A Report
on

Protection of Women from Cruelty

A Critical Study on Enforcement of Sec.498-A of Indian Penal Code.

Supported By:

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Content

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In my journey to trace the real position of the law in the contemporary society concerning cruelty on women in the marital home and the consequential impact on women as a result of affording legislative protection, I have come across many individuals and institutions who deserves to be duly acknowledged for making me understand that the final destination of justice can be approached through several ways, many well known paths which researchers generally follow but at the same time there are several less traversed avenues. Unless all possible roots are discovered, the final image of law may appear significantly different. It is almost impossible to name all of them who have enriched my knowledge with their acumen, even so, at the beginning; I need to reiterate my deep gratitude to OXFAM India not only for the financial support to undertake this study but also for encouraging me to build the courage to venture into the area. The crusade that the Oxfam India has undertaken is of great significance, particularly in a society which almost united and unilaterally made a declaration that the provision of law to protect women from cruelty in their marital home is grossly misused. Therefore, I am very proud to have been associated with Oxfam India to undertake a study of this nature.

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Bikash Das

Preface

This report is an outcome of a study undertaken by CLAP in Odisha with support of Oxfam India on the subject of Cruelty against Women in Matrimonial Home. In the Indian social fabric the status of women is not only unequal in comparison with their counterpart male member but also women are subjected to various forms of atrocities due to their vulnerable position. Over the years emphasis has been accorded on empowerment of women to enhance their capacity to lead a life with dignity fortified with socio-cultural and economic development in the process of planning by the State including prevention of crime against them. However, women continue to suffer double jeopardy. Considering the vulnerability of women especially in the matrimonial home which sometimes drive them to commit suicide or being harassed to such an extent that life of such women comes under threat or met with death, the state in India contemplated legislative measures to protect women from violence. One such attempt of the State was to incorporate a provision in the Indian Penal Code in Section 498-A relating to cruelty on women. The provision in the Indian Penal Code provides that husband or relative of husband of a woman subjecting her in cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

The Indian society has witnessed since incorporation of above mentioned provision in the Indian Penal Code that in spite of proclamation in the penal law that subjecting women to cruelty would constitute an offence and shall be punishable by law as a culpable act, there has been several untold miseries perpetrated on women in various magnitude and diverse forms. The sagacious endeavour by the state and society does not help women to lead violence free lives.

In a society where women do not enjoy equal status and where the life as well as liberty of women as a class are at risk in spite of legal protection through provision made in the penal law, it is contingent upon the state to enhance the capacity of institutions which are created for women. But in contrast it is observed that pressure on the state is being built to unfasten the legal safeguard on the ground of the provision being misused. Before any uninformed decision is made on the subject, it would be meticulous to gather evidences and undertake studies for appropriate policy reform. However, one can observe that there is a void that exists in India with regard to systemic study of the legal provision relating to cruelty. In response to it, the present study has been planned and an engagement has been made with the subject.

Hopefully, the present study would provide adequate insights and evidences concerning the working of law to safeguard women in their matrimonial home. The study would contribute to build knowledge to understand the rhetoric and

realities about the state response to cruelty against women in its totality. It is expected that the findings of the study would serve the purpose of giving proper orientation to penal laws of the country in order to protect women from violence.

BIKASH DAS

Executive Summary

Purpose:
The present study is designed with the purpose of exploring the present position of protection of women from cruelty in a marital relationship with reference to Section 498-A of Indian Penal Code primarily to understand the level of awareness among victims about the implication of the provision made under Section 498- A of Indian Penal Code, its application by the victim, nature of support derived and the role of major stakeholders like the police, prosecution, defence lawyer and judges along with the family of the victim and finally the magnitude of its use by women. The study aims at building evidence based knowledge concerning level of use of this particular provision by women.

Context:
In order to prevent cruelty on women in a marital relationship a special legal measure had been incorporated in the Indian Penal Code under Section 498-A. This provision provides that the husband or relative of husband of a woman subjecting her to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Thereby culpability in matters of wilful conduct whether mental or physical which is of such a nature as is lightly to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman or harassment of the woman where such harassment is done with a view to coercing her or any person related to her to meet any unlawful demand for property, valuable security or failure to meet such demand has been fixed under the criminal law and such act would constitute an offence under penal law. In view of the above stated provision in the penal law there has always been a possibility that the husband and his relative might be roped in and put behind bar when a case is lodged against them by the wife. In fact there has been a series of cases where the husband and his relative approached the higher judiciary with the allegation that the provision is being grossly misused by woman. While deciding cases in many occasion, the High Courts and Supreme Court have given obiter dicta that the provision is being misused. These development in various quarter opens up the scope for reform in the penal law. It is in this backdrop that the present study has been undertaken to understand and build knowledge concerning the application of penal law in matters of cruelty on women in marital home.

Methodology:
The present study has been conducted based on the established principles and norms of legal research. It heavily relied on case laws and case materials to approach the subject under investigation. For this purpose reported case materials of High Court of Odisha have been collected from law journals of a specified period of fifteen years for review and analysis. The present study is

also an empirical investigation into the subject for which a number of methods are systematically followed. An extensive engagement with women who have lodged cases in different police station of Odisha which were registered under Section 498-A have been made with a view to collect primary information. In this regard interview with such women has been conducted for one to one interaction. The study also made an attempt to collect views of stakeholders like lawyers in focus group discussion to understand with whole process of criminal justice system and its application in the matter of cruelty on women. Broadly the present study is a non-doctrinal empirical research with a defined proposition to explain the subject.

Structure of the Report:

The Report of the Study is presented in eight different chapters. It started with an Introduction which provides the background of the subject with citation of cases. In this chapter an extensive attempt has been made to understand the meaning of cruelty from the perspective of existing position of law. This chapter contains the proposition, methodology and research questions which were designed under the framework of research. The second chapter of the Report deals with the overall situation of crime against women as provided in the official record including the white paper being brought out by the Government of Odisha. This chapter provides an analytical state of offences against women in India in general and Odisha in specific with position of incidence of cruelty on women as defined in the penal law. It would help understanding the magnitude of the problem and also to locate the subject of cruelty on women as a form of offence in the society. In the third chapter a review of judgements and orders of Odisha High Court in the matter of Section 498-A of Indian Penal Code over a period of fifteen years has been made to build knowledge concerning the process of adjudication and disposal of cases. The views and opinion of lawyers concerning the subject under investigation has been dealt with in chapter four. This chapter in a sense provides an explanation to the research question as to why it is viewed widely that the provision under Section 498-A is misused. Chapter five of the report is about engagement with women who are victims of violence and who have lodged cases in different police stations being subjected to cruelty. The analysis of findings of the study and recommendations based on the findings are given in subsequent chapters respectively. The report comes to an end with a chapter titled conclusion.

Argument on Violence by Private Individual:

The study is built in the broader premise of argument advanced by the scholars of human rights that when violation of human rights are perpetrated by private individual and not the state actors, the state has the ultimate responsibility to prevent occurrence of such violence and protect the individual through effective measures and institutions. Cruelty on women by and large is committed by private individuals in the domestic matrimonial relationship

which has serious impact on the life and liberty. In order to protect women in marital home from the husband and relatives of the husband of the wife the state in India has introduced penal provision as a state response. The state is duty bound under international law, constitutional mandate and also statutory provisions to protect the life and liberty of individual including women who suffer cruelty in their marital homes.

Findings:

The study brings into focus based on review of case materials that over a period of fifteen years a limited number of cases have come up before the High Court of Odisha where the final judgement had been arrived at in the trial court. All such cases where the final judgement of the trial court were challenged in the High Court the order is reversed due to insufficient evidences and lack of witness. It was noticed that in many cases the High Court had exercised its inherent power to allow the parties to the dispute to settle the matter amicably on being approached by the parties.

The focus group discussion with lawyers reveal that a general perception has been built that the provision of penal law relating to cruelty on women is being largely misused. The reason for such widely accepted notion is that when a case is lodged there is a possibility of arrest of all family members along with husband of the wife since the provision is cognizable and non-bailable. In fact in course of application of this particular provision there are instances where all the family members were roped in. It was admitted that without the involvement of law enforcement machinery it is not possible to misuse any provision of penal law as the institution for enforcement is the final authority to decide the nature of case and the application of any particular provision of penal law. There is apparent evidences exist with regard to improper enquiry and ineffective investigation by the enforcement machineries. The fault on the part of enforcement agencies cannot be held to be misuse of the process of law by women. If any particular provision of penal law can be misused then there is enough wide scope available for misuse of entire provisions of penal law.

The interaction with victims provides evidences of perpetration of cruelty on them. Each case speaks for itself loud about the sufferings of women in various forms and magnitude. The evidences are wide enough to believe that violence on women writ large in the society in spite of legal measures. The victim's level of awareness about the provision contained in Section 498-A is so poor that it is difficult to comprehend that with a purpose of misuse the victims have approached the police.

Based on the engagement in various spheres and at different level it is conclusively established that the legal protection afforded to women in cases of cruelty by husband or the relatives of husband in the marital home has not

impacted the life of women. Life and liberty of women in marital home is not yet secured in innumerable cases where women are subjected to many forms of violence and harassment. The state institutions have grossly manifestly failed to protect and prevent due to lack of accountability in the system.

Recommendations:

The Report offers policy recommendation on the basis of engagement with the subject by suggesting that the act of private individual in the marital home which causes worst form of violation of women human right calls for effective provision, institutions and system by the state to uphold rule of law and for realising justice to women victims of cruelty.

Chapter-I

Introduction

Prelude:

Infringement of women's right takes place both in public domain as well as private spheres. A large number of violations of rights of women are perpetrated by private individuals. Since, these acts are not committed by the State, jurists argue that such type of violation constitute ordinary crimes that fall outside the ambit of State responsibility. However it does not mean to suggest that State has no accountability in such cases where commission of offences occurs by private individuals. This is purportedly to be addressed by administration of justice through domestic legal measures. In this regard, the state has the obligation to contemplate appropriate legislative arrangement having potentiality to prohibit commission of such acts by private individuals; and where such offences still occurs in spite of the legal measure, the appropriate enforcement agencies of the state begin to intervene to assure the victim and the society that the perpetrator is found and tried in the criminal justice system of the country in accordance with the provision of domestic penal laws[1].

Cruelty on wife by the husband and his relatives in a matrimonial relationship has been seen as a form of infringement of rights of women by private individuals. Very often, women are subjected to cruelty within the family in a marital relationship mostly by husband and the in-laws. Women in India have long been relegated to a secondary position due to its traditionally patriarchal culture as a result of which women are forced to submit to men and continue to stay in exploitative and destructive relationship[2].

The increasing number of dowry deaths was a matter of serious concern to our law-makers. Cases of cruelty by the husband and his relatives culminated in the wife being driven to commit suicide or being done to death by burning or in any other manner. In order to combat this menace the Legislature decided to amend the Penal Code. Criminal Procedure Code and the Evidence Act by the Criminal Law (Second Amendment) Act, 1983 (No. 46 of 1983). So far as the Penal Code is concerned, Section 498-A came to be introduced where under "cruelty" by the husband or his relative to the formers wife is made a penal offence punishable with imprisonment for a term which may extend to three years and fine. The explanation to the section defines "cruelty" to mean (i) wilful conduct of which is of such a nature as it likely to

[1] Rishmawi, Mona, Working on Women's Human Rights: The Developing Approach of the International Commission of Jurists, Page-65-76, 1995, International Protection of Human Rights, SIM Special No. 15, Netherlands Institute of Human Rights.

[2] Recognizing Domestic Violence as a Public Health Concern, Page 13, Good Practices in Gender Mainstreaming- Case Studies from India.

drive the woman to commit suicide or to cause grave injury or danger to her life, limb or death or (ii) causing harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security."[3]

Bride burning is a shame of our society. Poor never resort to it. Rich do not need it. Obviously, because it is basically an economic problem of a class which suffers both from ego and complex. Unfortunately, the high price rise and ever increasing cost of living coupled with enormous growth of consumer goods effacing difference between luxury and essential goods appear to be luring even the new generation of youth, of the best service, to the as much part of the dowry menace as their parents and the resultant evils flowing out of it. How to curb and control this evil? Dowry killing is a crime of its own kind where elimination of daughter-in-law becomes immediate necessity if she or her parents are no more able to satiate the greed and avarice of her husband and his family members, to make the boy available, once again in the marriage market. Eliminate it and much may stand resolved automatically Social reformist and legal jurists may evolve a machinery for debarring such a boy from remarriage irrespective of the member of family who committed the crime and in violation penalize the whole family including those who participate in it. That social ostracism is needed to curtail increasing malady of bride burning."[4]

The legislative arrangement made to address cruelty on women by husband or the relatives of the husband by way of incorporation of additional substantive provisions in the penal law of the country is required to be analysed in its totality to gain knowledge concerning the actual state of its application, extent of use, nature of protection afforded and also to understand how the legislative measure impacted women and society.

