaug	292	122	414	70.5
	Total	1001	651	1652	60.6

The table makes it very clear that when a woman dies at home usually there is no proof to show that the death could have been a murder or an abetment of suicide. There is no one around to state that she was suffering and that she gave up her life when it grew unbearable. All that is said by the police, and by the people is that women have lost the virtue of 'adjustment' and 'bearing with their lot' in life.

Since these deaths are labeled ‘Accidental Deaths’ in police jargon, we tried to find out how many died of proper ‘accidents’ and how many were labeled as accidents since there is no other way of describing such deaths in police registers. The following table points out the number of deaths which occurred as the woman fell from a height, or slipped from a staircase, or a wall collapsed near her cot, or was run over by a bus as she fell while alighting from it. Other deaths are categorised as per the descriptions found in the police records. Mainly these state that the woman died while heating water for bath / making tea / cooking /placing a kerosene lamp at a height. These could be described as kitchen-based accidents. Then there are remarks about the women taking poisonous insecticides or similar harmful liquids orally. The third description relates to a long standing illness which bothered the person so much that the wrong kind of medicine was consumed by her !

Table No. 17
No of ADs per causes as noted at the six police stations

Sr. No.	Police stations	Proper Accidents	Kitchen based accidents	Poison	Long illness	NK	Total
1.	Astodia	17	46	16	04	18	101
2.	Gomtipur	24	58	14	16	24	136
3.	Kalupur	27	45	10	06	-	88
4.	Madhdupura	26	112	28	06	-	172
5.	Meghaninagar	34	126	38	14	-	212
6.	Shahibaug	24	185	70	13	-	292
	Total	152	572	176	59	42	1001
	%	15.2	57.2	17.6	5.9	4.2	100

Simple accidents do take place and anyone can identify these as proper accidents. These are only 15.2% of the total so called ADs. It is difficult to accept that more than 57% women die of catching fire in the kitchen. Such noting only trivialises the causes of women’s deaths.

V. JUDICIAL PRONOUNCEMENTS

(i) Magistrates' Courts :

The 22 orders that we acquired were pronounced at the end of trials under section 498-A (IPC) applied by itself or under section 498-A (IPC) clubbed with other sections of the IPC. The following table shows the details of the use of section 498-A (IPC) and its clubbing with other sections.

Table No. 18
No.of offences registered under section 498-A (IPC) and other sections

Sections of IPC	498-A	498-A, 114	498-A, 114,323	498-A, 114, 323, 342	498-A, 114, 323, 504	498-A, 323,324, 504	498-A, 114,323, 504,506(1)	498-A 114,294, 323,426
No.of Offences	5	7	2	1	4	1	1	1

The most commonly used sections were 498-A (IPC) and 114. Sections 323 and 504 were used too. Section 114 is used when the offence is committed by more than one person, section 114 is about 'abettor present when offence is committed'. Section 323 is about 'voluntarily causing hurt', section 324 is used in case of 'voluntarily causing hurt by dangerous weapons or means' and section 504 is for 'intentional insults and provocation to break public peace'. Section 506 is for 'criminal intimidation'.

A closer look at the reports of the trials revealed how differently the sections were used and how uniformly the orders were pronounced.

Court Proceedings of Cases Under Section 498-A (IPC) :

Only five cases were registered under section 498-A (IPC).

Cases nos. 646/91 and 638/92 were routine cases. First a look at the format which is common to all and then a look at the contents would provide insight into the working of the courts and the justice meted out to complainant women.

'The judgment is as per section 355 of Criminal Procedure Code (CrPC) of 1973' is announced at the top. Then the Metropolitan Court's No., Case No., Date of the offence committed, the name and address of the accused, and the section under which the offence is registered are noted. Then the accused is asked if he agrees that he has committed the offence after he reads, or someone reads out to him, a copy of the chargesheet. The routine answer is that he does not agree.

A brief summary of the case is then noted under section 373/374 (3) (CrPC) as the order can be appealed.

Major points are then noted from the complaint. In this case (646/91), these are as under :

The complainant Narmadaben Maheshkumar returned to her parental home because the husband repeatedly told her that he did not like her and that she should go back to her father . She was harassed and beaten frequently.

The accused did not agree that he had committed an offence so the hearing took place.

Then the points for decision were stated by the magistrate.

1. In this case, has the complainant side proved that the accused has with suspicious attitude tortured the complainant woman mentally and physically?

2. What is the order ?

The reasons for the above decisions were stated. In this case as under :

Only one witness, the complainant was examined. Original complaint was noted. In her examination she said that nobody was beating her. In the cross-examination she stated : "It is not true that my husband was beating me and was suspicious towards me and was torturing me mentally and physically". The magistrate noted : "In this way the complainant herself does not support her own complaint and does not give any evidence against the accused. Thus mental and physical torture by the accused is not proved . So I decide point No.1 negatively and decide on No.2 as follows :"

The 'Final Order' Follows :

"As per section 248(1) of CrPC, I order that the accused be released as innocent[1] of the offence under section 498-A of IPC".

A note follows stating that the order was announced in the open court.

The date and signature are put at the end with the seal of the court.

In case after case it is the same story. In case no. 638/92 an additional detail draws attention. The husband used to drink and batter her, so the wife consumed insecticide. Lakshmi, the wife, stated that she was married for 13 years and had five children. She had taken insecticide as she was tired of her illness, and that the accused did not torture her. An application to discontinue the evidence was also made.

So the decision was to release the accused as innocent. The woman did not support her complaint and nothing could be proved. The magistrate noted that on the basis of incomplete evidence the accused could not be judged as guilty.

In case no 1263/91 Jyotiben Dhulabhai had complained about the husband not giving his income to her to feed the children. Jyotiben had gone to Jyoti Sangh, a women's NGO, where she was advised to go to a police station to give her complaint. She had given the complaint then and had signed it. That happened on 14.05.91. The hearing was held on 29.04.92 and 03.06.92. The parties had compromised and had given an application for the same in the court. But the magistrate noted that the offence was not compoundable. So he could not accept the application. But, it was noted, that it appeared to him that a compromise was arrived at between the parties. It was further noted, "In this way the complainant side had failed in proving the charge against the accused". So the accused was adjudged innocent.

The magistrate juggled with the language. He accepted the compromise but he could not do so as the offence is not compoundable. Finally he accepted the compromise as the cause of failure in proving the charge against the accused.

The language of the magistrate in case no 2309/89 is also an example of juggling with words. In doing so, he unfortunately contradicted himself. A statement runs like this : "In this way, only one witness is examined on the side of the complainant who does not support the case of the complainant and on the basis of such evidence, in this charge, the accused

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[1] In Judicial parlance the word 'innocent' is not used ordinarily. 'Acquittal' is used. In Gujarati, the word used is 'nirdos' and the literal translation of the order would be '... the accused is adjudged innocent of the offence under section 498-A...' The word 'innocent' is retained in translation.

cannot be adjudged innocent. So the point no 1 is decided negatively and the order is made as follows". The order declared the accused as innocent of the charge under section 498-A (IPC).

From a quick look at these four cases one can conclude that a decision to avoid court proceedings was made, much before the court summoned the parties. The court proceedings appear to turn into a farce while the woman complainant appears to be a fool who ventured on the path of getting the impossible, i.e. justice against a violent husband / relatives. She is returned from the court of law, her effort nullified and mocked at. As noted earlier, when women commit suicide the society judges them as foolish, irresponsible and oversensitive. Similarly they register complaints at the police station and later they are made to tell lies in the court and to appear foolish, senseless, irresponsible creatures.

This oft-repeated farce is quoted as the reason why section 498-A (IPC) should be made into a non-cognizable and compoundable offence. The argument is that nothing is proved against the husband in most of the cases so why should he be made to suffer the ignominy of arrest. Another argument is that the evidence in the court is always at variance with the details noted in the complaint. The witnesses tell lies on oath in the court. If the offence was compoundable, a compromise outside the court would be acceptable in the court. Women argue differently. A woman complainant is pressurised to withdraw her complaint. As per the requirement of the process she had set in motion by making the complaint, she has to go back on her words. In blaming the woman as a liar and a fool, it is forgotten by the men who advance arguments against women, that the offence is committed against the state and not merely a woman. A woman is in a subordinate position, she can hardly assert herself. Why does not the state assert that the offence was committed and the process to punish the offender must be taken to its logical end. If an insecticide was swallowed, treatment in a government hospital must have been taken. The victim complains once, why must she verbalise her complaint repeatedly ? Can a procedure be established through which the complaint of the woman would be accepted as the evidence along with the medical certificates etc. ? It is necessary to ponder over this aspect to do justice to harassed, tortured women.

The agonising questions of women are easily dismissed by those who know legal procedures. Statements made before the police are not accepted as evidence in court. Oral evidence on oath in court is the valid evidence. So complaints do not have any more value than the first push that starts off a legal process. So, if women want justice, they must learn to give evidence in courts properly.

One more offence registered under sec. 498-A (IPC) merits detailed discussion.

The brief note summarising the complaint notes the following points.

Bhadravati, daughter of Vishnubhai Padmashali was married to Venkateshwar Narasappa Padmashali. Bhadravati used to return to her parents when her husband tortured her over small nothings. On the day of the Rathayatra he asked Bhadravati to go to cinema with him so she left the parental home to go with him. On the way he changed his mind and asked her to go home with him. When she refused he beat her on the road near Sagar Hotel in Rakhiyal. Thereafter her father-in-law requested Bhadravati's father to send her and assured him that she would not be battered. A few days later Bhadravati was seen by her father and mother when her maternal uncle died. Her eyes were red and swollen. When Bhadravati was questioned about her being battered by her husband, she had started crying and had complained of being tortured by him.

Thereafter the father was informed on 05.07.87 by a neighbour of his daughter that Bhadravati had died of burns. He went there and found that she had committed suicide on account of being tortured so he complained in the police station.

Questions were framed on two points :

(1) Is it proved by the complainants that the accused had abetted Bhadravati's suicide?

(2) What is the order ?

Answers were as follows :

(1) not proved

(2) As per final order

Reasons Point 1. Two witnesses were examined. During the examination the father said that Bhadravati was married approximately two years ago to the accused. They were getting on initially. What happened thereafter was not known. He added that the accused looked after his daughter well, did not beat or torture her.

Similarly Lakshmiben gave evidence that her daughter was looked after well by the accused. Both the witnesses did not support the case made out by the complaint so they were declared hostile. No other evidence was given by the complainant's side. Thus the complainant's side entirely failed in proving the charges against the accused. So question no. 1 was decided negatively and the final order followed :

The order dated 02.08.89 noted that the accused was released as he was proved innocent of the charge under section 498-A (IPC).

Since the woman had died, why only section 498-A (IPC) was used is not clear. Why section 306 (IPC) was not applied is not clear either. The summary leads one to believe that the suicide of Bhadravati was abetted in the sense that she could no longer take the beatings / torture. Despite such a detailed complaint which mentions Bhadravati's death by burns, the police record does not mention the death at all. If the police failed to apply the proper sections of law, the Magistrate can apply section 306 (IPC) and commit the case to Sessions Court.

Following is the relevant excerpt from the record received from Gomtipur police station :

Excerpt from record received from Gomtipur Police Station :

Complainant's name & address	Date of offence	Date of Registering offence and Crime Reg. No.	Sections & Code under which offence was registered	Chargesheet prepared on date & no.	Case committed to which court on which date	Chowkies	Remarks	
							Cause	Outcome
Vishnubhai Lakshmanbhai Padmashali Rakhiyalgam Navo Vas	4/7/87 13.45 hrs	4/7/87 14.30 hrs. 193/87	498-a (IPC) Held 13/7/87 10.15 hrs.	1 commit 27/7/87	1 commit 10th Court	Tolnaka Rajpur, Silver Monogram, Astodia	Tortured the daughter of the complain-ant by batter-ing her	Not proved 10th Court
Accused : Venkateshwar Narasappa Padmashali, Dhulalbhai Patel ni Chawl, Behind Vikram Mill								

The Magistrate was aware that Bhadravati had died. Could he not apply his judicial mind to the complaint and the charge made out by the police? Could he not get the charge reformed and commit the case to sessions court? He could have done so in the interest of justice.[1]

Bhadravati died on 4/7/87 as per the police record, on 5/7/87 as per the court record and the police record and accused was taken into custody on 13/7/87. 8/9 days elapsed in between. Within two months the accused appeared in court. At the time the Magistrate could have got the charge reframed and questioned the police. Did the police make 'a false entry' amounting to an offence under sec 192 (IPC)? The parents were heard two years later (the order is dated 2/8/89) in the court. Did the police and the magistrate know in July 1987 that the witnesses were going to turn hostile? Why did not the police / Magistrate act in accordance with available legal provisions ? What were their compulsions for doing so ?

What were the compulsions of the parents in lying on oath in a court ? Could they be charged under section 193 (IPC) for giving false evidence in the court leading the court to form an incorrect opinion? When women are compelled to compromise and tell lies, cognizance of this is not taken because the motive is to reconcile the two and save a family. In this case, the woman was dead, no reconciliation was in sight. Why did the magistrate not file a complaint against the liars? He could have taken the testimony of the investigating officer that while filing a complaint the complainant stated all that was written in the complaint. Then he could have charged the complainant of perjury. Are the magistrates so overburdened that they do not take cognisance of obvious lies ?

If the magistrates challenge such persons who lead the police one way and the courts another, it would have a very significant effect on the conduct of such trials. Now people get away by pressurising complainants and the trials turn into a farce, consequently women do not get any justice. Statements before the police would then be given with a will to support these during trials so the police would also have more reason to do their job thoroughly.

<u>Court Proceedings of Cases Under Sections 498-A (IPC) and 114 (IPC)</u> :

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[1]. In fact, there is a judgment of Gujarat High Court (1995 (2) GLH 559) in the matter of Criminal Appeal No 381 of 1988, D/ 14-12-1994, which lays down that Magistrates should commit cases of offences alleged against the respondent, clearly fell within the purview of section 306, to the Sessions Court. The learned judges observed, 'It is hardly required to be told that whenever any learned Magistrate or for that purpose a learned Sessions Judge is required to frame a charge, he has to carefully peruse the police papers and on the basis of the same only appropriate offences must be specifically alleged against the accused. Framing up of charges is not an idle formality'. They also observed, 'It appears that perhaps because in the charge-sheet itself the Investigating Agency has stated the alleged offences were under sections 498-A and 114 of IPC. The learned magistrate has mechanically fallen in trap and framed the charge accordingly. Thus both the Investigating Agency as well as the learned Magistrate have overlooked the specific provisions under s.306 of IPC, which distinctly refers to the abetment of suicide.... Be the case as it may, the fact remains that because both the Investigating Agency and thereafter the learned Magistrate did not apply their mind to the fact of the case, that the error in question has been taken place.

It was further observed, 'It is unfortunate that the police officer of the rank of DySP has just lost sight of the fact that the offence alleged against the respondents was also an offence under section 306 of IPC and had indeed the DySP taken due care, the mistake committed by the learned Magistrate might not have crept in. Of course, that can never be a valid defence for any learned Magistrate who was also duty bound to peruse the police papers and find out whether he had jurisdiction to try the case or not'.

Section 114 in addition to section 498-A (IPC) suggests that the offence under section 498-A (IPC) is abetted by others, which in terms of domestic violence indicates that the husband is joined/supported by other family members in torturing the woman.

However, section 114 was applied in case no 125/88 unnecessarily as there was no abettor in the case. When the case was called out in the court the police reported that Shehnazbanu could not be found at the place of residence. So since there was no evidence against Salimkhan, he was declared 'innocent'.

As in the case of Shehnazbanu so in the case of Jyotsna, the demand was for money. In the case of Jyotsna, case no 570/92, additional complaints included battering, using obscene language and mental and physical torture. There was no supporting evidence so the accused were adjudged innocent.

In case no 1019/92, Vandana Khandas took poison and her brother went to see her at a hospital. The brother's statements are a study in juggling words. He stated that there was a compromise and Vandana was living with her husband. During cross examination he said: "It is not true that the accused did not torture her, or did not ask for money. (Vandana was a working woman) It is true that I have not lodged any complaint in the police station about the demand for money".

After this cross examination the magistrate noted that the witness did not support important points on the complaint and the complainant's side did not examine any other witness so the complainant's side had failed in proving the commitment of the offence.

Kamalaben of case no 2071/92 was married on 05.05.92. On 02.06.92 she was beaten (with hunter to get Rs.50,000 from her father as per police records) and tortured mentally and physically when she had stated that her father could not satisfy their demand of a steel cupboard, colour TV and Hero Honda. Manojkumar Bansilal Aherwal and four others denied having committed the offence.

The magistrate noted that the complainant's side had not given evidence other than that of Kamalaben who denied having made any complaint. The complainant's side had made an application to end taking of evidence. The officer making the inquiry was not examined. The complainant's side had failed in proving the case. So the accused were declared 'innocent'.

Jyotsna of case no 2153/92 had taken poison . The reason as per the complaint was that she had two sons, the husband did not have a regular job and they were asked to live separately from the parents-in-law. She had not eaten for two days and had gone to her mother-in-law to get some grains to cook but was driven out so she had taken insecticide. All this was denied during cross-examination. The brother stated that he had taken her to the hospital after she had taken poison but denied every other detail.

The complainant's side appealed for no more evidence. The witnesses did not support the case that Jyotsna was tortured. The witnesses had turned hostile. So the accused were declared 'innocent'.

Hansa of case no 1724/93 also took poison. As per the complaint she had a part-time job and used to give her earnings to her father. The husband’s family did not approve of her doing a job. So she returned to her parental family. Then her father-in-law had a heart-attack so she was summoned to live with them. On 01.07.93 Hansa had kept a vow of 'Jaya-Parvati' so she wanted to go to a temple with offerings. The husband did not approve of that so she felt bad and went to her father's. The father took her back to her marital home at about 10.00 a.m. That made her unhappy so she took poison about which the father was informed at 2.00p.m.

Hansa stated in her cross examination that all this did not happen and that she did not take poison because her father and mother-in-law beat her and tortured her. It was true that she had compromised but she was not giving false evidence. The father also said the same thing. He stated, "It is not true that I stated in my complaint that my daughter was beaten and tortured by the accused. It is not true that I am giving false evidence".

The magistrate noted that the evidence given by the witness did not prove that the accused tortured the daughter of the complainant. So the accused could not be held responsible. The magistrate moved on to note the order of releasing the accused as 'innocent'. The clothes etc. kept in custody were returned. The order was made on 04.01.94.

The magistrate noted in case no 2135/91 that the complainant and her father had stated that there was no cause of complaint. So they were declared as hostile witnesses. Other witnesses were not called as the complainants did not support the complaint.

Of the seven cases, one woman was not found by the police so she did not attend the court. Section 114 was not applicable in her case since only the husband was the accused. It must have been added routinely and thoughtlessly.

Of the remaining six, three women had taken poison. Two of them, Vandana and Hansa were working women who were tortured for their earnings. Hansa was deeply disturbed as her father sent her back soon after she had gone to him. Jyotsna Bhavjibhai took poison as the husband did not provide for her and her children. The mother-in-law also rejected her demand for food. The cases of Jyotsna Navalsinh and Kamlaben are similar in the sense that both were tortured for dowry. The reason for torturing Gita is not clear.

In such cases the nothings of the magistrates were that the witness, the complainant and the next of kin, i.e. either father and daughter or daughter and father, did not support the complaint or the witness turned hostile so the case was not proved against the accused. Despite such nothings the complaints clearly prove the haplessness of the women and the cruelty of the relatives around them. Each case is a poignant tale of the misery of the tortured woman but the 'cases' are 'not proved'.

In most cases the magistrates have noted that the complainants' side failed to prove that the offence was committed. The officer who looks after the complainant's side, i.e. the government's side (as the complainant is always the State) since the offence is committed against the State), is the Police Prosecutor (PP). What is his role after the 'parties' compromise ? From his i.e. PP's point of view the parties are the tortured woman and her parental relative on one hand and her husband and his family on the other hand. The case is ostensibly that of the state while the woman is brought back to a submissive behavioural pattern and the 'case' is 'not proved'.

In the nothings of the magistrate the investigating police officer finds a place. He could be called as a witness but that is often waived. When he is questioned his answers are dismissed as being of no value since he has no direct knowledge of the battering of the complainant. The magistrate can certainly take the evidence from the investigating officer if the witnesses make the statements prepared by him. The police officer could state on oath that they had made such statements. Then the magistrate could file complaints against those who lie in courts, but in these cases he did not do so. The statements taken by the police are not valid evidence by themselves, but when a police officer is examined on oath his statements have as much validity as those made by any other witness.

The women who took poison were admitted to the State's hospitals. The certificates of medical treatment were nowhere mentioned. These documents would support the police officer's statement and so would be very valuable only if the judicial minds were more active.

The witnesses were juggling with words. The statements beginning with "it is not true" and 'it is true' were contradictory, such statements also contradicted the complaint given by the same person. But such contradictions were not noticed. A witness stated that he did not say that his sister was not beaten but that he had not made any complaint ! This statement was noted by the magistrate only to pass it by and show that 'the offence of the accused was not proved', so they were pronounced 'not guilty'.

Court Proceedings Under Section 498-A (IPC) Clubbed With Other Sections :

Eight cases are grouped separately as more sections were added to sec. 498-A (IPC) and 114 . To the complaint registering authority it was clear that hurt was voluntarily caused (323/324), insults were intentionally hurled (504), at the victim who was also criminally intimidated (506). Did the court take notice of the hurt, the insult, the intimidation ? Were these offences proved ? If so, what was the punishment ?

Perusal of the orders once again made it clear that the parties had compromised before they were summoned to the court, that the complainant's side had applied to close the evidence, that the witnesses had turned hostile, that the complainant's side had failed in proving the case so the order declared the accused 'innocent'.

However, case no. 643 / 89 draws attention. It is a case in which seven plus one, i.e. the complainant and six relatives and one investigating police officer were examined. Apparently the A.P. Prosecutor had done his job thoroughly (or the police officer who had taken so many statements so that those who gave statements had to be summoned) and the defence was done by an advocate. The magistrate had framed four questions, whether it was proved that the victim was beaten and tortured mentally and physically to get cash or ornaments, whether she was abused and insulted, whether the victim was hurt by beating and whether the accused abetted the crime.

The Offence Described in The Complaint is as Follows :

After the birth of her first baby boy, Padma was sent to her marital home with ornaments of gold and silver as was the custom. Two months later Padma returned to her parental home after quarrels at the marital home. Accused no.1 had later taken her back to his home.

The father in his evidence denied all the things he had mentioned in his complaint. Then Padma denied having been beaten, being asked for more ornaments / cash etc., or tortured mentally / physically. So the witness was declared as a 'hostile witness'. The magistrate stated, "The complainant’s witness on whom the prosecution depends did not give any evidence. If one who was tortured mentally and physically and was beaten also did not give evidence then it should be seen as unfortunate for the prosecution. The prosecutor had argued that for the happiness of her husband and to see that the husband was not jailed and to see that her family life was not ruined it was natural for the woman to give evidence in the manner she did. This was how the witness herself for whose cause the complaint was registered did not give evidence".

Then the magistrate further noted that the parental aunt denied that the mother-in-law of Padma had beaten her. The aunt's statement was taken by the police. Then Padma's mother denied that she had returned to her natal home after quarrels at marital home. The witness was declared hostile. The maternal aunt of Padma also stated that Padma was not unhappy at her marital home. Padma's sister stated that Padma was not tortured at her marital home. The statement given to the police was not remembered. The witnesses were declared as hostile. One Shankarbhai Jethabhai also gave evidence. His relationship to Padma was not clear from the papers. He stated that at times Padma had arguments with her in-laws but there was nothing much in that. Once she had gone to her marital home after a quarrel but

her mother-in-law, husband or his brothers did not torture her. In this way all the witnesses presented by the prosecution did not give any evidence against the accused. Again the magistrate noted the prosecution's misfortune that not a single witness gave evidence to support that Padma, the daughter of the complainant, was beaten, was physically and mentally tortured, was insulted and abused or was driven out to get more ornaments. So all the four questions raised were decided negatively. The accused were announced 'innocent' and released.

It is normally assumed that in a metropolitan magistrate's court the hearing of seven witnesses and the inquiring police officer would take a long time. It is surprising that the complaint was filed on March 25, 1989, the charge sheet was prepared on April 9, 1989 and committed to the court on the same day. The order was pronounced on July 31, 1989. In less than four months the judicial process was over and done with. The parties appear to have arrived at a compromise quickly. So here was a case ready for 'disposal'. The magistrate proceeded to dispose it off. Is the emphasis on 'disposal' responsible for magistrates conniving at such blatant lies or is it the mindset of the magistrates that they expect battered wives to give evidence that did not prove charges against husbands ?

Is that quick justice or a quickly arrived at compromise ?

One case (827/92) is unlike the others, as curiously enough among the sections applied are sec. 294 and 426 of IPC together with sec.498-A (IPC), 114 and 323 (IPC). Both sections 294 and 426 of IPC are irrelevant as section 294 is about 'obscene acts and songs in public place' and section 426 is about 'mischief'[1] in public place. While framing questions the magistrate referred to sec.498-A (IPC) i.e. of mental and physical torture, to sec 323 i.e. of causing hurt, to sec. 294 interpreted as abusing in obscene language, to section 114 of abetting the offence. He did not refer to section 426 at all and interpreted sec. 294 to mean only 'obscene abuse' in domestic situation.

The details of the case repeatedly refer to quarrels within the home. In fact, section 294 was repeatedly clubbed with 498-A (IPC) in the police records. However, it is not always used when obscene abuses are reported in a case. For example, in case no 579/92, obscene abuses were reported but the case was registered under section 498-A (IPC) and 114 (IPC) only.

Is section 294 relevant ? If yes, why was it not applied in similar offences at other police stations or at the same police station at other times. If not, then could one question the learning of the police officers and magistrates ? While going through the data one is surprised by such discrepancies in the application of various sections of the Indian Penal Code.

Case no. 1575/86 calls for a separate mention. The case was adjudicated as partly proved. Four sections were applied, viz., sec 498-A (IPC), 114, 323 and 342. Of these, offence under section 323 was not proved but offences under the other three sections were proved.

