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Saumya Singh, *The Indian Judiciary, Domestic Violence and the Delusion of Rampant Misuse*, 8(1) NLUJ L. REV. 185 (2021).

**THE INDIAN JUDICIARY, DOMESTIC VIOLENCE AND THE  
DELUSION OF RAMPANT MISUSE**

ANALYSING THE JUDICIAL PERCEPTION REGARDING THE WIDESPREAD  
ABUSE OF DOMESTIC VIOLENCE PROVISIONS

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**ABSTRACT**

*The judicial perception regarding the widespread misuse of domestic violence provisions by women to harass and victimise innocent husbands and their relatives has been a mainstay in numerous judicial decisions. Over time, this perception has spurred a significant dilution of the procedural aspects of Section 498A of the Indian Penal Code, 1860 and a hesitance in registering cases under it. Further, it has spurred a summary disposal of complaints in some cases under Section 498A and the Protection of Women from Domestic Violence Act, 2005. This paper analyses this judicial perception. Through a critical analysis of the judgements echoing these concerns with respect to these laws, the paper examines the grounds on which this perception is based. The author argues that in inferring rampant misuse based on these grounds, the judiciary has acted in ignorance of the various social and legal barriers faced by*

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*women in accessing and seeking justice from the legal system. The author further examines the reasons for the persistence of this perception in both public and judicial discourse, and traces this persistence to the patriarchal social structure that this perception both stems from and serves to maintain. The paper is concluded by highlighting the need for the judiciary to explicitly recognise the untenability of this perception, and to overrule the extant procedural dilutions.*

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## I. INTRODUCTION

The Indian society has traditionally had very strong patriarchal norms across communities, with women being accorded a very low social status.<sup>688</sup> In many communities, women have been viewed as the property of the father or the husband.<sup>689</sup> For example, Brahmanical texts such as the Manusmriti reflect such a conception.<sup>690</sup> Such patriarchal norms engender the ideas of control and subordination of women<sup>691</sup> and consequently, there has been a high prevalence of domestic violence against women in India.<sup>692</sup> Its pervasiveness is apparent from the findings of the National Family Health Survey 4, which has noted that 30% of women in India in the age group of 15-49 years have faced physical or sexual violence.<sup>693</sup> Domestic violence has further witnessed an alarming increase in the recent months, with the onset of the COVID-19 pandemic and the consequent imposition of a nationwide lockdown.<sup>694</sup>

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<sup>688</sup> Rehan Abeyratne and Dipika Jain, *Domestic Violence Legislation in India: The Pitfalls of a Human Rights Approach to Gender Equality*, 21(2) JOURNAL OF GENDER, SOCIAL POLITY & THE LAW 333, 336 (2012) (“**Abeyratne and Jain**”).

<sup>689</sup> *See id.*

<sup>690</sup> *See* G BUHLER, THE LAWS OF MANU 195 (Oxford 1886).

<sup>691</sup> Sonali Aggarwal, *Patriarchy and Women’s Subordination*, 5(4) BHARTIYAM INTERNATIONAL JOURNAL OF EDUCATION AND RESEARCH 59, 59 (2016).

<sup>692</sup> *See* Abeyratne and Jain, *supra* note 688, at 336- 337; Judith G Greenberg, *Criminalizing Dowry Deaths: The Indian Experience*, 11(2) JOURNAL OF GENDER, SOCIAL POLICY & THE LAW 801, 811 (2002).

<sup>693</sup> INDIAN INSTITUTE FOR POPULATION SCIENCES, NATIONAL FAMILY HEALTH SURVEY 4 (NFHS-4) 2015-16 VOLUME 1 567 (IIPS 2017).

<sup>694</sup> Kanika Arora and Shubham Kumar Jain, *Locked-down: Domestic Violence Reporting in India during COVID-19*, OXFAM INDIA (August 3, 2020), <https://www.oxfamindia.org/blog/locked-down-domestic-violence-reporting-india-during-covid-19>.

Recognising the scale and intensity of the problem, the Parliament of India has passed various laws to curb this menace and provide the survivors with remedies. Over time, Section 498A of the Indian Penal Code, 1860<sup>695</sup> [*hereinafter* “**IPC**”] and the Protection of Women from Domestic Violence Act, 2005<sup>696</sup> [*hereinafter* “**DV Act**”] have been enacted. These provisions have gradually broadened the scope of the legal protection available to women in terms of domestic relationships and abusive conduct covered, the remedies available, and the positive obligations on part of the State to take measures against domestic violence. However, the effectiveness of these laws has been stultified by, *inter alia*, various implementational issues. The judicial perceptions of domestic violence constitute one such issue. Such perceptions have influenced the interpretation and application of the various domestic violence provisions and have arguably militated against the efficacy of the same.

This paper analyses the tenability of one such judicial perception: that the various domestic violence provisions have been heavily misused by women, and have led to the victimisation of innocent husbands and their relatives. It focuses on both Section 498A and the DV Act, as this concern has been expressed very frequently in judgements involving both these provisions, and has significantly influenced adjudication where they are implicated, as has been discussed in this paper. While there has been some

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<sup>695</sup> The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860, § 498A (India) (“**the IPC**”).

<sup>696</sup> The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005, (India) (“**the DV Act**”).

analysis on this perception and its tenability in the existing literature, there have been certain gaps in the same.

*First*, the extant analysis has focused squarely on analysing this judicial perception and its tenability with respect to Section 498A. However, the same has consistently found expression in cases concerning the DV Act as well, and has influenced adjudication through spurring unwarranted summary disposals of cases, as will subsequently be discussed. Further, the untrammelled prevalence of this perception with respect to the DV Act can potentially lead to calls for the dilution of its provisions from both within and outside the judiciary, as has been witnessed with respect to Section 498A. This is especially likely as the provisions of the DV Act have also been criticised as excessively broad in some judgements, as will be discussed. Hence, there is a need to examine the grounds advanced in support of the perception of rampant misuse in the relevant DV Act judgements, and whether the claim is reasonable.

*Secondly*, even with respect to Section 498A, the only ground relied on by judges for this perception that has been sufficiently analysed in the existing literature is that of high acquittal rates. However, there have also been other grounds that have formed the basis of this perception, which need to be critically examined to conclusively determine its tenability and whether it should influence adjudication.