Normative Structure:

As has been stated in the aforementioned paragraph a provision relating to cruelty on women by husband or the relatives of the husband had been incorporated in the Indian Penal Code in Section 498-A. A bare reading of the provision would help understand the content of the penal provision. It provides that:

" 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. For the purpose of this section, "cruelty" means[5]:

[3] See Balkrishna Pandurang Moghe v. State of Maharashtra, 1998 Cri LJ 4496 at 4504, 4506 (Bom).
[4] Brij Lal v. Prem Chand, AIR 1989 SC 1661.
[5] Given as an Explanation to the provision in Section-498-A of Indian Penal Code.

(a) any wilful 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) or 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 of any person related to her to meet such demand".

The insertion of new Section 498-A in the Penal Code by Criminal Law (Second Amendment) Act, 1983 which came into force w.e.f. 25.12.1983, with the sole object to stop all sorts of cruelty towards married woman. The provision has been made cognizable, non-bailable and non-compoundable.

A bare reading of these added provision of law in the Indian Penal Code makes it clear that when the husband or any relation of his is guilty of cruelty to the wife, he or she is punishable under Section 498-A of Indian Penal Code and in the presence of such cruelty, a presumption can be raised for abetment of suicide if the same is committed within a period of seven years from the date of her marriage. In a nutshell the first ingredient for attracting the provision relating to presumption under Section 113-A of Evidence Act, it must be proved that the wife was subjected to cruelty in accordance with the definition of cruelty in Section 498-A. This Section applies even where person inflicts such cruelty and harassment as to lead his wife to commit suicide[6].

Mens-rea is an essential ingredient of the offence under Section 498-A. Standards of proof of cruelty in civil law for matrimonial cases and in criminal law is different. The punishment prescribed for the offence under Section 498-A is a sentence of imprisonment for a term which may extend to three years and imposition of fine. So the offence is not of a comparatively minor in nature to hold that the legislature has by implication intended to rule out the existence of mens-rea. On the other hand the explanation appended to Section 498-A clinches the issue otherwise by giving out the meaning of cruelty as any wilful conduct which is of such a nature as is likely to drive women to commit suicide etc. The objective "wilful" qualifying the word "conduct" contemplates obstinate and deliberate behaviour on the part of the offender for it to amount to cruelty – the sole constituent of the offence as such. The term wilful is thus explicit in character and reflect the intension of the legislature that mens-rea is an essential ingredient to establish the offence[7].

"Cruelty"- The Connotation:

There is no vagueness or obscurity in the definition of the word "cruelty" as spelt out in the two clauses of the explanation to Section 498-A, IPC Clause

[6] V. Vedukondalu Vrs. State of AP, 1989, Cri.L.J. 1538 (A.P.)
[7] Saxena, Sajorini, 1994(reprint), Femijuris, Page-110, India Publishing Company, Indore.

(a) clearly speaks of any wilful 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. The definition of the word "cruelty" is a statutory innovation made by the Legislature which seeks to manifest its intention with a view to remedying the mischief for which the enactment is made. By its very nature, such a definition has to be artificial but if considered in the light of the objects of the statute and the purpose which the statute seeks to sub-serve, there is no vagueness or obscurity in the definition of the word "cruelty" in the two clauses of explanation to Section 498-A. Merely, because the definition of the word "cruelty" may be in excess of its ordinary dictionary meaning, it cannot be said to be arbitrary and violative of Article 14 of the Constitution. Similarly, as far as clause (b) is concerned, it speaks of harassment of a 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 a demand. Having regard to the social evil that is sought to be remedied such a wide definition of the word "cruelty" was necessary and there is no vagueness or obscurity in the definition of the word "cruelty" as contained in the two clauses of Section 498-A. Held, that the definition of the word "cruelty" in the explanation to Section 498-A is with a view to remedying the mischief and achieve the object with which the enactment was made. Merely, because the said definition is different from the dictionary meaning of the word "cruelty", it is not possible to hold that it is either vague or obscure[8].

It is not sufficient to contend that charges made in the written statement are unproved and therefore, amount to "cruelty". What is further necessary for the petitioner to prove is that the said charges are false. The burden is on the petitioner to show that the charges are false. The burden cannot be thrown on the respondent because respondent has not come to the Court for seeking any relief. It is settled law that in all matrimonial causes burden of proof is on the petitioner. Particularly in cases of "cruelty" it is for the petitioner to prove the element of "legal cruelty". If in the facts and circumstances of the case from evidence led on both sides, the Court comes to the conclusion the irrespective of the burden of the proof there is sufficient material from either side to prove that a particular allegation is not only proved but is false, it will be open for the petitioner to take advantage of such finding. However, it is sine qua non that the petitioner must show that respondent's allegations is false and therefore; they amount to "mental cruelty" towards him. It was contended that such a negative burden cannot be placed on the petitioner. This is not wholly correct. The general rule of evidence is that if in order to seek a relief the petitioner has to prove certain ingredients though negative then it is for the petitioner to prove the same. The burden though is negative in nature, is on the plaintiff to prove that a false charge was brought against

[8] Balkrishna Pandurang Moghe v. State of Maharashtra, 1998 Cri LJ 4496 at 4503, 4503 (Bom).

him, of which he was acquitted. The burden is light no doubt but the burden is certainly on the petitioner. Petitioner cannot escape from the duty of proving negative[9].

Where husband drink and comes home late much against the will of wife per se does not amount to cruelty but the acts coupled with beatings and demanding dowry and harassment to bring dowry clearly attracts the term cruelty as defined under Section 498-A[10].

Scolding occasionally for a mistake of a women may not per se amount to cruelty but continue taunting, insulting and scolding a woman on false pretext clearly extract the term cruelty as defined under Section 498-A[11].

It will, therefore, not necessary in order to establish cruelty as a ground for judicial separation under Section 22 of the Indian Divorce Act, to establish danger. Such cruelty is not restricted to physical cruelty and mental cruelty is also within its fold. Sex plays important role in matrimonial life and cannot be separated from other factors leading to a successful married life. Therefore, conduct of husband or wife which renders the continuance of co-habitation and performance of conjugal duties impossible such cruelty.[12]

The law is well-settled that cruelty as a matrimonial offence has to be determined by taking into account the particular individuals concerned and the particular circumstances of the case rather than by an unalterable standard. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. If the cumulative conduct of the wife towards the husband is such that the husband ought not to be called upon to endure it, the husband is justified in seeking relief on the ground of cruelty. Therefore, in a case where the wife, by reprehensible conduct, cause mental stress and tension to the husband and frustrates his life, the conduct of his wife amounts to cruelty. An intention by the wife to inure the husband is not necessary. Where the behaviour causes serious and deep impact and injury to the health and mind leading the husband to desperation the latter is entitled to approach the Court. Therefore, when it is established that the wife had been found using abusive language to the husband making false and disgusting accusation of immorality disturbing his mental peace by persistent reprehensible conduct cruelty entitling the husband to seek the relief if clearly made out.[13]

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[9] Naval Kishore Somani v. Poonam Somani, AIR 1999 AP 1 at 7,8 (DB).
[10] 1989, Cr.LJ, Page 1186 Punjab and Haryana.

[11] 1996, Cr. LJ, Page 2834, AP
[12] Prem Prakash Rubin v. Mrs. Sarla Rubin, 1990 (1) Civil LJ 128 at p. 131 (MP).
[13] Joseph Therattial v. Jacob, 1989 (1) Civil LJ 46 at 47 (Ker); AIR 1975 SC 1534; AIR 1988 SC 121 and AIR 1970 Cal 266.

To find cruelty it is not necessary to find physical violence. It is doubtful whether any definition of cruelty applies equally well to cases where there has been physical violence and to cases of nagging or to cases where there has been a deliberate intention to hurt and to cases where the temperament and unfortunate circumstance have caused much of the trouble. It is undesirable, if not impossible by judicial pronouncements, to create certain categories of acts of conduct as having or lacking the nature of quality which renders them capable or incapable in all circumstances amounting to cruelty in cases where no physical violence is averred.[14]

Repeated demand for dowry is made and harassment is meted out to a woman which may be physical or mental is an act of cruelty. It is not necessary that the husband or his relatives must be present at the time when the housewife is subjected to cruelty. If their act or conduct, omission or commission is of such a nature which results in mental and physical harassment it will amount to an act of cruelty to a woman and it home or at her parents' house. The offence under Section 498-A is a continuing offence and if the act of cruelty continues even while, the woman is living at her parents' house, the offence is triable by both the Courts in whose territorial jurisdiction the act of continuing offence of cruelty has been committed at matrimonial home or the parents' house. In the instant case *prima facie* it has been shown that deceased was subjected to cruelty at her matrimonial home and she was compelled to leave the matrimonial home due to the threats given by the petitioners. It has been further stated that when she was living at her parents' house the petitioners insisted on their demand for rupees one lack failing which she will have to remain at her parents' house[15].

The underlined portion of Section 304-B, IPC makes it clear from the underlined portion of Section 498-A, IPC that the offence of cruelty as defined in the said section is said to be committed by the husband only when such husband subjects the woman to cruelty. The word "cruelty has been defined in the explanation to Section 498-A (a) and (b), clause (b) of the said explanation indicates that harassment of a woman where such harassment is with a view to coercing her to meet any unlawful demand for any property or valuable security or is on account of failure by her to meet such demand constitute cruelty. Thus, to bring home the charge against the husband under Sections 304-B and 498-A, the prosecution has to prove that the husband subjected his wife to cruelty or harassment for or in connection with a demand for dowry. This is what has also been held by the Supreme Court in the case of *Smt. Shanti v. State of Haryana*,[16] as reported AIR 1991 SC 1226: Cri LJ 1713, the Supreme Court observed-

[14] (Smt.)Ann Sarkar v. Anil Sarkar, 1990 (1) Civil LJ 43 at 47 (Gau).
[15] Jagdish v. State of Rajasthan, 1998 Cri LJ 554 at 555, 556 (Raj).
[16] AIR 1991 SC 1126: 1991 Cri LJ 1713.

"However, we want to point out that this view of the High Court is not correct and Sections 304-B and 498-A cannot be held to the mutually exclusive. These provisions deal with the two distinct offences. It is true that "cruelty" is a common essential to both the sections and that has to be proved."

Section 113-B of the Evidence Act does not take away this burden of prosecution to prove cruelty on the part of the husband towards his wife. Rather it provides that the Court shall presume that a person has caused dowry death if it is shown that soon before the death of the woman, the woman had been subjected to cruelty or harassment by the accused for or in connection with any demand for dowry. In other words, the presumption as contemplated by Section 113-B of the Evidence Act arises only after it is established by the prosecution that soon before the death of the woman, the woman has been subjected to cruelty or harassment by the accused for or in connection with demand for dowry.[17]

Moreover, such cruelty on the part of the husband towards his wife by the prosecution has to be proved beyond reasonable doubt and Section 113-B of the Evidence Act does not alter this requirement of strict proof in Criminal cases. In the case of *State of West Bengal v. Orilal Jaiswal*,[18] the Supreme Court held in paragraph 14 of the judgment as reported in AIR 1994 SC 1410: 1994 Cri LJ 2104:-

"We are not obvious that in a criminal trial the degree of proof is stricter than that is required in a civil proceeding. 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 requirement of proof cannot be in the realm of surmises and conjunctures. The requirement of proof beyond reasonable doubt does not stand altered even after introduction of Section 498-A, 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 for 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 the evidence adduced in the case and the materials placed on record*. Lord Denning in Bater v. Bater*,[19] 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."

[17] Manik Datta v. State of Tripura, 1999 Cri LJ 356 at 358, 359 (Gau).
[18] AIR 1994 SC 1410: 1994 Cri LJ 2014.
[19] 1950 (2) All ER 458 at 459.

In the *State of Maharashtra v. Ashok Chotelal Shukla*,[20] the Supreme Court found that the High Court had acquitted the accused in that case under Sections 304-B and 498-A, IPC after recording findings that the prosecution had failed to establish beyond reasonable doubt that the accused has caused the death of the deceased or that the deceased committed suicide because of ill-treatment and cruelty by the accused and the Supreme Court did not interfere with the said judgment of the High Court even though if found that the conduct of accused in that case soon after the incident was unusual and that the accused has failed to explain some incriminating circumstances creating a strong suspicion about his involvement. What is to be examined, therefore, in this case is whether the prosecution has established beyond reasonable doubt that the appellant has committed any act of cruelty or harassment on the deceased for or in connection with the demand of dowry.[21]

Trajectories of Protection of Women from Cruelty:
The degradation of society due to the pernicious system of dowry and the unconscionable demands made by greedy and un-scrupulous husbands and their parents and relatives resulting in an alarming number of suicidal and dowry deaths by women has shocked the Legislative conscience to such an extent that the Legislature has deemed necessary it to provide additional provisions of as substantive, to combat the evil and has consequently introduced Sections-113-A and 113-B in the Indian Evidence Act and Sections 498-A and 304-B in the Indian Penal Code[22].

However, the Indian society witnessed that the judiciary in India from trial court to apex level in their recent judgements have expressed concern over the matter of misuse of Sec.-498A I.P.C. It is pertinent to state that under this provision when an F.I.R. is lodged all the family members of the husband can be roped in. In their judicial observations and remarks, the courts have expressed deep anguish over this law. Some of the judgement of courts in India may be reviewed for greater understanding like:

1990 Punjab and Haryana High court observed in Jasbir Kaur vs. State of Haryana, case as: “It is known that an estranged wife will go to any extent to rope in as many relatives of the husband as possible in a desperate effort to salvage whatever remains of an estranged marriage.”