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1. For the details of the section and the meaning of 'mischief ' please see app. 1

The details recorded by the police are at variance with those in the case papers. The offence was committed from 13.04.86 including the preceding nine months and continuing till date. Registered on 13.04.86, sections applied were IPC

sections 498-A (IPC), 342 and 323. A charge sheet was prepared on 06.06.86 and the case committed to court no. 17 on the same date. In the police register the remarks are: 'Accused no. 2, Maniba, w/o Arjunsinh Abhesinh and no.1, Arjunsinh Abhesinh Jadeja who had two

wives and the second one Krishnaba not having brought dowry, the two tortured the complainant's second wife very much and locked her in the bathroom, did not give her food thus abetting her to commit suicide'.

When one peruses the case papers it appears that the accused no. 1 was married to Krishnaba approximately seven years earlier and tortured her as she remained childless. Approximately three years earlier she was taken to her parental home. After some time, accused no.1 had brought her back and for a short period had treated her well. But during the last nine months she was tortured very much.

As per the police records Krishnaba was the second wife who did not bring a dowry and so was ill-treated. As per the court papers, Krishnaba was the first wife and was childless so she was ill-treated (Police record can be seen as item 3 on p.no. 45 above).

The ill treatment that Krishnaba received was described by the witnesses. She was battered, she was not given food, she was locked in the bathroom which had no window / ventilation, she was not allowed to sleep inside a room / house but instead slept under the staircase, she ate used tea-leaves and leaves of trees.

Then the event happened on 13.04.86 about which the court papers state that the neighbours sent a signed complaint. Police records show Krishnaba as the complainant.

The event was such that a panchnama was made which was attached to the court papers. The advocate argued that the neighbours did not want to see a childless man as per a customary belief, therefore they wanted him to go away from their neighbourhood so a false case was instituted against the accused. The prosecutor appears to have argued that no enmity between the witness and accused was proved so the case against the accused was proved. The tortured woman was not presented in the court as the prosecution could not find her.

What was the event about which the panchnama was made is not clear. It is alluded to but not described in the court papers. The magistrate noted that the woman was ill-treated, tortured mentally and physically (498-A (IPC)) by the two accused together (114) and was wrongfully confined (342) but no 'hurt' was caused (323). So three out of four offences were held as proved.

Then the arguments of the accused about old age and inability to earn were taken into consideration. The magistrate thought that the old persons' minds would be unnecessarily exposed to criminals if they were sentenced to jail and so he decided to give them the benefit of section 4 / 1 of Probation Offenders' Act. That according to him would serve the purpose of justice. This assurance is repeated thrice in the last para. Two years' sentence is recorded in the police register but not the benefit of Probation Offenders' Act, given to the accused.

In each of the 21 cases discussed above, the tortured woman was the most important witness. In this case her absence was taken for granted, there was no discussion of the 'event' or the 'panchnama', the proceedings were limited to specific questions leaving a sneaking feeling behind that the 'event' must have been an attempt to commit suicide and that Krishnaba must have succumbed to burns injuries. This is surmised because the police records refer to the abetment of suicide; there is no contradiction to the fact of cruelty, there is an allusion to the event and the key witness of the prosecution, Krishnaba herself was absent at the time of the hearing. The crime was committed in April, 1986, the order was signed in May 1990. In a case when a metropolitan magistrate examined eight witnesses, the order was passed in less than four months while in another it took more than four years. This case also throws light on the responses of the 'judicial mind' at work. The Magistrate did not look into all aspects of the case but showed sympathy for those who tortured a woman so inhumanly ! The case could not be disposed earlier as there was no 'compromise'.

This made us look at the pace at which women get 'justice' in complaints of 'cruelty' i.e. under section 498-A (IPC) alone or section 498-A (IPC) and other sections.

From the date of registering the offence to the delivery of the order only one case took more than 4 years. That was the case of Krishnaba. Six cases were wound up within six months, four were decided within one year. Five cases took less than two years while 6 cases were decided in more than two but less than 3 years. Of these 22, in 20 cases compromise was arrived at by the parties before they were summoned to the court despite the fact that section 498-A (IPC) is non-compoundable. One case was compromised by the complainant's father; the daughter Bhadravati had committed suicide. One had compromised the case but had obtained a divorce. She had suffered extreme violence, she was scalded with a hot iron rod in her private parts. Eighteen women had gone to live with their husbands at their marital homes. The two remaining women were 'not found' by the prosecution - Krishnaba and Shehnazbanu.

The sample is small but quite significant. These twenty- two cases tell the stories of women whose protests were not accepted by society. Most of them went back to their parental home from where they were sent back to the marital home. Disappointed and stifled, four women took poison. They survived and had to again return to the marital home. The reasons for torturing them ranged from 'unsatisfactory house work' to 'dowry' to 'childlessness' or even 'conceiving when the husband did not want her to'! Working women's income also could be the cause of their oppression and exploitation, while starvation also drove two women to consume poison. They were battered at times with hunter or iron roads, abused, hurt and were entirely at the mercy of the husband and his relatives and at times that too within the first fortnight of marriage. The fact that they were pushed back to the same surroundings once again points to the helplessness of these women.

How was it that some cases were wound up within 3 to 6 months ? Was the compromise arrived at that quickly ? And that the case was called up in court to put the final seal of approval on the compromise? Is that how seven witnesses were also examined quickly enough? Once the compromise is arrived at by the parties, do they activate the public prosecutor, the police and the court? Some cases did take long, may be the compromises took long, depending upon how deeply the woman was hurt and how far she could resist !

We tried to locate the women who had returned to their marital homes. Fourteen were found living with their husbands. One was divorced. Bhadravati was dead, Krishnaba and Shehnaz were not found by the prosecution. Four others could not be located. The fourteen women whom the research assistant met, were unwilling to talk. They revealed that they were occasionally beaten by their husbands. Most of them were from a low income group, judging by the houses they occupied.

There is a general belief that once a woman registers a complaint against her husband and his relatives under section 498-A (IPC), her chance of going back to the family is next to nil. The police officers firmly believe in that and so start counselling the woman that she should not get her complaint registered under sec. 498-A (IPC). The case papers do not support the myth. Eighteen women out of 22 had compromised and gone back to their husbands and the marital family.

The papers made out by the police may read differently, the section applied may be only 498-A (IPC), or a number of sections may be added to sec. 498-A (IPC), but nothing makes any difference. The woman is subordinated again to the will of the men around her and towards that end men get the help of other men in khaki uniform and black coats.

ii. <u>Sessions Court</u> :

A judgement of Sessions Case No.31/96 was the only one that could be acquired by us. It is very rare to find a 498-A (IPC) case in Sessions Court. It is about the death of a married woman who consumed poison; she was married 15/16 years ago. So legally speaking, section 498-A (IPC) is irrelevant but that was a pointer to us and also to the fact that this suicide was alleged to have been abetted by the husband who used to torture his wife.

The questions raised by the Sessions Judge were

[1] Whether the complainant's side proved that the accused was Hansa's (the woman who committed suicide) husband and whether he asked for money repeatedly from her and tortured her repeatedly thus committing a crime under section 498-A (IPC).

[2] Whether the complainant's side proved that the accused led his wife to commit suicide by torturing her and that the accused abetted the act of suicide of his wife thus committing a crime under section 306.

[3] What is the order ?

Decisions on the first two points were negative. The third was pronounced as per reasons stated.

It was proved beyond doubt that the accused and Hansa were married.

It was stated in the complaint that at times in winter the accused drove Hansa out of the house so she had to live out in the cold. He battered her and this was permanent harassment. The accused also was a gambler and took alcohol / drugs.

The investigating officer's cross examination revealed that this was not stated in the complaint by the complainant. So the conclusion was that part of the complainant's statement did not help the complainant's side. It was also concluded that beyond that no other incriminating evidence was provided against the accused.

Thereafter the children of Hansa, daughter Sweta and son Sandip, were examined. Nothing in what they said supported the complainant's side.

Then Vasuben, Hansa's sister was examined. Vasuben stated that two months earlier the accused had beaten Hansa so badly that she had to be taken to VS Hospital where she had remained unconscious for 12 hours. On the day Hansa took poison she was beaten so that her arm was broken. All this and that the accused was an alcoholic and took drugs was not stated in the statement before the police, it was stated in the court for the first time so, though it was important evidence, it could not be relied upon.

Witnesses Shambhubhai Becharbhai and Vitthalbhai Somabhai stated that they had gone to bring about a compromise between the accused and his wife Hansa twenty days ago. At the time the accused gave in writing to them that he would not torture Hansaben and would not drink. But such writing was not presented in court. Moreover the evidence of the witnesses did not indicate how Hansa was tortured, so the evidence was not considered useful to the complainant's side.

Witness Ranjanben Mahendrabhai stated that there were frequent quarrels between the accused and his wife and that she had brought about a compromise four or five times. In the evidence, the details of torture by the accused were not evident anywhere. The statement that there were quarrels did not point to torture.

Those who signed the 'panchnama', the inquest, deposed that they knew nothing about the contents of the inquest, they only signed the paper, as the police asked them to do so. The panchnama therefore did not become helpful to the complainants' side.

Hansa had lodged a complaint on 14/4/95 (she died on 22/8/95) which stated that when she was staying at her sister Vasuben's house, her husband had run after her with a 'dharia' (a long wooden stick fitted with sharp iron blade) to kill her and was threatening to kill her children. But sister Vasuben or children Sweta and Sandeep did not mention any such detail in their evidence. The copy of the complaint by itself was considered a very poor evidence. So the complainant's side had failed in providing evidence to show that the accused tortured his wife at times.

So question 1 with reference to section 498-A (IPC) was not proved.

Details of PM etc. proved that Hansa committed suicide. But that it was abetted by the accused was not proved by any evidence given by the witness. Evidence of Hansa's brother Nageshbhai and sister Vasuben appeared to be later additions in the court to rope in the accused. The accused did not seem to have intentionally abetted the suicide of Hansa as no evidence as per the Gujarat High Court's principle established in Rameshbhai Ranchhodbhai and Anr vs Gujarat State, was provided. The complaint dated 14/4/95 was also not supported either by the brother or the sister of the deceased.

So question 2 with reference to section 306 was not proved. So the order was to release the accused as 'innocent', personal security of Rs. 5000/- had to be provided by the accused. The order was pronounced on 25/1/96.

The details of the case raise a few questions. The investigating agency i.e. the police could have brought in a certificate from the VS Hospital if they were particular in preparing the complainant's case. It is accepted that what is not stated in the complaint initially, would raise suspicions of unreliability in the judicial mind. But with the help of the police the PP could have presented the certificate of treatment, and acquired the writing that showed the compromise done between the accused and Hansa through the good offices of Shambhubhai and Vitthalbhai. That writing could have been presented in the court to strengthen the complainant's side.

The very fact that the quarrels were of such nature that third parties were called in would point to unbearable torture of the woman. The court could have inquired what kind of quarrels necessitated frequent compromises. Unless it is constant torture, a third party would not be asked to come in. That this was frequent is amply stated. Two months before Hansa's death, she had gone to Vasuben's after being beaten by her husband so badly that she had remained unconscious for 12 hours. Twenty days before her death, the two men had gone to bring about a compromise between the accused and Hansa.

The court also dismissed the previous complaint that it was not supported in the evidence given by the complainant Nageshbhai or sister Vasuben. That the two did not refer to the complaint, did not amount to contradiction. Had the PP been well prepared, the complaint could have been part of the evidence.

In exercising 'judicial mind' and taking note of the principles of law, the Sessions Judge appeared to have missed out on a number of details that pointed to torture. Breaking of an arm during a quarrel between husband and wife is not a normal occurrence. She was probably not treated for the injury, if there was a bandage on her arm the PM note would have a reference to it. She took poison at 2145 hours at night. The pain of the broken arm would have been unbearable. Statements of Vasuben and Nageshbhai also point to very cruel treatment. But the judge found nothing that could satisfy his judicial vision.

The PP's role remains questionable. With more support from him and his office, as well as the police, perhaps the final order could have been different. The complaint of a previous offence committed by the accused, lodged by the deceased could be very relevant in showing the

torture perpetrated by the accused. If such an evidence is not seen as valuable there is no hope for women. As it is, women do not rush to police stations to lodge complaints. Here was a case where a complaint was lodged, the deceased had to be treated in VS Hospital for a very serious injury and a number of compromises were necessitated between the couple. We, the women, feel lost. What more can ever be presented in court in a single case ? Does this kind of judicial procedure promise justice to women ? Perhaps not.

iii. <u>High Court</u> :

In the High Court of Gujarat in the case of Rameshbhai Ranchhodbhai and Anr. vs State of Gujarat[1] in the matter of sections 107, 306 and 498-A (IPC) it was held that 'In order to constitute abetment, the act or omission must be intentional, it must be done with intent to facilitate the commission of an offence. So merely because a man is convicted of the offence under section 498-A (IPC), it does not follow that he has abetted the offence of committing suicide punishable under section 306'.

Section 107 spells out what is abetment under the Indian Penal Code and Section 306 is the penal section. The emphasis is on 'a person abets the doing of a thing who .... Thirdly : Intentionally aids by any act or illegal omission, the doing of that thing'. In the case under discussion the judges observed, 'For establishing abetment covered by clause Thirdly read with Explanation 2[2], it has to be established that there was intentional aiding. Mere aiding may not amount to abetment unless it is intentional. Mere act or omission on the part of a person which, in fact, results in facilitating the commission of the offence will not satisfy the requirements of Explanation 2 of clause Thirdly. . . There is nothing on record to show that there was any incident on the day of the incident or in the past which would show that the deceased was likely to commit suicide. It cannot be said with any stretch of imagination that a person subjecting a woman to cruelty is guilty of abetment. Section 306 (IPC) and section 498-A (IPC) are two independent sections in the IPC. While considering the guilt or otherwise of an accused for the offence punishable under sec.306 (IPC) we have to read only sections 306 and 107 (IPC). Section 498-A (IPC) is out of question so far as the question of abetment is concerned'.

The order of conviction passed by the Sessions Judge was thus set aside by the High Court. Torture to a woman, if proved, is not considered to be by itself abetment of suicide. This decision was quoted in 1996 by the sessions Judge quoted earlier in this chapter.

In another decision the Gujarat High Court, in hearing an acquittal appeal[3] (Criminal Appeal No.1475 of 1984 D/29-2-1996) confirmed the order of acquittal. The discussion was on S.306, abetment of suicide. In the note prefixed to the details of the order, the following is stated:

> Indian Penal Code, 1860 - S. 306 Abetment of suicide - When extremity is one's own creation and the accused is blamed, it would amount to roguery supplants justice - Nothing can be inferred or assumed for or against the party - To prove the offence there must be evidence about the knowledge and intention relating to the crime and proximate assistance - If spouses are often quarrelling on one or another issue, it is the usual wear and tear of the

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[1] Decided on 21-2-1989 Criminal Appeal No.1392 of 1986 against the order of conviction and sentence passed by Addl. Sessions Judge, Kheda at Nadiad in Sessions case No.159 of 1986. Reported in GLR Vol. XXX (2) p. 834.

[2] Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

[3] Reported in 1999 (2) G.L.H. (5), pp 5 to 11.

married life - A person would bring end of his/her life only when he/she is put to the compelling or alarming circumstances with no option - The prosecution has to show what was the apple of discord to determine about the abetment - Only evidence of the accused being often quarrelling with the deceased (wife) would not amount to abetment for committing suicide in the facts and circumstances of the case.

The judges referred to four other cases, viz.

1. Chanchal Kumari & Ors. v. Union Territory, Chandigarh AIR 1986 SC 752 (para 7).
2. Rameshbhai Ranchhodbhai & Anr. v. State of Gujarat xxx (2) GLR 834 - 1990(1) Crimes 417. (para 7).
3. Niharbala Banerjee & Anr. v. The State 1989 Cri. L.J. (NOC) 38 (para 7).
4. Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116.

In another decision the Gujarat High Court, in hearing an acquittal appeal[1] (Criminal Appeal No 1475 of 1984 D/29-2-1996) confirmed the order of acquittal. The discussion was on section 306, abetment of suicide. In the note prefixed to the details of the order, the following is stated :

'In the first mentioned order stress is laid on dependable evidence with regard to actual abetment by the accused. In the second order it was held that to establish abetment, it has to be established that there was intentional aiding. The third mentioned order emphasized that there must be Mens Rea or community of intention. The mere fact that the deceased wife was treated with cruelty by her husband and her in-laws is not sufficient to prove the abetment by the husband in committing suicide. There must be Mens Rea or community of intention. Without knowledge or intention there can be no abetment and the knowledge and intention must relate to the crime and the assistance must be something more than a mere passive acquiescence. In the fourth mentioned order the psychological aspect is dealt with'.

Section 306 therefore, could be proved if the intentional abetment is proved. The fact that offence under section 498-A (IPC) is proved is not sufficient to prove abetment of suicide. The judges in the case of 'Rameshbhai Ranchhodbhai and Anr. v State of Gujarat' had observed, 'there is nothing on record to show that there was any incident on the day of the incident or in the past to show that the deceased was likely to commit suicide'. In the Criminal Appeal under discussion a witness is reported to have stated that 'she then heard the utterance of respondent, viz. "better die today than tomorrow". The judges observed : 'Whether such utterance can be said to be the abetment in the eye of law has to be examined, for it might be the outburst of one's fatuity or anger or consternation, without any intention or knowledge, or might be the rude or insulting but firm reaction rather than nurturing the desire or stubbornness or levity . . . The court has to dissect the merits thereof and reach to the just and proper conclusion. The witness is also not seen as reliable witness because she did not state before the police about the quarrels in past and the fact that the deceased used to tell her about her miseries and woes. When she has not preferred to state about the quarrels and the information she used to gather about the ill-treatment, miseries and woes from the deceased, and has preferred to state before the court it can be said that here is a witness who has made alarming improvement so as to rope in the respondent. Owing such tendency and the improvements in the case, the prudence dictates that we should insist for corroboration. There is no corroborative evidence. . .

The judges observed in conclusion : 'Before we pass the final order, we think it proper to mention that we agree with the learned Additional Public Prosecutor (APP) that atrocities on

1. Reported in 1999 (2) G.L.H. (5), pp 5 to 11.

women are going berserk. The society and State have to face setback as such incidents lead us from civilization to barbarism. Everything moves to the reverse. Hence the courts have to heavily come down upon the criminals. The courts are also equally worried about the atrocities on women but we, as the Court, have to appreciate the evidence and decide the case remaining within the four corners of law. Our satisfaction or a doubt is not sufficient if it is not consistent with law, and we cannot on the basis of conjectures and inferences jump to the conclusion against the accused. In law it is incumbent upon the prosecution to prove the charge beyond reasonable doubt and if prosecution fails to prove the same, the court would be helpless. For the aforesaid reason, the charge is not proved. Consequently we have to reluctantly pass the final order confirming the order of acquittal'.

The judges appear to be helpless before the law. Women feel that the appreciation of evidence is different from the reality they face. At the first instance, a person may not state everything, but at the second opportunity other facts may come to mind. The facts stated later in the court are immediately discounted as unreliable evidence as they were not stated the first time in the complaint prepared by the police. The evidence given by the parents of the first wife who met with a similar fate and died was also not considered acceptable as that was not stated before the police and was not a part of the complaint.

To prove abetment of suicide appears to be the most difficult task. Women have no hope for succour from section 306 of IPC, torture by itself even if proved can not be seen as abetment of suicide.

In criminal appeal no 394 of 1988[1] D-3-4-1995 another issue is discussed. Section 113-A of Indian Evidence Act was enacted in 1983 along with section 498-A (IPC). The learned Judge discussed section 113-A of the Indian Evidence Act with reference to section 498-A (IPC).

The prefixed note (A) reads :

Indian Penal Code, 1860 - S 498-A (IPC) and Indian Evidence Act, 1872 - S 113-A - Wife committed suicide within the period of seven years of her marriage - Prosecution has failed to prove its case of cruelty by the accused husband beyond reasonable doubt - Scope of S.113-A of I.P.C. cannot be enlarged by referring to S.113-A do not create new offence or substantive right - It is a matter of procedure of evidence - Presumption as to abetment of suicide would not arise, in the facts of the case.

As per section 113-A the court can presume that the suicide of the woman was abetted by her husband or relatives of husband only when 'cruelty' as contemplated by section 498-A (IPC) is proved and suicide was committed within seven years of marriage. The prosecution had not proved beyond all reasonable doubt that the death was on account of 'cruelty' of the husband or his relatives. The second point raised is about cruelty. The prefixed note reads.

(B) Indian Penal Code, 1860 - S-498-A (IPC) - Incident took place at 8.00 a.m. on 24-7-1987 - F.I.R. lodged on 28-7-1987 at 10.00 a.m. - No satisfactory explanation offered by the prosecution for late F.I.R - No other material to show that accused caused cruelty to the deceased during subsistence of marriage - Father or uncle of the deceased did not make complaint of cruelty - Neighbours also not examined - Prosecution failed to prove guilt of the accused.

The explanation offered was that none of Jashi's relatives knew about her death for three days. The uncle stated that he came to know about the death of Jashi after three days when

[1] Criminal Appeal against the judgment and order of J.M.F.C. Santrampur, date 08-01-1988 passed in Criminal Case No. 996 of 1987. Reported in 1995 (2) G.L.H. 878 - 883.

he went to village Bhatia where the deceased and the accused were residing. This does not seem to amount to a ‘satisfactory explanation’ for lodging the F.I.R. late . The judge also observed : ‘There is no dying declaration or suicidal note. There is no letter or any other material to show that during subsistence of marriage, the accused beat or caused cruelty to the deceased. There is no complaint either by the father or uncle who is said to have adopted the deceased Jashiben. No neighbours residing nearby the burnt house of the deceased Jashi and the accused have also been examined’.

Indian rural women can hardly leave suicidal notes behind. Their illiteracy would prevent them from doing so. But one wonders if the complaints of parents or neighbours would be finally accepted as 'evidence' because of the suspicion that they would be 'interested in 'roping in' the accused.'

The judge observed towards the concluding paras, ‘The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of section 498-A of IPC and section 113-A of Indian Evidence Act. Although the court’s conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard of proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of evidence adduced in the cases and the materials placed on record.'

This is noticeable in each order discussed here. Nothing appears to prove anything 'beyond reasonable doubt.' However we have a feeling that the evidence cited about 'cruelty' to women needs to be appreciated with more concern. If a couple frequently needs third party intervention for a compromise there could be more than what is stated by the witness. The PP or the judicial authority should look into it. Documents showing the consequences of torture could be examined. What more is needed for 'intention' to be proved when the woman is so tortured physically and mentally that she expresses the wish to die and the torturing agent replies 'better die today than tomorrow'. When the second wife dies and the parents of the first wife depose that their daughter had died similarly, some weight could be attached to the evidence given by them. Unfortunately all these things are swept away and lack of evidence of ‘cruelty’ acquits the accused.

The mind of the High Court appears to be closed to consider 'cruelty' as proved under section 498-A (IPC) as the case of abetment of suicide under section 306 (IPC). Intention of aiding suicide or actively assisting it needs to be proved to prove the offence under section 306. We, women consider that if 'cruelty' is proved under section 498-A (IPC) that would be enough to show that the suicide committed as a consequence of cruelty was abetted suicide. An order passed by the Sessions Judge on the basis of cruelty was set aside by the High Court in the case of Rameshbhai Ranchhodbhai and Anr v. State of Gujarat. This is signal enough to all sessions courts that when 'cruelty' as per section 498-A (IPC) is proved, they need not take it as abetment of suicide.

Appreciation of evidence by the judges in courts also falls short of the expectation of women. The judges do take cognisance of the increasing number of atrocities against women. They think that the courts need to heavily come down upon the criminals. But then the law does not allow them to do anything else but acquit the accused.

VI. PROFILE OF WOMEN VICTIMS

i. Women Victims Against Whom Offences Were Committed and Registered :

Who were all these women in the police records against whom offences were committed were registered ? Among which religious groups was it common to torture women ? Which groups in Indian society drove their women to unnatural deaths ? Which social group was guilty of barbaric behaviour towards its women ? Were poor women strong as they went out to earn and could use language that is not very soft nor is indicative of submission on the part of women folk? Were they young ? Or were they middle - aged ? In order to find answers to these questions further analysis of the data was done.

Religion :

The first group of sections are 498-A (IPC) and other death indicating sections like 302, 304-B, and 306 (IPC). The following table shows the religion of these 137 women, whose deaths are registered and the cause of the death is indicated in the use of sec.498-A, i.e. domestic violence.

Table No. 19

No.of women whose deaths are reported as per sections in Group I distributed as per their religion.

Religion	Hindu	ST	Muslim	Christian	Not Known	Total
No. of women	119	-	17	1	-	**137**
%	86.1	-	12.4	.7	.7	**100**

Does this by any chance indicate that there is no domestic violence in tribal families ? Far from it, few tribals come to Ahmedabad to earn as labourers. Reflection of what happens among them is bound to be low in this study.

The second group of sections are 498-A and other sections which do not indicate death. These could indicate battering, causing bleeding injuries or simple hurt etc. The cause of complaint is clearly indicated in the use of section 498-a, i.e. domestic violence. The following table indicates to which religion these battered wives belonged :

Table No. 20

No.of women who got offences registered under sections in Group II, distributed as per their religion

Religion	Hindu	ST	Muslims	Christians	Not Known	Total
No.of women	254	04	45	05	02	**310**
%	81.9	1.2	14.5	1.6	.6	**100**

The total no.of women reaching out to police stations because of domestic violence appear to be more than those who died as is indicated by the number in sections clubbed together in group I. But the proportion of Hindu, Muslim, Christian women reaching out to police stations almost remains similar to that in the previous table. The figures in the table indicate that tribal women are also battered.

The number registered under group III is quite large. In the group are death indicating sections but 498-a is not added up. The distribution as per religion of the number of these

dead women who died of murder, accident, abetment of suicide or committed suicide is given in the table below.

Table No. 21
No.of women whose deaths were registered under sections in Group III, distributed as per their religion.