*Lastly*, there has been insufficient analysis of the reasons for the rise and persistence of this perception in both public and judicial discourse

despite the absence of any concrete data supporting it, or of the patriarchal interests served by it.

This paper endeavours to build on the existing literature through conducting analysis on these aspects. It identifies and examines the three grounds relied on by judges for the perception and shows how these grounds do not support the same. In this regard, the paper analyses the various social and legal barriers that women face in both approaching and seeking justice through the legal system. It argues that these barriers preclude the possibility of any widespread misuse of the laws. In the light of its findings, the paper further analyses the reasons for the persistence of this perception in both public and judicial discourse despite its untenable nature. It traces this persistence to the patriarchal social structure that it stems from. Further, it also attributes such persistence to the critical role that the perception has played in maintaining this patriarchal structure, such as by enabling the systematic dismantling of the legal protection available to women. The paper concludes by highlighting the need for the judiciary to explicitly recognise the untenable nature of this perception, especially given the absence of concrete data affirming the same. Such a recognition is crucial especially in the light of the deleterious impacts of the reliance on this perception for the enforcement of domestic violence provisions.

## **II. THE JUDICIAL PERCEPTION REGARDING THE WIDESPREAD MISUSE OF DOMESTIC VIOLENCE PROVISIONS**

Understanding the context and content of the two domestic violence laws is crucial for analysing the perception regarding their misuse.

Section 498A, the first provision in India dealing with domestic violence, was enacted in 1983.<sup>697</sup> It criminalised the treatment of a married woman by her husband and/or his relatives, with ‘cruelty’.<sup>698</sup> ‘Cruelty’ includes harassment meted out to married women in connection with demands for dowry.<sup>699</sup> However, it also includes instances of domestic abuse that are unrelated to dowry, if the same are likely to drive the woman to commit suicide, or cause a “grave injury or danger” to the physical or mental health of the woman.<sup>700</sup> Procedurally, the offence defined by the provision is (a) cognisable and (b) non-bailable. This means that (a) arrest can be undertaken without the warrant of the magistrate, under Section 41 of the Criminal Procedure Code, 1973 [*hereinafter* “**CrPC**”], and (b) bail can only be granted by the courts.<sup>701</sup>

The scope of ‘domestic violence’ was expanded through the enactment of the DV Act. Recognising the multi-faceted nature of domestic violence, the DV Act broadened the scope of the conduct covered to include any conduct that causes physical, sexual, verbal, emotional, or economic abuse.<sup>702</sup> The standard of ‘grave’ danger or injury, as provided under Section 498A, has also not been included under the DV Act. Further, the DV Act is broader in terms of the domestic relationships

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<sup>697</sup> Sawmya Ray, *Legal Constructions of Domestic Violence*, 55(3) SOCIOLOGICAL BULLETIN 427, 430 (2006).

<sup>698</sup> The IPC, § 498A.

<sup>699</sup> *See id.* explanation (b).

<sup>700</sup> *See id.* explanation (a).

<sup>701</sup> Abeyratne and Jain, *supra* note 688, at 354-355.

<sup>702</sup> The DV Act, § 3.

it covers, going beyond marriage to include relationships by consanguinity, adoption, etc.<sup>703</sup> Moreover, unlike Section 498A, which provides only criminal remedies, the DV Act provides for civil remedies such as protective orders and injunctions against the respondent(s).<sup>704</sup> It also envisions the implementation of protective measures on part of the State, such as the appointment of Protection Officers, to help women gain access to the legal system.<sup>705</sup>

Hence, there has been a gradual broadening of the scope of the provisions related to domestic violence in India, on various aspects. However, among some sections, this increase in scope has stoked a concern regarding the misuse of the provisions by women, to harass innocent husbands and their relatives.<sup>706</sup> Even in the absence of concrete data backing such claims,<sup>707</sup> these concerns have increasingly dominated the public sphere, and have even been expressed by judges at various levels.

Section 498A is one provision for which judges have expressed such concerns. In some cases, such as *Lalita Kumari v. Government of UP*,<sup>708</sup> which dealt with general guidelines regarding arrest in case of cognisable offences, the provision has been cited as exemplifying the registration of a

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<sup>703</sup> See *id.* §2(f).

<sup>704</sup> Abeyratne and Jain, *supra* note 688, at 343; see also the DV Act, §§ 18-23.

<sup>705</sup> Abeyratne and Jain, *supra* note 688, at 343; The DV Act, §§ 8, 10, 11.

<sup>706</sup> Biswajit Ghosh and Tanima Choudhuri, *Legal Protection against Domestic Violence in India: Scope and Limitations*, 26 JOURNAL OF FAMILY VIOLENCE 319, 322-323 (2011) (“**Ghosh and Choudhuri**”).

<sup>707</sup> See note 735.

<sup>708</sup> *Lalita Kumari v. Government of UP and Ors*, (2014) 2 SCC 1, ¶ 27, 28 (“**Lalita Kumari**”).

large number of frivolous complaints. Other judgements have dealt squarely with Section 498A and expressed concern regarding the rampant misuse of the same. The provision has been called a “*weapon... by disgruntled wives*”,<sup>709</sup> used in a “*cruel, ruthless, and totally revengeful manner*”<sup>710</sup> and possibly causing “*legal terrorism*”<sup>711</sup> and “*hitting at the foundations of marriage*”.<sup>712</sup> The women allegedly misusing the provision have been termed as “*wolves masquerading in the human flesh*” who must be “*dealt with iron hand*”.<sup>713</sup>

The judicial perception of rampant misuse has also found expression in cases relating to the DV Act, such as *Loha v. The District Educational Officer*.<sup>714</sup> Different courts have raised concerns about the Act being invoked by wives to “*terrorise the husbands, their families and distant relatives*”<sup>715</sup> in order to “*vent their personal vendetta and stake a claim in the properties belonging to the husband and the in-laws*”.<sup>716</sup>

In the context of Section 498A, the Supreme Court of India [hereinafter “**the Supreme Court**”] has held the threat of misuse to be insufficient to affect the constitutionality of the provision.<sup>717</sup> However, the perception of rampant abuse has influenced decisions regarding the

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<sup>709</sup> *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, ¶ 6 (“**Arnesh Kumar**”).