In Kanaraj vs. State of Punjab, the apex court observed as: “for the fault of the husband the in-laws or other relatives cannot in all cases be held to be involved. The acts attributed to such persons have to be proved beyond

[20] 1997 (11) SCC 26: 1997 Cri LJ 3761.
[21] Manik Datta v. State of Tripura, 1999 Cri LJ 356 at 360 (Gau).
[22] Brij Lal v. Prem Chand, AIR 1989 SC 1661.

reasonable doubt and they cannot be held responsible by mere conjectures and implications. The tendency to rope in relatives of the husband as accused has to be curbed".

Karnataka High Court, in the case of State Vs. Srikanth observed as: "Roping in of the whole of the family including brothers and sisters-in-law has to be depreciated unless there is a specific material against these persons, it is down right on the part of the police to include the whole of the family as accused"

Supreme Court, In Mohd. Hoshan vs. State of A.P. case, observed as: "Whether one spouse has been guilt of cruelty to the other is essentially a question of fact. The impact of complaints, accusation or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of the sensitivity, degree of courage and endurance to withstand such cruelty. Each case has to be decided on its own facts whether mental cruelty is made out".

Supreme Court, in Sushil Kumar Sharma vs. Union of India and others, observed as: "The object of the provision is prevention of the dowry menace. But as has been rightly contented by the petitioner that many instances have come to light where the complaints are not bonafide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not an assassin's weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre-conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide

available and generalized statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view."

While the Courts in India view the provision in the above light, the Parliament of India has also started reviewing the whole matter mostly based on the judicial verdicts and also petitions filed by public. Accordingly the Committee on Petition has been considering amendments in Sec. 498-A of Indian Penal Code.

It is in this regard necessary and essential to delve deeply in to the real world of victims of cruelty in marital relationship to document the circumstances under which such protection becomes essential. It is also desirable to seek explanation to each of the points raised in the petition which is pending with the Committee on Petition of Rajya Sabha for describing the actual position of women.

Sec 498A was incorporated in the Indian Penal Code in 1983 with a view to bring cruelty on married woman an offence under the Code. However, the use and impact of this provision on victims of cruelty over the past 30 years have not been adequately evaluated at all by the government with respect to their deterrence goals, despite the institutionalization of law and policy in relation to domestic violence. On the contrary there has been consistent endeavour to underplay the importance of the provision provided for under 498-A at various level and context including the judiciary and legislature. Therefore, there is a need for a research to advance the current state of knowledge on the effects of legal sanctions on cruelty. It is widely recognised that cruelty on women in martial home by husband and his family members are complex behaviours and the social organisation of trial courts, the police, prosecution and legal cultures systematically tend to underplay domestic violence cases.

The narrow or perhaps almost negligible study done by law enforcement agencies about the deterrent effects of legal sanctions for domestic violence stands in high contrast with the extensive efforts of activists, victim advocates and criminal justice practitioners in mobilising law and shaping policy to stop domestic violence. It has been observed that over last 20 years a common argument made against laws relating to violence against women in India has been that women misuse these laws. A large section in the police, civil society, politicians and even judges of the High Courts and Supreme Court

have offered these arguments of the "misuse' of laws vehemently. The allegation of misuse is made particularly against Sec 498-A of the IPC and against the offence of dowry death in Sec 304-B. One such view was expressed by former Justice K T Thomas in his article titled 'Women and the Law', which appeared in The Hindu. The 2003 Malimath Committee report on reforms in the criminal justice system also notes, significantly, that there is a "general complaint" that Sec 498-A of the IPC is subject to gross misuse; it uses this as justification to suggest an amendment to the provision, but provides no data to indicate how frequently the section is being misused. It is important therefore that such "arguments" are responded to, so as to put forth a clearer picture of the present factual status of the effect of several criminal laws enacted to protect women.

Proposition:

The present research is made with the proposition that there are enough evidences to suggest that many women are subject to cruelty in their marital home by the husband and the in-laws. Cruelty on women is a gross manifestation of violence on women. A special provision in the penal law may assure the victims the right to life and liberty is guaranteed. The probability of misuse of penal provision in the guise of cruelty on women is by and large a misconception and proper use of the legal provision depend largely on effectiveness of enforcement agencies and criminal justice system. In fact there are very few instances where recourse to the provision provided in Section 498-A of Indian Penal Code stands independently of any other provision of different criminal law, hence women do not necessarily resort to this provision as a matter of protection.

Research Question:

For the purpose of the present research no separate questions are framed. However the present research seeks to answer the questions which brought before the Committee on Petition of Indian Parliament.

Methodology:

The present study has been conducted based on the established principles and norms of legal research. It heavily relied on case laws and case materials to approach the subject under investigation. For this purpose reported case materials of High Court of Odisha have been collected from law journals of a specified period of fifteen years for review and analysis. The present study is also an empirical investigation into the subject for which a number of methods are systematically followed. An extensive engagement with women who have lodged cases in different police station of Odisha which were registered under Section 498-A have been made with a view to collect primary information. In this regard interview with such women has been conducted for one to one interaction. The study also made an attempt to collect views of stakeholders like lawyers in focus group discussion to understand with whole process of criminal justice system and its application in the matter of cruelty on women.

Broadly the present study is a non-doctrinal empirical research with a defined proposition to explain the subject.

Conclusion:

The present study is designed with the purpose of exploring the present position of protection of women from cruelty in a marital relationship with reference to Section 498-A of Indian Penal Code primarily to understand the level of awareness among victims about the implication of the provision made under Section 498- A of Indian Penal Code, its application by the victim, nature of support derived and the role of major stakeholders like the police, prosecution, defence lawyer and judges. The study aims at building evidence based knowledge concerning level of use of this particular provision by women.

As a result of the study, a thorough understanding about enforcement of Section 498-A of Indian Penal Code shall emerge. Broadly, the present study shall help to build knowledge concerning the relevance of Section 498-A of Indian Penal Code and the need for bringing in place new progressive legislation to prevent crime and/or to provide for stringent punishment for persons who are party to cruelty on women in marital relation.

Chapter-II

Situational Analysis of Crimes against Women

'Crime in India Report' prepared by the National Crime Record Bureau provides crime statistics and overall crime scenario of the country in various aspects. According to NCRB, the crimes which are directed specifically against women are characterized as 'Crimes against Women', although women may be victims of any of the general crimes such as 'Murder', 'Robbery', 'Cheating, etc .Crimes against Women are broadly classified under two categories i.e (i) crimes under the Indian Penal Code (IPC); and (ii) crimes under the Special and Local Laws (SLL). All analysis and graphical presentation made hereunder is drawn from the statistical report of Crime in India Report, of NCRB.

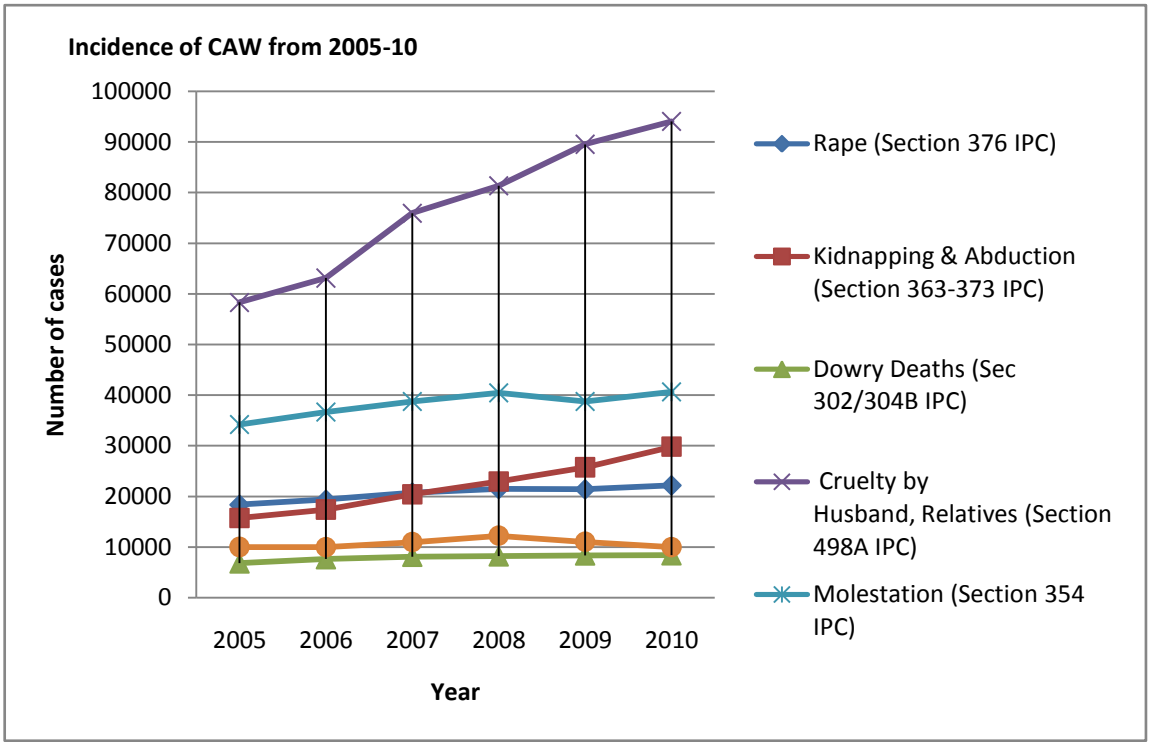
An engagement with statistical report concerning crime in India would provide adequate insight into the nature and extent of offences which are made punishable. It would serve the purpose of locating the subject of cruelty in the overall scenario of various kinds of crime committed against women. Such statistical analysis would be of use to understand cruelty in a comparative perspective with other kinds of offences which are committed against women. Therefore, this research has made an attempt to glance through the statistical figure and data concerning crime against women. For this purpose the research primarily investigates into the Crime in India Report and corroborated the facts from available reports including the White Paper being published by the Government of Odisha.

Table: Incidence of Crimes against Women at All India Level from 2005 – 2010

Sl. No	Crime Head	2005	2006	2007	2008	2009	2010	% of Variation in 2010 over 2005
1	Rape (Section 376 IPC)	18359	19348	20737	21467	21397	22172	20.0
2	Kidnapping & Abduction (Section 363-373 IPC)	15750	17414	20416	22939	25741	29795	89.0
3	Dowry Deaths (Sec 302/304B IPC)	6787	7618	8093	8172	8358	8391	23.6
4	**Cruelty by Husband, Relatives (Section 498A IPC)**	**58319**	**63128**	**75930**	**81344**	**89546**	**94041**	**61.2**
5	Molestation (Section 354 IPC)	34175	36617	38734	40413	38711	40613	18.8
6	Sexual Harassment (Section 509 IPC)	9984	9966	10950	12214	11009	9961	-0.3
7	Importation of Girls (section 366-B IPC)	149	67	61	67	48	36	-76.0
8	Sati Prevention Act 1987	1	0	0	1	0	0	-
9	Immoral Traffic (P) Act,	5908	4541	3568	2659	2474	2499	-57.7

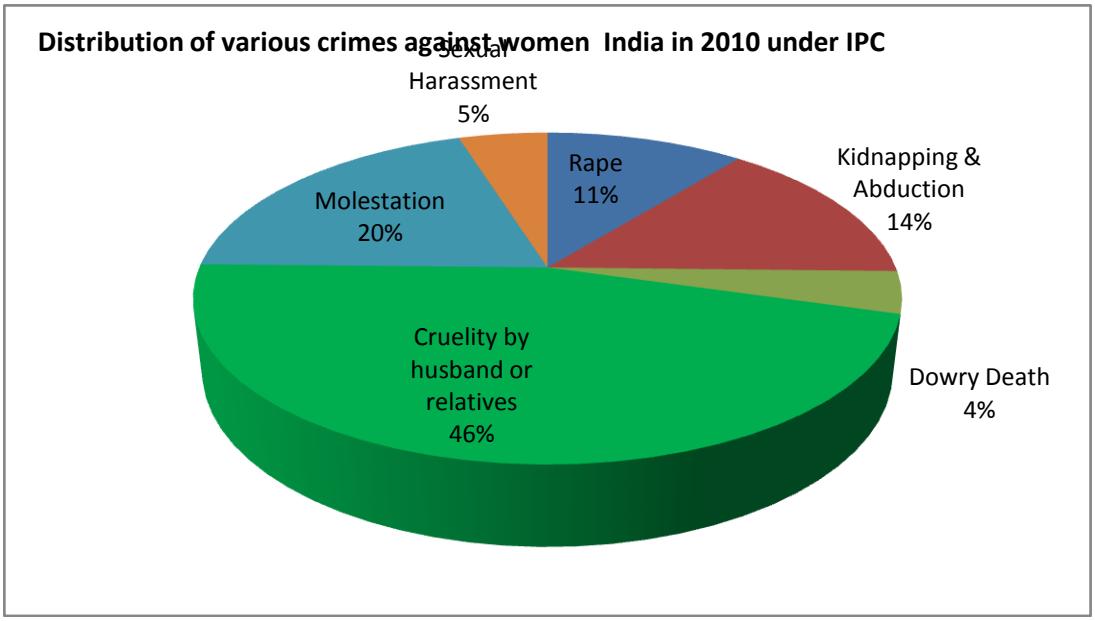
	1956							
10	Indecent Representation of Women (P) Act, 1986	2917	1562	1200	1025	845	895	-69.4
11	Dowry Prohibition,1961 Act	3204	4504	5623	5555	5650	5182	61.7
		155553	**164765**	**185312**	**195856**	**203779**	**213585**	**37.3**

It is quite evident from the crime statistics; there has been constant increase of violence against home. A total of 11,18,850 numbers of crimes were registered during 2005-2010. The crimes against women has increased by 37.3% between the years of 2005-2010.The growth rate of crimes is highest in Kidnapping and Abduction (89.0%), followed by dowry torture, cruelty by husband & relatives. Offence of cruelty to women by husband or relative of the husband of woman under section 498 A of IPC is cognizable, non-compoundable, and non-bailable. Cruelty is being explained in IPC as willful conduct of such nature which is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or physical or mental health of the woman; and harassment to woman for any unlawful demand. Therefore, offence committed U/S 498 A is intrinsically connected with the sexual harassment (u/s 509 of IPC), dowry torture (under Dowry Prohibition Act), domestic violence (under Protection of Women from Domestic Violence Act)



The most noticeable findings that emerge from the Crime in India Report is that while the total incidence of crime is declining across the country, Crime against Women has been constantly increasing. As per 2010 Crime in India

Report, offence U/S 498 A of IPC have accounted 46% of the Crimes against Women followed by cases of molestation, kidnapping & abduction, and rape.