	Hindu	ST	Muslims	Christians	Not Known	Total
No.of women	814	11	85	09	126	**1045**
%	77.8	1.1	8.1	.8	12	**100**

One could easily notice that the religion of many women is not clearly indicated in the records received by us. Once a woman is dead, the task of registering, investigating etc. is done. In cases where 'heavy' offences could be proved, the details are more carefully noted. But in noting accidental deaths or suicides, such negligence is visible.

Another detail that deserves to be mentioned is the number of tribal women dying in the city where they had migrated with the family to make a living. Deaths of tribals in the city show that tribal or not, men push their womenfolk to death.

The last group of sections indicate injury, hurt etc. but section 498-A is not used. The registering officer may not have found it necessary to apply section 498-A. The following table indicates to which religion the injured women belonged.

Table No. 22
No.of women concerning whom offences were registered under sections in group IV, distributed as per their religion.

Religion	Hindu	ST	Muslims	Christians	Not Known	Total
No.of women	123	03	19	2	13	**160**
%	76.8	1.8	11.8	1.2	8	**100**

The percentage of the Christians and Muslims appears to approximate their percentage in the population in general. The following table points to that at one glance.

Table No. 23
No.of women concerning whom offences were registered under sections in Groups I to IV distributed as per their religion.

Religion	Hindu	ST	Muslims	Christians	Not Known	Total
Group I	119	-	17	01	-	**137**
Group II	254	04	45	05	02	**310**
Group III	814	11	85	09	126	**1045**
Group IV	123	03	19	02	13	**160**
Total	**1310**	**18**	**166**	**17**	**141**	**1652**
%	80.3	1.00	10.1	1.00	8.6	**100**

The number of tribals in the city is bound to remain exceptional as they are migrants.

These religious groups are so far seen in terms of the use of section groups to their complaints. Seen in terms of the police stations, these reflect the population groups under different police stations. The following table reflects the population mix in the city as the number of the women against whom the offences were committed in the six police stations are distributed as per their religion.

Table No. 24
Religion of women against whom offences were committed and registered at the six police stations

Religion	Astodia	Gomtipur	Kalupur	Madhupura	Meghaninagar	Shahibaug	Total	Percent
Hindu	99	225	63	225	348	350	1310	79.3
ST	-	03	-	04	02	09	18	1.08
Muslim	08	59	34	51	02	12	166	10.1
Christian	-	07	-	01	04	05	17	1.01
Not known	08	39	11	22	23	38	141	8.5
Total	**115**	**333**	**108**	**303**	**379**	**414**	**1652**	**100**

No religious group saves its women from torture and deaths. The percentages seem to come close to the percentage of the particular religious groups in the population. More Muslims live in Gomtipur, Kalupur and Madhupura police stations while more Christians live near Gomtipur, Meghaninagar and Shahibaug police stations.

Caste :

Hindus were seen as subdivided in Scheduled Castes (SC), Other Backward Classes (OBC) and upper castes.

Table No. 25

Caste divisions among Hindus as per police stations

Castes	Astodia	Gomtipur	Kalupur	Madhupura	Meghaninagar	Shahibaug	Total	Percent
S.C.	12	96	04	59	72	115	358	27.3
O.B.C.	17	97	23	104	209	138	588	44.9
Upper castes	70	32	36	62	67	97	364	27.8
Total	**99**	**225**	**63**	**225**	**348**	**350**	**1310**	**100**

Obviously the women of other backward castes are most vulnerable. So are SC women. The OBC and SC women fall in the poorer class. They go out to earn in addition to looking after their homes and children. The table shows that a very large number of these women were battered. This shatters two very well circulated myths among the upper castes and classes of society. One is that these women are very well off monetarily as they themselves go out to earn and so do their husbands and sons. Their incomes are therefore large, only they do not know how to use their incomes in a planned manner. Second is that these women can abuse their husbands, use foul language for all around so they are free from oppression within the family. One PI who had served long years at Meghaninagar and Madhupura police stations said that these OBC women suffer a lot because their husbands take to alcohol and stop working. Women have to work hard as unskilled labourers. Husbands waking from their

alcoholic stupor look for them as they need food. A husband may notice his wife taking money from or talking to a man (under whom she got her work). So when she returns home he picks up a quarrel alleging her of bad character and of having sexual relations with that man. The woman retaliates in the beginning but later gives up her life, in the face of such frequent quarrels The PI summarised the reality of these poor women's lives well.

Upper caste women are also quite vulnerable. Their number in Astodia and Shahibaug is indicative of the middle class reflected in the composition of the population in those areas. In Madhupura and Meghaninagar the poor upper castes could be located more.

The number of women of the Rajput caste was analysed separately as they were more visible The following table brings out the reality of Rajput women's lives:

Table No. 26
Numbers of Rajputs among upper castes as per police stations

Upper Castes	Astodia	Gomtipur	Kalupur	Madhupura	Meghaninagar	Shahibaug	Total	Percent
Rajputs	01	02	01	14	29	43	90	24.7
Others	69	30	35	48	38	54	274	75.3
Total	**70**	**32**	**36**	**62**	**67**	**97**	**364**	**100**

Rajput women make up approximately one quarter of the total number of battered women among upper caste women.

Age :

The age of women against whom offences were registered at various police stations was analysed. The following table presents their ages recorded in the police stations.

Table No. 27
Age of women victims as per police stations.

Age	Astodia	Gomtipur	Kalupur	Madhupura	Meghaninagar	Shahibaug	Total	%
0-10	02	07	-	03	13	13	38	2.3
11-20	29	56	25	51	91	77	329	19.9
21-30	43	90	24	110	188	129	584	35.3
31-40	10	23	16	44	43	33	169	10.2
41 +	20	19	18	31	24	21	133	8.1
not known	11	138	25	64	20	141	399	24.2
Total	**115**	**333**	**108**	**303**	**379**	**414**	**1652**	**100**

Young wives are the worst in effected. Even beyond the age of 40 women suffer so that they go to the police stations to get their complaints registered. The records are such that the ages of as many as 24% women could not be ascertained even when the research assistant personally scanned the police records. Women, especially young women, certainly seem to be an expendable commodity.

A few cases of women who had reached the age of 40 and beyond were looked into to see what made them rush to the police stations. Most of them had died of accidents or had committed suicide. Some had died of simple accidents like slipping from stairs while some others had died of different reasons. A woman had taken poison, another had consumed acid,

some caught fire while putting up a kerosene lamp while some others caught fire while heating water or making tea or cooking in their kitchens. Even at the age of 40 and above women could not come to terms with life. It must have been quite unbearable for them at that age. We decided to look at this phenomenon much more closely.

ii. <u>Profile of Women Whose Accidental Deaths (ADs) Were Recorded in Police Stations</u> :

In India and in Gujarat as well, a girl learns to make tea and cook from the young age of 8/10 years. She is taught at that time how to save herself from fire. Such lessons are not easily forgotten as negligence could bring death. Yet so many women are reported as dying of catching fire in their kitchens. To think that hundreds of women are dying of such 'negligence'! How could they unlearn the lessons of safety ? Or did they learn the lessons of submission and sacrifice better ? Or were they victimised because they were not 'submissive'? Did only young women 'sacrifice' their lives or were they 'victimised'?

The records we received from the police stations were again scanned to find how many deaths were registered as Accidental Deaths (ADs). Once a death is registered as AD, the police has to do nothing about it and so the records are not much detailed. A very large number of cases are classified as ADs, as is clear from the following table.

Table No. 28
No.of offences registered against women and those of Accidental Deaths (ADs) distributed as per religion

	Hindu	ST	Muslim	Christian	N.K.	Total	Percentage
Other Offences	529	04	82	07	29	651	39.4
Ads	781	14	84	10	112	1001	60.6
Total	**1310**	**18**	**166**	**17**	**141**	**1652**	**100**

The records show that more than 60% cases registered are of unnatural deaths of women recorded as Accidental Deaths (ADs). In the registration of ADs it is obvious that religion of as many as 11% is not noted. Similar laxity is noticeable in noting other details like age etc.

The following table shows the age of women as per police stations.

Table No. 29

Age of women whose Accidental Deaths (ADs) were recorded as per police stations

Sr. No.	Police Station	0-10	11-20	21-30	31-40	40+	N.K.	Total	%
1	Astodia	02	26	36	10	20	07	101	10.1
2	Gomtipur	06	35	34	14	14	33	136	13.6
3	Kalupur	-	25	21	16	18	08	88	8.8
4	Madhpura	03	41	74	24	23	07	172	17.2
5	Meghaninagar	12	65	87	28	20	-	212	21.2
6	Shahibaug	13	67	111	32	21	48	292	29.2
Total		**36**	**259**	**363**	**124**	**116**	**103**	**1001**	**100**
%		3.6	25.9	36.3	12.4	11.6	10.3	100	

Women appear to be most vulnerable between the ages of 11 to 30; their vulnerability appears to extend upto and even beyond the age of 40 years. More than 62% die young. In more than 10% cases, ages were not recorded.

The following table shows the age of victims and their religion and age.

Table No.30
Age and Religion of Women whose ADs were registered as per police stations

Religion	Age in years							
	0-10	11-20	21-30	31-40	41+	NK	Total	%
Hindu	25	210	303	102	95	46	781	78.1
ST	02	02	02	04	02	02	14	1.4
Muslim	02	28	24	12	11	07	84	8.4
Christian	-	02	04	01	01	02	10	1.0
NK	07	17	30	05	07	46	112	11.2
Total	**36**	**259**	**363**	**124**	**116**	**103**	**1001**	**100**

The percentage of the number of women belonging to different religion almost approximates the percentage of those religious communities in the population.

The number of Hindu women was further distributed as per caste. The following table shows the distribution.

Table No. 31
No.of Hindu women whose ADs were recorded as per castes

Caste	Age in Years						
	0-10	11-20	21-30	31-40	41+	NK	Total
SC	05	62	76	24	15	18	200
OBC	13	94	146	46	43	10	352
Upper Caste	07	54	81	32	37	18	229
Total	**25**	**210**	**303**	**102**	**95**	**46**	**781**

Once again it is obvious that young women die in large numbers and that many more OBC women get victimised compared to SC and Upper Caste women.

There must have been some reason for these women to die. What made so many young women succumb to so-called ‘accidents’ ? Causes of deaths as recorded in police registers are classified as the following table shows and are distributed as per the age of victims.

Table No. 32
Age of women whose ADs were recorded as per the reasons of death assigned

Sr. No	Reason	Age in years							
		0-10	11-20	21-30	31-40	41+	NK	Total	%
1	Proper Accidents	25	17	32	25	45	08	152	15.2
2	Kitchen based Accidents	09	168	241	72	42	41	573	57.3
3	Poison	01	62	72	17	04	20	176	17.6
4	Long Illness	01	05	14	10	22	07	59	5.9
5	NK	-	07	04	-	03	27	41	4.1
Total		**36**	**259**	**363**	**124**	**116**	**103**	**1001**	**100**

Of more than 57% women who caught fire in their kitchens, more than 70% (168+241) died quite young. More than 12% (72) were senior to them by a few years only. So more than 82% of the women seem to die in the prime of their lives in their kitchens. This number is so overwhelmingly large that every other means of taking away life (e.g. poison taken by young women of 11 to 30 age group is reported at 17.6% of all who took poison) appears to fade into insignificance. It is also surprising that even among women dying of long illness young women outnumber older women. The proportion of 41+ age group is less than 11 to 40 years age group. 29 younger women died of becoming tired of long illness while 22 older women died of similar cause. So one wonders if the younger women really died of being tired of long illness!

However, what is equally shocking is that the reasons of deaths of older women also point to an equally hideous reality. A 63 / 70 year old woman dies of catching fire while heating water / making tea or placing a kerosene lamp. A woman, more than 50 / 60 years old consumes poison / acid following quarrels at home.

On perusing these records one gets the feeling that many women suffer silently, more than those who go to police stations, and give up them life when suffering becomes unbearable. Age becomes redundant then, the years of marriage could be more than seven or ten or even twenty. Unfortunately their deaths are noted in such a way that they seem to die of negligence or because of 'small nothings'. The opaqueness of society is very much evident here in keeping the sufferings of women invisible.

It is necessary to devise a fresh system of recording women's deaths, going into the history of preceding marital discord and assigning reasons for unnatural deaths. The system, like the society, is dominated by patriarchal thinking and insensitive to women's deaths. It is necessary to bring changes to it.

VII. ATTITUDES AND PERCEPTIONS

i. Police Officers : PIs :

The police, as the executive arm of the Criminal Justice System (CJS) is the first state agency that is approached by women who suffer family violence. However, the registration of complaints depends on the discretion of the police. As a result, women have to go through the test of convincing the police about the severity of the violence and justify their decision to register a case against the perpetrators. The police are also part of the society that sanctions male violence, especially within the family. Besides they are part of a sub culture that is often brutal and violative of the human rights of several vulnerable sections of the society. Given these facts, it is important to study the police attitudes towards male violence in the family. Do they reinforce and perpetuate those myths of domestic violence that are prevalent in the society or are they able to carry out their duty despite personal beliefs? How do these attitudes affect the women's quest for justice?

AWAG researchers have interviewed six police personnel from the six police stations selected for this study. The original intention was to interview case officers who had filed cases under section 498-A (IPC) in these police stations, but due to their transfers mid-case and otherwise, they could not be traced and hence that was not possible. The officers interviewed for the purpose of the study headed these police stations under study and were of the rank of Police Inspectors (PI).

The police personnel interviewed belonged to the age group of 41-55 years. Their minimum job experience was 18 years, maximum was 35 years. All of them were married and most of them had adult children. They had joined the force as sub-inspectors and they had moved up the ladder during these years. At the time of the interview all of them were working as Police Inspectors. All the six stated that they had joined the police force of their own volition and the reason for this step was a desire to serve the society. Other reasons stated were peer pressure and combination of a job opportunity which would provide for the family as well as give satisfactory social status.

One was an undergraduate while the others were graduates, one also had a degree in law.

The five respondents' understanding of women's issues starkly reflected their patriarchal thinking. According to their understanding, women are hysterical and over sensitive and are apt to take the wrong step (of filing a case / registering a criminal complaint) against their husbands.

One of them stated : 'Women are women's enemies. A married woman should understand that her mother-in-law has the first claim to her husband. She, the daughter-in-law, should submerge her identity into her husband's and follow the customs of her in-laws. She should learn to compromise with her in-laws'. He claimed that his thinking was shaped by his personal experiences.

The other reasons cited for increasing violence against women were unemployment, poverty, alcoholism etc. but it was added that increase in registration was also due to the fact that women had lost their virtue of tolerance.

A PI was of the opinion that violence was higher among the poor and especially the OBC women, since their families were large, their husbands turned alcoholic due to the pressure to earn. As a result, these women had to go out of homes to work and that made their husbands suspicious and led to violence.

He claimed that violence against women was lower among the Muslims and Rajputs as women from these communities were not forced to go outside to work.

The respondents seemed to feel that women were sufficiently protected by laws. One of them stated that any suspicious death resulted in the visit of the DCP and hence there was ample proof that women's issues were taken seriously by the police. One of them admitted that there was serious thinking on women's issues at the higher levels in the government and as a result, the police also gave women's problems due consideration.

Police personnel claimed that they had not gone beyond their duty in any case related to women. They claimed not to have used the extra legal power bestowed on them. However, they tried to bring about reconciliation between husbands and wives in cases of marital disputes. This approach, though, is beyond the call of their duty and stems from their desire to help the couple and preserve the family system.

The respondents paid lip-service to the women's organisations / NGOs. They were able to accept them without prejudice. One of them said that the women's organisations had their limitations. They did not have the powers that the police had. Besides, they lacked resources, and did not have information regarding the case that the police had. While the respondents said that the women's organisations and other NGOs were socially relevant, they did not take the lead in contacting the relatives in cases of atrocities against women. However, the NGOs assist police in investigations.

In Indian society, where the men of the family have exclusive rights over women, any attempt by women to question, challenge and repudiate male authority leads to a backlash. Women's use of section 498-A (IPC) which challenges male violence within the marital family has caused this reaction from the society. The police personnel seemed to share these views.

All the respondents stressed that women used this section in a state of agitation or excitement or on an impulse. Obviously the stereotypes of women as impulsive, intuitive and non-rational, non-thinking entities are reflected here.

Another view expressed was that women register criminal cases under this section over `small matters'. Added to this was the accusation that `women have become less tolerant these days'. This is significant regarding section 498-A (IPC), where a woman can technically file a case if she has suffered mental harassment. However, the police definition of `small matters' reflects a mindset which trivialises violence that women face on a day-to-day basis and raises doubts on women's ability to exercise their legal rights. The second view that women have become less tolerant may reflect a growing awareness in women about their rights but the police view such women as digressing from the stereotypes of good women who are supposed to be passive, submissive, obedient and tolerant.

Another opinion was that the woman and her parental family use this section to settle a feud with her marital family. Concurrent is again the opinion that women use this section indiscriminately to establish their dominance within the marital family. Both the views are quite contrary to the realities of women's experience, where in patriarchal societies, natal families do their utmost to keep their daughters in their marital families, to avoid social stigma. Besides, registering a case under section 498-A (IPC) is often too risky a bargain for a violated woman to resort to, in order to establish her dominance in the marital home.

The police personnel also said that in a few cases the couple reached a compromise before the matter reached the court, thus rendering unfruitful all the labour of the police in nabbing the perpetrator.

Four respondents denied the instances of taking bribes in the case of S.498-A (IPC): "Such incidents do not happen in women's cases". However, one respondent admitted the possibility of it, but stated that it did not happen in the police station where he worked. Another was non-committial.

It is significant that all six respondents stated that they counselled the woman as well as the couple before registering an offence under section 498-A (IPC). They admitted that though that was not part of their official duties they looked at it as their social responsibility. On being asked the procedure that they follow, informally, while counselling, a PI stated that the officer in charge talked to the couple individually and later jointly. Asked whether the atmosphere in the police station was conducive to such a process, his reply was in the affirmative. He said "Even women open up and share with the police". He further stated that the police were not strict at such times, but talked to the couple softly.

Queried whether any woman who had been counselled by the police had been murdered later, most of them admitted that while technically it was possible, they had not heard of such a case.

An issue which is evident in the statistical analysis is that of the high incidence of registration under the heading of accidents. As a result, it becomes imperative to delineate the process which leads to such classification, especially in cases of women.

According to a PI, a death is first classified as an accident. The investigation begins later and if further proof is obtained, such as Post Mortem (PM) report, Dying Declaration (DD) etc. only then is it classified as murder. One PI felt that all such cases in the police station were genuine accident cases.

The experience of the women's groups is that while the police are meticulous in catching the offenders in murder cases, there is a tendency to neglect the murder of women. A PI replied that the police presumed harassment in cases of women's murders and such cases were investigated by the higher level officials, such as the ACP. He put the blame on society stating that there was low awareness and sensitivity among the general public about women's problems and as a result, many instances of deaths were not reported to the police. Other PIs shared these views and added that people tended to give false statements to the police and were not co-operative in the investigation process.

All the police personnel interviewed insisted that the police act very fast in cases of suspicious deaths. They stated that once the informants (mostly people from women's natal families, neighbours or hospital authorities) notify the police, the duty officers are contacted on the mobile immediately and despatched to the scene of crime. Higher officials (one respondent said DCP, another, an SP and yet another, an ACP) are also present. They denied that police were slow to react to instances of crimes against women.

Women's groups across the nation feel that women's deaths that cannot be passed off as accidents, are registered as suicides. The statistics of the six police stations also show a higher number of deaths noted as suicide or accidents than those of murders. The police personnel were asked to spell out the criteria which led to differentation between suicide and murder in cases of women's deaths. According to the respondents, these include : the police observation at the scene of crime, physical evidence, positioning of the body, presence of family members and discovery of the body, dying declaration of the woman, statements of the neighbours etc. These factors are also considered at the inquest.

Another issue is that of low registration of dowry deaths. According to the compiled statistics shown in this study, there were very few instances of cases registered under section 304-B in the six police stations. The police personnel's general view was that that there were

not many dowry murders in Gujarat. A PI said that unemployment and adultery, rather than dowry, were the causes of murder. The area under the Gomtipur police station, had a large population of Patels (a dominant caste where the incidence of dowry is very high due to hypergamy) but the police claim they do not have any problem of dowry. Other reasons cited for murder were alcoholism and suspicions regarding the character of the woman. Another PI said people often did not reveal the truth but dowry was not a major problem. He deemed that lack of legal knowledge on the part of the police was a reason for low registration.

The process of investigation too, is not smooth. The police face pressures from various elements in the society, such as caste / community leaders, political parties and their superiors in the hierarchy. Such obstacles, often from the more influential offenders' party, hamper the process. However, most PIs while admitting that pressures did make matters difficult for the police, said that they were generally not pressurised.

The police personnel maintained that the Post Mortem (PM) report was very important and PM was done in all the cases of suspicious deaths. The experience of AWAG has been otherwise. The police also said that fingerprint experts and photographers were not called in every case. However, one PI said that they called a photographer if the victim was a woman. He swore by the importance of Dying Declaration and said that if there was suspicion of dishonesty or tampering with the first DD, a second DD was taken. The people present at the time are the doctor, special executive magistrate, social workers, community leaders, etc.

The police officers said that they made a panchnama (i.e. a document about the place and other details of crime) and selected panchas who were neutral. The relatives of either side were not included and that one woman pancha was mandatory in cases where the victim was a woman. The panchnama included details such as the position of the body, observations of the police at the scene of crime, interviews of the people present at the scene of crime, etc. Other details like the victim's interaction with other persons before death, material lying around e.g. poisonous insecticide etc. which could have caused death, earlier quarrels and reconciliations were also important. A PI contradicted the experience of AWAG that the police did not observe the procedure of selection of Panchas properly and Panchas were often made to sign on the Panchnama without knowing the full details.

Another question was about the proof that led to convictions in cases of women's murders, especially within the family. According to the police officers, these included dying declarations, letters that the victims had written earlier to parents / friends / relatives, mentioning instances of cruelty from the in-laws, statements of persons concerned, any criminal cases/complaints registered in the police stations in the past, esp. under section 498-A (IPC), victim's behaviour before death, her interaction with people before death, availability of materials (e.g. poison etc.) which had caused death, details of earlier reconciliations etc.

The data at a particular police station shows cases under many sections, such as section 498-A (IPC), section 304-B, etc., while in other police stations, there is a concentration of cases under suicides and accidents. Hence the interviewer also sought light on this subject. The PI of that particular police station was asked the reason for this. Was it that the culture of police stations in other areas prevented the people from approaching the police stations there ? Was it the indifference and apathy of the police personnel in other police stations that led them to register cases under sections convenient for them? According to a PI it is the duty and responsibility of the police to register the crime under appropriate sections. As far as the situation in other police stations was concerned, a PI surmised that lack of proof would have led to the situation mentioned above.

Given the scenario, a question arose: was it possible that women would not complain of cruelty, upto the point where they lost their lives? Were women turned away from the police stations earlier and their complaints not registered? Or were they forced to reconcile and had that gradually led to murder? According to a PI, women often did not come to the police station to complain as they hoped for a compromise with their husbands and in-laws. Such social pressures are more responsible for their deaths.

Another issue which needed clarification was what according to the police were the reasons for increasing violence against women. This was more relevant in the light of the police assurances regarding women-friendly attitudes of the police. According to the police these causes were at various levels. At one level, PIs claimed that over population, poverty, unemployment, high cost of living etc. caused marital disputes. However, when asked about the reasons of violence in upper classes, a PI replied that was due to ego conflicts between men and women. At the level of other victims, on one hand increase in education of women had led to an awareness of as well as dissatisfaction with their lives. Another PI said that women could not openly state their problems in society and that often led to suicides. Co-existent with these responses was the belief that women harmed themselves out of a sense of revenge or in a state of anger and excitement.

Besides, the atmosphere in the society was such that the people were not scared of law enforcement agencies and could get away with crimes. The police could not be effective as the people did not co-operate with the police and often there was no proof to chargesheet a person.

Thus, police attitudes reveal a lack of critical self examination, of the person as well as the system. Besides they reveal patriarchal thinking, which makes us question the chances of women securing help / justice from the police.

ii. <u>Advocates</u> :

Cruelty by husband or his relatives came to be recognised as a crime in December 1983 when a sub section 'A' was added to section 498 of the Indian Penal Code (IPC). Wife battering, mental or physical torture are common experiences of women in India; they live in families where injury or danger to life, limb or health is a routine experience and many women are driven to commit suicide. A few women do not die but protest. Those who protest could have a complaint registered under section 498-A (IPC) of the Indian Penal Code (IPC). As soon as the complaint is registered the state takes over the process of punishing the criminal. But the process is long and the 'crime' of the accused has to be proved beyond doubt for the magistrate to pronounce the judgment of 'guilty'.

Initially the police officer under whom the complaint is registered makes an inquiry, makes out the case and submits his papers. Then it is the court that becomes important. The public prosecutor handles the case. He is appointed by the state government to prosecute the accused in criminal courts. The complaint under section 498-A (IPC) is also looked after by him when it comes to hearing in the court.

The public prosecutor is an advocate by training and profession. His / her appointment by the government sets him apart from the other advocates. As public prosecutor he argues for the complainant, and another advocate is hired by the accused. The practicing advocates are therefore quite conversant with the proceedings in courts in the matter of section 498-A (IPC). Some advocates, including a couple of retired public prosecutors were interviewed. Responses of 15 advocates including those of two women advocates were received.