<sup>710</sup> *Social Action Forum for Manav Adhikar v. Union of India, Ministry of Law and Justice and Others*, (2018) 10 SCC 443, ¶ 1 (“**Social Action Forum**”).

<sup>711</sup> *Sushil Kumar Sharma v. Union of India*, (2005) 6 SCC 281, ¶ 18 (“**Sushil Kumar**”).

<sup>712</sup> *Savitri Devi v. Ramesh Chand and Others*, 2006 (3) WLC 332, ¶ 21 (“**Savitri Devi**”).

<sup>713</sup> *Id.* ¶ 28.

<sup>714</sup> *Loha v. The District Education Officer, WP (MD) No 8646 of 2015*, ¶¶ 5-6 (“**Loha**”).

<sup>715</sup> *Anoop and others v. Vani Shree*, 2014 SCC OnLine P&H 14730 (“**Anoop**”).

<sup>716</sup> *Bhartiben Bipinbhai Tamboli v. State of Gujarat*, 2018 SCC OnLine Guj 9, ¶ 23 (“**Bhartiben**”).

<sup>717</sup> *Sushil Kumar*, *supra* note 711, ¶ 13.

procedure to be followed while implementing the same, especially during arrest. Hence, in *Armesh Kumar v. State of Bihar*,<sup>718</sup> the Supreme Court laid down guidelines regarding arrests in the case of cognisable offences involving a potential imprisonment of less than, or equal to, seven years. Even though the guidelines were also applicable to other offences,<sup>719</sup> they were framed with an eye on Section 498A, with only the misuse of this provision being analysed in the judgement. The concern regarding widespread misuse also led the Court to consider “*matrimonial disputes/ family disputes*” as fit for a ‘preliminary inquiry’ into complaints by the police.<sup>720</sup> Such inquiries are focused on ascertaining whether the information provided in the First Information Report reveals the commission of a cognisable offence.<sup>721</sup> Hence, the Supreme Court has effectively created a mechanism for the police to screen Section 498A complaints, based on their opinions of whether an offence under the provision has been committed.

The saga of procedural dilutions culminated with the Supreme Court’s judgement in *Rajesh Sharma v. State of UP* [hereinafter “**Rajesh Sharma**”],<sup>722</sup> with the Court laying down expansive guidelines specifically for the investigation and prosecution of Section 498A complaints not involving physical injuries and death.<sup>723</sup> The same included various unique

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<sup>718</sup> *Armesh Kumar*, *supra* note 709

<sup>719</sup> *Id.* ¶ 14.

<sup>720</sup> *Lalita Kumari*, *supra* note 708, ¶¶ 27-28, 111.

<sup>721</sup> *Id.* ¶ 111.

<sup>722</sup> *Rajesh Sharma v. State of UP*, 2017 SCC Online SC 82 (“**Rajesh Sharma**”).

<sup>723</sup> *Id.* ¶ 19.

measures, such as the constitution of a ‘Family Welfare Committee’ to examine the validity of every complaint before the commencement of the usual criminal procedure.<sup>724</sup> The severe dilution in procedural requirements undertaken in this judgement was heavily criticised by scholars.<sup>725</sup> Further, some of these measures, including the one mentioned, were such significant departures from the CrPC that they were overruled by the Supreme Court later. The ground for the overruling, however, was the inconsistency of the same with the CrPC,<sup>726</sup> and not that *Rajesh Sharma* had overestimated the extent of misuse and acted disproportionately. In fact, some of the guidelines laid down in *Rajesh Sharma* were upheld for being “*protective in nature*”,<sup>727</sup> and continue to remain part of the criminal procedure for Section 498A cases. These include the general exemption for the family members of the accused husband from physical appearance in trial courts, and the rule that Red Corner Notices should generally not be issued to Non-Resident Indians in Section 498A cases.<sup>728</sup> The trial courts had earlier

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<sup>724</sup> *See id.*

<sup>725</sup> Bindu N. Doddahatti, *The Dangerous, False Myth That Women Routinely Misuse Domestic Cruelty Laws*, THE WIRE (August 11, 2017), <https://thewire.in/gender/section-498a-domestic-cruelty-laws> (provides one such critique of the judgement in *Rajesh Sharma*). (“**Doddahatti**”)

<sup>726</sup> Social Action Forum, *supra* note 710; *see also* Rajesh Sharma, *supra* note 722, ¶ 19(i) and CODE CRIM. PROC. § 154; *Rajesh Sharma*, *supra* note 722, ¶ 19(iii) and CODE CRIM. PROC. § 482.

<sup>727</sup> Social Action Forum, *supra* note 710, ¶ 35.

<sup>728</sup> *Rajesh Sharma*, *supra* note 722, ¶ 19. Red Corner Notices are notices published by the Interpol on the request of countries’ National Central Bureaus, requesting for the arrest of an offender with a view to subsequent extradition: *Interpol*, CENTRAL BUREAU OF INVESTIGATION, <https://cbi.gov.in/Interpol-Notices#a>.

enjoyed discretion with respect to these decisions, based on the facts of the case.<sup>729</sup>

The perception of the widespread misuse has hence had a considerable bearing on the judicial dilution of the procedure to be followed in the implementation of Section 498A. Further, such a deep-rooted concern has potentially influenced the adjudication on merits of both Section 498A and DV Act cases, and made judges more suspicious in accepting the prosecution's/petitioner's case. Such a tendency is patent in *Loba v. The District Educational Officer*,<sup>730</sup> where a "bare reading" of the petitioner's affidavit was considered sufficient to infer the misuse of the DV Act by her against her father-in-law, without examining any other relevant evidence regarding the complaint.<sup>731</sup> In the case of the police, the repeated assertion of this concern in judicial pronouncements has led to their rationalising their inaction in carrying out Section 498A arrests through quoting the said judicial decisions.<sup>732</sup> Even the government has bought into this narrative and has directed the police to register Section 498A complaints only as a last resort, after first attempting reconciliation through various counselling and mediation measures.<sup>733</sup> To justify this direction, it has cited "some cases" of the misuse of the provision.<sup>734</sup> Hence,

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<sup>729</sup> *Social Action Forum*, *supra* note 710, ¶¶ 21-22.