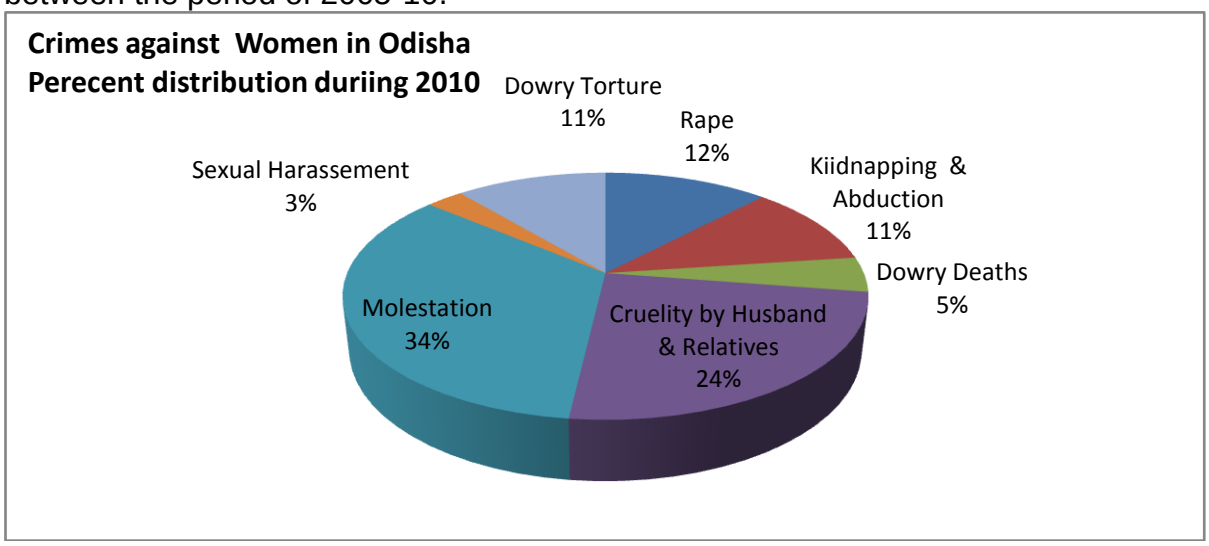
A comparative statement extracted from the NCRB Report in regard to crime statistics for the State of Odisha shows that incidence of crimes against women has been on rise over the years. There has been 36% growth rate in Crime against Women between 2005 and 2010. Another noticeable factor that emerges from the Crime in India Report-2010 that rate of crimes against women is 20.8% for Odisha as compared top 18.0% at the All-India level. While the rate of increase of all categories of crimes against women is 36.0%, but crime in the form of cruelty by husband and relatives has shown an increase of 23.7% between the years 2005-10.

Table: Incidence of Crimes against Women at Odisha from 2005 – 2010

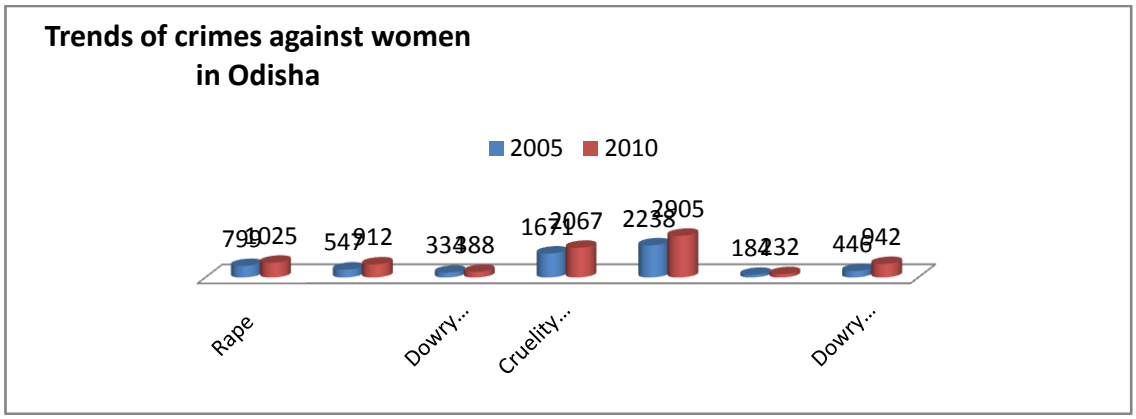
Sl. No	Crime Head	2005	2006	2007	2008	2009	2010	% of Variation
1	Rape (Section 376 IPC)	799	985	939	1113	1023	1025	28.2
2	Kidnapping & Abduction (Section 363-373 IPC)	547	557	660	762	799	912	66.7
3	Dowry Deaths (Sec 302/304B IPC)	334	457	461	401	384	388	16.0
4	**Cruelty by Husband, Relatives (Section 498A IPC)**	**1671**	**694**	**728**	**1618**	**2047**	**2067**	**23.7**
5	Molestation (Section 354 IPC)	2238	2415	2775	2782	2697	2905	29.8

6	Sexual Harassment (Section 509 IPC)	184	247	241	282	210	232	26.0
7	Importation of Girls (section 366-B IPC)	0	12	0	0	1	5	500.0
8	Sati Prevention Act 1987	0	0	0	0	0	0	-
9	Immoral Traffic (P) Act, 1956	29	44	40	29	14	25	-14.0
10	Indecent Representation of Women (P) Act, 1986	1	0	0	0	0	0	-
11	Dowry Prohibition,1961 Act	446	1394	1460	1316	945	942	111.0
		6249	**6825**	**7304**	**8303**	**8120**	**8501**	**36.0**

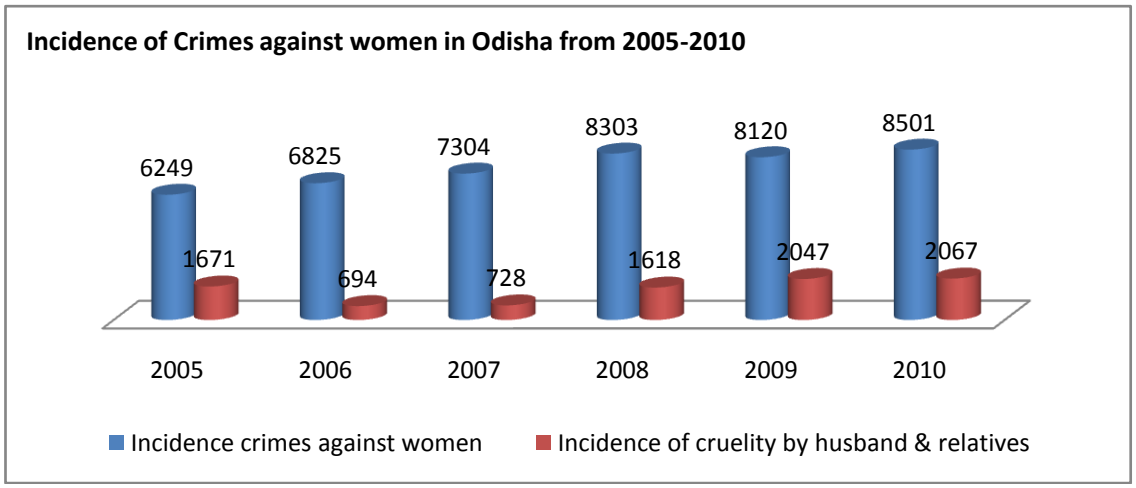
A total of 8501 numbers of cases were registered in Odisha in the year 2010 as f crime against women. As per 2010 NCRB data, 38.0% of the crimes against women in Odisha is due to cruelty by husband or relatives, dowry torture, and sexual harassment. A comparative incidence of crimes during the 5 years period shows that rate of crimes against women has been on rise between the year 2005 and 2010. Number of cases registered U/S 498 A (Cruelty by Husband & Relatives) has gone from 1671 for the year 2005 to 2067 for the year 2010. Torture to Women by Family members (i.e Cruelty by Husband and Relatives U/S 498 of IPC) in Odisha is increased by 24.0% between the period of 2005-10.



It is revealed from Crime in India Report of NCRB, that all forms of crimes against women has been rising constantly during the period of 2005-2010.In fact, the rate of increase among all categories of crimes against women is 36.0% between the years 2005-2010. Crime in the form of cruelty by husband and relatives was reduced from 1671 to 694 between the years 2005-06. However, the incidence of crime U/S 498 A has constantly increased in a very high rate between the years 2007-2010.Reported crimes U/S 498 A was gone up from 728 to 2067 during the period of 2007-2010.

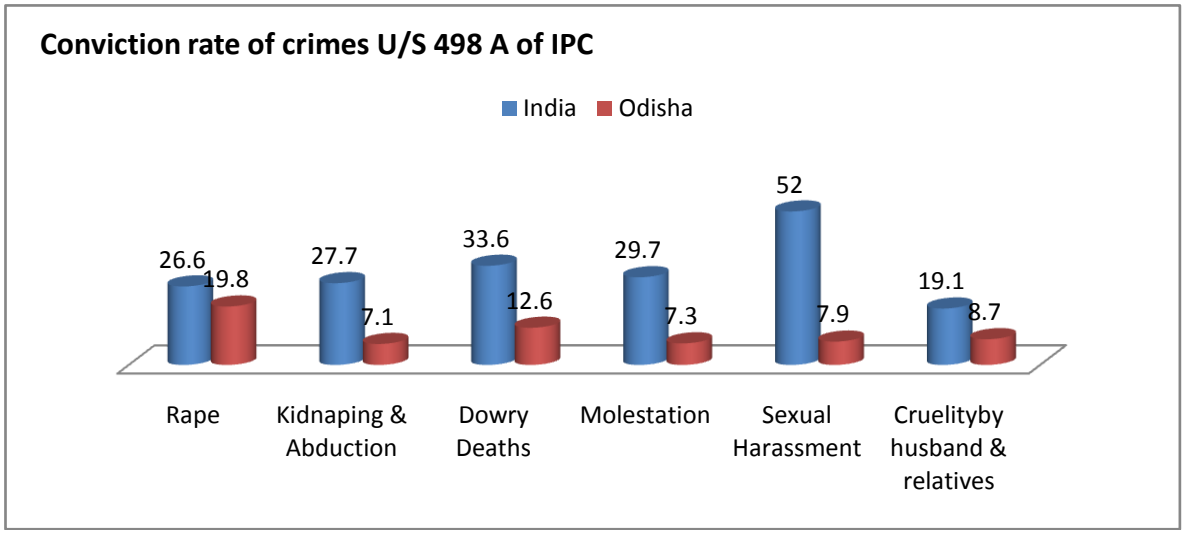


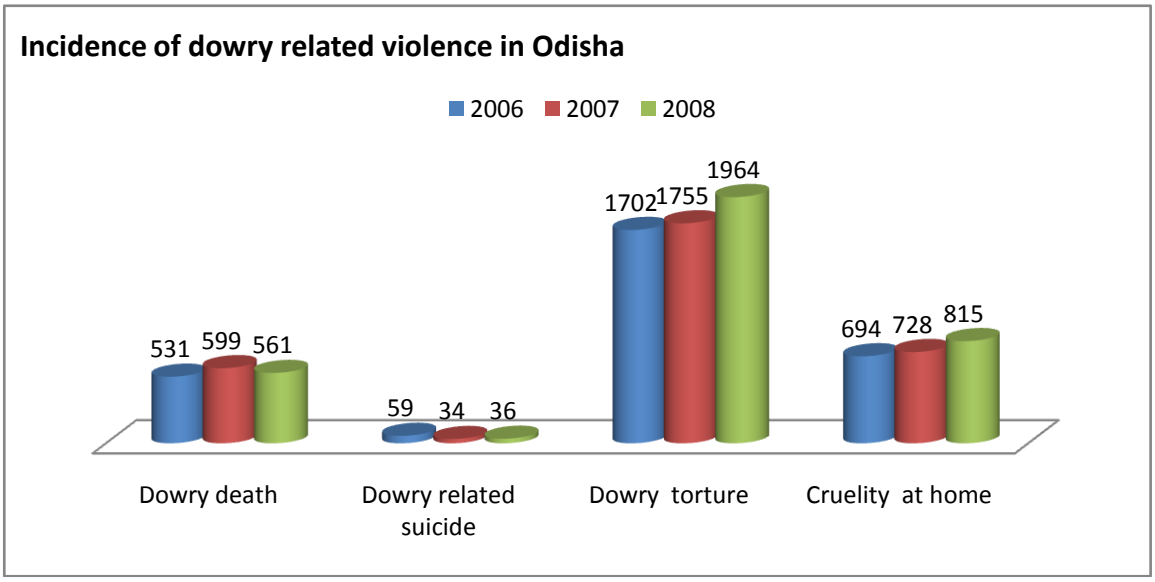
The data furnished by the NCRB relating to the conviction rate of different types of crimes committed against women for the year 2010, the rate of conviction remains lower in the State of Odisha as compared to All India level. For instance, the conviction rate for cruelty by husband and relatives (crimes U/S 498 A of IPC) is 8.7% in Odisha as compared to 19% at the All India level.