Most agreed that despite the current gross misuse, the addition of section 498-A (IPC) will be useful to women eventually. The opinions ranged from stating that women register

complaints only to harass the in-laws to stating that the complaints are made to get divorce. One stated that 30% of the complaints were groundless, another said that 50% were such while another put the count at 99%. One who put the count at 50% added that the complaints were only made to arrive at a compromise. The one who stated that 99% of the complaints were bogus added that the complaints were exaggerated by the advocates of the complainants. One of them stated that upper caste women were justified in making complaints as dowry is an evil in that class but the women of the lower class need not use this section as they could get divorce as per their social customs. When women of lower class complain under this section their intention is only to fleece the opposite party. A number of them stated that the complainant might have had quarrels with husband / mother-in-law but they include names of others in the complaint and thus harass all the in-laws. One estimated that in 90% of the cases the mother-in-law was a co-accused. Another put the count at 100%. One stated that courts largely pronounced sentences on the husband and mother-in-law. Courts had also stated that small household matters did not amount to 'cruelty' or 'mental and physical torture' so the accused were released. According to one of the respondents, serious offences included demands of dowry, the husband's illicit relationship outside marriage, torture from the husband's side when he wants to remarry etc. They stated that enough incriminating evidence is not collected. There is usually nothing more in support other than the complaint itself. Women are illiterate and ignorant so they do not know about evidence considered valuable in courts. There are no medical certificates, no letters. Oral evidence could be accepted if corroborated by other witnesses, but they usually turn hostile because they favour a compromise which is likely to occur if the complaint is not proved. Witnesses such as neighbours of the marital home or parents were afraid of courts and court procedures, did not want to waste time and money on others' problems, or were persuaded by the accused. At times the witnesses who did not turn hostile in court were intimidated and sent away by the friends of the accused. The woman who moves to a new home after marriage may not easily find friends among neighbours.

One advocate stated that an accused was found not guilty because he could successfully argue the following : provide alibi that he was absent from home at the time quoted in the complaint, that the behaviour of the woman was abnormal, that false allegations were made, that there was failure in proving *mens rea*[1] that there was no eyewitness in the neighbourhood, that the medical certificate was not properly made out, that the duration of marriage was more than seven years, that the accused must be given benefit of doubt, that the court did not take cognisance of small nothings, that the 'crime' was not established and so on.

Another advocate stated that the complainant did not know how to state her case when she was heard in the court. No preparation was done in advance. This is the duty of the public prosecutors. They must guide them. But most people believe that this is not done. One advocate defended public prosecutors by adding they were overburdened. They handled more than 300 cases at a given time so they could not look after each case. The public prosecutors also did not get adequate support from the library of the courts nor did they have access to the latest journals. Remuneration paid by the government to them was also poor. If an advocate helped at the time of making the complaint, it was bound to be highly exaggerated. Consequently such complaints were not proved. So the accused had the benefit of doubt. One quoted a case in which the accusation was that the woman was asked to get a TV and refrigerator from her father. It was shown that these were useless to the in-laws as they lived in huts with no electric supply. The magistrates did not handle women's cases with seriousness so the whole process went against the complainant.

[1] *mens rea*' means 'criminal intention' (p 1660 Vol. III, 4th edition Stroud's Judicial Dictionary.

Complainants arrive at a compromise because of parents' wish not to be stigmatised in the society or lack of economic support. It was therefore suggested that the social workers should fight the parents and get her rights in her parental home.

Accused can be punished only if guilt is proved. An advocate gave his assessment of why the 'crime' was not established. "In 5% of the complaints the police commit mistakes, in approximately 10% the marriage breaks and the couple seeks divorce, approximately 30% to 50% end in compromise, about 15% to 20% cases reach a logical end and the accused is sentenced", he stated.

About the compromises arrived at in courts an advocate stated that the husband has to assure the court that he will not torture his wife. He gives the assurance and abides by his word as he fears the court. Another advocate felt that hearings were always delayed in courts so the parties compromised out of court. As the case was pending, the woman had an upper hand and could dictate her terms in compromise. Those who could not come together decided to get a divorce and that was also settled out of court.

The advocates were critical of the role of police in preparing papers for women's cases. Police took the complaints unwillingly so the investigation was lax. FIR was written by a novice who usually copied a previous FIR. The job was entrusted to an untrained person so the complaint, the evidence, the statements, everything was negligently prepared.

Some were of the opinion that the police should take extraordinary care before taking the complaint of a woman. They said that very likely the woman was a person of bad character and was planning revenge on her husband and marital family. So the police must inquire among the neighbours, must get the opinions of 'good' men about the woman's character and take the complaint only if he was satisfied.

One advocate stated that complaints under section 498-A (IPC) point towards fast disappearing sentiments nurtured in the Indian culture of joint family. Women seem to reject the old social custom in favour of nuclear family. Those living in a nuclear family did not seem to complain against their husbands.

The interviews bring out the prevalent thinking among the advocates about the use or misuse of the section by women. They support the husband and in-laws who, they think are harassed. Most of them do not spare a thought for the woman who must have suffered so much to register a complaint. They impute motives like wanting to get an upper hand in compelling husbands to accept certain terms of compromise or divorce.

This section is not seen as one providing an opportunity to a battered woman to file her complaint. Instead it is seen as one which can only be used in the event of dowry being demanded. So upper caste women are seen as justified in registering a complaint under section 498-A (IPC). Lower class women, it is again assumed, use the complaint to fleece their husbands.

The complaints are seen as instruments of harassment. However advocates dwelt on the guilt of the mother-in-law. But then 'the courts did not accept small mallers' so the complaints do not have desired results. Once again this substantiates the thesis that complaints were meant to harass and were groundless. The offences which were recounted as 'serious' by one of the respondents are separate offences under the Penal Code.

Since it is assumed that women had ulterior motives like securing a compromise or divorce in filing a complaint under section 498-A (IPC), the fact that witnesses turn hostile was also interpreted to fit into that thinking. Witnesses turn hostile only to facilitate compromise !

It appears to be that it is a man's world in which women who oppose their husbands do not get support from other men.

Just as the police does not help the woman, the public prosecutor does not help her either. Exaggerated complaints are prepared by advocates. Courts do not help or they push the complainant in the opposite direction i.e. by delaying hearing and final order for so long that the fatigued women reach a compromise out of court.

iii. <u>NGOs</u> :

In Gujarat, women's organisations have been active on issues relating to violence against women within the family from 1934 onwards. The first 'rescue' centre was established in 1934 in Jyoti Sangh at Ahmedabad and the first shelter 'Vikasgriha' was started in 1937 in the city. In the next two decades ten more shelters were established in Gujarat, especially in the districts of Saurashtra region. When the Central Social Welfare Board and another department of the government started funding counselling centres, many women's organisations opted to run them. So now more than fifty counselling centres are run by women's organisations and are spread all over Gujarat. Most of these NGOs also run Legal Aid Centres so they are conversant with the legal aspects of the cases handled by them.

The criminal justice system of the country is known to the NGOs by way of their experiences that are limited largely to the police stations and to the lower courts of justice. Only recently persons with a legal background have joined NGOs. In 1995 the Legal Aid Centres came into being and the Government provided financial support for paying a lawyer. Otherwise the NGOs used to requisition the services of lawyers as and when needed. The scale of payment to lawyers then depended on the relationship between the NGO and the particular lawyer. However family counselling centres have existed in NGOs from the mid-fifties. So the NGOs have a long experience of dealing with women in distress.

Initially the NGOs through their family counselling centres aimed at bringing 'relief' to the woman or the man who brought her / his complaint. The case was 'heard', both parties presented their sides, joint sittings were held and in order to preserve the family and to provide a 'home' for the children 'compromise' was recommended. More often than not the woman was asked to mend her ways so that she did not invite the wrath of the husband or the in-laws. This conventional, patriarchal approach still persists. The method remains the same and the procedure resembles that in any court of justice. Status quo is recommended in the interest of a 'stable society'.

However, over the years the NGO system of dealing with women in distress has undergone a subtle change. Younger persons who hold the posts of counsellors, social workers and assistants in the counselling centres or legal aid centres have injected dynamism in the system. There is noticeable a superimposed layer of the acceptance of the woman as a person in her own right. When they respond to the cry of the woman in distress, their response is not circumscribed by the parametres of patriarchal thinking. Their concern for the suffering woman is indicative of the pre-woman thinking they have imbibed through the movement for women's rights. The trend now is geared towards seeking legal redress for the woman if she so desires. It is accepted that a woman has a right to get away from the situation that she considers as jeopardising her life and that she can live alone by herself if she wants.

The method followed by the counsellors and social workers is the same in the sense that they also arrange joint meetings and suggest compromise. But if the woman hesitates and rejects

compromise, she is explained how she could register a complaint against the perpetrators of violence to her. Then, if the woman wishes, she is explained how a complaint could be registered and what kind of justice to expect. Once the process is set in motion, what is likely to happen is made clear to her. Then, she is given time to think over the move she would like to make. If she decides, a complaint is registered.

If the 'case' i.e. the woman in distress approaching the Family Counselling Centre (FCC) or the Legal Aid Centre (LAC) run by an NGO, decides to register a complaint at the police station or institute a case in the court, the counsellors of the FCC or the social workers of the LAC accompany her to the police station or refer the case to the legal counsellor of the NGO and later accompany the 'case' to the court on the dates of 'hearing'. The younger persons dealing with such cases are usually aware of legal provisions and procedures though they may not be aware of all the aspects of the legalities involved.

The NGOs are thus involved with the criminal justice system on behalf of the 'cases' that approach them. It was therefore considered necessary to assess the responses of the NGOs to the criminal justice system as it is available to women in Gujarat.

A questionnaire was sent to assess the responses of the NGOs with reference to the use of section 498-A (IPC) by the women who came to their Family Counselling Centres or Legal Aid Centres run by them. 25 responses were received. Of these 15 were by counsellors and 10 were by the Chief Functionaries. These were received from thirteen districts of Gujarat, viz. Junagadh, Bhavnagar, Jamnagar, Amreli, Surendranagar (Saurashtra Region), Valsad, Surat, Bharuch (South Gujarat) Mehsana, Banaskantha (North Gujarat), Ahmedabad, Vadodara (Central Gujarat) and Kutch.

The first question was to ascertain the respondents' understanding of section 498-A (IPC) of the Indian Penal Code (IPC) and how they support women in intiating litigation based on the section.

According to 16 of them section 498-A (IPC) can be used when the woman who suffered violence wants to file the complaint. Seven persons indicated that when violence became so acute that it would lead to the death of the woman, the section could be used and other indications were that the marks of violence should be seen on the body. Only two of the respondents believed that the section could be used only when the death of the woman is reported. Since the other questions were not mutually exclusive, some respondents indicated two options. It appears to be by and large clear in the minds of most of them that the section could be used in cases of violence suffered by women when they wished to lodge the complaint.

The respondents were asked if they believed that women misuse the section to harass their husbands. Fourteen replied that it was not so. Nine stated that at times when others instigate the woman and use her to get revenge on the other family which made their daughter suffer violence that the section is misused. It appeared to some that men took over and used the woman as an instrument to assuage their thirst for revenge or even make political gains out of her suffering. Two respondents stated that section 498-A (IPC) is always misused as women are used by others.

The respondents were asked the reasons for making such statements. Their replies were varied. Primarily women were socially conditioned to accept violence at the hands of their husbands and ill-treatment by the in-laws. Indian culture expects the woman to tolerate all

that is meted out to her in her marital home. One of the respondents quoted a line from Kalapi (a Gujarati Poet) stating that to accept suffering is gaining happiness. Men seem to have the license to batter their wives. 'As an animal is beaten by the owner so are wives beaten by the husbands'. Such men should be taught a lesson so it was necessary for women to set an example in society. The woman who is battered must lodge the complaint to teach the lesson that battering is punishable under law. However, women find their path to protest blocked by social and religions mores.

Some of them also added that it was because of the social conditioning that women who had suffered extreme forms of violence also requested the counsellors to intervene and persuade the husband not to be so violent. At the back of their mind lurks the worry that the parents might disapprove of the step of quitting the marital home. Some women were equally worried about their children whom they had to leave behind. It pained them and also worried them how society would stigmatise them as 'bad' mothers.

Women who are not exposed to the outside world are afraid of approaching the police stations. They are worried about responses at the police stations and are apprehensive that the police officer might not listen to their complaints or might call them again and again. They are also worried that going to the police station to lodge a complaint might also entail going to the court later. Then they worry about finding lawyers and the wherewithal to pay them. This becomes a very tiring exercise for them and dissuades them from lodging complaints against their husband or in-laws.

Some stated that at police stations the police officers do not take their complaint under the pretext that there were no visible marks of violence on the body of the woman. Some police officers counsel the women by saying that such a complaint would not allow her to go back to her marital home at all so she should not lodge any complaint against her husband.

Women do not know the legislation nor are they aware of legal consequences. They do not know that they do not have to hire lawyers. But some do go to them. The lawyers then, overstate the problem by adding issues like that of the demand of dowry. Women are largely illiterate, unexposed and ignorant, so they are misdirected and still get blamed for being misled.

The general complaint that the police officers do not take the complaint as and when women go to police stations was taken up next. NGOs were asked if they thought it was necessary for the NGO to intervene on behalf of the woman to get her complaint registered. Only one respondent stated that the woman complainant's complaint is taken by the police station while 14 stated that when the woman complainant goes alone to the police station her complaint is not taken. Ten considered NGO intervention necessary which is a roundabout way of saying that if a woman went alone to the police station her complaint would not be registered. The reasons given in support of their answers reflect on the way the police treats women in Gujarat. When a woman goes alone to the police station or with an NGO representative (who is usually a counsellor or a social worker) the police, on hearing the complaint laugh at it. A police officer is reported to have said that he too was beating his wife, that it must be treated as a domestic affair, and had nothing to do with police stations and crime. At times the police officer on duty points to untoward consequences that would follow, such as having to repeatedly visit police stations and courts, the expenses these would entail, etc. At some police stations the police officer sends them to another police station on the pretext that the particular case was not within his jurisdiction.

When an NGO representative escorts the woman complainant the police officer addresses her and elaborates on the seriousness of the section. He pleads on behalf of the woman that the NGO should look at the future of the woman as insistence on registering such a complaint would render her homeless, nor would she be able to make a compromise later. The police officer opines that the complainant was thinking of complaining only because anger had blinded her otherwise she would understand that she was speaking of a very personal relationship in public.

On the insistence of the NGO representative if the police officer has to take the complaint, he makes the problem sound milder. He uses such language that the complaint appears to be innocuous. The police officer does not move swiftly in the case of her complaint. He accommodates the accused by sending for him at the time when he could be presented straight in the relevant court for bail.

Some NGOs opined that the police officers treat the registering of crimes under 498-A (IPC) as opportunities to get some money from the accused as the section necessitates their arrest. When the accused is not arrested but is liberally treated, the complainants get the signal that their case was being softened to assure the release of the accused.

The behaviour of policemen towards women who go alone to the police station is rude and even indecent. The men laugh, make her wait for long periods of time, make her the subject of obscene remarks and make her feel humiliated.

The unstated reason for the police officer to refrain from registering women's complaints is that he does not want to increase the number of crimes registered in his police station. The police officers in charge of police stations are aware that they get reprimanded if the number of crimes increases and are praised if these do not increase. It is easier to send women away when they approach police stations to keep the number of registered crimes on the lower side.

The next question was to find out if the NGOs were aware of the misuse of section 498-A (IPC) by the police force. One responded that the section is not used at all in their district while 11 others stated that the police intentionally misused the provisions of the section. Seven others stated that at times police did so. Seven were of the opinion that there was no scope for the police to misuse the section.

Those who stated that the police do misuse (11+7) the section were asked to state reasons to support their replies. All stated that the police were paid to avert arrest, to get bail directly in the court, to show that the complaint was based on a freak incident or was based on a minor / milder form of violence. If there is political pressure, the police respond accordingly. The ignorance of law on the part of the rural people is taken advantage of by the police. Some said that the police treated all the accused as criminals and indirectly expected the accused to bribe them. Those who stated that police did not misuse the section, were of the opinion that there was no scope to misuse the section by the police because they had to do nothing after registering the complaint, because it then goes to the court. Those who stated that the police misuse the section indicated that the 'misuse' occurs at the stage of registering the complaint, making the arrests and releasing the accused on bail.

All the respondents agreed that women's lives could be saved if the section were used on time. They stated that women decide to complain only when the situation becomes unbearable. It is necessary that she comes out of this mindset. So if she gets support at that time, it would make her decision to protest against violence more firm and allow her time to

decide on her next step. The forces that make her life painfully unhappy are checked and the people around see that the perpetrators of domestic violence cannot get away when they behave violently. They emphasised that it was necessary for the women to get help at the right time.

While going through the responses of the respondents one gets the impression that the understanding of the legal provisions of the NGOs emanates from their contact with the police stations and not through the study of the law books. For example, the insistence by some that the marks of violence must be visible on the body of the woman who wants to complain or that section could be used only when the woman was dead, could not be the result of any study, it could only emerge from interaction with the police. At some police stations, police register the complaint under Sec. 323 (IPC) though it needs to be registered under section 498-A (IPC).

The NGOs take the woman to complain to the police station only when she states that she can no longer accept violence and the situation arising out of it. Her will to complain is very important. Once she decides to complain, NGOs support her in every way.

The responses very clearly bring out the seamy side of the criminal justice system. The police defeat the provisions of the legislation to help battered wives by refusing to understand the provisions fully, by neglecting to hear a 'mere' woman, by belittling her complaint, by intimidating her by his own superior position, by acting in collusion with the accused (as the accused is a man / a husband like the police officer) or by looking only at his self interest by accepting a bribe.

VIII. POLICY CHANGES

AWAG's close experience with the state's dealings on women's issues dates from 1984. During these years governments headed by different parties came to power. It also happened that what one party did was undone by the next party in power. Women keep on building pressure for what they need and hope the state would respond.

i. Women's Cell , 1984 :

In March, 1984 AWAG had organised a demonstration against the police of Ahmedabad City alleging that the police was not aware of the pro-woman legislation, did not make thorough inquiry in cases of women's deaths and behaved rudely with women while taking their statements or dealing otherwise with them. The SP of the police station opposite which the demonstration was organised took the memorandum complaining that he was a senior officer who had done his duty well and had never come across such public reprimand before. He did not think that our demands were serious enough to merit attention. Over the years, these demands have been responded to gradually though much remains to be done yet by way of training the police on women's issues and of investigating cases pertaining to women thoroughly. The immediate fallout of the demonstration was that the city police authorities suspended all communication with AWAG.

In August 1984, a case of gangrape by government servants at Gandhinagar came to light. One of the rapists was a policeman who used his revolver to intimidate the couple who had hired a room in a government run guest house known as 'Pathikashram'. The other rapist was a watchman of the guest house. The case received much media coverage and questions were asked in the Legislative Assembly. The then Home Minister invited all social workers to a meeting to pacify them. At the end of the meeting, three demands of women social workers were conceded. The victim was sent over to the shelter for women run by an NGO. AWAG had demanded a workshop to discuss the roles of police and social workers in cases concerning women to be attended by officers of the Home Department, senior police officers and women social workers. The demand was immediately accepted and a date was decided upon. Two days later that was postponed, never to be heard of again. However, the other demand made by AWAG of constituting a Women's Cell in the Commissionerate at Ahmedabad, was immediately accepted. The Additional Commissioner of Police at the Commissionerate was named in charge of it. The cell functioned under him for some time and thereafter under other officers when he was transferred.

At the cell the Additional Commissioner used to say that he had to solve many cases. He took on the role of a counsellor to the women who came to him with complaints. This was and is being done at police stations especially at the Social Service Cell of the Crime Branch headed by the Deputy Commissioner of Police (DCP) whose office is located in the old city.

AWAG's intention was to get a cell at which inquiries of all cases concerning women in the city could be made. The Addl Comsnr., on account of the office he held, could get all the information that was asked for. But his perception of his role was different from that of AWAG.

With the nomination of a Women's Protection Council in 1991 in the City headed by the Commissioner of Police , this cell was no longer needed.

ii. <u>Women's Protection Councils 1991-1995 :</u>

The State Women's Protection Council was established in 1991 by a resolution of the state government, bearing no PRCH-2290-1864-N dated 07.03.91. The resolution stated the objective at the outset. In translation it reads : Married women suffer torture at the hands of the husband and marital family, sometimes it results in murder. Cases of this type are registered as accidents and the criminals get away as innocent persons. Such horrible crimes are committed for one or another reason. In some cases the husband and members of the marital family behave with such cruelty that women are led to commit suicide. Over and above these, some other crimes like eve teasing, rape, kidnapping etc. are also committed. Women's NGOs try to expose them, and get them punished but they do not get the desired response so it was resolved to nominate a state level council and its constitution, by the resolution dated 20.04.87. In the resolution then, the nomination of the committee primarily for two years and then again for one year and then its discontinuation on account of lapse of time and the active thinking of the government to revive the councils, are noted. It is stated in the last sentence. "After serious thought the state Women's Protection Council to prevent violence against women is reconstituted as follows". Names of 11 Government appointees and 29 women including MPs, MLAs, active party members, NGO representatives and women in higher education were listed. Initially the reconstitution was to be valid for two years.

The State Women's Protection Council was expected to meet every three months. It could not meet that frequently.

The Women's Protection Councils were nominated at district levels as well as in the cities. In the districts, these were headed by District Superintendents of Police (DSP) in the cities, these were headed by Commissioners of Police, (CP).

The composition at districts and cities was similar to that at the state level : political party members, NGO representatives and women in education, were nominated. The meetings were held every two months and these met regularly at most of the places.

At the city and district levels the Council meetings were not only well attended, these established rapport between the police and the women leaders. The latter wanted information on offences committed against women. The police authorities could make reports from their point of view and explain the actions taken. The meetings promoted mutually cordial relationships.

The State Council was made more active through the Vice-chairperson. It was a political appointment but the person was active enough to make the impact of her position felt in Gujarat.

In 1995 another political party came to rule over Gujarat and the Home Minister disbanded the councils in August, 1995. It was hoped that the government would activise these again with members from the party. However, the government did nothing till it was replaced by another. Successive governments have not heeded to the demands of NGOs about revitalising the Women's Protection Councils. The need of the Councils at the district and city levels is felt as the Councils empowered the women to a certain extent through the information they received and the insight they gathered in the actions of the police.

iii. <u>All-Woman Police Station</u> :

An all-woman police station was established on August 15, 1991, by the then Chief Minister of Gujarat at Ahmedabad, the chief city of Gujarat. Crimes against women like dowry, rape and harassment would be registered at the police station which would be headed by a Police Inspector and would have all women Constables.

Since the initial announcement was that the crimes against women would be registered at the All-Woman Police Station (AWPS) there was a lot of confusion for some months among the people and the police officers. If a woman complainant lived very far from the new AWPS, could her complaint be registered at the police station nearest to her residence or go to Karanj which was centrally situated within the old city was the question raised again and again. Women kept shuttling from one place to another for some time till clarifications were sought through the meetings of the city Women's Protection Council.

The AWPS has been under the Crime Branch from its very inception. The Crime Branch used to have a Social Security Cell which was used as a 'Counselling' or 'Reconciliation' cell. Most of the police officers believe that women need not file complaints. The officers claim that they could always make the counterparts 'see sense', 'understand' 'behave better' etc., so they take a promise from the husband not to torture the woman and send her home with him. AWAG persons have been assured by the officers over the years that the couple thereafter never came back which proved that 'they lived happily ever after'. This is what the police officers believe to date and follow the path followed by the first Gujarati woman leader who 'rescued' women.

This type of service was continued in AWPS. A counselling centre was run within the precincts of the AWPS, from April 1993. Three women counsellors attended during office hours. The services were supported by the Gujarat Social Welfare Advisory Board.

The AWPS is as good or as bad as any other police station in the city. The staff is trained as police staff whose internalised lessons of patriarchy are reinforced by such training. It was proposed by AWAG in July, 1991, that before the police station came into being, the women police to be put in charge there, undergo training in dealing with women complainants. The proposal was accepted in theory but practically nothing came of it.

The sensitisation of the female police staff towards women's issues was done by AWAG in 1997. At the time the PSIs in charge of the police station did not attend the workshop. Reports were that the women police had to always try and outshine their male counterparts in order to get a promotion or good posting. This made them imitate and compete with men. A few of the police women who attended the workshop broke down as they were also suffering domestic violence. The trainer asked if they had protested, the answer was in the negative. Some of them who were posted in police stations with men stated that they were doing the jobs of peons or errand runners. They were not given important duties in which risk was involved, so they never qualified for serious type of work. When asked to elaborate on 'important duty' and 'serious type of work', one of the responses received was that they were never put in charge of a morgue at a hospital. They also explained that they did not want such duties because they were afraid of staying alone all night in the open spaces near the morgues. They were also fearful of the dead. They preferred running errands to such duties. None of them was being trained for desk duties either.

Since AWPS is known as a women's police station and is in the heart of the city many women complainants do go there. Some policemen on duty in police stations of distant areas at times send women complainants all the way to AWPS. In the hope of being heard many women travel long distances to reach out to AWPS.

iv. <u>Circulars Issued by the Department of Home Affairs, Government of Gujarat</u> :

The legislations passed at the national level and the demands from the women's movement are reflected in the circulars issued by the Home Department of Government of Gujarat from time to time. Circulars were issued in 1985, 1989, 1992 and 1998.

The circular issued in 1998 included the texts of all previous circulars in it. In fact, this was done progressively in earlier circulars also.

The circular issued in 1998 contains two new orders which were added in response to the demand raised by AWAG. One of them is about the Deputy Superintendent of Police (DySP) visiting the hospitalised woman as soon as the news of her hospitalisation due to burns / poisoning is announced on the communication system of the police. How this order improves upon the earlier one is stated below in detail. The second circular is about Stridhana.

The Procedure Adopted by the Police When the News of a Woman's Hospitalisation or Death is Reported :

As soon as a report of a woman's hospitalisation as a 'burns' case reaches the police attached to the hospital, this is put on information system of the police as 'Janavajog' (news worth knowing). Then a Head Constable makes an on-the-spot inquiry and reports that an offence is committed and the time of the offence is announced.

In case of the woman not having completed 35 years of age or in case she was married within 10 years of the offence, a detailed inquiry is immediately started. The Head Constable (HC) or the Police Sub Inspector (PSI) visits the scene of happening and initially notes it as either accident or attempt to commit suicide, i.e. under section 174 of Criminal Procedure Code (CrPC). In the hospital, the woman's Dying Declaration (DD) is taken in case the burns/injuries sustained by her are such that death might occur and in case she is capable of conversation. If any person is accused in the DD, the offence of murder or abetment of murder is considered. Further investigation of the scene of the event and the questioning of witnesses is undertaken. If the victim states that it was an accident or was a suicide, then no further investigation is considered necessary.

The relatives of the victim at times state after the death of the victim that the death resulted either from murder or abetment of suicide. This happens largely when the victim's DD was not taken in case she was not hospitalized. The statements of the relatives need to be supported by the statements of witnesses or letters written by the victim or other such corroborative evidence. Unless there is evidence to support the death it is recorded under sec. 174 of CrPC.