<sup>730</sup> *Loba*, *supra* note 714.

<sup>731</sup> *Id.* ¶ 7.

<sup>732</sup> See *Social Action Forum*, *supra* note 710, ¶ 10.

<sup>733</sup> *Victimised Twice Over*, 44(46) EPW 6, 7 (2009); *Misuse of Section 498A- regarding*, MINISTRY OF HOME AFFAIRS (October 20, 2009), [https://www.mha.gov.in/sites/default/files/Adv498\\_220114\\_0.PDF](https://www.mha.gov.in/sites/default/files/Adv498_220114_0.PDF).

<sup>734</sup> See *id.*

there is a need for assessing the basis and tenability of this judicial perception.

### III. AN ANALYSIS OF THE GROUNDS FORMING THE BASIS OF THIS JUDICIAL PERCEPTION

The judicial perception regarding the widespread misuse of Section 498A and the DV Act is not based on any concrete data regarding the extent of the misuse of the provisions, for there exists insufficient data on this point to reach conclusions regarding rampant abuse.<sup>735</sup> In fact, in the context of Section 498A, the existing limited data has pointed to the absence of the rampant misuse of the provision. For example, an analysis of the National Crime Records Bureau data from 2005 to 2009 has revealed that only 9-10% of the cases filed under Section 498A in the period were false in terms of being driven by a mistake of law or fact.<sup>736</sup> An empirical study conducted by the Centre for Social Research has also pointed to a minimal percentage of the examined complaints being found false during investigation (specifically, 6.5%).<sup>737</sup> The lack of sufficient empirical data has even led to a petition by ‘men’s rights activists’ to the Government, to

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<sup>735</sup> In the context of Section 498A, *see* Abeyratne and Jain, *supra* note 688, at 358-359 and LAW COMMISSION OF INDIA, REPORT NO. 243: SECTION 498A IPC (2012) 3. As recently as 2018, the absence of sufficient concrete data was also highlighted by the petitioner in *Social Action Forum*, *supra* note 710, ¶ 8, and the argument was not rebutted by the respondents or the Court.

<sup>736</sup> Swayam, Kolkata, *Section 498A: A Report Based Upon Analysing Data From the National Crime Records, 2005-2009*, PLD INDIA (August, 2011), <https://feministlawarchives.pldindia.org/wp-content/uploads/498A-Report-for-NCW-final.pdf>.

<sup>737</sup> Abeyratne and Jain, *supra* note 688, at 358.

collect the same.<sup>738</sup> In the absence of data affirming the judicial perception of rampant abuse, the judicial decisions expressing concerns over the same primarily base their perception on three grounds:

- (A) The alleged over-breadth of the provisions, and the consequent ability of the same to be misused;
- (B) The existence of individual cases of misuse;
- (C) The high acquittal rate in Section 498A cases.

While the first two grounds have been adopted in cases relating to both Section 498A and the DV Act, the third ground has been prevalent in judgements relating to Section 498A. It hence becomes necessary to analyse if any of these grounds lends credence to the concerns of the judges. The first two grounds will be analysed together, in the first sub-section. The third ground will be examined in the second sub-section. This separation in analysis has been undertaken as the discussion of these grounds requires an examination of different sets of factors. As will subsequently be discussed, a critical analysis of grounds (A) and (B) necessitates an examination of the structural barriers faced by women in approaching the legal system and filing Section 498A or DV Act complaints in the first place. While these barriers have been discussed in existing literature, the analysis of these two grounds and whether they necessitate an inference of rampant misuse has not yet been undertaken. On the other hand, the examination of ground

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<sup>738</sup> *To obtain reliable data by conducting empirical study on misuse of provisions of 498-A IPC*, CHANGE.ORG., [https://www.change.org/p/ministry-of-home-to-obtain-reliable-data-by-conducting-empirical-study-on-misuse-of-provisions-of-498-a-ipc?recruiter=681006065&recruited\\_by\\_id=ac203790-f0dd-11e6-9c51-99246b9ffc02](https://www.change.org/p/ministry-of-home-to-obtain-reliable-data-by-conducting-empirical-study-on-misuse-of-provisions-of-498-a-ipc?recruiter=681006065&recruited_by_id=ac203790-f0dd-11e6-9c51-99246b9ffc02).

(C) merits a consideration of the barriers faced in obtaining Section 498A convictions even in genuine cases once complaints have been filed.

**A. THE ALLEGED OVER-BREATH OF THE PROVISIONS CONCERNED, AND THE EXISTENCE OF INDIVIDUAL CASES OF MISUSE**

In some cases, the allegedly wide scope of the provisions is cited as a factor that, as per courts, makes them prone to misuse. Hence, in the context of the DV Act, the Madras High Court held that the ability of the provisions to be misused would make women use the same to “*teach a lesson*” to husbands and their relatives.<sup>739</sup> In the context of Section 498A, the Supreme Court has expressed concerns of over-breath through arguing that the provision effectively vests police officers with the determination of the contours of ‘cruelty’ and ‘harassment’,<sup>740</sup> and even courts have struggled to reach “*safer conclusion*” regarding the same.<sup>741</sup> This perception of over-breath, as well as the existence of individual cases of (alleged) misuse, have also potentially influenced the judicial approach in the cases where broad generalisations regarding rampant misuse are made without citing any concrete data. Such generalisations have been observed in judgements pertaining to both Section 498A<sup>742</sup> and the DV Act.<sup>743</sup> Even the Malimath

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<sup>739</sup> *Loba*, *supra* note 714, ¶ 6.

<sup>740</sup> *Savitri Devi*, *supra* note 712, ¶¶ 21, 25.

<sup>741</sup> *Id.* ¶ 21.

<sup>742</sup> *Sushil Kumar*, *supra* note 711 and *Preeti Gupta and Another v. State of Jharkhand and another*, (2010) 7 SCC 667 (“*Preeti Gupta*”).