According to the crime data offered in White Paper -2008 prepared by the Department of Home, Government of Odisha, there has been steady increase

of dowry related crimes. The crimes captioned under that head is classified as dowry death, dowry related suicide, dowry torture, and cruelty at home. There has been a significant increase of crime against women in the form of dowry torture and cruelty at home between the periods of 2006-08.





The analysis of statistics and data concerning crime on women in India and also in Odisha reveals that the incidence of cruelty is less than national average, however, there is a steady increase of incidence of cruelty. Similarly the incidence of cruelty stands as the third highest type of crime committed against women in Odisha after the cases of rape and dowry death respectively.

Chapter-III

Judicial Pronouncement

Analysis of Judicial pronouncement on various legal provisions has been viewed as a major source of legal knowledge in legal research. In fact case laws and case materials provide enough insight into position of law and the manner in which the interpretation of statues are made by courts having jurisdiction over law. Legal Research in India primarily rely on judicial decisions and pronouncement. This research seeks to identified and appraise the magnitude of the variable factors influencing the outcomes of legal decision making in a limited way. For this purpose the research made an attempt to review all case laws reported in law journals of Odisha. It has taken into consideration all reported case laws based on the judgment of Odisha High Court which were preferred before it in the form of appeal or revision. The case laws reported in different journal which were taken for review for the purpose of research spans over a period of 15 years.

In course of review of judicial decisions in different journals of Odisha as many as 42 cases were found. A thorough review of all these reported judgments which appeared in journals, it was revealed that there are 26-cases which are decisions on the cases on the subject of cruelty, whereas remaining cases are fall out of the main cases and relate to procedural aspects for which the cases were preferred. Judicial decisions are reviewed here below on yearly basis starting from 1998. It is desirable to mention that the year mentioned against each of the cases are the years in which the cases are disposed off by the High Court. Ordinarily each of the case started much earlier than these orders.

1. In Dipali Chakrabarti and 2 others vrs. State of Orissa the High Court observed that as charge-sheet in the case was not filed and cognizance was not taken, the nature of offence whether compoundable or non-compoundable cannot be determined.

The essential facts in this case was marriage between Purnima Chakrabati, the informant, and present petitioner No-3, Partha Pratim Chakrabarti, was solemnized on 5.2.1998 at Gumadera within Belpahar P.S. At the time of her marriage, the petitioners allegedly demanded cash of Rs. 40,000/- and accordingly, the parents of the informant had given on two installments, one on 25.1.1998, Rs. 20,000/- and the balance Rs. 20,000/- on 27. 1.1998. They had also given two VIP suit-cases and other marriage presentations. Despite this, their relationship did not continue cordially and there was frequent bickering, misunderstanding and quarrel between the two spouses as a result of which they fell out from each other. Sometimes, petitioner No.3 was found drunk and ill-treated the informant by beating and torturing her. The torture continued unabated as a result of which the informant had to leave the matrimonial house and took shelter with her parents. She was constantly

threatened to be done away with. It is further stated that even after the intervention of well-wishers and friends of both the spouses, their relationship did not continue well. Since harassment and torture upon the informant became unbearable and intolerable, she had to file a report which was treated as F.I.R. and on the basis of such F.I.R. a case was registered under Sections-498-A, 307, 324, 504/34, IPC and Section 4 of the Dowry Prohibition Act. This application by the mother-in-law, father-in-law and husband of the informant has been filed seeking for quashing of the FIR as well as the criminal proceeding before the learned S.D.J.M., Jharsuguda. There has been an interim order of stay passed by this Court regarding continuance of the criminal proceeding in G.R. Case No.36/99.

During the pendency of this case, certain developments have taken place. Both the parties filed an application for mutual divorce which was registered as T.S. No. 54/2000 in the Court of the Civil Judge (Senior Division), Sambalpur on 15.3.2000. In the said suit, after expiry of about a year, the learned Civil Judge passed a decree of mutual divorce on 2.3.2001. Neither party has filed appeal against the said decree of divorce before this Court and the decree of divorce was allowed to be treated as final. In the meantime, the informant is said to have married for the second time. The informant and her parents have filed three separate affidavits in this case indicating that they have ironed out their differences and the petitioners had agreed to pay Rs. 1,01,000/- (Rs. 96,000/- in cash and Rs. 5,000/-in the shape of fixed deposit certificate in the name of the informant).

The High Court considering all these aspects as well as looking into the terms and conditions so set forth in the joint affidavit and the fact that the criminal proceeding should not be construed as an instrument of oppression rather it would be considered as means of achieving social justice and harmony, particularly when both the husband and the wife want to live separately and put to an end to the marital ties and do not want to proceed further with the criminal case, and want to end the Divorce Suit pending before the Family Court with consent on the aforesaid terms, it would be proper to allow the prayer of the parties. The Criminal Misc. Case is accordingly allowed.

2. In Debaraj Mallik and another vs. State of Orissa the High Court held that Friends cannot be held to be relative of husband to come within the purview of Section 498-A IPC; hence the Order of cognizance was quashed.
In this case, the question that arises for consideration is whether a friend of the husband can be treated as a relative. Though learned counsel appearing for the parties have not cited any decision directly on the said point, the constitutional validity of Section 498-A of the Penal Code was questioned before the Punjab & Haryana High Court in the Case of Krishan Lal and others v. Union of India and others reported in.[23] The full Bench of the said

[23] 1994 Crl. L.J. 3472.

Court while dealing with the question of constitutional validity of the said provision observed that husband and the relative of husband of a married woman form a class apart by themselves. The Court also further observed that the Section was introduced to save the married woman from being ill-treated or forced to commit suicide by the husband or relatives of the husband who generally coerce her to fetch more dowry or on her refusal to do so kill her. Keeping in view that the mal-treatment of a married woman is usually confined within the four-walls of her matrimonial home which in most of the cases are located far away from the home of her parents and there is no likelihood of availability of any evidence, the said provision has been introduced in the statute. If the Section is analyzed in the aforesaid manner, obviously it is confined to husband and his relatives and by no stretch of imagination it can be extended to friends of husband.

3. In Shantilata Parida v. Nrusingha Ch. Behera and another High Court came to the conclusion while deciding the case that strict proof of marriage is required to be established in order to record an order of conviction under Section 498-A.

The prosecution case is founded upon the allegation that the petitioner and opposite party No.1 entered into wedlock in Baladevjew temple at Kendrapara on 14.2.1989. All the rituals, such as, performance of homa etc. were gone into in presence of the parents and relatives. The marriage between the parties was the sequel of a love affair between the parties. After marriage both the parties started their conjugal life at Dihabalarampur. At the time of marriage, there was no demand for dowry. But within two months of the marriage the opposite party made a demand for motor cycle and other articles as a part of dowry to the marriage. The petitioners family having failed to meet the demand, the opposite party No.1 even assaulted the petitioner and did not change attitude towards her in spite of intervention of local gentleman and relations. It is alleged that opposite party No.1 had gone to the extent of snatching away gold ornaments out of the possession of the petitioner. He did not provide her food and cloths denied the conjugal right to her. At last the opposite party expressed his willingness to marry for second time and the petitioner having protested, she was thrown out from the house and threatened with dire consequence. Since then petitioner is residing in a separate house on rent at Erasma. On the basis of complaint a case was registered and even though opposite party No.1 faced trial before the learned Magistrate which, however, ended in acquittal as after going through the materials on record, the court came to the conclusion that the prosecution had failed prove its case beyond reasonable doubt and accordingly, acquittal the opposite party of the charge under section 498-A, I.P.C.

Being aggrieved by and dissatisfied with the order the learned Magistrate, the petitioner has come in revision of the case. According to the petitioner, the

evidence is galore to establish the fact of marriage between the parties. It has also been submitted that the prosecution succeeded in establishing the the fact of torture by the accused to the petitioner. Accordingly the petitioners, learned Magistrate was wholly unjustified resuming a verdict of not guilty. Accordingly, the petitioner has prayed for setting aside the order of acquittal.
The High Court felt that the finding of trial court on the point of marriage cannot be disturbed in this proceeding. Since the main ingredients of the offence has not been established it seems that the accused has been rightly acquitted by the trial court. As has been discussed above, the prosecution been unsuccessful in establishing the marriage between parties. So no interference is called for. In that view of matter, the revision application fails and is dismissed.

4. In Chandra Sekhar Senapati vs. Sumeeta Senapati and another the parties decided to have conjugal life by forgetting the past dispute and filed joint petition to that effect. Both are highly qualified and are doctors and they prayed to quash the proceeding.

The brief fact of the case was that during the pendency of this proceeding, the petitioner who is the husband and opp. Party No.1 his wife decided to give a fresh beginning to their conjugal life by forgetting the past dispute. A joint petition has been filed supported by an affidavit by the petitioner and opp. Party No.1. Though the offence under Section 506, IPC is compoundable, the offence under Section 498-A, IPC is not compoundable. However, even though, the offence under Section 498-A, IPC is not compoundable, since the husband and wife have amicably resolved their dispute, it would not be in the interest of justice to allow the criminal proceeding to continue, as continuance of such proceeding would be counterproductive. Since the husband and wife want to live together, the proceeding pending before the Sub-Divisional Judicial Magistrate, Bolangir, should not come in their way of living together. It would not be in the interest of justice to allow such criminal proceeding to continue.

5. In Benumadhab Padhi Mohapatra and others vs. State the High Court held that the prosecution has completely failed to adduce any iota of evidence that the deceased was at any time subjected to harassment by the appellants on demand of dowry hence the main Ingredients of Section 498-A not satisfied. Order of conviction and sentence cannot be sustained in the absence of any cogent evidence regarding ‘torture’ or ‘harassment’ to the victim woman vis-à-vis demand of dowry.

The Court had relied on a previous judgment (Pramila v. State) which held that for maintaining a conviction under Section 498-A IPC, prosecution must prove that the woman was subjected to cruelty or harassment by her husband or any relative of her husband in regard to non-fulfillment of the demand of

any property or valuable security. This ingredient has not been satisfied in the present case. In the absence of any evidence as to subjecting in deceased to cruelty or harassment for or in connection with demand of dowry, only on the basis of some vague and inconsistent statements of interested witnesses like parents of the deceased, and in absence of any cogent evidence of any near relative or neighbor of the parties about cruelty or harassment meted out to the deceased by the accused persons in relation to demand of dowry no conviction under Section 498-A IPC or under Section 4 of the Dowry Prohibition Act can be sustained[24].

The Court observed that here is a case where the defence not only examined the doctor who attended the deceased at her death bed and recorded her dying declaration Ext. B, but also examined the Executive Magistrate in whose presence the dying declaration of the deceased was recorded, as D.Ws. 1 and 2. Both these witnesses have unambiguously stated that the deceased at the time of recording Ext. B was in her full sense and was able to talk clearly. She stated before them that nobody had tortured her and that she had burnt herself as her parents did not take care of her. The priest who was the mediator in the marriage was examined as D.W. 4 and a local gentleman who had attended the marriage was examined as D.W. 5. Both of them had clearly stated that no dowry was demanded by the bridegroom side. A cumulative assessment of the evidence adduced in the case thus inspires confidence on the defence plea.