If a person is accused of murder, the investigation turns to find evidence and the record shows the offence under sec. 302 and sec. 498-A (IPC). If a person is accused of abetting the suicide of the victim, investigation takes the direction of getting at the abettor and recording the offence under Section 306 of the IPC.

If a person survives the attempt of suicide, then the police charges her for an attempt to commit suicide which is recorded under sec. 309. If a person survives but has said that there was an attempt at murder the investigation brings the accused to book charging him under sec. 307. At this point of time the DYSP supervises the investigations.

Experienced police persons aver that they can tell whether the victim has committed suicide or is murdered by noting the injuries of burns/ marks of hanging/straggling. Their initial understanding is usually supported by DD or by the Post-Mortem (PM) note submitted by the

medical persons who examined the dead body. In cases of unnatural deaths it is always necessary for the police to get PM done and acquire PM note.

A Head Constable (HC) or a Police Sub Inspector (PSI) initially investigates the crime in response to the 'Janavajog' (news worth knowing). As and when the victim dies, the investigation is taken over by a Deputy Superintendent of Police (DYSP). A DYSP is higher than a PI who is senior to a PSI. The DYSP is supposed to direct the investigation and personally supervises the same as per police regulation.

NGO Intervention :

The Police Regulation in force upto September 1998 laid down that a DySP would take over the investigation when the news of the death of the hospitalised woman victim was communicated on police communication system.

AWAG's suggestion to the Additional Chief Secretary (ACS), Department of Home Affairs, Government of Gujarat, was that the investigation should be directed by a senior officer right from the time the 'Janvajog' news were released.

If a Deputy Superintendent of Police, (DySP) directs investigation in place of a Head Constable (HC) the investigation could be more fruitful as a senior officer with better understanding of legislations looks after it, and it would also be perceived as important.

The arguments advanced by the ACS and his staff were : (1) 'Janvajog' is only information. It does not state that an offence is committed. (ii) A DySP is a busy senior officer in the district. He personally investigates cases of Murder, Dacoity, Robbery of above Rs.50,000/- of property, (i.e. sections 302, 307, 393 and 395) and also looks after 'bandobust' duties.

AWAG's arguments were that the DySP in any case takes over the investigation when the woman dies in the hospital. It is well known that almost all hospitalized women die. When a senior officer joins at the end, he would not be able to make much difference to the investigation done upto that point of time. If the senior officer i.e. the DySP reached out to the hospital when the victim was alive and the investigation was yet to begin, he could certainly give better direction. In asking him to reach out in the event of death, the intention of the government must have been the same, i.e. of detecting the crime and the criminal. What was being asked for was only the preponing of the visit. The DySP was being requested to reach when the 'Janvajog' news of a woman victim of burns / poison reaches out through police channel of communication, instead of reaching after the news of the woman's death was received.

About the second argument AWAG's presentation was that the lives of women also need to be seen on par at least with Robbery of property of more than Rs.50,000/-. The death of the woman by burns could be a murder (sec. 302) or an attempt to murder (sec. 307) or abetment of suicide (sec.306), each of these are 'heavy' sections. Only if the home department perceived women as equal to men and considered loss of their lives as important, our proposal could be acceptable.

Moreover when a DySP is assigned special duty of taking care of cases of atrocities on SCs and STs, women also qualify for similar attention.

Eventually the arguments were accepted by the Department of Home Affairs, Government of Gujarat. A circular was drafted and all earlier circulars on the subject were clubbed together.[1]

Stridhana :

The second Circular pertains to providing escort to the woman who wants to approach her marital home to retrieve her belongings. More often than not women are driven out of their marital homes without allowing them to take away even a pair of clothing. In cases of such instant dismissals the woman has to get back to get her and her children's (if she was allowed to take them away) belongings. She does not go alone, a woman counsellor is not seen as adequate escort, so it was requested that a policeman in uniform could go with such a woman on request. The Supreme Court of India had pronounced in 1985 that whatever a woman received on the occasion of the marriage was her property known as Stridhana. The police escort is requested to help a woman get her stridhana back.

Before the concept that the police could provide an escort was accepted, questions were raised. How would the policemen know which particular items were 'stridhana' ? If there were disputes, how were these to be resolved ? Our replies were : The police-escort did not have to go into the details of what constituted 'stridhana'. Usually in most cases, the rural woman was bound to point to a tin box as hers. This could be locked and she could have the key. Some clothes could be picked up from corners of the house and she would be ready to leave. In urban areas, women of the middle class could lay claim on more things as theirs but then the gold ornaments would be beyond her reach.

AWAG's replies were based on experience and appeared to be acceptable. If there were disputes, these need not be resolved at that time. In good faith the woman takes away what she considers to be hers. If the husband or his relatives did not agree they could use those means which they expected the woman to use when she was not allowed to take away her belongings.

Apart from our arguments, the Supreme Court's judgment must have led to the decision. That order was passed in 1985, based on the legislation passed in 1956, and the women's demand was raised in 1997.

In the circular issued on 26 October, 1998[2], this circular is at no.2.

1& 2 Circular No. PRCH-2997-12248-D, dated 26 October, 1998.

IX. CONCLUDING OBSERVATIONS

Significant issues emerged when we delved deeper into the criminal justice system.

A closer look at the police recording system showed that the assigning of sections to a given complaint is not thoroughly systematised. Similar offences could have dissimilar sections assigned, similar sections are assigned to dissimilar offences. At times irrelevant sections are added and the most relevant are not used. Such inefficiency of the police hinders justice. Moreover, in stark contrast to the attitudes of the police and the judiciary, most NGOs averred that women did not misuse section 498-A to harass their husbands or in-laws.

On the other hand the police records lacked a number of details. Yet a general picture did emerge. Section 498-A (IPC) was clubbed with a few offences indicative of death and the cause of death could be domestic violence as indicated by section 498-A. Some more offences were recorded under section 498-A (IPC) clubbed with other sections which did not indicate death but indicated hurt, intimidation etc. The largest number of offences were women's deaths recorded under section 174 of Criminal Procedure Code (CrPC). These are assumed to be accidents or suicides and these are classified as such because no evidence is found by the police to prove that the death could have been a murder or an abetment of suicide. The dead did not leave a note behind, nor was there any neighbour or a relative from even the natal family to give a statement to show that the death was not an accident or a suicide. There is nothing to indicate that she was suffering and that she gave up life when it grew unbearable. The police, advocates and people claim that women have lost the virtue of 'adjustment' and 'tolerance' to bear with their lot in life. Or that women do not take enough care in the kitchen and foolishly catch fire by flames.

The orders pronounced in metropolitan courts with reference to the cases pertaining to offences registered under section 498-A (IPC) revealed that the complainant and the witnesses for the prosecution did not support the complaint. The offence was not proved and the accused was acquitted.

The offence registered under section 498-A (IPC) is not a compoundable offence. But the orders do indicate that compromises were made before the parties came to court. Each case tells the story of poignantly felt misery of the tortured woman but 'cases were not proved'. The magistrates noted in almost each and every case that the prosecution had failed to prove that the offence was committed. What is referred to as a 'judicial mind' in law books does not seem to get reflected in the proceedings of the court which are noted in detail. To take an illustration : In a case the brother of a victim (Ms.Vandana Khandas) stated : "It is not true that the accused did not torture her or did not ask for money from her as she was a working woman. It is true that I have not lodged any complaint in police station about the demand of money". Having noted this cross examination the magistrate noted that the witness did not support important points on the complaint . . . A lay person's mind would dwell on the first part of this statement while the magistrate's mind dwells upon the latter part of the statement. In case after case, cross-examinations reveal such denials and in order after order magistrates declare the accused as 'innocent'[1].

The magistrates' minds do not dwell upon what looks like evidence to a lay person. In Padma's case the magistrate noted, "the complainant witness on whom the prosecution depends did not give any evidence. If one who was tortured mentally and physically and was beaten also did not give evidence then it should be seen as unfortunate for the prosecution".

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[1] 'innocent' is the literal translation of the word 'nirdos' in Gujarati, used in the orders of courts.

The prosecutor had argued that for the happiness of her husband and to see that the husband was not jailed and to see that her family life was not ruined, it was natural for the woman to give evidence in the manner she did. This was how the witness herself for whose cause the complaint was registered did not give evidence. The arguments for the happiness of the husband etc. put the stamp of approval on a stereotypical obedient wife accepting cruelty unquestioningly. The magistrates are individuals who set the seal of their approval as aided by public prosecutors on the compromises that precede the hearing of non-compoundable offences registered under section 498-A. The public prosecutors are individuals who shirk responsibility in the name of society. So despite the fact that as many as seven witnesses were to be examined, the trial did not take long. In less than four months of lodging the complaint, (March 25, 1989) the court's order (dated July 31, 1989) of acquittal was pronounced. New legislations could only be supported by individuals in specific positions who interpret them. Section 498-A is not an exception. It remains to be seen when the section would have its impact.

Since the compromises were arrived at before the proceedings started in court, these have turned into a farce. The complainant woman appears to be a fool who ventured on the path of getting the impossible, i.e. justice against a violent husband/relatives. She is returned from the court of law, her effort nullified and mocked at. As noted earlier in this study, when women commit suicide after prolonged domestic violence, the society judges them as foolish, irresponsible and oversensitive. Similarly they register complaints at the police stations and later they are made to tell lies in the court and appear foolish, senseless, irresponsible creatures.

The oft repeated farce is quoted as the reason why section 498-A should be made into a non-cognizable and compoundable offence. The argument is that nothing is proved against the husband in most of the cases so why should he be made to suffer the ignominy of arrest. Another argument is that the evidence in the court is always at variance with the details noted in the complaint. The witnesses tell lies on oath in court and the complainant woman is also pressurised to withdraw her complaint. So, it is argued that if the section was compoundable, compromises arrived at outside the court would be acceptable in court and so it would not be necessary to play out the farce in the court.

Some cases were wound up within 3 to 6 months of the initial date of complaint, some took longer. In some cases the time taken was as long as 2 years and 4 months or even more. The period between the filing of the complaint along with the consequent arrest of the husband and the final hearing varies from case to case depending upon how deeply the woman was hurt and how far she could resist. It seems that till the compromise was made and it became clear that the case could be disposed off quickly, no hearing was fixed. When the hearing was fixed, as many as seven witnesses were examined in a day and the order of 'case is not proved' and the 'accused is a acquitted' passed.

One of the axioms reiterated by men connected with the criminal justice system is that courts favour compromises, especially in the cases of disputes within a family. So when a complainant wife does not support her own complaint and the witnesses turn hostile, the courts accept that. In itself this should be seen as a noble concept, a belief in the family remaining intact through a compromise arrived at by both the parties. However, the compromise is not arrived at by both parties as equals. The woman is pressurised by social opinion and the natal family because the husband who wants to avoid jail asks for the compromise. The only way in which he can achieve the objective is by pressurising the woman to accept living with him. The pressure is exerted through all possible avenues. One could say that the women use this section as a lever to assert themselves, to make the husband accept their terms. In reality, the complaint under the section makes the husband behave well for a short

time, at least till the complaint reaches its logical end; which is an acquittal order from the court. NGOs know of some cases in which women get tortured again, in some the battering is diminished. If the section were turned into non-cognizable and compoundable, women would not get even the little leverage they have now. It is very unfortunate that women are made to wait a long time before their complaints are heard in courts.

The delay fatigues women and disappointment turns into feelings of frustration and despair, which lead women to compromise against their wish. Why are the cases withheld for long? If after compromise a case could be heard within 4 months of the complaint why should other cases take a longer time ? Is it because neither PPs nor magistrates are interested in hearing cases that could not be quickly disposed off? Or is it because they do not want to get men convicted under the offence? Women reach out to courts in search of justice. It is therefore imperative that their cases should be heard. It is unjust not to fix hearings of women's complaints till compromise is arrived at and the case is ripe for disposal. The system should be improved to provide hearings to women complainants within 3 to 6 months of the complaints being admitted to courts.

Compromises in family disputes are noble achievements only if they bring husband and wife together, not otherwise. In one of the cases studied here, daughter Bhadravati had committed suicide after suffering domestic violence and the father had lodged the complaint. Two years later he compromised the matter with the accused. His compulsions in doing so are not clear. The court accepted the compromise in the same way as in cases in which husband and wife compromise. The police had registered this offence only under section 498-A (IPC) though this could have been abetted suicide. Could not the court (i) get the charge reframed under section 306 and commit the case to sessions court or (ii) charge the father of Bhadravati of perjury? The court's compulsions in accepting such compromises are not clear. Nor is the non-use of section 306 by the police clear. Cognisance of Bhadravati's death is not taken at all by the police or the court.

In the case of Krishnaba who appears to have committed suicide after prolonged domestic torture, as per police records, the section indicating suicide is not applied. Section 498-A (IPC) is applied with those indicating wrongful confinement, hurt and abetting the crime by another. The records of the police are at variance with court papers in a number of details. The case of Krishnaba is only seen in the light of the complaint filed by neighbours, and her death is not alluded to. The case was 'proved', the accused were held 'guilty' but the sentence was not pronounced. The reason cited was the old age of the accused and possible bad effects on old persons in jail. It is not clear why those who could be cruel at 56 years of age could not be punished at 60 years of age. The magistrate stated thrice that in the interest of justice, the accused were given benefit of section 4/1 of Probation Offenders' Act. It is curious that while women like Krishnaba are driven to suicide through domestic violence, the perpetrators of violence are shown mercy in the interest of justice.

The case papers state that the prosecution could not find Krishnaba. Police records point to suicide but that was not at all mentioned in the court. Shehnazbanu was also not found. The court papers do not show any concern over the absence of the three women, Bhadravati, Krishnaba and Shehnazbanu.

The cases point to serious lacunae in the functioning of the police and the courts. After all, institutions work through individuals who are guided by their inherent thinking and beliefs. The new legislations make them take cognisance of offences initially but then their resentment appears to take over. It is a question of lives of women and the torture they undergo. Not all women who suffer, voice their protest. Many more die, in Gujarat more than 14 died per day while hardly 5 went to police stations to register their complaints (as per

police records of year 1995). Those who protest meet with unstated resentment and find their efforts thwarted. Hapless women bold enough to protest are returned into the stranglehold of the patriarchal society.

There is a general belief that once a woman registered a complaint against her husband and his relatives under section 498-A (IPC), her chance of going back to the marital family was next to nil. The police officers firmly believe in that and so start counselling the woman that she should not get her complaint registered under sec. 498-A (IPC). The case papers do not support the myth. Eighteen women out of 22 had compromised and gone back to their husbands and the marital family. We tried to locate these women. Fourteen were found but were unwilling to talk about the cases. However, they revealed that they were occasionally battered by their husbands.

The sample of court pronouncements is small but is quite significant. These twenty two cases tell the stories of women whose protests were not accepted by society. Most of them went back to the parental home from where they were sent back to the marital home. Disappointed and stifled, four women took poison. They survived and had to again return to the marital home. The reasons for torturing them ranged from 'unsatisfactory house work' to 'dowry' or 'childlessness' or even 'conceiving when the husband did not want her to' ! Working women's income also could be the cause of their oppression and exploitation, while starvation also drove two women to consume poison. They were battered at times with hunter or iron rods, abused, hurt, entirely at the mercy of the husband and his relatives and at times that too within the first fortnight of marriage. The fact that they were pushed back to the same surroundings once again points to the helplessness of these women.

The sample from Sessions Court is miniscule. The judge abides by the principle enunciated in Gujarat High Court's judgment in Rameshbhai Ranchhodbhai and Anr. vs. Gujarat State: 'Even if cruelty were proved under section 498-A (IPC) the suicide may not be abetted by the perpetrator of cruelty'. In the case in the Sessions Court, cruelty under section 498-A (IPC) was not proved either.

To us it appears that the Sessions Judge missed out on a number of details which could have pointed to torture. It was stated in the complaint that at times in winter the accused drove Hansa out of the house so she had to live in the open in the cold. She was battered repeatedly. Once she was beaten so badly that she had to be hospitalised and she had remained unconscious for 12 hours in VS Hospital. Then she was convalescing at her sister's where her husband visited her and assaulted her with a 'dharia' (a long wooden stick, fitted with a sharp iron blade). A complaint about this was lodged at a police station. This happened four months before she committed suicide. Twenty days before her death two men had gone to bring about a compromise between Hansa and her husband and the accused had given assurance in writing. On the morning of the day that she committed suicide, she was beaten so badly that her arm was broken. She took poison at 2145 hours on that day.

The Sessions Judge did not find evidence of torture because all these details were (i) not stated in the complaint made primarily to the police (ii) details of Hansa's hospitalisation and the breaking of her arm were mentioned in the court for the first time, (iii) the husband's assurance in writing was not presented in the court and the evidence of the witnesses did not indicate how Hansa was tortured, (iv) another witness stated about quarrels between husband and wife and the compromise brought about four or five times but the details of torture were not mentioned (v) those who signed the inquest knew nothing about the details of the contents of the inquest; they had only signed the paper as the police had asked them to do so. Thus the complainant's side had failed to provide evidence that the husband had tortured Hansa.

To us it appeared that the case could not be proved because of the lacunae in the spade work done by the investigating agency, i.e. the police and by the public prosecutor's (PP) office. A certificate of medical treatment from VS Hospital could have been acquired, the complaint could have been fully written, the statement spoken of by the witnesses about the compromise signed by the accused could have been acquired. The PP could have asked the investigating agency to get all these, and presented the same in the court to support its case.

As a principle it is accepted that what was not stated in the complaint initially, raises suspicion in the judicial mind that it could be unreliable. But the very fact that the quarrels were of such nature that third parties were called in to bring about compromises, point to unbearable torture of the woman. The court could have inquired what kind of quarrels necessitated compromise. Unless the torture was constant and unbearable, the third party would not be asked to come in repeatedly. The previous complaint made at the police station was also not accepted by the court. Had the PP been well prepared the complaint could have been a part of the evidence. However, there was no contradiction in the evidence presented in the court. In exercising 'judicial mind' and taking note of the principles of law, the Sessions Court appears to us to have missed out on a number of details which could have pointed to torture. Breaking of an arm during a quarrel between husband and wife is not a normal occurrence in such quarrels. She was probably not treated for the injury, if there was a bandage on the arm, the PM note could have reference to it. The pain of the broken arm could have been unbearable. She took poison at 2145 hours. However, the judge found nothing that could satisfy his judicial vision, that is how evidence was appreciated by him.

Till the police improve upon writing of complaints and investigating as well as gathering legally necessary evidence and till the PP's offices do their work sincerely and professionally, it is likely that the cases of 'cruelty' would not be proved. Till then there is little hope for women. Even if cruelty were proved, as per the principle enunciated in Rameshbhai Ranchhodbhai and Anr. vs. Gujarat State, it may not be viewed as abetment of suicide.

Judgments of Gujarat High Court, after the case of Rameshbhai Rachhodbhai and Anr. vs. Gujarat State, have followed the principle laid down in it. Nothing appears to prove 'cruelty' also. In one of the judgments[1] it is mentioned that 'The courts are also equally worried about the atrocities on women, but we, as the Court, have to appreciate the evidence and decide the case remaining within the four corners of law'. It is further elaborated in the same judgment, 'In law, it is incumbent upon the prosecution to prove the charge beyond reasonable doubt and if prosecution fails to prove the same, the court would be helpless'.

While the concern of the court for principles of justice could be appreciated by us, we do think that the judges will have to be more active and demand evidence from PP's office. Moreover the evidence about cruelty to women has to be appreciated with more concern. Indian rural women are illiterate. They cannot leave notes behind stating the cause of suicide. The evidence that could be cited would be (i) compromise brought about by third parties (ii) medical certificates of injuries sustained as a result of battering (iii) complaints filed at police station of assault or hurt (iv) expression of the wish to die in front of relatives or neighbours or during quarrels (v) the evidence indicating the death of the previous wife similarly etc. The list could be endless because the ways in which women are tortured cannot be fully recounted. If there is no contradiction between the complaint and the evidence later presented in court, the court could accept it. Otherwise, given the systems of police trivialising women's woes and writing innocuous complaints on the one hand and the PP's office 'overburdened' and unable to work on women's cases on the other, the cases will not be proved, and the courts will keep on noting that 'the prosecution has failed to prove the case'.

[1] Criminal Appeal No. 1475 of 1984 D/29-2-1996

We, women, hope to have justice done to us and the hope is that the judiciary would appreciate the evidence with concern and when it is not enough will ask for more to arrive at a sound judgment.`

The police records show that no religious group saves its women from torture and deaths. The proportion of the victims of a particular religious group approximates the proportion of that community in the population. Among the Hindus, the largest number of deaths of women recorded were among OBC (45%), while SC (27%) and Upper Castes (28%) are almost equal in number. Women of the poorer castes seem to be more oppressed and driven to death. These figures disprove the myths circulated among the upper castes that the poor women can abuse their men so they are not subservient and that poor families are well off as each member of the family earns. The study revealed that poorer women were more vulnerable. This is not to understate the plight of the upper caste women among whom Rajput women (25%) were the most vulnerable. Young women seem to be the most expendable commodity. Most of the women whose deaths are on record gave up life before they were 30 years old (62%) and a sizable number died at a much more advanced age also.

What is worse is that a 60/70 years old woman is also reported as dying of catching fire while making tea/cooking/ heating water etc. A 50/60 year old woman consumes poison following quarrels within the family. This is how deaths of hundreds of women are recorded. The police records represent what was reported to them by the members of the family and the records indicate that deaths occurred through negligence, folly or lack of patience/tolerance of women.

Each incident of death could tell the tale of harrowing suffering. The final act of committing suicide or pushing a woman to her death could be taken only after a series of violent assaults. The victim lacking support to life in the marital home turns to the natal home from where she is sent back. Her return make her sufferings more acute and push her to thoughts of death. Her will to live and resistance to death get eroded. So a flare-up, a quarrel pushes her to death and that is seen as the immediate cause of death. Women's groups look for the conditions which stifled her will to live and pushed her to her death, but the police have no such compunctions. The callousness of the society in dealing with women is not revealed. Police records oversimplify the underlying horrid reality of women's lives that death is lurking for them in their own kitchens.

Police Inspectors (PIs) who were interviewed, held the opinion that women were over-sensitive and were apt to take the wrong step of filing a criminal complaint against the husband. PIs stated that they had always tried to bring about reconciliation between husband and wife in cases of marital disputes. This, they said, was beyond the call of their duty and that it stemmed from their desire to help the couple and preserve the family.

The PIs said that women wanted to register offences over 'small matters' and accused the women of having become less tolerant these days. This definition of 'small matters' reflects a mindset which trivializes violence that women face on a day-to-day basis. Their allusion to women having become 'less tolerant' indicates that women are moving away from stereotypical images of 'good' women who are passive, submissive, obedient and tolerant. This is significant with reference to filing of complaints under section 498-A (IPC). A woman, a human being is shuttled from husband's cruelty to parent's cruelty, but the society expects her to remain within the bounds of the culture of unquestioning tolerance. The implementation of new legislation depends upon individuals interpreting them. The PIs are the officers who can set the legal process in motion. If they superimpose their patriarchal notions on a woman's request to register her complaint, the woman will have to return to her marital home where she would be jeered at for her audacity to reach out to the police station.

Another opinion that was strongly stated was that the woman who wanted to settle a feud or who wanted to establish her dominance in the marital family used this section indiscriminately. Both the views appear to be quite contrary to the realities of women's experience where in a patriarchal society, natal families do their utmost to send their daughters back to the marital family. Besides, registering a case under section 498-A (IPC) is often too risky a bargain for a violated woman to resort to in order to establish her dominance in the marital home.

Responses of advocates were varied some advocates stated that women who wanted to harass the husband or in-laws grossly misused section 498-A (IPC). Some stated that most of the complaints made by women under this section were bogus.

Some advocates stated that police took the complaints unwillingly and so the investigation was lax. One advocate stated that the advocates could always show that the 'crime' could not be established and that the court need not take cognisance of small nothings, and that the accused could get benefit of doubt.

Some advocates stated that the Public Prosecutors (PPs) did not do their job of guiding complainant women well. Some defended PPs by saying that they were overburdened. Some advocates also stated that magistrates did not handle women's cases with seriousness so the whole process went against the complainant.

The advocates supported patriarchal attitudes in stating that the women harassed the in-laws by complaining under section 498-A (IPC). No one seemed to spare a thought for the woman who suffered so much and so long to be motivated to register a complaint. Advocates, like the police, revealed a lack of critical examination of the system. It is a men's world in which women who oppose their husbands do not get support from other men. Both PIs and advocates trivialised the violence perpetrated on women as 'small matters', thus turning a blind eye towards the torture suffered daily by women within their homes.

The NGOs who run Family Counselling Centres responded to the questionnaire sent to them. Most of them stated that women did not misuse section 498-A (IPC) to harass their husbands or in-laws. The section could be misused when women were used as instruments by other men (her relatives of the natal family).

The NGOs stated that they did not believe that women could misuse the section because of the hold of the culture of silence, of unquestioning tolerance, was strong on them. Women who had suffered extreme forms of violence also requested the counsellors to persuade their husbands not to be so violent. They were worried about their parents, their children and the stigma that would attach to them.

The respondents stated that women were afraid of police stations and courts. They were worried about the responses of the officials. Some police officers did not register complaints if there were no visible marks on the body of the woman. Some counselled the woman against filing a complaint and told her that she would never be able to go back to her marital home.

The respondents stated that it was necessary to go with the complainant to the police station because if she went alone the police would ridicule her complaint and would send her back. Some officers sent women complainants back by arguing that the offence was not committed within the area of their jurisdiction.

When an NGO representative goes with the complainant to the police station, she has to invariably hear a lecture by the police officer on the virtues of tolerance for an Indian woman. She is told to think of the future happiness of the complainant and not to lead her away from

the path of virtue. He assumes that the complainant must have been blinded by anger to speak about a very personal relationship in public.

This mentality of the police, commented on earlier, is in evidence throughout Gujarat. The violence suffered by the woman is trivialised and the patriarchal values are so superimposed that legal avenues close for the victim. The implementation of section 498-A (IPC) yet appears to be bogged down in the patriarchal interpretation of women's complaints as mere anger or misleading by an NGO.