<sup>743</sup> *Anoop*, *supra* note 715 and *Bhartiben*, *supra* note 716, at ¶ 23.

Committee expressed apprehensions about the widespread misuse of Section 498A without citing any statistics.<sup>744</sup>

Scholars have agreed that the provisions related to verbal abuse in the DV Act could have been defined more specifically, with a further definition or standard clarifying the contours of ‘insults’ and ‘ridicule’.<sup>745</sup> However, the breath of the other provisions defining domestic violence cannot be assailed. Broad provisions defining domestic violence are necessary given its the multi-faceted nature, and the need for broad definitions to cover various types and instances of abusive conduct.<sup>746</sup> In any case, merely the breath of the domestic violence provisions and the existence of individual cases of misuse cannot be valid grounds for reaching definite conclusions regarding the rampant misuse of the provisions. In concluding so, the courts have acted in ignorance of the various social factors that deter even genuine domestic violence complaints in India. Available data show that only under 1% of married women facing domestic violence have been able to file criminal complaints,<sup>747</sup> and only in the most extreme of cases.<sup>748</sup> In such a social scenario, the rampant abuse of Section

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<sup>744</sup> DR. JUSTICE V.S. MALIMATH COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM, MINISTRY OF HOME AFFAIRS, REPORT VOLUME I (March, 2003) ¶ 16.4.4.

<sup>745</sup> Ghosh and Choudhuri, *supra* note 706, at 323.

<sup>746</sup> Sanjay Ghose, *Supreme Court Order on Domestic Abuse Cases Is a Step Back for Women’s Rights Law*, THE WIRE (July 31, 2017), <https://thewire.in/gender/supreme-court-domestic-abuse-dowry> (“**Ghose**”).

<sup>747</sup> Doddahatti, *supra* note 725.

<sup>748</sup> Shalini Nair, *498A, battered*, THE INDIAN EXPRESS (June 26, 2018), <https://indianexpress.com/article/india/498a-battered-supreme-court-misuse-of-dowry-law-women-harassment-cruelty-sneha-sharma-allahabad-hc-4794220/>.

498A or the DV Act on the scale exhorted by the courts is highly improbable at best.

There is a general lack of government efforts to raise awareness of the laws, and implement the protective measures prescribed under the DV Act.<sup>749</sup> This contributes to the lack of awareness of the provisions among women.<sup>750</sup> The lack of awareness generation has particularly posed a significant barrier in accessing the legal system for women from underprivileged backgrounds. This was noted in a study conducted in Burdwan in West Bengal, where most cases filed under the DV Act were filed by women from urban backgrounds who had access to the services of lawyers.<sup>751</sup> However, even women who are aware of the relevant legal provisions face various barriers in seeking justice, making even the use of the provisions in genuine cases extremely difficult, much less misuse.

*Firstly*, traditional patriarchal norms privilege the maintenance of family and marriage over the rights of the woman. Under the influence of such norms, various actors in the legal system, from the police<sup>752</sup> to the Protection Officers appointed under the DV Act,<sup>753</sup> have placed heavy

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<sup>749</sup> Ghosh and Choudhuri, *supra* note 706, at 324.

<sup>750</sup> *See id.*

<sup>751</sup> *See id.*

<sup>752</sup> Sowmya Rajaram and Jayanthi Madhukar, *One step forward, two back*, BANGALORE MIRROR (August 27, 2017), <https://bangaloremirror.indiatimes.com/opinion/sunday-read/one-step-forward-two-back/articleshow/60239078.cms>; Prashant K Trivedi and Smriti Singh, *Fallacies of a Supreme Court Judgement: Section 498A and the Dynamics of Acquittals*, 49(52) ECONOMIC AND POLITICAL WEEKLY 90, 94-95 (2014) (“**Rajaram and Madhukar**”).

<sup>753</sup> Aarefa Johari, *Twelve years since the Domestic Violence Act, how well do protection officers help women in need?*, SCROLL (March 28, 2017), <https://scroll.in/article/830882/twelve-years->

emphasis on the re-conciliation of the couple. In some cases, women seeking legal recourses against domestic violence have been exhorted to return to the abusive household to prevent the fragmentation of the family.<sup>754</sup> This overriding concern with preserving the family has found expression even in various judicial decisions, including those of the Supreme Court. One of the grounds on which the courts have criticised the alleged rampant misuse of domestic violence provisions is that “*thousands of marriages have been sacrificed at the altar of this provision*”,<sup>755</sup> and that it stifles any potential reunion of the couple.<sup>756</sup> The prioritisation of the family over the women’s dignity and rights is also reflected in the nomenclature of the Family Welfare Committees sought to be set up in *Rajesh Sharma*.<sup>757</sup> For women, the internalisation of this emphasis on the preservation of the family has often led to their accepting domestic violence without seeking legal recourses, to keep the marriage together.<sup>758</sup> In such a social situation, the widespread abuse of the laws is highly unlikely.

*Secondly*, the performance of state governments in appointing Protection Officers under the DV Act has been dismal at best. Most states

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since-the-domestic-violence-act-how-well-do-protection-officers-help-women-in-need.  
 (“**Johari**”)

<sup>754</sup> Ghose, *supra* note 746.

<sup>755</sup> *Savitri Devi*, *supra* note 712, ¶ 23.

<sup>756</sup> *Rajesh Sharma*, *supra* note 722, ¶ 7.

<sup>757</sup> Deva Bhattacharya, *Domestic Violence: Supreme Court verdict on Section 498A puts family honour over women’s rights*, FIRSTPOST (July 29, 2017), <https://www.firstpost.com/india/domestic-violence-supreme-court-verdict-on-section-498a-puts-family-honour-over-womens-rights-3870627.html>.

<sup>758</sup> *Shades of Courage: Women & Indian Penal Code Section 498A*, TATA INSTITUTE OF SOCIAL STUDIES (1999), [https://www.tiss.edu/uploads/files/6Shades\\_of\\_Courage.pdf](https://www.tiss.edu/uploads/files/6Shades_of_Courage.pdf).

have appointed fewer than the required officers, and some appointments have been carried out merely through assigning additional duties to the existing officers.<sup>759</sup> Even where Protection Officers have been appointed, there have sometimes been issues with their approachability and functioning, such as the lackadaisical attitude of the officer concerned towards the complainant's case.<sup>760</sup> This has deprived women of a significant outreach mechanism envisioned under the DV Act to enable them to access the legal system.