On an analysis of the evidence, both oral and documentary, and on hearing the learned counsel for both sides at length, according to me the order of conviction and sentence passed against the appellants for commission of offences under Sections 498-A and 4 D.P. Act cannot be sustained in the absence of any cogent evidence regarding 'torture' or 'harassment' to the victim woman vis-à-vis demand of dowry and the same is to be set aside and the appeal is bound to succeed.

6. In Sarala Mohrana and another vs. State of Orissa it was held by the High Court in a Criminal Appeal that the Court below after scrutinizing the entire evidence has arrived at the conclusion that no ill-treatment or harassment was meted out to the deceased in connection with demand of dowry and acquitted the appellants of the charge under Section 304-B IPC. The said finding, as stated earlier, has not been challenged by the State in appeal and has, therefore, become final. If the Court below has not accepted the evidence with regard to subjecting the deceased to any ill-treatment or harassment in connection with demand of dowry for the charge under Section 304-B IPC, the same set of evidence, I am of the view, cannot be utilized for convicting the appellants under Section 498-A IPC. Even otherwise, reading of the entire evidence does not reveal that the deceased was subjected to any

[24] Criminal Appeal No. 367 of 1992.

ill-treatment or harassment on account of non-payment of dowry. Ext-9 ipso facto does not throw any light with regard to demand of dowry and it is of no help to the prosecution. At the other hand, the entire episode reveals that the brother of the deceased had borrowed huge amount from the appellants and he was not in a position to re-pay the same. Being humiliated by the said fact, his sister committed suicide. The belated attempt made by the prosecution to rope in the appellants for commission of offence under Section 498-A IPC and Section 4 D.P. Act appears to be an after-though, and with an avowed oblique motive to wriggle out of re-payment of the amount borrowed.

After scrutinizing the entire evidence both, oral and documentary and after going through the materials, I have no hesitation to set aside the order of conviction and sentence passed against the appellants[25].

7. In Prasanna Kumar Moharana and others vs. State of Orissa and another it was observed that If the Court presumes that the offences alleged are committed, charge for those offences can be framed. At the time of taking cognizance of framing of charge the Court is only required to see whether prima facie materials are available on record to support the order taking cognizance or framing charge. The defence of the accused is not required to be considered at this stage. Specifically at the time of framing of charge on the existing material available on record, if the Court presumes that the offences alleged are committed, charge for those offences can be framed. There are specific allegations of demand of dowry and torture in the FIR whether such FIR was an afterthought or not can be decided during trial. The defence allegations as mentioned in the petition and submitted by the learned counsel for the petitioners cannot also be considered at this stage since prima facie materials are available on record to support the charges in respect of which charge has been framed. In view of the above, there is no scope for this Court to interfere with the impugned order.

According, I do not find any merit in the petition and the same stands dismissed[26].

8. In Hemanta Kumar Behura and others vs. State of Orissa and others the O.P. No. 2 voluntarily obtained a decree of divorce, accepted permanent alimony and is living peacefully. She is not eager to purpose the criminal case against the petitioners as continuance of the case will create unnecessary tension to her and also to the petitioners. Considering the fact of the case it was held by the High Court that continuance of the proceeding of the G.R. Case will unnecessarily dis-settle the parties from the present peaceful mooring and will not achieve any purposeful result. It was further held that

[25] Criminal Appeal No. 104 of 1999.
[26] CRMC No. 3074 of 2002.

Continuance of the proceeding would be simply abuse of the process of the Court as that will impart equitable justice to the parties[27].

9. In Sarbeseswar Pradhan and others vs. State of Orissa and another the High Court found that due to intervention of the well wishers of the petitioners and the opp. Party No. 2 they amicably settled their differences. Petitioner No.1 and opp. Party No. 2 jointly filed a petition under Section 13 (B) of Hindu Marriage Act for mutual divorce, before the Court of learned Judge, Family Court, Cuttack vide C.P. No. 284 of 2005. Opp. Party No.2 is no more interested to prosecute the case because of the changed circumstances. She filed an affidavit in this regard. Hence, the petition under Section 482 of Cr. P.C. to quash the criminal proceeding as stated earlier.

The petitioners have not sought for composition of the offences. They have filed the petition to quash the proceeding for securing the ends of justice, in view of the compromise effected between them. Generally, where there is specific provision in the Code relating to any matter, inherent power under Section 482 of Cr. P.C. should not be exercised. But in appropriate cases to secure the ends of justice such between the parties and the divorce decree obtained on mutual consent of petitioner No.1 and opp. Party No.2 even if the criminal proceeding is allowed to continue it would end in fiasco. So, it is a fit case where the inherent power bestowed on this Court under Section 482 of Cr. P.C. should be exercised in the interest of the parties and to save public money and valuable Court's time.

Under such circumstances, the Criminal Proceeding in G.R. Case No. 20 of 2003 pending in the Court of S.D.J.M. Khurda is hereby quashed[28].

10. In Sarba Prasanna Panda vs. State of Orissa the High Court discussing the facts and evidences held that, sufficient doubt arises with regard to the question of demand of dowry made by the accused appellant and his relations at the time of marriage of the deceased. With regard to conviction under Section 4 of the D.P. Act and under Sec. 498-A IPC, prosecution has utterly failed in proving that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband including the appellant in connection with any demand for dowry.

With regard to the charge under Section 304-B IPC though it is true that the death of the deceased has occurred otherwise than under normal circumstances within seven years of marriage, but the prosecution has utterly failed in proving that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband including the appellant in connection with any demand for dowry. As such, the death of the

[27] CRLMC No. 837 of 2004.
[28] Criminal Misc. Case No. 1305 of 2005.

deceased cannot be called to be a "dowry death" as defined in the said Section 304-B IPC in view of the above, we also find the appellant not guilty of the offence under Section 304-B IPC[29].

11. In Kunu@ Chhabindra Dalei and others vs. State of Orissa the High Court held from the record, it appears that the petitioners are facing trial for commission of offences under Sections 498-A, 304-B and 34 of the Penal Code. It appears from the impugned order that the Chemical Examiner had opined that organ chloro insecticidal poison was detected during examination. The report of the Chemical Examiner as it appears from the impugned order was proved on admission and examination of the Chemical Examiner was dispensed with. The said report was marked as Ext. 11 and after closure of the prosecution evidence as well as examination of the accused persons under Section 313 Cr. P.C. an application was filed under Section 923 Cr. P.C. read with Section 311 of the Code for summoning the Chemical Examiner and to give an opportunity to the petitioners for cross-examining him in relation to the said report submitted by him. The said prayer having been turned down, the present revision has been filed.

The petitioners are facing trial for heinous type of the offence and every opportunity must be offered to them to put forth their defence. The prosecution shall not be in any way prejudiced, if the Chemical Examiner is summoned and examined. The learned Additional Sessions Judge should have in my view taken this approach while considering the petition. Though I do not find any fault in the order of the learned Additional Sessions Judge, for ends of justice, I am of the view that since the petitioners are facing trial for a serious offence, they should be given all the opportunities to defend themselves[30].

12. In Nanda Kishore Singh and others vs. State of Orissa and another affidavits were filed by both the informant and the victim of the alleged torture that matter has been settled and both of them are leading a happy conjugal life. Therefore, the High Court decided that it is just and proper to put an end to the criminal litigation.

13. In Namita Nayak@ Namita Kumari Nayak and another vs. State of Orissa Joint petition by petitioner and other accused persons were filed to quash the proceeding. Since, the parties have settled their matrimonial disputes, it would be in exercise of futility to file the challan in the Court and to proceed with the trial. Considering this the High Court in exercise of its power and jurisdiction under Section 482, Cr.P.C. quash cognizance/proceeding. The High Court was of the opinion that since both the parties are desiring to get rid of the case and live together in the matrimonial house, in the interest of

[29] Criminal Appeal No. 66 of 1998.
[30] CRLREV No. 573 of 2003.

justice, parties should not be compelled to face trial-In the present facts and circumstances of the case. The High Court observed that the criminal charges have lost its objectives.

14. In State of Orissa vs. Attar Khan the High Court maintained that the main grounds on which the Court below has based its order acquitting the accused are reasonable and plausible and may not be entirely and effectively dislodged or demolished. The High Court, therefore was not inclined to disturb the order of acquittal. In the present case the High Court held that the reasoning's given by the Asst. Sessions Judge are not unreasonable or perverse.

In the judgment the court observed that when two views on the evidence are reasonably possible and the evaluation of evidence by the trial Court does not suffer from illegality, manifest error or perversity, the order of acquittal is not to be reversed. Although in an appeal from an order of acquittal, the power of the High Court to reassess the evidence and reach its own conclusions are as extensive as in an appeal against an order of conviction, yet, as a rule of prudence, it should always given proper weight and consideration to matters[31].

15. In Smt. Mounabati Jena and another vs. State of Orissa, the High Court dealt with a case which was brought before it with a prayer for quashing the order of S.D.J.M for by which cognizance under Section 498-A, 304-B, 201 and 34, IPC read with Section 4 of the D.P. Act was taken. It is to be mentioned that the police after investigation submitted charge sheet for commission of offence on which cognizance has been taken. However, the High Court observed that the death not being unnatural, the offence under Section 304-B is not at all made out. In view of it the High Court directed the learned counsel for the State to produce the case diary. The case diary revealed that the deceased was suffering from cancer and was under treatment. On perusal of the statements of witness recorded in course of investigation the High Court also found that nobody has alleged that the deceased was either killed or committed suicide. Under this circumstance the High Court felt that the order of cognizance under Section 304-B is required to be reconsidered for which it directed the learned Magistrate to reconsider the question as to whether on the existing materials cognizance in respect of the offence under Section 304-B of the Indian Penal Code should be taken or not. However, the Court maintained that so far as the other offences are concerned there being materials on record *prima facie* to establish commission of the said offences they do not require to be reconsidered[32].

[31] Government Appeal No. 16 of 1992.
[32] CRLMC No.1407/2007.

16. In Abhimanyu Mohapatra vs. State the High Court found that in course of trial nothing has been elicited from P.W.1 witness during cross-examination to discredit his evidence. Similarly, nothing has been brought out from P.W. 4 by the defence to disbelieve the testimony of this witness. In the entire evidence, there is no whisper that the harassment or cruelty faced by the deceased led her to commit suicide. There is no evidence that the appellant instigated the deceased to commit suicide. Besides, no materials are available that any terror was created by the appellant in the mind of the deceased to push the deceased to take the extreme step. In order to establish the offence under Section 306, IPC, the onus is on the prosecution to prove that the deceased had committed suicide and the appellant had abated the commission of such offence. In view of it conviction under Section 306 of IPC was set aside as no material on record to substantiate the said charge[33].

17. In Chandra Chudamani Patnaik and two others vs. State of Orissa an criminal appeal was filed in the High Court against the judgment of learned Second Additional Sessions Judge whereby the appellants have been convicted under Section 498-A of IPC and Section 4 of the Dowry Prohibition Act read with Section 34 of IPC. The Court below sentenced the appellant to undergo imprisonment for 2-years under Section 498-A and 1-year under Section 4 of the Dowry Prohibition Act. Initially the appeal was preferred by 3-appellants. During the pendency of the petition appellant number 2 died. After careful examination the High Court in this appeal observed that there is no specific material with regard to torture meted out to the deceased on account of nonfulfilment of demand of dowry even the prosecution witness who was also a neighbor has not stated anything about torture by the appellant. The High Court felt that the prosecution has failed to establish a case under Section 498-A of IPC. For the above reason the High Court has set aside the conviction and sentence of the appellant under Section 498-A IPC. However, the High Court uphold the conviction of the appellant number 1 under Section 4 of Dowry Prohibition Act[34].

18. In Smt. Kiranmayi Mishra vs. State of Orissa, the petitioner approached the High Court in a criminal revision challenging the order of commitment of the case to the Court of Session. It was submitted before the High Court that in view of the *post-mortem* report to the effect that the death was suicidal, the trial court erred in holding that the death of the deceased was caused by the accused persons. As such framing of charges against the accused persons under Section 304-B read with Section 34 of IPC is illegal. It was further submitted that the charge was framed mechanically without considering the statement of the witnessed recorded under Section 161 of Cr.P.C. Since, the petitioner ordinarily does not stay with the accused framing charge against her is bad in law. Citing various decisions in Lalu Prasad Yadav vs. State of Bihar

[33] Criminal Appeal No. 42 of 1990.
[34] Criminal Appeal No. 276 of 1996.

through CBI (AHD) Patna (2007) 36 OCR (SC) 548, in which it was held that at the time of framing of charge, the requirement is that the trial court forms the opinion that there is a ground for presuming that accused had committed the offence which he is competent to try. In such situation, he is only required to frame a charge in writing against the accused. But for discharging the accused, the reasons should be recorded. In this background based on the ratio decided the High Court came to the conclusion that no illegality or irregularity has been committed by the trial court in framing charge against the petitioner. Hence the revision petition was found to be devoid of any merit[35].