The NGOs also stated that if a police officer had to file a woman's complaint he would make it sound milder and would use such language that it would sound innocuous. However, the police officers behaved differently with the accused men and accommodated them a lot.

All the respondents stated that if section 498-A was used at the right time by women, it would save their lives. Otherwise, she would be left to suffer and commit suicide.

The responses very clearly bring out the seamy side of the criminal justice system. Police defeat the provisions of the legislation to help battered wives meaningfully. They do this wilfully in the name of the society, or in the name of preserving the family. The effective implementation of a new legislation is also dependent upon individuals in specific positions, their interpretations as police officers or advocates or magistrates who make or mar the complaints.

Women's groups have demanded from the state government that police functions be monitored. Some steps have been taken, and dependent upon their usefulness, have evoked appropriate responses from activist women.

X. RECOMMENDATIONS

The Criminal Justice System (CJS) of our country is supported by persons of different learning and expertise. The persons are trained from different angles and whereas justice is one of the aspects of training to some, to others it could be the most important aspect. For example, the training of the police largely emphasises law and order. Offences related to the breach of peace or violation of person or property are their prime concern. Lawyers who are appointed as public-prosecutors study the enacted legislations and case law. Magistrates do the same and in addition undergo a training before they join their duties. These and other people related to the CJS were not exposed to the thinking that led to the legal reforms in 1983 and 1986. The pro-woman legislations came to them as novelties, the implications of which they have not been able to digest fully. Intellectual comprehension is not being called in question. But their internalized thinking is laden with patriarchal notions so they find it very difficult to accept the legal provisions, which challenge their own thinking. It is absolutely necessary to expose these persons to the international community's concepts that a woman is a human being and that women's rights are human rights.

The judges have often stated in judgments that they were concerned about increasing atrocities on women but the laws, as these are framed today, did not allow them to go beyond its letter. As we read the judgments, we realise that the evidence brought in the courts could have been differently appreciated. That could happen only if the judicial mind is open to the stark realities of women's lives. The unlimited acceptance by women of the violence perpetrated on them within marriage has so far been seen as the wear and tear of family life. This perception turns a blind eye on the detail that the woman is mostly at the receiving end and that her skin tears all the time. The Indian woman is taught not to oppose, not to complain against her lot in life, that once she is married she has to accept all. So women accept a lot, but when one comes out to lodge a complaint, it must be seen as unusual and indicative of abnormal cruelty. A third party is invited to compromise the parties when the quarrel has reached mammoth proportions. So complaints at police stations, and third party interventions should be considered as the final straw on the camel's back. The judicial minds need to take cognisance of this while appreciating the evidence before them.

Women have been unhappy about the way policemen write their complaints. Their tortures are made to sound quite innocuous, the police understate the woes of women. Statements taken in support of the complaint are not found to be supportive enough. The courts have commented that important facts revealed in the evidence were not found in the first complaint registered by the police / statement noted by the police and so these could not be accepted as valid evidence.

Public prosecutors (PP) did not appear to use the case papers prepared by the police, nor could they get relevant papers / documents / evidence from the police. An advocate with a will to strengthen the case on hand exerts to get all that he can. A PP also needs to do so in theory but in practice he claims to be overburdened like the police and does not have facilities to update his knowledge of case-law. The courts are also overburdened. So the thrust is on disposal and those cases that can be disposed quickly are given priority in time. So compromised cases are brought to the courts while those in which the parties are at loggerheads, are allowed to lag. In this hurry for disposal, the non-compoundable cases get compromised. Women, who want to contest, wait indefinitely and finally tired of waiting, compromise. Then they are blamed for filing complaints unnecessarily.

Bearing all this in mind following recommendations are made.

I Training :

Training for the persons connected with CJS i.e. police, prosecutors and judiciary in :

(1) Basic thinking that brought in pro-woman legislations.

(2) Exposure to the stark reality of women's lives in India which is full of oppression and exploitation as they are subordinated to the men within the domestic sphere.

(3) The international thinking on women's rights.

(4) Sensitisation to the issues connected with domestic violence against women.

(5) Training in systematically registering complaints, taking statements, applying legislative provisions and such other skills.

(6) Understanding the legislations, regulations, circulars etc. fully.

(7) Refresher courses for each policeman at specified intervals.

II Separate Agencies :

1. It is necessary to institute a separate investigating agency to investigate women's complaints and deaths. The cadre need not be separated from the police. Women's cases should not be marginalised but need to be well investigated, hence the suggestion. Transfers to and from the women's department should be routine.

2. It is necessary to institute a separate prosecuting agency to look after only women's cases but the cadre need not be signalled out only for women's cases. This is suggested again not to marginalise women's cases and the persons connected with them.

It is also necessary that the agency should vigilantly bring up the cases under section 498-A (IPC) quickly enough for hearing and not wait indefinitely for compromise and consequent disposal.

III. Sensitisation on Gender Issues :

Recruitment of the personnel in judiciary and for the posts of public prosecutor needs to be done also on the basis of their social awareness. As that was not high on the qualifications list so far, the members of the judiciary as well as public prosecutors at all levels need to be exposed to sensitization on gender issues.

IV. Systems Needed :

It is necessary to devise a fresh system for registering deaths of women. 'Proper' accidents need to be separated from those accidents in which women are victimised within their kitchens / homes. Cases of poisoning also need to be looked at more thoroughly. The investigation ought not to stop at the last incident which led to the loss of woman's life, but the investigating agency needs to look at the history that has gone before which led to the last flare-up.

Case papers in courts and notings in police stations are seen to have been at variance. Such lacunae need to be plugged. A fresh look at the system used could lead to necessary changes to be made. A monitoring authority is needed to check the errors that might creep in.

Magistrates seem to miss taking cognisance of details denoting deaths of women. So judicial inquiries are not made about such occurrences. Vigilant monitoring of such negligence is of utmost importance, as are the rectifying steps thereafter.

No cognisance is taken of witnesses turning 'hostile'. Statements given before the police are not supported by witnesses in court. Blatant lies are told in courts which are accepted as routine. Such acceptance turns the court procedure into a farce. This needs to be rectified. A magistrate can institute a case of perjury against the witness after taking the evidence of the investigating police officer that the statement was given by the witness who was turning hostile. The system in which the magistrate becomes active in the interest of justice needs to be revived. There always is the argument that judiciary is overburdened. A separate agency is, however, not needed here.

V. The 'Do's and 'Don't's for the Police :

The police must stop 'counselling' the complainant woman. They must do their job of registering an offence when a complaint is made and then follow the procedure that is laid down. It is necessary for the police to accept the woman as a human being who does not have to submit to ill-treatment by the husband or anyone else. Domestic barbarity has to be recognised as such and should not be put down as 'small matters'. Police cannot decide the limits of a woman's 'tolerance' or the scope of her 'goodness' in being a 'good wife'. The duty of the police is to register an offence when a complaint is received.

The police have a tendency of not hearing the complaints of the illiterate, the poor and the weak. Many women happen to be illiterate, poor and weak. So they are fearful of the police. The police need to listen to each woman that knocks at the police station and having heard her, register her complaint as per the offence complained against. If the complainant is accompanied by an NGO representative, the police officer could get more information from her and on hearing of her long history of domestic violence, could register the complaint under section 498-A (IPC).

If the police, in good faith, is of the opinion that the offence presented in the complaint does not sound like that of section 498-A (IPC) the offence is to be registered as per his understanding. That would help prepare a record of the violence meted out to the woman and could help the woman in case another complaint is made by her.

The police need to understand that section 498-A (IPC) is about mental harassment also. So asking for obvious bleeding injuries or other proofs of battering / burning amounts to not clearly grasping the requirements under the section.

The police need to take cognisance of a finding in this study that registering a complaint under section 498-A (IPC) by women in itself does not close the doors of the marital homes for them for ever. Some may end in divorce, others end in reconciliation also.

The women do not know that the police can always register a complaint of an offence committed outside the jurisdiction of the police station under number 00. The police must know this very well and so whatever the jurisdiction in which the offence was committed, a police officer must take up the complaint of the woman who approaches him in the police station. Decent behaviour by the police personnel towards women should be the norm.

The illiterate women do not know if the writer in the police station wrote her complaint as she stated it. Even those who can read say that the complaints of women are made to sound innocuous. Such writing goes against the complainant when the case is heard in the court. The court, in principle, thinks that details not noted in a complaint but later brought up in the court, could be brought in to 'rope in the accused', so validity of such details is doubted. The police must be sincere in registering women's complaints, and not accommodate the offenders named in the complaint.

Filing of complaints under section 498-A (IPC) could help a woman survive. So the police need to help them register complaints and follow the process of law. The police do not have

to keep the number of registered crimes in their police stations low by intimidating women or shooing them away from the police stations.

VI. Need for New Legislations :

Sections 498-A (IPC) and 304-B (IPC) do not seem to be enough to provide justice to women. Section 306 (IPC), as per the opinion of the High Court, cannot be seen as operative when cruelty under section 498-A (IPC) is proved. Intentional abetment of suicide as apart from cruelty perpetrated on the victim is to be proved.

So far it was understood by women that continual cruelty perpetrated on a woman could lead her to commit suicide and that could be perceived as abetment of suicide. Now that judicial opinion does not accept that, there has to be another legislation to bring the perpetrators of cruelty to book.

Section 113-A as it is, does not seem to be of much help either. When cruelty is conclusively proved, the court as per section 113-A, of Indian Evidence Act could presume that the suicide had been abetted by the husband or by such relative of the husband who subjected her to cruelty. But such presumption does not appear to have been made so far.

Section 107 which defines 'abetment' reads :

Abetment of a thing.- 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 doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

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

Explanation 1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procures a thing to be done is said to instigate the doing of that thing.

Explanation 2. Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Section 306 is the penal section using the verb 'abets'.

Section 107 / 306 cannot cover the offence of driving a woman to commit suicide by perpetrating cruelty on her.

To cover such offences, a fresh explanation is needed.

It could be worded as :

Explanation : Where the death of a woman is caused or occurs otherwise than under normal circumstances and it is shown that during the course of her married life she was subjected to repeated cruelty or repeated harassment as contemplated by sec. 498-A (IPC) by her husband or any of his / her relatives, such husband or relative shall be prima facie deemed to have abetted such suicide under this section.

It is proposed that the following `note' could be appended to section 498-A (IPC).

Note :

The cruelty could be proved, inter alia, by (i) a medical certificate showing that injury was inflicted and that treatment was taken in a hospital or (ii) a complaint lodged at a police station by the victim of mental / physical torture by the husband or any relative of the

husband or (iii) the woman had to invite third party to intervene on her behalf in the quarrels between her and her tormentors or (iv) that the woman was compelled to return to her natal home repeatedly.

Section 304-B (IPC) needs to be amended. Women who suffer cruelty do not always suffer within the first seven years of marriage. Demand of dowry and harassment consequent on not getting such demand satisfied is largely not the reason for cruelty suffered by women within marriage. Section 304-B is not useful in cases where marriage is of more than seven years' duration or where dowry is not the reason for domestic violence. In Gujarat, for instance deaths caused consequent to dowry demand were 55 as recorded in police registers in year 1995 while unnatural deaths of women recorded as accidental deaths (ADs) were 4276 in the same year. This leads us to suggest that two phrases, viz., `within seven years of marriage' and `or in connection with any demand for dowry, such death shall be called `dowry death' be deleted from the section 304-B. Similarly reference to dowry will have to be deleted from the `Explanation' also, meaning thereby that it would not be needed. The word `dowry' in second part of the section could be replaced by `unnatural'.

The section amended as per above comments will read as follows :

304-B (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances 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 such husband or relative shall be deemed to have caused her death.

(2) Whoever commits unnatural 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.

The changes are proposed to make the section applicable to unnatural deaths on account of domestic violence.

Along with section 498-A (IPC) section 113-A has been added to the Indian Evidence Act in 1983 to raise a presumption regarding abetment of suicide by a married woman. From this section also it is suggested that phrases delimiting the section to seven years be deleted. The section amended as per above comments will read as follows.

113-A . 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 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.

Explanation : For the purpose of this section `cruelty' shall have the meaning as in sec 498-A (IPC) of the Indian Penal Code.

To provide justice to women, no state can stop at the first step. Introduction of sections 498-A and 304-B in IPC and section 113-A in Indian Evidence Act, constituted the first step. That by itself does not seem to be adequate. Women do not yet get justice. More steps are needed to be taken.

Policy Change :

It is necessary that the state should consult women's NGOs fully before making policy changes / enacting legislations / institutionalising its pro-woman concepts. The step that the state took in organising women's protection councils was welcomed by women and the need to reorganise it is repeatedly expressed. But the all-woman police station has not solved women's problems. It is comparable to any other police station though its name misleads one to believe that it is meant to assist women. In alleviating the miseries experienced by women

and in providing avenues of justice to them the state would do well to confer with women, their representative NGOs and others.

VIII. Women's Movement :

After more than ten years of having achieved pro-woman legislations, like addition of sections 498-A (IPC) and 304-B (IPC), women are dismayed to find that domestic violence against them has not decreased.

On the contrary, what is noticeable is the constant increase in the number of unnatural deaths of women year after year. There is little consolation in noting that the use of section 498-A (IPC) is on the increase, because the number of deaths per year are approximately five times more than the numbers of the women who protest. Not only that, the complaints filed under section 498-A (IPC) seem to go waste. Then there is a protest from some men belonging to organisations like Akhil Bharatiya Patni Atyachar Virodhi Sangh or Purush Haqq Sanrakshan Samiti against these legislations, asking that these should be deleted.

Legislations have not been used sufficiently by women. Based on our experience with grassroot women, we found that attempts to file complaints by women against domestic violence were thwarted. Our experience in lower courts also gave us no hope, we were of the opinion that women had not used the section and so we were surprised by the backlash as expressed in the protests and demands raised against pro-woman legislations. We were therefore led to study systematically what was going wrong where. The findings very clearly bring to us the reasons why women are unable to reach out to get justice and how that is used as an argument against them.

It is up to us in the women's movement to demand the plugging of the lacunae. Though new legislations have been accepted in principle, intellectually, the men in charge of translating these into action have not been prepared from within. So a police inspector lectures a complainant on wifely virtues and reprimands the NGO representative that her activity is anti-family, therefore anti-society. A magistrate almost accepts compromises of non-compoundable offence by using language of admiration for wifely subservience. A judge cannot accept continued cruelty perpetrated against a woman as her reason for committing suicide. The training of these office bearers is of prime importance.

We have found that any system established only for women in response to our demand soon gets marginalised ; e.g. All-Woman Police Station or Family Courts are considered sub-standard by those who are put in charge and women do not get what they initially asked for. So, while demanding special agencies, we have to ensure that they would be seen as part of mainstream activities too. Hence asking for a special investigating agency would not mean only setting up a special cell in the police set up but maintaining it as a part of the establishment so that transfers from the women's cell to other cells are routine. Similarly, asking for a special public prosecutor for women would not mean that a separate office be set-up, a person could be given exclusive charge for some months and another could take over thereafter. Such an arrangement would make the incumbents see and feel that the posts with reference to women are part of routine work. Our intention is that women's cases get full attention since there is always the complaint that police and prosecutors are overburdened, special appointees in police could find more time for thorough investigation and those in the prosecutor's office could find more time to prepare the 'cases' to be presented in courts.

It is necessary that women activists be invited, wherever possible, to participate in the investigation of cases of unnatural deaths so that they could help trace the history of domestic violence suffered by the victim. Women have to demand participation in

monitoring police records and case papers as well. Waiting for ‘compromises’ and bringing up cases only when ‘disposal’ is assured harms the interest of women, so such monitoring is necessary.

There has to be a system in which women could meet the police officers and get a report on crimes against women at specific intervals, say of two months. In Gujarat, a system was devised. It was named Mahila Suraksha Samiti (Women’s Protection Council). Such systems could help in monitoring the details of crimes against women in a given area. Members of such committees could bring to the notice of the officer, complaints, if any, about the non-compliance of members of the police force under him, more easily.

For the women’s movement, it is necessary to lobby for fresh legislative changes. All unnatural deaths are not caused because of demands of dowry, nor are these caused within seven years of marriage. The changes indicating ‘dowry death’ in section 304-B (IPC) have to be deleted. Such clauses should be deleted from section 113-A (IE Act) also. Similarly an additional explanation is necessary to be appended to section 306 (IPC) so that repeated cruelty to the woman could be seen as the cause of her suicide. The proof of cruelty as available with reference to the deaths of women varies, but needs to be brought to the notice of the court so a fresh ‘note' can be appended to section 498-A (IPC).

State governments as well as the central government will have to be pressurised to take active steps so that the incidence of domestic violence against women decreases. The women’s movement must take the lead in getting such pro-woman reforms put in place. The government of India had ratified CEDAW and has been a signatory to the UN Declaration 1993, that deals with violence against women. Hence it is morally bound to the international community on the one hand and on the other to the women of the country.

APPENDIX - I

I. Text of the Sections :

1. Section 498-A, Indian Penal Code :

The 498-A subsection was added to the Indian Penal Code in December, 1983 by the Criminal Law Amendment Act, 1983 (Act 46 of 1983). It reads :

498-A . Of cruelty by husband or relatives of husband :

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 purpose of this section, 'cruelty' means -

(a) any wilfull 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

(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 is on account of failure by her or any person related to her to meet such demand.

2. Section 113-A , Indian Evidence Act :

Section 113-A was introduced in the Code by the Criminal Law (Amendment) Act, 1983 (Act 46 of 1983) to combat the menace of dowry deaths. By the same Act section 113A was added to the Indian Evidence Act to raise a presumption regarding abetment of suicide by a married woman to the following effect :

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 purpose of this section 'cruelty' shall have the same meaning as in section 498-A of the Indian Penal Code.

3. Section 114 , Indian Penal Code :

Abettor present when offence is committed :

Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

4. Section 294, Indian Penal Code :

Obscene acts and songs :

Whoever, to the annoyance of others,

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene songs, ballad or words, in or near any public place,

Shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

5. Section 302, Indian Penal Code :

Punishment for murder :

Whoever commits murder shall be punished with death or imprisonment for life and shall also be liable to fine.

6. Section 304-b, Indian Penal Code :

Dowry death, 304-b :

(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 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 section 2 of the Dowry Prohibition Act, 1961.

(2) Whoever 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.

7. Section 306, Indian Penal Code :

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 ten years, and shall also be liable to fine.

8. Section 307, Indian Penal Code :

Attempt to murder :

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

9. Section 309, Indian Penal Code :

Attempt to commit suicide :

Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.

10. Section 323, Indian Penal Code :

Punishment for voluntarily causing hurt :

Whoever, except in the case provided for by Section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

11. Section 324, Indian Penal Code :

Voluntarily causing hurt by dangerous weapons or means :

Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

12. Section 326, Indian Penal Code :

Voluntarily causing grievous hurt by dangerous weapons or means :

Whoever, except in the case provided for by Section 335, voluntarily, causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

13 . Section 334, Indian Penal Code :

Voluntarily causing grievous hurt on provocation :

Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two thousand rupees, or with both.

14. Section 342, Indian Penal Code :

Punishment for wrongful confinement :

Whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

15. Section 426, Indian Penal Code :

Punishment for mischief :

Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Comment.- **Ingredients**.- This section requires three things :-

(1) Intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person;

(2) causing the destruction of some property or any change in it or in its situation; and

(3) such change must destroy or diminish its value or utility, or affect it injuriously.

This section deals with a physical injury from a physical cause.

16. Section 504, Indian Penal Code :

Intentional insults with intent to provoke breach of the peace :

Whoever intentionally insult, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

17. Section 506, Indian Penal Code :

Punishment for criminal intimidation :

Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

If threat be to cause death or grievous hurt etc.-

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years or with fine, or with both.

Text of the sections taken from Ratanlal Dhirajlal's Indian Penal Code, 26th Ed. 1987 by Justice M. Hidayatullah and R. Deb. Wadhwa & Co. Pvt. Ltd. Nagpur.

18. Section 174 of Criminal Procedure Code :

Section 174 reads as follows :

Police to enquire and report on suicide, etc. :

(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District of Sub-divisional magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District magistrate of the Sub-divisional Magistrate.

[1] [(3) When -

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relating to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do he shall],

subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following magistrates are empowered to hold inquests, namely, any District magistrate or Sub divisional magistrate and any other Executive magistrate specially empowered in this behalf by the State Government or the District Magistrate.

Text of section 174 taken from The Code of Criminal Procedure (Act no.3 of 1974) 1985, Orient Law House Allahabad.

[1] Ins by Act No.46 of 1983, S.3.

APPENDIX II

II. Texts of Court's Orders :

(i) Judgment in the case of Bai Krishnaba Arjunsingh Jhala[1]

In the Court No.17 of Metropolitan Magistrate, Ahmedabad.

Case no. 1575 / 86

Complainant : The Government

vs.

Accused :
1. Arjunsinh Akhubha Jhala,
Residing at : Meghaninagar Road,
Tatanagar Society, No. 57, Ahmedabad.
2. Maniba Arjunsinh Akhubha
Residing at : Meghaninagar, Tatanagar,
Block No. 57, Ahmedabad.

Charge as per IPC Section 498-A, 342 / 323 / 114

Judgment :

(1) In this matter Shahibaug Police has framed a chargesheet against the accused under IPC Section 498-A, 323, 114. The case of the police is that nine months before the occurrence of the incident the accused residing at Meghaninagar, Tatanagar block no. 57, till date the complainant woman was tortured, unlawfully kept locked in a bathroom, beaten, thus committing the crime and helped each other in doing so the police having made inquires, presented the chargesheet against the accused under IPC Sections 498-a, 323, 114.

(2) The chargesheet ex.no.2 was read out and explained to the accused who denied committing the crime. The accused did not present evidence in defence.

3. The following points emerge for my decision in this matter.
   (i) Has prosecution proved that the accused tortured complainant woman Krishnaben physically and mentally and put her life in danger ?
   (ii) Has prosecution proved that the complainant woman was locked inside a bathroom thus causing wrongful restraint ?
   (iii) Is it proved that the accused willingly caused hurt by knowingly beating the complainant.
   (iv) Is it proved that the accused helped each other in committing the crime ?
   (v) What should be the order ?

4. My decision on these points is as follows :
   (i) Positive
   (ii) Positive
   (iii) Negative
   (iv) As per the final order.

[1] Translation by the author.

Reasons :

Kamladevi Baliram's statement is noted in Ex.no.4. The complaint is presented in ex. no.7. Ex. no.6 is the statement of Hemantkumar Maganlal. Natwar Valjibhai's statement is in ex.no.9. The panchnama is in ex.no.10. Arguments of Prosecutor A.S. Budhwani were heard. The arguments of the lawyer I. K. Katia were heard in defence.

Natwarbhai Valjibhai's statement is noted in ex.no.9. He stated that he was called as a panch at the house of the accused. Nareshbhai was present as a panch. The house of the accused was seen. In front there was a grill, then there was the open space. On the left of the window there was a bathroom. There was no window or ventilator to it. There is a room on the side, panchnama was done with reference to that room, which was presented as ex.no.10. Which proves that the crime was committed there. Kamladevi Deviram's statement was taken in the matter in ex.no.4. She knew the accused and the complainant. She had lived in the society for 26 years. She did not know anything about the life of Krishnaba, she did not know what incident happened. Prosecution declared the witness as hostile. Rajesh Maganlal's statement was noted in ex. no.5. He stated that he lived in Tatanagar society in B no.23 and the accused lived opposite them. Accused no.1 and 2 live there. Accused no.2. is the second wife of Accused no.1. Krishnaba was his first wife. Accused no.1 has no child. Accused no.1 and 2 together used to batter Krishnaba. Since Krishnaba was childless the accused were torturing her mentally, did not give her food and made her unbearably unhappy. Three years before the incident took place Krishnaba was sent to her parental home but then later accused no.1 had brought her back. For some time she was treated well. In the last nine months she was harassed a lot. It was stated that Krishnaba lived in her parental home. In the cross examination it was stated that the house of the accused was 30 feet away. Krishnaba was beaten in the open space but the door was kept closed. When she was beaten heavily she used to scream. Police was informed at the time of the incident but not before that. The accused did not give food to Krishnaba. He denied that Krishnaba ate used tea leaves or tea powder. Hemantkumar Maganlal's statement was recorded in ex.no.6. He knows the accused. They live in B.no.57. Complainant was the wife of accused no.4. She lived with him. The marriage of Krishnaba was performed about seven years ago. She had no child. The accused did not give food to the complainant, they used to harass her so the people living in the society had complained to the police which he had signed, which is presented in ex.no.7. The accused live in their society and they were very close so they knew them. They used to lock the complainant in, they did not give her food. The complainant used to eat leaves of trees and the used tea leaves. She was not allowed to sleep inside the house. She was made to sleep in the verandah under the staircase. The battering and harassment had continued for five - six years. The distance of the house of the accused is 25 to 30 feet. So it was known and her body also showed that she was harassed. Three years ago the people of the society had got together and had taken Krishnaba to her parental home but then Arjunsingh had brought her back. The complainant lived at the house of accused no.1 for six years. Vithalbhai Haribhai's statement is noted in ex.no.8. He knows the accused no.1 and the complainant. The complainant is the wife of the accused no.1. The complainant and the accused lived in the same house. The complainant was beaten and that could be seen. She was locked in the bathroom when he went out. The complainant was not given food. She used to eat leaves of trees that was seen. The complainant was given nothing to eat or drink. The complainant had no child. The complainant lived at the house of the accused for seven years and was battered many times. He had not gone to her rescue. It was stated that what happened in the house of the accused could be seen. On behalf of the prosecution A.S. Budhawani argued that looking at the statements of the witnesses, the complaint and the complaints made by the members of the society, it is clear that the complainant woman was not given food and drink, was battered and tortured, she had to eat leaves of trees, had slept under the stairs, and was locked. The members of the society are independent witnesses who have no enmity with the accused and that it is not believable that the members of the society would say that the accused was childless, to drive him out of the society because they were independent witnesses, the cross examination had not revealed that there was enmity which showed that the case against the complainant was proved. Defence lawyer I.K.