*Thirdly*, in many families, domestic violence is perceived as normal, with inferiority and submission on the part of women being promoted by the patriarchal social structure.<sup>761</sup> Further, violence is often advocated as a disciplinary measure against wives by in-laws, often by the mother-in-law herself.<sup>762</sup> The internalisation of such norms deters women from approaching the authorities in even extreme domestic violence cases, much less for filing vexatious complaints.

*Fourthly*, cultural practices such as patrilocal residence and the sexual division of labour often make women heavily dependent on their husband's families for subsistence.<sup>763</sup> In such situations, there is a strong disincentive to file cases against the husband, since the same might endanger the survival

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<sup>759</sup> Ghose, *supra* note 746.

<sup>760</sup> Johari, *supra* note 753.

<sup>761</sup> Sujata Gadkar-Wilcox, *Intersectionality and the under-Enforcement of Domestic Violence Laws in India*, 15 UNIVERSITY OF PENNSYLVANIA JOURNAL OF LAW AND SOCIAL CHANGE 455, 470 (2012) ("**Gadkar-Wilcox**"); Trivedi and Singh, *supra* note 752, at 91.

<sup>762</sup> Gadkar-Wilcox, *id.* at 470-471.

<sup>763</sup> *Id.* at 465-466.

of the woman.<sup>764</sup> Patrilocal residence can exacerbate the problem by leading to the separation of women from their friends and family, who could have lent them economic and emotional support in the legal battle against the husband and his family.<sup>765</sup>

In such a social context, where there is such heavy deterrence for women to file even genuine complaints, the claim of disproportionately high false complaints becomes extremely difficult to sustain.

The inability to use domestic violence provisions and seek legal redress is heightened in the case of women belonging to lower castes or classes.<sup>766</sup> Even if women from these backgrounds are able to approach the authorities, they might not have the economic means to convince the authorities to prosecute cases, given the prevalence of bribery and corruption.<sup>767</sup> Further, these women are often discriminated against by the authorities because of their caste or class identity, and officers are hesitant and unwilling to file complaints brought by them.<sup>768</sup> Such a callous attitude of the authorities can prove to be a significant deterrent in filing complaints.<sup>769</sup> The lack of economic privilege also precludes women from these backgrounds from filing appeals.<sup>770</sup>

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<sup>764</sup> *See id.*

<sup>765</sup> *Id.* at 471.

<sup>766</sup> *Id.* at 466-469, 470-473.

<sup>767</sup> *Id.* at 468.

<sup>768</sup> *Id.* at 468, 470.

<sup>769</sup> *See id.*

<sup>770</sup> *Id.* at 468.

Hence, the social milieu of the country disadvantages women and militates against their seeking legal redress, in even extreme domestic violence cases. Where the legal system is so unapproachable for even genuine complainants, the abuse of the legal process by women on the scale averred by the courts is highly unlikely. In such a situation, given the absence of concrete data affirming rampant misuse, the breath of the provisions or the existence of individual cases of misuse cannot form the basis of conclusions regarding rampant abuse.

#### **B. THE HIGH ACQUITTAL RATES IN SECTION 498A CASES**

In the context of Section 498A, the high acquittal rates in cases involving the provision have been cited in judgements as proof of its rampant misuse. For example, in *Arnesb Kumar v. State of Bihar*,<sup>771</sup> the Supreme Court justified its perception of misuse by citing National Crime Records Bureau data showing that the conviction rate in domestic violence cases in 2012 was only 15%.<sup>772</sup>

In interpreting this data to imply high levels of misuse of the provision, courts have assumed that acquittal is primarily the result of the frivolousness of the complaints. This assumption, however, becomes untenable when other factors causing such high rates of acquittal are analysed. There exist various lacunae in the implementation of Section 498A on part of various stakeholders in the criminal justice system, that

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<sup>771</sup> *Arnesb Kumar*, *supra* note 709.

<sup>772</sup> *Id.* ¶ 6.

cumulatively result in multiple barriers for survivors of domestic violence to access justice and secure convictions under the provision.

In general, the lack of the implementation of training measures for police officials and judges regarding domestic violence has hampered the implementation of the provisions and convictions thereunder.<sup>773</sup> In the absence of such training, traditional conceptions of domestic violence, marriage and gender roles have dominated decision-making on part of both the police and the courts. On part of the police, domestic violence has often been attributed to the difficulties of adjusting to a new marriage, instead of viewing the same as reflective of a patriarchal social structure and male domination.<sup>774</sup> Often, the female survivor is blamed for the violent behaviour of the husband.<sup>775</sup>

Further, domestic violence has also been viewed as a ‘private matter’, best resolved within the family.<sup>776</sup> In some cases, even egregious instances of domestic violence are considered mere everyday ‘incidents’, and complaints are not registered.<sup>777</sup> Corruption also poses a significant barrier against access to justice. The police are often unwilling to pursue

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<sup>773</sup> The DV Act, § 11(b); Abeyratne and Jain, *supra* note 688, at 351. Such training has been mandated not only with respect to domestic violence but also other offences that require social awareness and sensitivity for proper investigation and adjudication, such as rape. *See* PARTNERS FOR LAW IN DEVELOPMENT, TOWARDS VICTIM FRIENDLY RESPONSES AND PROCEDURES FOR PROSECUTING RAPE 50 (PLD 2015).

<sup>774</sup> Greenberg, *supra* note 692, at 811-13.

<sup>775</sup> *Id.* at 812-13.

<sup>776</sup> *See id.*

<sup>777</sup> *Id.* at 813.

domestic violence cases, especially those against influential persons.<sup>778</sup> Resultantly, owing to these factors, the investigation in domestic violence cases is often lackadaisical, and leads to judges dismissing cases for lack of evidence.<sup>779</sup> Hence, on the level of the police, there are significant barriers to the prosecution of domestic violence cases, contributing to the high acquittal rates.