19. In Dhani @ Dhaneswar Sahu and another vs. State of Orissa discussing the facts, contention and provisions of law it was held by the High Court that action on the part of the appellants was an willful act of such a nature that was 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 and further that harassment to the deceased was with a view to coerce her as well as her widow mother to meet a further unlawful demand of dowry. Charge under Section 498-A IPC is therefore sustained. Since death has not been found to be suicidal and in absence of a suicide, Section 306, itself has no application. Section 511 not applicable to be facts of the present case. However, on consideration of the contentions advanced by the learned counsels for the parties the High Court observed "End of Justice would be served if appellant number 1 is dealt with under Section 4 of Probation of Offenders Act 1958 and is released on probation of good conduct" the sentence imposed on appellant number 1 was accordingly set aside. Similarly, considering the submission that appellant number 2 who is the father-in-law is a person of advanced year in as much as 60-years in 1986 and is 77 years by now and the offence relates back to the year 1986, the High Court while upholding his conviction under Section 498-A of IPC reduced the sentence to the period already undergone with a fine of Rs 5000[36].

20. In State of Orissa vs. Sachindra Kumar Behera and Others the High Court found that there was no reliable evidence with regard to demand of dowry, subjecting the deceased to cruelty or harassment by the accused-respondent (in this case) for non-fulfillment of any demand of dowry. There is no specific evidence that the deceased was being subjected to cruelty or harassment. Prosecution failed to prove that soon before her death the deceased was subjected to cruelty. Unless it is conclusively established that the harassment and torture meted out to the deceased was with a view to force her to commit suicide, the offence under Section 498-A, IPC cannot be attracted. Hence the order of acquittal is confirmed by the High Court in this revision. The High Court observed that "In the case at hand, the accused-Respondents do not challenge the finding of the trial Court that the death of

[35] CRLREV No. 216 of 2006.
[36] Criminal appeal No. 229 of 1989.

the deceased occurred otherwise than under normal circumstance and that she died within seven years of her marriage. But they fervently challenged the allegation that soon before her death she was subjected to cruelty or harassment by them for non-fulfillment of their demand of dowry. Admittedly accused-Respondent No.1 was the husband of deceased. Respondents Nos. 3 and 4 are the parents of Respondent No.1 and Respondent No. 2 is the wife of the brother of Respondent No. 1. So Respondent Nos. 2 to 4 are the close relatives of Respondent No. 1. On perusal of the evidence of father of the deceased (P.W.1) it is found that he had presented gold ornaments, one Bajaj Scooter and other house-hold articles to the deceased Manorama of his own accord at the time of her marriage. On the next day of the marriage at the time of PAKHALKHIA, accused-Respondent Schindra demanded a gold chain. So his nephew (P.W.1) Ratnakar assured him to deliver the same latter. During cross-examination it was elicited from P.W.1 that when accused-Respondent Sachindra did not take his meal on the occasion of PAKHALKHIA, Ratnakar volunteered to give a gold chain after some time. On perusal of the evidence of Ratnakar Patra (P.W.2), it is found that at the time of PAKHALKHIA, accused Sachindra demanded a gold chain and threatened to observe fasting unless it was given. So he assured to deliver a gold chain to him latter. But he had not stated before the I.O. that accused-Respondent Sachindra demanded a gold chain at the time of PAKHALKHIA and threatened to observe fasting, unless it was given So the evidence of P.W. 2 that accused –Respondent demand a gold chain and threatened to observe fasting in case it is not given, cannot be relied upon. There is no other reliable evidence to show that any other accused-Respondent demanded any dowry much less a gold chain as such the trial Court rightly held that there was no demand of gold chain on behalf of the accused-Respondent. In absence of any reliable evidence with regard to demand of dowry, subjecting the deceased to cruelty or harassment by the accused-Respondent for non-fulfillment of any demand of dowry does not arise. There is also no specific evidence that the deceased was being subjected to cruelty or harassment as would be discussed latter.

There is no evidence with regard to the specific instance of subjecting the deceased to cruelty by any of the accused-Respondents. It transpires from the evidence of P.Ws. 2,3,6,7 and 8 that on 29.12.1991 while they had been to the house of the accused-Respondents the deceased expressed before them that she was being ill-treated by the accused-Respondents except accused-Respondent Narayan for non-supply of the gold chain to accused –Respondent Sachindra as assured by P.W. 2, but they had not stated so before the I.O. So, the same cannot be relied upon. Moreover, it transpires from their evidence that the accused-Respondent Sachindra demanded Rs. 3000/- in lieu of the gold chain to utilize the same in his C.T. Examination. During cross-examination it was elicited from P.W. 2 that the accused-Respondent Sachindra appeared in the C.T. Examination in the month of November. So it is hard to believe that he demanded Rs. 3000/- in lieu of the

gold chain on 29.12.1991 i.e., two months after he appeared the C.T. Examination. Furthermore, it transpires from the evidence of P.W. 14, the I.O. that his investigation disclosed that the deceased had written some letters to P.W.1. Had those letters been produced it would have shed some light on the prosecution case that the deceased was subjected to cruelty, but as found from the evidence of P.W.14, even though he asked P.W.s. 1 and 2 to produce those letters they did not produce the same. It is found from the evidence of some witnesses that the deceased told before P.W. 3 that the accused –Respondent Sachindra had illicit relationship with the accused. Respondent Snehalata Behera, the wife of his brother, for which he was ill-treting her some of the witnesses also stated that they had heard the same from P.W. 3but since P.W. 3 and those witnesses had not stated so before the I.O. the same cannot be relied upon. So, the trial Court rightly held that there was no reliable evidence that the accused-Respondents subjected to deceased to cruelty. In absence of such evidence, the presumption as to abetment of suicide by the deceased as contained under Section 113-A of the Evidence Act cannot by drawn. Unless it is conclusively established that the harassment and torture meted out to the deceased was with a view to force her to commit suicide, the offence under Section 498-A of IPC cannot be attracted. It is the established principle of law that if the view taken by the trial Court is a plausible one, the appellate Court should not interfere with it even if a second view was possible. In my considered opinion the view taken by the trial Court is a plausible one".

21. In Bichitra Behera vs. State of Orissa case, the marriage was solemnized in the year 1992, the first child was born in October 1993, the second child in 1997, and they were leading a happy conjugal life. Due to some misunderstanding F.I.R. was lodged. Thereafter the petitioner was convicted by the trial Court. The M.A.T. Case was withdrawn on 26.6.2006 by the informant after settlement keeping in view the future of the children. In view of the fact that both the parties are living peacefully and maintaining a happy conjugal life with their children, in the interest of justice and to avoid multiplicity of litigation between the parties, by applying the ratio decided in above referred cases, this Court accepts the compromise and sets aside the order of conviction and sentence on the basis of the such compromise[37].

22. In Prahallad Budek vs. State of Orissa except the Statement of P.W. 1 no other witnesses examined by the prosecution have supported the allegation of demand of dowry and torture or torture and harassment for, or in connection with, any demand of dowry. Prosecution has failed to prove the last and vital ingredient of Section 304-B that soon before her death, the deceased was subjected to cruelty or torture for, or in connection with demand of dowry. Offence under Section 304-B has not been proved against the appellant. Thus the High Court came to the conclusion that Section 304-B

[37] CRL. REV. No. 303 of 2004.

has not been proved against the appellant. While dealing with 304-B the High Court relied on the decision in the case of Kamesh Panjiyar @ Kamlesh Panjiyar v. State of Bihar, (2005) 30 OCR (SC) 578 wherein the Supreme Court held that there must be existence of a proximate and live-link between the effects of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence. Similarly, prosecution has not conclusively proved as to when and how such demand was made by the appellant, for dowry or as to when the deceased was tortured. Though P.Ws. 11 and 12 have stated that several village meetings were held, neither anything has been brought out by the prosecution as to what was decided in such meetings nor any such decision was ever reduced to writing. Prosecution has also failed to prove the commission of offence under Section 498-A, I.P.C. No Case is also made out under Section 4 of the D.P. Act. In view of the above the order of conviction and sentence passed thereon by learned trial court was set aside by the High Court. The High Court further observed that if it is established that soon before the death, deceased was subjected to cruelty or harassment by her husband or any of his relatives for or in connection with any demand for dowry, such death shall be called “dowry death” and such “husband or his relatives” as the case may be, to have caused her death by drawing a presumption as available in Section 113-B of the Evidence Act[38].

23. In Sanatan Mallik and others vs. State of Odisha and Others the High Court observed that it is an off shoot of a matrimonial dispute, wherein the marriage has since been dissolved between the parties and the wife has come forward with an affidavit that the dispute has already been settled between them outside the Court and she does not want to proceed with the case. The same appears to be bona fide. Therefore, chance of conviction in this case is also bleak. For that reason no useful purpose is going to be served in continuance of proceeding. Accordingly, the High Court allowed the prayer made in this case and quashed the proceeding.

24. In Deepak Pradhan vs. State of Orissa- the High Court while hearing a Jail Criminal Appeal stated that before convicting the accused, the Court must be satisfied about the following:

(i) The circumstances on which the prosecution relies must be cogently and firmly established leaving no doubt in the mind of the Court about their proof.

(ii) Each circumstance must be consistent with the hypothesis of guilt of the accused, though taken alone, it may not prove the guilt of the accused. In other words, it must not be capable of explanation by the defence.

[38] CRLA No. 211 of 2003.

(iii) All circumstances taken together that be forming a complete chain unerringly pointing towards the guilt of the accused.

Sincere there is no direct evidence regarding the torture meted out on the deceased and the only material forthcoming in the present case is that the deceased made complaint before her father and uncle that she was ill treated and tortured by the present appellant demanding a cash of Rs. 15,000/-as dowry and she was being tortured also for inferior quality of the wrist watch and T.V. These materials cannot be looked into. Contradictions in the statement coupled with the fact that the independent witnesses to the alleged discovery statement and recovery of the weapon of offence have not supported the case of the prosecution, the same has to be viewed with suspicion. Prosecution has not proved the circumstances beyond all reasonable doubts and furthermore the circumstances so established in this case do not form a complete chain unerringly pointing towards the guilt of the accused.

In view of the above the High Court observed that "The evidence afore discussed also do not establish a case under Section 304-B of the I.P.C. as the essential ingredient of torture for dowry soon before the death of the deceased is lacking. Furthermore there is no evidence to establish a case under Section 4 of the D.P. Act. Thus, the case of the prosecution fails and the conviction recorded by the learned Sessions Judge, Sundargarh, is erroneous, requiring our interference and therefore we are of the considered opinion that the conviction recorded by the learned Sessions Judge is not sustainable under law. Accordingly, we allow the appeal and set aside the conviction and sentence passed by learned Sessions Judge, Sundargarh, in Sessions Trial No. 100 of 1997 against the accused-appellant for the offence under Sections 498-A /302 of the I.P.C. The accused-appellant be set at liberty forthwith, unless his detention is required in any other case[39]".

25. In Jitendra Rout vs. State of Orissa the High Court considered the case as the petitioner was convicted of the offence under Section 498-A IPC and Section 4 of Dowry Prohibition Act. He was sentenced to undergo R.I. for 2 and 6 months. However, the petitioner through his counsel informed the Court that they have decided to file a petition for mutual divorce between the parties under-Section 13(b) of the Hindu Marriage Act. Accordingly, the marriage was dissolved by the Family Court in 1999. It was submitted before the High Court that at the time of divorce the informant-wife undertook to withdraw all the proceeding initiated by her against the petitioner. However, No appropriate steps were taken by her-Petitioner acquitted of the charges in the case.
After hearing the case the High Court held that "In view of the above undertaking, she was required to take appropriate steps in accordance with law for disposal of that case, but no such steps were taken by her and for the

[39] JAIL CRIMINAL APPEAL No. 19 of 2000.

reasons best known to her, she did not move the competent Court for withdrawal of the case pending against her husband. To my mind, in view of all these events and the conduct of the informant-wife, it would be abuse of the process of the Court if the criminal proceedings arising out of which the present revision arises is allowed to continue. Therefore, I am of the considered opinion, ends of justice would meet if the petitioner is acquitted of the charge in this case. In the final analysis, the revision is allowed. The petitioner is acquitted for the charge framed against him in G.R. Case No. 612 of 1988/Tr. No. 19 of 1994 of the Court of C.J.M., Jajpur. The bail bond be discharged accordingly"[40].

26. In Brajabandhu Acharya vs. State of Orissa a criminal appeal was preferred before the High Court. The criminal appeals arise out of the judgment and order of Second Additional Session Judge, Puri in S.T. No. 9/116 of 1996. The petitioners have been convicted for commission of offence under section 498-A and 304-B read with 34 of Indian Penal Code. The petitioners have been sentenced to imprisonment for life for conviction under section 304-B and no separate sentence was imposed for their conviction under section 498-A of IPC. The High Court after hearing the case held that "the entire case relating to demand of dowry before, at the time of and after marriage has been developed only in course of trial. Though the evidence of P.Ws 11 and 14 has been contradicted by evidence of P.Ws 25 and 26 to some extent, considering the entire evidence placed by the prosecution with regard to demand of dowry, we are unable to accept the evidence of the above two witnesses and consequently hold that the prosecution only at the time of trial developed the case and tried to put forth before the Court that there was a demand of dowry before, at the time of and after marriage, though no such allegation had ever been made during investigation in their statements recorded under Section 61 Cr. P.C. by P.Ws. 25 and 26". Accordingly, the Court observed that the prosecution has failed to prove charges leveled against both the appellants [41].