Katia argued that who collected the signatures of the members of the society on the application and when they were collected was not made clear. A belief was prevalent that if one saw a childless person, one's day was spoiled. In pursuance of that belief the members of the society had instituted a wrong case to harass him and drive him out of the society so that they would not have to see a childless man's face. Looking at the arguments from both the sides, the woman who was tortured as per prosecution was not found because of circumstances, and looking at the statements of other witnesses the woman was harassed in food and drink and was locked up did not indicate that the woman was subjected to hurt, but that she was given used tea leaves and leaves of trees as food and drink proves beyond doubt that she was tortured mentally and physically. Accused no.1 and 2 tortured her physically and mentally and locked her in the bathroom which proves the crime under IPC section 498-A and 342 (wrongful confinement). Moreover the two abetted the crime by assisting each other was proved so I decide the questions no.1, 2 and 4 positively and no.3 negatively.

As per my above cited decision I come to the decision of punishing the accused and before announcing the punishment the accused were heard. They stated that they were retired persons. He was 65. Accused no.2 was 50 years old. They had no means of income and so asked for mercy of the court in which circumstances I hold that in these circumstances the interest of justice would be taken care of if the punishment was made light. The accused were never punished before and the accused had a long life ahead of them. By sending the accused to prison they would come in contact with hardened criminals which could have bad effect on their minds. In these circumstances I hold that ends of justice would be taken care of by giving them advantage of probation and by not sending them to jail and I hold that giving the advantage of section 4 (1) of Probation Offenders' act would serve the ends of justice so I order the following :

ORDER :

As per section 248/2 of Criminal Procedure Code the accused are held guilty of offences under sections 498-a and 342 of IPC and having held them guilty, under section 4(1) Probation Offenders' Act the accused are released on bail with the surety of Rs. 1000/- and bail of the same amount for two years. During this period the accused have to behave well and peacefully. They have to present themselves in court as and when called. No punishment is ordered under section 323 of IPC.

Declared today on 31st May 1990 in open court.

Place : Ahmedabad
Date : 31/5/90

Signed
(NBR Ranaksha)
Metropoitan Magistrate
Court No. 17
Ahmedabad

True copy
certified by
Asst. Superintendent
Metropolitan magistrate
Court no. 17 Ahmedabad
19/6/98

(ii) **CRIMINAL APPELLATE**

Before the Hon'ble Mr. Justice R.J. Shah and
the Hon'ble Mr. Justice J.P. Desai

RAMESHBHAI RANCHHODBHAI & ANR. v. STATE OF GUJARAT*

Indian Penal Code, 1860 (XLV of 1860) - Secs. 107, 306 & 498A-

In order to constitute abetment, the act or omission must be intentional, it must be done with intent to facilitate the commission of an offence - So merely because a man is convicted of the offence under Sec. 498A, it does not follow that he has abetted the offence of committing suicide punishable under Sec. 306.

For establishing abetment covered by Clause Thirdly read with Explanation 2, it has to be established that there was intentional aiding. Mere aiding may not amount to abetment unless it is intentional. Mere act or omission on the part of a person which, in fact, results in facilitating the commission of the offence will not satisfy the requirements of Explanation 2 of Clause Thirdly. What is required to be established is that the person against whom the charge of abetment is levelled has done something in order to facilitate the commission of the offence, what is, therefore, required is that the person against whom charge of abetment is levelled has to do something purposefully which facilitates the commission of the offence. It cannot be said with any stretch of imagination that a person subjecting a woman to cruelty is guilty of abetment. Sections 306 and 498A are two independent sections in the Indian Penal Code. While considering the guilt or otherwise of an accused for the offence punishable under Sec. 306 I.P.C. we have to read only Secs. 306 and 107 I.P.C. Section 498A I.P.C. is out of question so far as the question of abetment is concerned. In view of this, it is difficult to support the finding of the learned trial Judge that the appellants are guilty of the offence punishable under Sec. 306 I.P.C. (Para 12)

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* Decided on 21-2-1989, Criminal Appeal No.1392 of 1986 against the order of conviction and sentence passed by the Addl. Sessions Judge, Kheda at Nadiad in Sessions Case No.159 of 1986.

(Only a part of the Judgment approved for reporting is published)

(iii)

1995 (2) G.L.H. 878
D.G. KARIA, J.

(The) State of Gujarat .....Appellant

Versus

Amra Arjan Dhamot .....Respondent

Criminal appeal NO.394 of 1988*****

D/- 3-4-1995

(A) Indian Penal Code, 1860 - S.498-A and Indian Evidence Act, 1872-S. 113-A - Wife committed suicide within the period of seven yeas of her marriage - Prosecution has failed to prove its case of cruelty by the accused husband beyond reasonable doubt-Scope of S.113-A of IPC cannot be enlarged by referring to S. 113-A do not create new offence or substantive right - It is a matter of procedure of evidence - Presumption as to abetment of suicide would not arise, in the facts of the case.

It is not in dispute that the tragic incident took place within about four years since the deceased Jashi's marriage with the accused. Mr. Rawal thus relied upon the provisions of S. 113-A of the Evidence Act and submitted that the burden was on the accused to show that the death was not on account of cruelty by the deceased and that burden was not discharged by the accused and as such, the impugned order of acquittal is vitiated. Firstly, the prosecution has not proved beyond all reasonable doubt to show that the death was on account of cruelty and as such, to my mind, no such presumption as is contemplated in S.113-A of the Evidence Act would arise against the accused. A bare reading of S.498-A of the Indian Penal Code and S.113-A of the Evidence Act would lead to any unrebuttable presumption that in case of suicide by the wife within seven years of the marriage, the husband or his relatives would be guilty of the offences under S.306 or 498-A of the Indian Penal Code. The scope of S.498-A cannot be enlarged by referring to S.113-A of the Evidence Act. I am of the view that the provisions of S.113-A cannot be said to create any new offence nor do they create any substantive right. It is merely a matter of procedure of evidence. Therefore, having regard to the facts and circumstances of the case read with further statement of the accused under S.313 of the Code of Criminal Procedure, it cannot be concluded that the prosecution has proved its case about cruelty by the accused, beyond all reasonable doubt, to the deceased Jashiben and therefore, it was the accused to substantiate that he was not guilty of the alleged cruelty.

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* Criminal Appeal against the judgment and order of J.M.F.C., Santrampur, dt. 8-1-1998 passed in Criminal Case No.996 of 1987.

(B) Indian Penal Code, 1860 - S. 498-A - Incident took place at 8.00 a.m. on 24-7-1987 - F.I.R. lodged on 28-7-1987 at 10.00 a.m. - No satisfactory explanation offered by the prosecution for late F.I.R. No other material to show that accused caused cruelty to the deceased during subsistence of marriage - Father or uncle of the deceased did not make complaint of cruelty - Neighbours also not examined - Prosecution failed to prove guilt of the accused.

It may be noticed in this case that the incident has taken place at about 8.00 a.m. on July 24, 1987. The F.I.R. came to be lodged at 10.00 a.m. on July 28, 1987. Thus, the complaint is after about four days. There is no satisfactory explanation of delay in lodging the F.I.R. There is no dying declaration or suicidal note. There is no letter or any other material to show that during subsistence of marriage, the accused beat or caused cruelty to the deceased. There is no letter or any other material to show that during subsistence of marriage, the accused beat or caused cruelty to the deceased. There is no complaint either by the father or uncle who is said to have adopted the deceased Jashiben. No neighbour residing nearby the burnt house of the deceased Jashi and the accused have

also been examined. All these circumstances speak about the fact that the prosecution has not been able to bring home the guilt of the accused.

Case Referred :

State of West Bengal v. Orilal Jaiswal and Another, AIR 1994 SC 1418.

Appearances:

Mr. K.P. Rawal, A.P.P. for the appellant-State

Mr. B.M. Mangukia, Advocate for the respondent.

D.G. Karia, J.:-

1. By this acquittal appeal under Section 378 of the Code of Criminal Procedure, 1973, the State has challenged the order of acquittal dated January 8, 1988 whereby the learned Judicial Magistrate, First Class, Santrampur, ordered to acquit the respondent for the offence punishable under Section 498-A of the Indian Penal Code.

2. Shortly stated the prosecution case is that the respondent accused was married with deceased Jashiben, who was the daughter of P.W.2-Hathibhai Motibhai, before about 4 years since the date of occurrence on July 24, 1987. It was alleged that the accused husband treated the deceased Jashiben with cruelty driving her to commit suicide. As a result of cruelty, the prosecution case proceeds, the deceased Jashi committed suicide by burning herself at about 8.00 a.m. on July 24, 1987. It was alleged that the deceased Jashi being subjected to cruelty, was driven to commit suicide and thereby the accused was charged with the offence punishable under Section 498-A of the Indian Penal Code.

3. Earlier, a complaint was lodged that the house in which the deceased Jashi was there was put on fire as a result of which the deceased Jashi sustained burnt injuries, ultimately resulting in her death. The deceased Jashi was brought to the hospital at Santrampur in a tractor where she was declared to have died by P.W. 1. Dr. G.K. Devra. After investigation, the police submitted charge-sheet against the respondent accused for the aforesaid offence. The charge on the aforesaid facts was framed at Exh. 4 to which the accused pleaded not guilty.

4. The learned Magistrate, having recorded the evidence of the prosecution witnesses and having examined the material placed before him, came to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt and ordered to acquit the accused person for the offence under Section 498-A as aforesaid. It is against this order of acquittal that the State has preferred the present appeal.

5. Mr. K.P. Rawal, learned A.P.P. has taken me through the relevant evidence of the prosecution witnesses and judgment under appeal. Mr. Rawal having referred to and relied upon the evidence of the prosecution witness, particularly P.W. 3 Nathiben Hathibhai and P.W. 4 Hemtabhai Motibhai contended that the prosecution proves the wilful conduct on the part of the accused which amounted to cruelty driving the deceased Jashiben to commit suicide. On perusal of the evidence of these witnesses and the medical evidence on record, I am unable to accept this contention of the learned A. P.P. Mr.Rawal.

6. P.W. 1 Dr. G.K.Devra has deposed at Exh. 6 that on July 24, 1987 he was Medical Officer in Government hospital at Simalia and the dead body of the deceased Jashiben was brought at about 2.00 p.m. on that day. He performed the post-mortem and found secondary burns over head. He found second degree burns in front and back side of the body. There were third degree burns on the thigh of the deceased Jashiben to the extent of 80 per cent and there were also 80 percent burns on both upper limbs. In the opinion of the Doctor, the cause of death of the deceased was on account of shock following extensive burns. In the cross-examination, he has admitted that if a person having sustained burn injuries, runs helter-skelter the burn injuries would be spread all over body of such person and in a village, if a woman while cooking with wood is likely to sustain burn injuries, as was received by the deceased Jashi.

7. P.W.2. Hathibhai Motibhai, father of the deceased Jashiben deposed at Exh. 8 that the accused having consumed alcohol, caused death of the deceased. He does not know however, as to how he

killed her. She was burnt alive. He knew about it only when post-mortem was performed. He also gathered that the house was put on fire wherein the deceased Jashiben sustained burnt injuries and died. In the cross-examination, P.W. 3. Hathibhai has admitted that the relationship between his daughter deceased Jashi and his son-in-law was good.He also stated that it was true that the deceased Jashi sustained burnt injuries while cooking and the house was also put on fire. similarly, P.W. 3 Nathiben Motibhai, mother of the deceased Jashi has given inconsistent version stating in her cross-examination that the deceased Jashi did not tell anything about ill-treatment to her. P.W. 4 Hemtabhai Motibhai is the uncle of the deceased Jashi and he has deposed at Exh. 11 that the deceased Jashi used to often come to his place as she was adopted by him and told him about her feuds with the accused. He also deposed about the ill-treatment by the accused after consuming liquor. He knew about the death of Jashi after three days when he went to village Bhatiya where the deceased and the accused were residing. He found that the house of the accused and the deceased Jashi was also burnt. In the cross-examination, P.W.4 has stated that he had no occasion to visit the house of the deceased Jashi after her marriage. There was no dispute about dowry. Before her death, Jashi never told him anything about beating or ill-treatment. He gathered from village people that the deceased Jashi died accidentally and the house was also burnt. In view of this evidence on record, I agree with the reasonings and findings given by the learned Magistrate that on account of inconsistencies in the evidence, it cannot be concluded that the prosecution has proved its case beyond all reasonable doubt that the accused treated the deceased with such a cruelty as to drive her to commit suicide.

8. The panchnama of the case of occurrence at Exh. 20 also reads that the house was also put on fire on the day of the incident. Thus, having regard to the overall evidence on record, it is evident that the deceased Jashi died because of burns accidently. At this stage, if we refer to the statement of the accused recorded under Section 313 of the Code of Criminal Procedure, he stated to be innocent. He further stated that he did not cause any physical or mental cruelty to the deceased. He had good relations with the deceased Jashi and before about one and a half month, she had given birth to a male child. While cooking, the deceased Jashi received burn injuries in his absence. He was also very much shocked on account of death of his wife and he was innocent and he was falsely implicated. There is no reason to disbelieve this statement under Section 313 of the Code of Criminal Procedure.

9. It was next contended by Mr. Rawal, learned A.P.P. that in view of the provisions of Section 113-A of the Evidence Act, a presumption as to abetment of suicide by the deceased Jashi would arise against the accused as she committed suicide within the period of seven years of her marriage. It is not in dispute that the tragic incident took place within about four yeas since the deceased Jashi's marriage with the accused. Mr. Rawal thus relied upon the provisions of Section 113-A of 'the Evidence Act and submitted that the burden was on the accused to show that the death was not on account of cruelty by the deceased and that burden was not discharged by the accused and as such, the impugned order of acquittal is vitiated. Firstly, the prosecution has not proved beyond all reasonable doubt to show that the death was on account of cruelty and as such, to my mind, no such presumption as is contemplated in Section 113-A of the Evidence Act would arise against the accused. A bare reading of Section 498-A of the Indian Penal Code and Section 113-A of the Evidence Act would lead to any unrebuttable presumption that in case of suicide by the wife within seven years of the marriage, the husband or his relatives would be guilty of the offence under Section 306 or 498-A of the Indian Penal Code. The scope of the Section 498-A cannot be enlarged by referring to Section 113-A of the Evidence Act. I am of the view that the provisions of Section 113-A cannot be said to create any new offence nor do they create any substantive right. It is merely a matter of procedure of evidence. Therefore, having regard to the facts and circumstances of the case read with further statement of the accused under Section 313 of he Code of Criminal Procedure. It cannot be concluded that the prosecution has proved its case about cruelty by the accused, beyond all reasonable doubt, to the deceased Jashiben and therefore, it was the accused to substaintiate that he was not guilty of the alleged cruelty. In this case, I am fortified by the following observations of the Supreme Court made in para 14 of the decision in the case of State of West Bengal v Orilal Jaiswal and Another, A.I.R. 1984, SC 1418.

"14. We are not oblivious that in a criminal trial the degree of proof is stricter than what is required in a civil proceedings. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirements of proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498-A of IPC and Section 113A of Indian Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidence adduced in the cases and the materials placed on record. Lord Denning in Bater v Bater, (1950) 2 All ER 458 at page 459 has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject-matter".

10. In view of the above position of law relating to Section 113A of the Evidence Act, I do not find any merit in the submission of the learned A.P.P. Mr. Rawal that the accused failed to discharge his burden on him under Section 113 A of the Evidence Act.

11. It may be noticed in this case that the incident has taken place at about 8.00 a.m. on July 24, 1987. The F.I.R. came to be lodged at 10.00 a.m. on July 28, 1987. Thus, the complaint is after about four days. There is no satisfactory explanation of delay in lodging the F.I.R. There is no dying declaration or suicidal note. There is no letter or any other material to show that during subsistence of marriage, the accused beat or caused cruelty to the deceased. There is no complaint either by the father or uncle who is said to have adopted the deceased Jashiben. No neighbours residing nearby the burnt house of the deceased Jashi and the accused have also been examined. All these circumstances speak about the fact that the prosecution has not been able to bring home the guilt of the accused.

12. It is now settled position of law about powers of the High Court as regards interference with the order of acquittal under Section 378 of the code of Criminal Procedure. Keeping in mind the principles about entertaining an acquittal appeal, that great weight should be attached to the view taken by the trial Court who had an advantage of hearing witnesses and observing their demeanor and that in an appeal from acquittal, presumption of innocence of the accused continues alive upto the end of the acquittal and is further strengthened by the order of appeal. The interference with an order of acquittal can be justified only when it is done for compelling reasons when it is shown that the order of acquittal is perverse and having regard to the evidence on record, no reasonable person would have taken such a view. Nothing of that sort has been shown in the present case.

13. In the above premises, the appeal falls and is hereby dismissed.

(NMA) Appeal dismissed.

(iv) **1996 (2) G.L.H.5**

R.R. JAIN AND H.R. SHELAT, JJ

State of Gujarat .....Appellant

Versus

Sunilkumar K. Jani .....Respondent

Criminal appeal No.1475 of 1984*

D/-29-2-1996

Indian Penal Code, 1860 - S. 306- Abetment of suicide - When extremity is one's own creation and the accused is blamed, it would amount to roguery supplants justice - Nothing can be inferred or assumed for or against the party - To prove the offence there must be evidence about the knowledge and intention relating to the crime and proximate assistance - If spouses are often quarreling on one or another issue, it is the usual wear and tear of the married life - A person would bring end of his / her life only when he / she is put to the compelling or alarming circumstances with no option - The prosecution has to show what was the apple of discord to determine about the abetment - Only evidence of the accused being often quarreling with the deceased (wife) would not amount to abetment for committing suicide in the facts and circumstances of the case.

Simply someone comes before the Court and says that both the spouses were often quarreling is not sufficient because that would not clearly establish the knowledge or intention relating to the crime and proximate assistance. There may be difference of opinions. If on one or another issue the spouses are often quarreling, it is the usual wear and tear of the married life, and certainly that would not lead any one to end his / her life. One would bring end of his / her life if he / she is put to the compelling or alarming circumstances with no option. The prosecution has, therefore, to show what was the apple of discord so as to determine about abetment. The case in general terms is not sufficient. Here in this case it is not made clear as to what was the subject of quarrels, on the day of the incident what was the issue, who initiated the quarrel, in what context both were quarreling, and who was at fault for the quarrel. With regard to the past quarrels also it is ambiguously and in general terms alleged and stated that both were often quarreling, but it is not made clear in what context, and who was at fault ? The party at fault if ultimately facing frustration of his / her plan goes to the extreme, i.e. suicide, the opposite party cannot be blamed and held liable. In different words, if extremity is one's own creation, and the opponent is blamed, it would amount to roguery supplants justice. Nothing can be inferred or assumed for or against the party or the court cannot jump to the conclusion that husband is always at fault, and wife is the victim of the wickedness of the husband. As made clear by the Calcutta High Court in the case of Niharbala Banerjee (Supra), there is also no evidence about the knowledge and intention relating to the crime and proximate assistance. It is pertinent to note that the Calcutta High Court has held to which we agree that merely on the fact that the husband was not treating the wife properly and was treating her with cruelty will not be sufficient to establish the abetment. In this case, even if on the basis of the evidence of the above referred witnesses it is assumed that the respondent was often quarreling with the deceased, that will not amount to abetment for committing suicide it might be owing to above quoted psychological factors and symptoms taking shape independent of abetment.

* Acquittal appeal against the judgment and order dated 31-8-1984 passed by the Addl. Sessions Judge, Ahmedabad (Rural) at Narol in Sessions Case No.141 of 1983.

Cases Referred :

1. Chanchal Kumari & Ors. v. Union Territory, Chandigarh AIR 1986 SC 752
2. Rameshbhai Ranchhodbhai & Anr. v. State of Gujarat XXX (2) GLR 834=1990(1) Crimes 417.
3. Niharbala Banerjee & Anr. v. The State 1989 Cri. L.J. (NOC) 38
4. Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116.

Appearances :

Shri K.P. Raval, APP for the appellant
Shri Janak V. Japee, Advocate for the respondent.

PER H.R. SHELAT, J. :-

1. This appeal has been directed against the judgment and order of acquittal dated 31-8-1984, passed in Sessions Case No. 141 of 1983, by the then Additional Sessions Judge, Ahmedabad (Rural) at Narol.

2. The respondent married Kokilaben, the deceased after his former wife Hansaben died. Hasmukh Ishwarlal is the brother of the deceased, Kokilaben. The respondent and Kokilaben were residing at Gandhinagar in Sector No.23. The parents, two sisters and brother of the respondent were also residing with them. After the marriage, for few months their marriage life was happy and no one had any problem, but later on dissension arose between the two, and both were quarreling often pushing the war-button. Sometimes on the point of ornaments or sometimes on the point of watch or other things, either of the two used to pick a fight. The respondent never missed a chance to nettle Kokilaben and nag her. Continuously she was scorched with invectives. She was treated like a chattel and a beast. Humanism was foreign to the respondent, he was a terror to Kokilaben. She was often humiliated and it was difficult for her to reconcile. Her married life had come under strains. She was made to realise that life was not worth living, and something extreme would be the solution, because by resorting to other available remedial measures she did not like to be out of the frying pan into the fire. On 19-9-83 in the evening the respondent bickered with Kokilaben although she used to swallow her vexation always and bear anguish. She was badly humiliated, and disconcerted, and ideated to die uttering “better die today than tomorrow”. At 9.00 p.m. on that day she went into the kitchen, bolted the door from inside and burnt herself pouring kerosene on her person and committed suicide. A complaint was lodged by Hasmukh the brother of the deceased before the police at Gandhinagar. At the conclusion of the police investigation, the respondent was charge-sheeted for the offence under Section 306 and also Section 201, IPC before the Court of the Judicial Magistrate at Gandhinagar, being not competent in law to hear and decide the matter committed the case to the Court of Sessions, Ahmedabad (Rural) at Narol. The case then came to be registered as Sessions Case No.141 of 1983. A charge Exh. 4 against the respondent was framed to which he pleaded not guilty. The prosecution then led necessary evidence. Appreciating the evidence before him, the learned Judge below reached the conclusion that the prosecution had failed to bring the guilt home to the respondent beyond reasonable doubt. He, therefore, acquitted the respondent. Being aggrieved by the order of acquittal, the State has preferred this appeal.

3. Mr. Raval, the learned APP representing the State submitted that learned Judge erroneously appreciated the evidence and acquitted the respondent.

There was sufficient evidence about terror and frequent quarrels on record going to show clearly that respondent was the tormentor, and that fact was sufficient to hold that the respondent abetted his wife Kokilaben to commit suicide and thereby committed the offence. Our attention was drawn to the evidence of Hasmukh Ishwarlal (Exh.22), Harnarayan Pandya (Ex.24), Sharmishthaben Jasubhai

(Ex.26), and Lilaben Amritbhai (Exh.27). Mr. Japee the learned Advocate representing the respondent contended that generally the in-laws of the husband would always assume wickedness, hostility, design, extravaganza, meanness, wile, and what not ? Because of prejudices and ill-based notions, the in-laws would deprecate the husband and his family members. The neighbours would also be sailing in the same boat adopting sympathetic and sentimental attitude. He, therefore, urged to discard the evidence of these witnesses, who are either the in-laws or neighbours of the respondent.

4. Always the witnesses cannot be condemned on the ground canvassed by Mr.Japee. In some cases without any scruple, on the ground of hostility, ill-based notions and assumption, relationship or neighbourhood, some may be inclined to depose before the court. In law therefore the evidence of such witnesses has to be scrutinized with extra care and very closely. After minutely examining the evidence of such witnesses, if it is found that the evidence is free from doubt, true, appealing, free from prejudices or ill-based notions, and its credibility is beyond impeachment, the court is free to accept the same and place reliance thereon and conclude what is logically possible.

5. A perusal of the evidence of aforesaid four witnesses show that endeavor of everyone is to put his finger on respondent saying that he was never irenical, but inhuman and inimical to the deceased, and his savagery as well as satanic conduct and treatment led the deceased to end her life, but their versions are not free from doubt. Hasmukhbhai (Ex.22) the brother of the deceased has tried to find fault with the respondent recollecting his irksome conducts on different occasions in past as well as subsequent to the incident, but he has not stated all those facts about ill-treatment, harassments, hostility, douceur, and doleful life of the deceased. Harnarayan Pandya the father of Hansaben, the former wife of the respondent has not stated before the police those facts about which he deposed before the court namely his daughter Hansaben also met with the likewise fate. Sharmishthaben and Lilaben have also not stated all those facts before police which they later on stated before the courts. Before the court all have, improving their case suitably, tried to rope in the respondent. As these witnesses have divagated making material improvements, their evidence cannot be termed credible and trustworthy and free from echoing bias, prejudices, ill-will or revenge. The contention advanced on behalf of respondent cannot hence be swept under the carpet.

6. Ignoring the infirmities appearing if their evidence is considered, the prosecution will get no ground to stand upon. No doubt all the four witnesses have stated about the quarrelsome married life of the two as alleged by the prosecution, as well as dejection and mortification of the deceased. It was awful for the deceased to tolerate the situation she was put to after marriage. The emerging effect of their evidence is that married life of Kokilaben was not a buxom but a desolate. However, frequent quarrels making the life desolate is not sufficient, without the apple of discord being on record, to connect the respondent with the offence. Before we proceed we may refer some of the decisions making the law clear.