Some of these conceptions also influence the courts in decision-making, hence adding to the barriers in securing convictions in Section 498A cases and fuelling the high acquittal rates. Subordinate courts are often unwilling to convict those accused of domestic violence, as is visible in their appreciation of evidence.<sup>780</sup> For example, a trial court acquitted the accused based on some discrepancies in the dying declaration of the deceased, even though eight prosecution witnesses testified to domestic abuse.<sup>781</sup>

The Supreme Court has noted the lackadaisical approach of the lower courts in enforcing domestic violence laws, with the accused being acquitted for untenable reasons.<sup>782</sup> Further, the conception of domestic violence as a transitory problem at the beginning of marriages is prevalent in the judiciary, including the Supreme Court. The continuation of marriage

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<sup>778</sup> Abeyratne and Jain, *supra* note 688, at 351.

<sup>779</sup> Gadkar-Wilcox, *supra* note 761, at 464; *see id.*, 351-352; *see also* V Elizabeth, *Patterns and Trends of Domestic Violence in India: An Examination of Court Records*, in INTERNATIONAL CENTRE FOR RESEARCH ON WOMEN, DOMESTIC VIOLENCE IN INDIA: A SUMMARY REPORT OF FOUR RECORDS STUDIES 36, 38 (2000).

<sup>780</sup> Gadkar-Wilcox, *supra* note 761, at 464.

<sup>781</sup> *See id.*

<sup>782</sup> Narsingh Prasad Singh v. Raj Kumar, (2001) 4 SCC 522 (“*Narsingh*”).

in such cases is often the judicially favoured outcome. This perception was reflected in *Preeti Gupta v. State of Jharkhand*,<sup>783</sup> where the Supreme Court exhorted lawyers not to take up ‘frivolous’ cases so as to maintain the “*social fibre, peace and tranquillity of the society*”.<sup>784</sup> Another perception relating to domestic violence that is prevalent among judges and proves a significant barrier in obtaining Section 498A convictions, is that of domestic violence being a ‘private matter’ best settled within the family. Even the Supreme Court has treated domestic violence as an offence of “*overwhelmingly and predominatingly civil flavour*”, best settled through ‘reconciliation’.<sup>785</sup> Since such ‘settlements’ are implemented by the high courts through quashing the complaints under Section 435 of the CrPC, they increase the number of acquittals under Section 498A, even where the original complaint is genuine.<sup>786</sup> Moreover, even though Section 498A recognises physical and mental cruelty as a separate form of cruelty unconnected with dowry harassment, judges still look for evidence of the latter, and dismiss cases in the absence of the same.<sup>787</sup> Judges sometimes also base their decision on the cause of the violence rather than focussing on the violent act itself.<sup>788</sup> Hence, untenable judicial perceptions relating to domestic violence are a significant reason for the high acquittal rates under Section 498A; these data

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<sup>783</sup> *Preeti Gupta*, *supra* note 742.

<sup>784</sup> *Id.* ¶ 31.

<sup>785</sup> *Gian Singh v. State of Punjab*, (2012) 10 SCC 303, ¶ 61.

<sup>786</sup> *Rajaram and Madhukar*, *supra* note 752.

<sup>787</sup> *Ray*, *supra* note 697, at 433-434; *see also* *Richhpal Kaur v. The State of Haryana and Anr.*, (1991) 2 RCR (Cri) 53.

<sup>788</sup> *See id.*

can therefore not be summarily chalked off as a product of widespread misuse.

In addition to the perceptions relating to domestic violence that pervade the legal system, the difficulty of sourcing evidence regarding the offence also stymies the enforcement of Section 498A. Often violence occurs within the house, and obtaining proof of the same is very difficult, for members of the household are socialised to refrain from testifying about ‘private matters’ to maintain the honour and dignity of the family.<sup>789</sup> Sourcing medical evidence has also become difficult where doctors have refused to submit reports of the woman’s injuries, to prevent themselves from becoming involved in the legal proceedings.<sup>790</sup> Moreover, even where evidence is available, judges are often unwilling to enforce domestic violence provisions. In many cases, this leads to untenable approaches in the examination of the evidence.<sup>791</sup> Sometimes, judges dismiss dying declarations on the grounds on the unfit mental condition of the woman, even when the same has been verified by medical experts.<sup>792</sup> Witnesses are declared as hostile in the presence of slight variations in their statements.<sup>793</sup> Overall, the problem of evidence is acute enough to make proving the relevant facts extremely difficult.

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<sup>789</sup> Ray, *supra* note 697, at 435.

<sup>790</sup> Rajaram and Madhukar, *supra* note 752.

<sup>791</sup> Gadkar-Wilcox, *supra* note 761, at 464; Narsingh, *supra* note 95.

<sup>792</sup> Ray, *supra* note 697, at 436; *see also* Ramesh and Others v. State of Haryana, (2017) 1 SCC 529, ¶¶ 1-3, 18, 18.1, 20, 21, 30, 34-35.

<sup>793</sup> Ray, *supra* note 697, at 438.

Hence, on the level of implementation, there are various issues that plague Section 498A. Implementation has significantly been hindered by the traditional and patriarchal conceptions of domestic violence, marriage, and gender roles among the police and judges. Further, many cases of acquittal have resulted from the abandonment or withdrawal of the prosecution by wives, owing to various factors including familial and police pressure<sup>794</sup> and financial constraints.<sup>795</sup> The high acquittal rates in domestic violence cases can hence not be interpreted to signal high levels of misuse of Section 498A. It is therefore erroneous to rely on these data to reach conclusions regarding widespread abuse of the provision, as has been done by the courts.

#### **IV. THE ROOTS OF THIS PERCEPTION OF RAMPANT MISUSE, AND THE PATRIARCHAL INTERESTS SERVED BY IT**

The perception of the rampant misuse of Section 498A and the DV Act is hence untenable in the light of concrete data and the lived experiences of women with the legal system. Nevertheless, it has consistently formed a mainstay of both public and judicial discourse regarding domestic violence. Perhaps unsurprisingly so, for this perception finds its roots in the patriarchal structure of the Indian society, and the

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<sup>794</sup> Ghose, *supra* note 746; Jayna Kothari, *Criminal law on Domestic Violence: Promise and Limits*, 40(46) ECONOMIC AND POLITICAL WEEKLY 4843, 4846 (2005).

<sup>795</sup> Trivedi and Singh, *supra* note 752, at 95.

misogynistic attitudes promoted by it towards women who approach the legal system. Further, the perception serves various patriarchal ends.

A significant facet of the Indian society across communities has been the pervasiveness of values and norms furthering the control and subordination of women.<sup>796</sup> Further, 'saving' families and marriages has consistently been privileged over the dignity and rights of women.<sup>797</sup> In such a social structure, submissiveness to marital and familial oppression is taken as the norm, and women who attempt to break the shackles and reach out to the legal system are perceived as deviants 'misusing' the law.<sup>798</sup> In various ways, their complaints are sought to be chalked off as instances of the abuse of the legal system, by actors both outside and within it. These include imputing various nefarious motives to complainants, branding them as 'oversensitive', and downplaying the violence faced by them as transient 'adjustment' problems.<sup>799</sup> Through 'settlements' and more recently, Family Welfare Committees, every attempt is made to save oppressive marriages and families, at the cost of women's rights and lives.

Besides stemming from the patriarchal social structure, this perception of rampant misuse significantly contributes to its maintenance. In two crucial ways, this perception has played a key role in turning the clock back with respect to the legal protection available to women, hence ensuring that patriarchal familial oppression is sustained.

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<sup>796</sup> Aggarwal, *supra* note 691, at 59.

<sup>797</sup> Bhattacharya, *supra* note 757.

<sup>798</sup> Flavia Agnes, *Section 498A, Marital Rape and Adverse Propaganda*, 50(23) ECONOMIC AND POLITICAL WEEKLY 12, 13 (2015).

<sup>799</sup> Ghose, *supra* note 746.

*Firstly*, it provides a ground for legitimising heavy procedural dilutions, hence eating away at the efficacy of the legal provisions in ensuring justice in domestic violence cases. For example, in *Social Action Forum for Manav Adhikar v. Union of India* [hereinafter “**Social Action Forum**”], the Supreme Court did not find anything problematic in the substance of the guidelines laid down in *Rajesh Sharma*. On the contrary, they were perceived as preventing “*unfairness and unreasonableness*” by establishing a “*fair procedure*” for arrests and investigations in Section 498A complaints.<sup>800</sup> Hence, if the same are introduced again as a legislative measure, they will probably stand judicial scrutiny, effectively placing the woman’s complaint hostage to the opinions of an untrained bunch of volunteers. Even at present, though the Family Welfare Committee mechanism stands dismantled, the work of screening complaints is instead effectively being undertaken by the police, through the ‘preliminary inquiries’ allowed by the Supreme Court to curb the alleged misuse. Another example of such significant procedural dilutions is the attempt by the various actors in the legal system, from the Law Commission of India<sup>801</sup> to the Union Government,<sup>802</sup> to make Section 498A compoundable and legally enable reconciliations in false or ‘trivial’ complaints. In the process, there has been a blatant disregard for the various forms of pressures faced

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<sup>800</sup> *Social Action Forum*, *supra* note 710, ¶ 36.

<sup>801</sup> Law Commission of India, *supra* note 735, at 41.

<sup>802</sup> *Government plans to amend anti-dowry harassment law*, THE ECONOMIC TIMES (March 15, 2015), <https://economictimes.indiatimes.com/news/politics-and-nation/government-plans-to-amend-anti-dowry-harassment-law/articleshow/46571163.cms>.

by survivors to withdraw complaints and arrive at ‘settlements’. In the context of the DV Act, though no official proposals for dilutions have been made yet, the situation may change in the near future. This is because of the government gradually buying into claims of misuse of the DV Act.<sup>803</sup>

*Secondly*, because of the vehement assertion of this perception, the focus of reform stays on curbing the alleged misuse. Hence, the discourse stays clear of examining ways to address the various barriers to accessing justice in domestic violence cases, as well as challenging the problematic notions regarding domestic violence that have pervaded the legal system. The judgement in *Social Action Forum* is a quintessential example of this phenomenon. In the case, the sole focus of the Supreme Court remained the alleged rampant misuse of the provisions by women, and the appropriate measures to curb such misuse. In the process, the other aspects of the prayer of the lead petitioner, focussing on the implementation of measures to make the legal system more accessible for women, remained unaddressed.

Hence, in various ways, this perception serves patriarchal interests by contributing to the maintenance of women’s subordination within the family.

## V. CONCLUSION

The perception that domestic violence provisions have been significantly misused by women has been a constant in many domestic

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<sup>803</sup> *Domestic Violence Act misused: Centre*, THE HINDU (May 12, 2016), <https://www.thehindu.com/news/national/domestic-violence-act-misused-centre/articl e8586646.ece>.

violence judgements. The same has significantly influenced the dilution of the procedural rules to be followed in such cases, and judges' decisions in domestic violence cases. However, an analysis of the grounds for this perception reveals that the same is based on an ignorance of the social and practical barriers faced by women in pursuing domestic violence cases. Further, judges cite high acquittal rates as pointing to the rampant misuse of the provisions, specifically Section 498A. They hence fail to recognise the various social and legal factors that influence the high acquittal rates in such cases. This perception of rampant misuse has persisted in part because it stems from and reinforces the patriarchal values and norms deeply embedded in the Indian social structure. Further, over time, it has served various patriarchal ends by playing a significant role in turning the clock back on the legal protections available to women.

Such a perception must not influence adjudication. To this end, all the judgements that have affirmed and sought to prevent this rampant misuse must be overruled to that extent. For example, the guidelines diluting the procedure in Section 498A cases that were laid down in *Rajesh Sharma* based on this perception, and upheld in *Social Action Forum*, must be overruled. Concomitantly, there needs to be a comprehensive examination of the tenability of the various other judicial perceptions relating to domestic violence as well, such as instances of violence being transient issues best settled through reconciliation. Thus, there is a need for the explicit recognition of the misperception on part of the judges that domestic violence provisions are subject to misuse by women and their relatives, which would, in turn, increase the efficacy of legal provisions

concerning domestic violence, and would help reduce the barriers in access to justice for victims.