7. The Apex Court in the case of Chanchal Kumari & Ors. v. Union Territory, Chandigarh - AIR 1986 S.C. 752 has observed that so far as offence under Section 306 about the abetment to commit suicide is concerned, thee should be dependable evidence with regard to actual abetment by the accused. If the dependable evidence is not there the accused would be entitled to acquittal. Latter on the Division Bench of this High Court had the occasion to deal with the question in the case of Rameshbhai Ranchhodbhai & Anr. v. State of Gujarat, - xxx (2) GLR 834 = 1990 (1) Crimes 417 wherein keeping Section 107, I.P. Code in mind it is laid down as under :

“For establishing abetment covered by Clause Thirdly read with Explanation 2, it has to be established that there was intentional aiding. Mere aiding may not amount to abetment unless it is intentional. Mere act or omission on the part of a person which, in fact, results in facilitating the commission of the offence will not satisfy the requirements of Explanation 2, it has to be established that there was intentional aiding. Mere aiding may not amount to abetment unless it is intentional. Mere act or omission on the part of a person which, in fact, results in facilitating the commission of the offence will not satisfy the requirements of Explanation 2 of Clause Thirdly. What is required to be established is that the person against whom the charge of abetment is levelled has done something in order to facilitate the commission of the offence. What is, therefore, required is that the person against

whom charge of abetment is levelled has to do something purposefully which facilitates the commission of the offence. It cannot be said with any stretch of imagination that a person subjecting a woman to cruelty is guilty of abetment. Sections 306 and 498 A are two independent Sections in the Indian Penal Code. While considering the guilt or otherwise of an accused for the offence punishable under Section 306 and 107 I.P.C. Section 498A I.P.C. is out of question so far as the question of abetment is concerned. In view of this, it is difficult to support the finding of the learned Trial Judge that the appellants are guilty of the offence punishable under Section 306 I.P.C.

Likewise question arose before the Calcutta High Court in the case of Niharbala Banerjee & Anr. v. The State. 1989 Criminal Law Journal (NOC) 38 wherein it is made clear that "The mere fact that the deceased wife was treated with cruelty by her husband and her in-laws is not sufficient to prove the abetment by the husband in commission of suicide. There must be mens rea or community of intention. Without knowledge or intention there can be no abetment and the knowledge, and intention must relate to the crime and the assistance must be something more than a mere passive acquiescence. In the absence of proof of any direct or indirect acts of incitement to the commission of suicide or a conspiracy or any act facilitating the commission of suicide, it cannot be said that the accused was guilty of abetment to commission of suicide." We think it worthwhile to refer the decision of the Supreme Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra - (1984) 4 S.C.C. 116 wherein psychological aspect of suicide is nicely dealt with observing :

"The psychological aspect of suicide is an important factor to be taken into account while reappreciating the evidence. The melancholy marriage may create so much of emotional disorder resulting from frustration and pessimism that one may become psychotic and develop a tendency to end his life, persons with such psychotic philosophy or bent of mind always dream of an idea; they possess a peculiar psychology which instills extreme love and devotion but when their ideal fails or when they are faced with disappointment or find their environment so unhealthy or unhappy, they seem to lose all the charms of life and they are driven to end their life. Ruptured personal relationship plays a major part in the clinical picture. Further, the psychologically oriented theories view that suicide is a means of handling aggressive impulses engendered by frustration. Revenge fantasies are associated with suicide. In cases of women of sensitive and sentimental nature it has usually been observed that if they are tired of their life due to the action of their kith and kin, they become so desperate that they develop a spirit of revenge and try to destroy those who had made their lives worthless, and under this strong spell of revenge sometimes they can go to the extreme limit of committing suicide with a feeling that the subject who is the root cause of their malady is also destroyed. Moreover, the constant fact of wailing and weeping, feeling miserable, feelings of hopelessness about the future, suicidal thoughts etc. which show depressed mood as also factors such as fear, anxiety and worry are some of the important symptoms of an intention to commit suicide".

8. If the evidence is viewed keeping such law in mind, we do not see any reason to accept the contention advanced on behalf of the State and upset the finding of the lower Court. Simply some one comes before the Court and says that both the spouses were often quarreling is not sufficient because that would not clearly establish the knowledge or intention relating to the crime and proximate assistance. There may be difference of opinions. If on one or another issue the spouses are often quarreling, it is the usual wear and tear of the married life, and certainly that would not lead any one to end his/her life. One would bring end of his/her life if he / she is put to the compelling or alarming circumstances with no option. The prosecution has, therefore, to show what was the apple of discord so as to determine about abetment. The case in general terms is not sufficient. Here in this case it is not made clear as to what was the subject of quarrels, on the day of the incident what was the issue, who initiated the quarrel, in what context both were quarreling, and who was at fault for the quarrel. With regard to the past quarrels also it is ambiguously and in general terms alleged and stated that both were often quarreling, but it is not made clear in what context, and who was at fault ? The party at fault if ultimately facing frustration of his/her plan goes to the extreme, i.e. suicide, the opposite party cannot be blamed and held liable. In different words, if extremity is one's own creation, and the opponent is blamed, it would amount to roguery supplants justice. Nothing can be inferred or assumed

for or against the party or the court cannot jump to the conclusion that husband is always at fault, and wife is the victim of the wickedness of the husband. As made clear by the Calcutta High Court in the case of Niharbala Banerjee (supra) there is also no evidence about the knowledge and intention relating to the crime and proximate assistance. It is pertinent to note that the Calcutta High Court has held to which we agree that merely on the fact that the husband was not treating the wife properly and was treating her with cruelty will not be sufficient to establish the abetment. In this case, even if on the basis of the evidence of the above referred witnesses it is assumed that the respondent was often quarreling with the deceased, that will not amount to abetment for committing suicide it might be owing to above quoted psychological factors and symptoms taking shape independent of abetment.

9. In view of this matter, Mr. Raval the learned APP drew our attention to the evidence of Sharmishthaben recorded at Exh.26. According to Sharmishthaben on the day of incident few hours before the incident the deceased was inquiring about the floor mill as she wanted to go there taking grist. Thereafter she started to cry and on being asked she stated about the ill-treatment. Few hours thereafter when Sharmishthaben went into her kitchen she could hear hot exchange of words and found that respondent and Kokilaben were quarreling. She then heard the utterance of respondent, viz. "better die today than tomorrow". Whether such utterance can be said to be the abetment in the eye of law has to be examined, for it might be the outburst of one's own fatuity or anger or consternation without any intention or knowledge, or might be the rude or insulting but firm reaction rather than nurturing the desire or stubbornness or levity. Abruptly, without considering merits or demerits of the issue one would jump to the conclusion against the husband. The court has to dissect the merits thereof and reach to the just and proper conclusion. In what context the same has been uttered has to be examined, but unfortunately the evidence about the context is conveniently kept away from the Court, or who was at fault is also veiled, and therefore it would not be just and proper to jump to the conclusion only on the basis of that statement that the accused abetted. Apart from this aspect the evidence of Sharmishthaben is also not reliable. In the cross examination she had to admit when necessary questions were put to her that she did not state before the police about the quarrels in past, and the fact that the deceased used to tell her about her miseries and woes. When she has not preferred to state about the quarrels and the information she used to gather about the ill-treatment, miseries and woes from the deceased, and has preferred to state before the Court, it can be said that here is a witness who has made alarming improvements so as to rope in the respondent. The Court also cannot overlook the tendency of relatives and neighbours who add facts or shape the case differently out of love and affection or sympathy for the deceased, and hatred or prejudice towards the husband or in-laws of the deceased. Owing such tendency and the improvements in the case, the prudence dictates that we should insist for corroboration. There is no corroborative evidence about the statement alleged to have been made by the respondent which according to the prosecution immediately abetted the deceased to end her life. Lilaben Amrutbhai is the next door neighbour. But she is silent on this aspect and there is no credible corroboration to the evidence of Sharmishthaben who has come forward with the abetting statement made by the respondent.

10. It was next contended on behalf of the State that soon after the incident the respondent remained inert and slothful as if nothing had happened in the house and he was having no concern whatsoever . He ought to have extricated the deceased and gone to the hospital along with the others for providing the best treatment. His such unnatural conduct points to his guilty consciousness. No doubt, Hasmkh the brother of the deceased has accordingly tried to expose the respondent. But we cannot miss to note one of the facts brought on record. Sudhaben Jitendrabhai (Exh.29) has been examined. She had rushed to the scene of the offence soon after she came to know about the same. When asked, she has showed ignorance about respondent's going to the hospital. On being trapped drawing her attention to her police statement, she had to admit that before the police she did make the statement that when the deceased was being put in the ambulance van, the respondent requested many others present there to accompany him to the hospital and help him, and into the ambulance van he did board and take his seat and went to the hospital. We are aware about the fact that the evidence before the police is no evidence and that cannot be considered, but the evidence of this witness shows that suitable improvements about the conduct of the respondent have been made by the prosecution so as to make

him appear a rogue. We cannot therefore on such incredible evidence jump to the conclusion that respondent was inert and his conduct was highly deplorable indicating the criminal mind. The contention must therefore fail.

11. Before we pass the final order, we think it proper to mention that we agree with the learned Additional Public Prosecutor that atrocities on women are going berserk. The society and State have to face setback as such incidents lead us from civilization to barbarism. Everything moves to the reverse. Hence the courts have to heavily come down upon the criminals. The courts are also equally worried about the atrocities on women but we, as the Court, have to appreciate the evidence and decide the case remaining within the four corners of law. Our satisfaction or a doubt is not sufficient, if it is not consistent with law, and we cannot on the basis of conjectures and inferences jump to the conclusion against the accused. In law it is incumbent upon the prosecution to prove the charge beyond reasonable doubt and if prosecution fails to prove the same, the court would be helpless. For the aforesaid reason, the charge is not proved. Consequently we have to reluctantly pass the final order confirming the order of acquittal. No other submission was advanced.

12. In the result, the appeal being devoid of merits, is, hereby dismissed.

(NMA) **Acquittal appeal dismissed.**

(v) **1995 (2) G.L.H.559**

K.J. VAIDYA, J.

State of Gujarat ..... Appellant

Versus

Zalabhai Vadhabhai & Anr. ..... Respondents

Criminal Appeal No.381 of 1988*
D/14-12-1994

(A) Indian Penal Code, 1960-S. 498A - Acquittal by the learned Magistrate - Complaint and charge both indicate that offence u/S. 306 of the I.P. Code is also made out - Magistrate has no jurisdiction to try the case - Patent and obvious error committed by the Magistrate in assuming jurisdiction - Trial for the offence u/S. 498-A only is void ab initio.

(B) Criminal Procedure Code, 1973 - S. 211 - Charge - Before framing a charge the Court has to carefully peruse the police papers and appropriate offences must be specifically alleged against the accused Framing up of the charges is not an idle formality.

Both the complaint at Exh.1 and the charge at Exh. 3 are crystal clear indicating that the offence alleged against the respondents clearly fell within the purview of S.306 of Indian Penal Code and despite this glaring legal position, for whatever reasons, the learned Magistrate has committed a patent and obvious error in assuming jurisdiction. It is hardly required to be told that whenever any learned Magistrate or for that purpose a learned Sessions Judge is required to frame a charge, he has to carefully peruse the police papers and on the basis of the same only, appropriate offences must be specifically alleged against the accused. Framing up of the charges is not an idle formality. As a matter of fact, so far as the commencement of the proceedings before the learned magistrate are concerned, in Chapter-XVI of the Code, there is a provision by way of S.207 of the Code, which pertains to supply to the accused a copy of police report and other documents. This S. 207 in its proviso clearly indicates that the learned Magistrate is required to peruse the statements recorded under sub-Section (3) of S. 161 of the Code of all persons whom the prosecution proposes to examine as its witnesses. If the learned Magistrate had undertaken this exercise of applying his mind to the facts alleged in police papers, then in that case, the eventuality which has unfortunately befallen in the instant case of not framing the charge under S.306 of Indian Penal Code would not have been there. As a matter of fact, further guidelines are given in S. 211 of the Code as regards the contents of the charge. It appears that perhaps because in the charge-sheet itself the Investigating Agency has stated the alleged offences were under Ss. 498-A and 114 of Indian Penal Code, the learned Magistrate has mechanically fallen in trap and framed the charge accordingly. Thus, both the Investigating Agency as well as the learned Magistrate have overlooked the specific provisions under S.306 of Indian Penal Code, which distinctly refers to the abetment of suicide. In this view of the matter, neither S.107 nor S.114 of the Indian Penal Code could have been resorted to. Be the case as it may, the fact remains that because both the Investigating Agency and thereafter the learned Magistrate did not apply their mind to the facts of the case, that the error in question has been taken place. In this view of the matter, it further appears that the learned Magistrate instead of committing the case to the Court of Sessions conducted the case himself. Thus, this being 'ex facie' the jurisdictional error going to the root, it renders the entire trial void-initio. Under the circumstances, neither the learned APP can be permitted to argue that there is sufficient evidence for recording the order of conviction and sentence nor the learned Counsel for the accused can be permitted to submit that the order of acquittal should remain as it is. This court is quite conscious of the fact that the alleged offence is of the year 1987 and by this time as many as 7 years have passed, but that would be hardly a ground to condone the patent mistake committed by the learned Magistrate because the offence alleged is indeed a very serious offence

* Acquitial Appeal against the judgment & order of J.M.F.C. Santrampur dated 8-1-1993 in Criminal Case No.731 of 1987.

against the young women recently married and that such offences in the society are found increasing day by day.

Appearances :

Mr. P.S. Chapaneri, APP for the appellant-State

Mr. D.F. Amin, Advocate for the respondents

K.J. VAIDYA, J:-

1. This appeal by the State of Gujarat is directed against the impugned judgment and order dated 8-1-1988 rendered in Criminal Case NO.731 of 1987, passed by the learned JMFC, Santrampur, wherein the respondent Zalabhai and his father Vadhabhai Ganeshbhai Baria who came to be tried for the alleged offences punishable under Section 498-A read with Section 114 of the Indian Penal Code, were at the end of trial ordered to be acquitted.

2. In substance, to briefly narrate the prosecution case as it gets unfolded from the Complaint (Exh.1) filed by Mr.P.B. Shukla, Dy. S.P. Lunavada, the incident in question wherein Bai Lila hanged herself to death due to the alleged cruelty perpetrated upon her by her husband Zalabhai and her father-in-law, took place on 24-2-1987 at about 10.00 a.m. at village Bhavar. On the basis of this allegation, after the investigation was over, the accused came to be chargesheeted to stand trial for the aforesaid alleged offences before the learned J.M.F.C., Santrampur. Thereafter the learned Magistrate on 18-7-1987 framed charge (Exh.-3) alleging that Bai Lila, aged 21 committed suicide due to the cruelty perpetrated by her husband Zalabhai and father-in-law Vadhabhai, and accordingly, they are liable to be punished under Section 498-A and 114 of the IPC.

3. At trial, the respondents pleaded not guilty and claimed to be tried. The learned magistrate after duly appreciating the prosecution evidence brought on the record, acquitted the accused, giving rise to the present appeal.

4. Mr. P.S. Chapaneri, the leaned APP for the Appellant-State, while challenging the impugned order of acquittal has raised a preliminary objection to the fact that the learned Magistrate had indeed no jurisdiction whatsoever to conduct the trial in view of the crystal clear facets emerging from the police papers itself where the offences alleged against the respondents were not only under Section 498-A of the Indian Penal Code but the same also very well fell within the purview of Section 306 of Indian Penal Code, which pertains to "abating the commission of suicide" and for which the punishment provided is upto ten years. In this view of the matter, according to the learned APP since the case was exclusively triable by the Court of Sessions, the learned magistrate committed patent illegality in trying the same and ultimately acquitting the accused. Thus, when the trial was ab initio void, the matter deserves to be remanded to the Sessions Court having the jurisdiction to try the same.

5. When Mr. D.F. Amin, the learned Advocate for the respondents was confronted with this point-blank contention regarding jurisdictional error committed by the learned Magistrate, raised by the learned APP, he had no answer and rightly so, except saying that having regard to the nature of evidence brought on the record impugned order of acquittal cannot be said to be illegal one.

6. Now the point raised by the learned APP indisputably being a neat question of law going to the root of the jurisdiction, the same is required to be decided in favour of the prosecution. It is indeed unfortunate that the learned magistrate without applying his mind to the facts alleged in the complaint as well as in the police papers, mechanically framed the charge, assumed the jurisdiction, conducted the trial and acquitted the accused. Both the complaint at Exh. 1 and the charge at Exh. 3 are crystal clear indicating that the offence alleged against the respondents clearly fell within the purview of Section 306 of the Indian Penal Code and despite this glaring legal position, for whatever reasons the learned Magistrate has committed a patent and obvious error in assuming the jurisdiction. It is hardly required to be told that whenever any leaned magistrate or for that purpose a learned Sessions Judge is required to frame a charge, he has to carefully peruse the police papers and on the basis of the same only, appropriate offences must be specifically alleged against the accused. Framing up of the charges is not an idle formality. As a matter of fact, so far as the commencement of the proceedings before the

learned Magistrate are concerned, in Chapter-XVI of the Code, there is a provision by way of Section 207 of the Code, which pertains to supply to the accused a copy of police report and other documents. This Section 207 in its proviso clearly indicates that the learned Magistrate is required to peruse the statements recorded under sub-Section (3) of Section 161 of the Code of all persons whom the prosecution proposes to examine as its witnesses. If the learned Magistrate had undertaken this exercise of applying his mind to the facts alleged in police papers, then in that case, the eventuality which has unfortunately be fallen in the instant case of not framing the charge under Section 306 of Indian Penal Code would not have been there !! As a matter of fact, further guidelines are given in Section 211 of the Code as regards the contents of the charge. It appears that perhaps because in the charge-sheet itself the Investigating Agency has stated the alleged offences were under Section 498-A and 114 of Indian Penal Code, the learned Magistrate has mechanically fallen in trap and framed the charge accordingly. Thus, both the Investigating Agency as well as the learned Magistrate have over-looked the specific provisions under Section 306 of Indian Penal Code, which distinctly refers to the abetment of suicide. In this view of the matter, neither Section 107 nor Section 114 of the Indian Penal Code could have been resorted to. Be the case as it may, the fact remains that because both the Investigating Agency and thereafter the learned Magistrate did not apply their mind to the facts of the case, that the error in question has taken place. In this view of the matter, it further appears that the learned magistrate instead of committing the case to the Court of Sessions conducted the case himself. Thus, this being 'ex facie' the jurisdictional error going to the root, it renders the entire trial void-initio. Under the circumstances, neither the learned APP can be permitted to argue that there is sufficient evidence for recording the order of conviction and sentence nor the learned Counsel for the accused can be permitted to submit that the order of acquittal should remain as it is. This Court is quite conscious of the fact that the alleged offence is of the year 1987 and by this time as many as 7 years have passed but that would be hardly a ground to condone the patent mistake committed by the learned magistrate because the offence alleged is indeed a very serious offence against the young women recently married and that such offences in the society are found increasing day by day.

6.1 That takes us to the second submission of Mr. Amin that reading the complaint and the police papers as a whole, except the silence and passivity of Vadhabhai Ganeshbhai, father of the respondent No.1, there is nothing on the basis of which he can ever be involved implicated even for the alleged offence of abetment, and if that is the ultimate situation, he should not be tried mechanically just for the sake of trying only, more particularly when by this time, he is about 72 years of age. There is a considerable substance in what Mr. Amin has submitted. Of course, the learned APP has vehemently submitted that once the case was to be remanded for 'de novo' trial, this Court should send the case as a whole without giving any benefit to Vadhabhai. The learned APP further submitted that if indeed there is nothing, then at the time of framing of the charge Vadhabhai can make an appropriate application for discharge, which the learned Sessions Judge would consider on merits. Now this submission of the learned APP has no substance for the simple reason that when the facts alleged on face of it do not hold out even the bleakest prospect of conviction, it would be just a mechanical exercise of power by this Court in remanding the case qua Vadhabhai and that in turn would also to the said extent be non- application of mind of this Court. Moment the Court definitely feels on perusing the papers that there is no substance in the evidence and yet the matter is remanded, it would not only be non-application of mind of this Court but having regard to the fact that Vadhabhai is aged 72 it would be unnecessarily perpetrating hardships on the old man. Bearing in mind this point, this Court is of the view that if Vadhabhai can reasonably taken out while remanding the matter, there is nothing wrong in giving benefit to him by taking him out. At this stage, the learned APP persisting in his contention of remanding the case against Vadhabhai also, submitted that having regard to the provisions contained in Section 386 (a) which pertains to the powers of the Appellate Court, this Court has no power to remand the matter in piecemeal. As regards the powers of the Appellate Court under Section 386, there cannot be any dispute but at the same time this Court is certainly not powerless to make such orders as may be necessary to prevent the abuse of process of law and to secure the ends of justice. In fact there is indeed no express prohibition in Section 386 of the Code, putting falters on the power of High Court under Section 482 whereby it cannot pass any order to

prevent the abuse of the process of Court and secure the ends of justice. Having regard to the facts and circumstances of the case to mechanically remand the case of Vadhabhai would be simply unfair, unjust and illegal.

6.2 It is unfortunate that the Police Officer of the rank of Dy.SP has just lost sight of the fact that the offence alleged against the respondents was also an offence under Section 306 of Indian Penal Code and had indeed the Dy.SP taken due care, the mistake committed by the learned magistrate might not have crept in. Of course that can never be a valid defence for any learned Magistrate who was also duty-bound to peruse the police papers and find out whether he had jurisdiction to try the case or not.

7. In the result, this appeal is partly allowed. The impugned order of acquittal passed qua both the accused is hereby quashed and set aside. The case is remanded to the Sessions Court for retrial of Zalabhai Vadhabhai Baria only for the alleged offence punishable under Sections 498-A and 306 of Indian Penal Code. Having regard to the fact that the alleged offence is of the year 1987, the Sessions Court is directed to give this case a "top-most priority" and decide the same preferably on or before 31st May 1995. Writ to be issued forthwith.

(NMA) Appeal partly allowed.

APPENDIX III

i. List of cases as per the case, names of the woman victim / complainant and the sections applied, referred to in Chapter V (i)

Sr. No.	Case nos.	Names of women victims / Complainants	Section applied
1.	1575/86	Krishnaba Arjunsingh	498-a, 114, 323, 324
2.	1636/87	Not Known	498-a, 114, 323
3.	1637/87	Bhadravati Venkateshwar	498-a
4.	125/88	Shahenaz Banu Salim Khan	498-a, 114
5.	643/89	Padma Rajnikant Chavda	498-a, 114, 323, 504
6.	2309/89	Hemlata Bachubhai	498-a.
7	1736/90	Kokila Madhavlal	498-a, 114, 323, 504
8.	403/91	Bhavna Kiritkumar	498-a, 114, 323, 324, 504
9.	646/91	Narmadaben Maheshkumar	498-a
10.	767/91	Gitaben Sohanlal	498-a, 114, 323
11.	888/91	Krishnaben Puranmal	498-a, 114, 323, 504, 506 (1)
12.	1008/91	Kanchan Shyamlal	498-a, 114, 323,504
13.	1263/91	Jyotiben Dhulabhai	498-a
14.	1478/91	Vijayaben Rameshbhai	498-a, 114, 323,504
15	2135/91	Gitaben Madhabhai	498-a, 114
16.	579/92	Jyotsna Navalsinh	498-a, 114
17.	638/92	Lakshmi Ganpatbhai	498-a
18.	827/92	Lakshmi Girishkumar	498-a, 114, 294, 323, 426
19.	1019/92	Vandana Khandas	498-a, 114
20.	2071/92	Kamlaben Dwarkaprasad	498-a, 114
21.	2153/92	Jyotsna Bhavjibhai	498-a, 114
22.	1724/93	Hansa Harish	498-a, 114

(ii) No. of cases, time spent between complaint and order, reasons for complaints and outcome.

Sr. No.	Case No.	Sections	Date Complaint made	Date order passed	Approx. duration of time taken	Cause	Outcome
1.	1575/86	498-A 114, 323, 342,	13/04/86	31/05/90	4 years & 1 month	Demand of dowry, Childlessness	Suicide (?) Not found
2.	1636/87	498-A, 114 , 323	26/06/87	07/10/89	2 years & 4 months	Scalding with iron rod	Compromise Divorce
3.	1637/87	498-A	05/07/87	02/08/89	2 years & 1 month	Battering	Suicide Compromise
4.	125/88	498-A, 114	26/08/87	09/08/90	3 years	Demand of dowry, Battering	Not found
5.	643/89	498-A, 114, 323, 504	24/03/89	31/07/89	4 moths	Husband and in-laws demanding ornaments at the birth of the first child	Compromise
6.	2309/89	498-A	12/09/89	17/03/92	2 years & 6 months	She became pregnant by her husband despite his wish	Compromise
7.	1736/90	498-A, 114, 323, 504	07/10/90	25/02/91	6 months	Battering, Childlessness	Compromise
8.	403/91	498-A, 114, 323, 324, 504	19/01/91	30/09/93	2 years & 8 months	Battering, Childlessness	Compromise
9.	646/91	498-A	04/03/91	29/10/91	8 months	Wife not liked by the husband, Battering	Compromise
10.	767/91	498-A, 114, 323	06/04/91	01/05/93	2 years & 1 month	Demand of dowry, Battering	Compromise
11.	888/91	498-A, 114, 323, 504, 506 (1)	15/03/91	02/07/91	3 ½ months	Battering, Illicit relationship of the husband protested against	Compromise

12.	1008/91	498-A, 114, 323, 504	14/04/91	14/12/93	2 years & 8 months	Demand of dowry, Battering	Compromise
13.	1263/91	498-A	14/05/91	03/06/92	1 year & 1 month.	Husband did not provide household expenses	Compromise
14.	1478/91	498-A, 114, 323, 504	23/06/91	28/08/92	1 year & 2 months.	Battering, Housework unsatisfactory	Compromise
15.	579/92	498-A, 114	15/04/92	23/09/92	5 months	Demand of dowry, Battering	Compromise
16.	638/92	498-A	26/01/92	30/09/92	8 months	Poison, 5 Children & no household expenses provided by husband	Compromise
17.	827/92	498-A, 114, 323, 294, 426	28/03/92	05/06/92	3 months	Battering, Housework unsatisfactory	Compromise
18.	1019/92	498-A, 114	08/04/92	24/02/93	11 months	Poison, Mental hasassment, Her income demanded by husband and in-laws	Compromise
19.	2071/92	498-A,114, 498-b	02/06/92	24/02/93	8 months	Demand of dowry, Battering	Compromise
20.	2153/92	498-A, 114	07/06/92	22/09/93	1 year & 3 months	Poison, Nothing to eat or feed 2 children, No household expenses provided by husband	Compromise
21.	1724/93	498-A, 114	24/09/93	04/01/94	3 months	Poison, Mental harassment, Her income demanded by husband and in-laws	Compromise
22.	2135/93	498-A, 114	21/08/91	14/12/93	2 years & 4 months	Battering, Housework unsatisfactory	Compromise