Analysis of Judgment and Orders:

An extensive analysis of all the above cases numbering 26 which were came up before the High Court of Odisha since 1998 until 2012 in matters of Section 498-A along with other provisions indicate that out of the total cases only 10-cases were relating to conviction order by trial court. It shows that out of 26 case conviction by the trial court made in only 10-cases. Out of these 10-cases where the order of conviction by trial court were preferred in appeal or revision, in one case the High Court uphold the conviction and in remaining other 9-cases the order of conviction by trial court were quashed on various ground mostly due to absence of evidence. In that particular case where the High Court sustained the order of conviction of the trial court, it was allowed

[40] Criminal Revision No. 355 of 2003.
[41] Criminal Appeal Nos. 53 and 56 of 1999.

partly with the observation that although the conviction is upheld the parties are allowed with reduction of punishment. While one convicted person was allowed to go under probation, the conviction order is reduced for the other one considering his old age. Similarly, against the acquittal order in trial court in 2-cases the High Court upholds the order of acquittal. Thereby, it is evidently clear that no one has undergone imprisonment as a result of conviction. Similarly, the analysis reveals that in course of hearing of the case and during the pendency compromise is made and allowed in 4-cases. In one case the conviction order was set aside already. There were as many as 4-cases where mutual divorce had been made for which the cases are quashed under the inherent power of the High Court under Section 482 of Cr. P.C. Almost 8 cases are ended with quashing on the ground of mutual divorce or compromise between parties. There are 2-number of cases where the order of cognizance was preferred which were dismissed and the order of cognizance are sustained. In one case due to non-availability of strict proof of marriage the conviction was converted into acquittal. Similarly, there are 2-cases where framing of charge by trial court was considered and observed that framing of charge is legal. In one case the appellant approached the court for providing opportunity of being heard which was allowed.

In view of the above analysis it can be safely stated that over last 15-years there was no conviction under Section 498-A except for one case where the punishment has been reduced without any imprisonment.

Chapter-IV

Dialogue with Lawyers

Lawyers as Opinion Makers:

The present research made an attempt to ascertain the views of lawyers conversant with penal laws and the criminal justice system. An attempt has also been made to engage those lawyers, who have already conducted or dealt with the subject of cruelty on women by husband or the relatives of husband who come under the purview of the provision of Indian Penal Code under Section 498-A read with Section 304-B as well as the Dowry Prohibition Act, in the discourse on use and misuse of the provision.

The lawyers who are covered under the research practice in different courts starting from Sub-divisional Judicial Magistrate Court to High Court of Odisha, hence the level of understanding about procedural aspect and also legal knowledge concerning interpretation of statute are different. A total number of 37 lawyers out of which 6 are women lawyers from various districts of Odisha are the participant of the research. In order to have a dialogue with lawyers a focus group discussion was arranged and held. Almost 3-hours in two different sessions were devoted to record the views of the lawyers. The interaction with the lawyers for the purpose of this research was made by way of open-ended question and recorded in an unstructured format.

It is of relevance for any legal research that the views of lawyers' community are significant in view of their regular interaction with client, laws, precedents and the courts. In fact the lawyers as a community always form views on any aspect of law and justice that impacts the individuals and the society at large. Very often the legal opinion and the views of lawyers are overlooked in the process of reform of laws due to absence of mechanism to record the view of the lawyers to contribute to the process of law making. This has been viewed as a major deficit in the process of law making and also in the arena of legal reform. Although consultation with lawyers in a large country like India would be a formidable task for the legislators in the process of law making or seeking reform in the existing framework of law, due to the practical knowledge and understanding of procedural justice the views of lawyers are always significant. There has always been an impression about the lawyers in the society that they possess opinions which are biased towards their client, the interest of the society at large is less significant than the case in hand and the lawyers maintain status quo due to the conventional practice to which they are accustomed for which legal reform is insignificant in the day to day legal practice. The above views demonstratively made clear as it has been observed that in the process of interaction with lawyers for the purpose of the present research, the lawyers who have participated have come out with very

clear observations and also were ready to change their stand on specific issues.

Common Perception:

The interaction with lawyers began with a very general question about the possibility of misuse of the provision provided for preventing cruelty on women in their matrimonial home. The initial dialogue indicated that this provision is grossly manifestly misused by women to fulfil their aspiration and expectation from the husband and his relatives. Majority of lawyers (30 out of 37) stated that when there is an affair between a boy and girl or for that matter just a friendship exists, often girls develop an expectation that the relationship or friendship would end up with a marital relationship. When such a desire is unfulfilled due to rejection of proposal either by the boy himself or the family members of the boy or even by all of them, the other side i.e. the girl resort to Section 498-A. The lawyers referred several instances based on their briefs (cases) where without any solemnisation of marriage as per the laws that govern the marriage like (Hindu Marriage Act), cases are lodged with the Police to rope the boy and their family to the court to build pressure on them for giving the relationship a marital status.

The lawyers referred several cases of High Court and the trial court where the court rejected the petition on the ground of non-fulfilment of marriage as per law. It is pertinent to mention here that one of the ingredient to establish a case under Section 498-A is evidentiary proof of solemnisation of marriage. Similar arguments were advanced by lawyers in case of misuse of law to fulfil the expectation of women who are married from their husband and in-laws like staying separately with husband alone without any other family members, in cases of extra marital relationship, indifferent attitude of wife and also to get rid of household responsibilities. It was clear in course of dialogue that such views are based on their imagination which they believe to be true relying on their communication with the client.

Overall the lawyers had given the explanation for terming this as misuse primarily for the reason that this Section is added with other provisions to make the case stronger. The provision of Presumption in such cases as provided for in Section 113 –B of Indian Evidence Act probably influences such perception as understood from the dialogue with lawyers.

Professional Perception:

As the interaction progressed with lawyers in a more professional manner using technicalities of law and the procedural aspect, it was observed that a very different kind of opinion began to emerge. It was observed that when questions on technical and procedural aspect are put to lawyers from a very general question like what they feel about use and misuse of provision relating to the cruelty on women to more specific queries, there was a

complete overhaul of the earlier statement that the provision is misused. This was explored in a different set of question which revolved round the fact of a case.

In course of exploring the legal opinion as to how a case in the court of law begins, the lawyers unanimously observed that either by lodging an FIR (Section 154 Cr.PC) with the Police under whose jurisdiction the cause of action arises or where the women is living at the time of lodging the FIR or secondly by filing a complaint case with the Judicial Magistrate who has jurisdiction over the matter. It was admitted that by and large FIR is lodged with the Police by the victims or their representatives directly without consultation with lawyers as the moment an offence is committed as a result of which the parties sustained injuries or apprehend any danger to their life they take shelter immediately after commission of offence with the local police. Generally it is beyond the reach of victims to take the advice of lawyers before approaching the police.

The lawyers also responded to the question that is it desirable under law to mention the provision under which they need protection. The lawyers informed that as per the procedure laid down under Criminal Procedure Code that the informant in their first information are only required to inform about the fact of the case and as a general rule they cannot ask for protection under any specific provision or law. The nature of complaint might indicate at certain specific provision which is termed as an offence as per the criminal laws, however, it is not permissible for the informant to lodge any complaint with seeking a relief under any particular provision of law. It was almost unanimously agreed that the Police after investigation and enquiry decide the nature of offence and accordingly a case is lodged under various provisions of penal laws. The dialogue with lawyers was stretched further for seeking an explanation as to how it is possible for women to misuse the law (provision under Section 498-A of IPC) unless the investigating officer of police also believes the fact to be true at least prima facie, the lawyers opined that it is not the women who are victims of cruelty who misuse the law but in contrast the process of law is abused by the law enforcement machinery of the State for various reasons. The reasons for misuse or abuse of power by police consists of grounds like pressure built on police by media, women group and political as well as influential persons to take cognisance in the matter that has come before them. In such cases even without making proper investigation cases are lodged to avoid any complaint about them regarding inaction or even for that matter to avoid demonstration and rallies. There are instances where the police is gained over in exchange of money or power. In some cases the attitude of investigating officer also matters. The believe system of investigating officer is also some times favourable towards women who have taken shelter for protection. It is in this regard bears significance to mention that there are several case materials available on record which

suggests that even without making an enquiry about the status of marriage that is to suggest that whether the marriage is solemnised cases are lodged. It is very important that one of the ingredients required to be fulfilled to establish a case under Section 498-A of Indian Penal Code is proof of marriage. Using discretion arbitrarily by police is a matter of serious concern and constitutes violation of human right.

What is however more important to mention that such abuse of power is not only goes in favour of women but also similar abuse of process of law is also meted out in similar circumstances to assist the accused. When process of law is abused by enforcement agencies of the State to favour accused the net result always is denial of justice to the victim from the very beginning of the case. The lawyers subscribed to the view unanimously that the abuse of process of law is common in both the cases be it the women who come as informant or the husband and their relative who are accused in cases of cruelty on wife.

On the question that are there any other legal remedy available to initiate a case under the provision of Section 498-A of Indian Penal Code, it was suggested that a complaint petition can not be filed directly in the court of law to take cognizance about cruelty as there are judgments which requires that in all matters which attract Section 498-A a proper enquiry by the police is essential.

A cognizance when taken by police who has been approached, such cognizance can be quashed by High Court on a petition moved by the accused persons if there is no evidence or the ingredients that are required to be fulfilled to attract the penal provision is inadequate. The High Court has the inherent power to exercise its authority in cases where the minimum conditions remain unfulfilled (Section 482 of Cr.P.C). The above discussion with lawyers about the procedural aspect of law encompasses that misuse of penal provision is hard to realise in view of the presence of justice delivery system. Even though the remedial measures in cases of misuse of process of law is a long drawn out procedure nevertheless it exists.

In cases where all elements of the fact is manufactured for purposes of using the criminal justice system to realise the goal or to make it favourable towards the informant, it is always a matter of investigation. Mistake of facts is well known to the Indian criminal justice system and not very uncommon. In view of the possibility of imposition of penalty or taking cognizance due to mistake of facts, the procedural law contemplates remedial measures.

Other than the above stated procedural arrangement, it is opined by the lawyers that no case is built with the initial cognizance but it follows a series of action to prove the case beyond any reasonable doubt. Every case goes

through a number of stages as a matter of natural justice before the final verdict is pronounced and penal provisions are imposed. Right to be heard is one of the cardinal principles of criminal justice system of India. It was revealed from the lawyers that after cognizance is taken in a case the investigating officer and the enforcement agencies are required to submit final report or charge-sheet on the basis of collection of evidence and proper enquiry within a stipulated period as prescribed for different provisions of penal law. When the final report is submitted to the appropriate court having jurisdiction over the matter and under whose jurisdiction the cause of action occurred, the court examines in detail the validity to constitute an offence. At this stage also the cases can be quashed in exercise of the inherent power conferred on high court. Therefore, the possibility of misuse of legal process is very much restricted within the procedural boundaries of law. Once the charges are framed, the trial begins as per the procedural law where prosecution witness and defence witness are examined and cross examined by the prosecution and defence lawyers. Penalties are imposed only when trial comes to an end and with all material facts and evidences on record. In Indian criminal justice system the above processes are not an end in itself. The opportunity in the form of appeal and revision is always provided as a matter of natural justice to prove innocence before pronounce guilty of any offence until the matter is adjudicated by high court and Supreme Court.

A question as to how then it is possible to misuse a legal provision in the presence of procedural law, the lawyers observe that the complexity of law determines the cases for which there can be misuse only as an exception and not as a rule.

Alternate Legal Recourse:

In course of holding a dialogue with lawyers in a focus group discussion, the question was put to them about their understanding on availability of alternative legal recourse in place of the provision relating to cruelty on wife by husband and/or relatives in a matrimonial relationship. In response to this question, it was made clear by lawyers that legal recourse under different provisions of Indian Penal Code may be resorted to by wife for causing bodily injury to women or for matters of criminal intimidation, hurt and grievous hurt, wrongful confinement, wrongful restraint along with out-raising modesty of women. There was almost a unanimous view among lawyers that majority of provisions of Indian Penal Code and other penal laws as well as special laws can be made applicable by the law enforcement officials in place of the provision under Section 498-A of Indian Penal Code. Since a special arrangement is made in the penal law therefore, in the present context by and large this provision alone serves the purpose of providing protection to women when they are subjected to cruelty.

It was given to understand that in most of the cases which were lodged against the husband and his relatives by the prosecution on behalf of women, in very limited cases the provision under Section 498-A of Indian Penal Code has been applied singularly. In a matter relating to cruelty on women in the marital home many other provisions are also at the same time made applicable like Dowry Prohibition Act. When the cruelty resulted in a dowry death cases are lodged under Section 304-B relating to dowry death along with Section 498-A. Similarly, in cases of attempted suicide where there is a specific complaint about cruelty for which such suicidal attempt has been made, cases are registered under Section 306 along with 498-A on the ground of abatement of suicide. It is pertinent to mention that Section 306 relates to abatement of suicide and will apply only when suicide is committed which killing of oneself. Committing suicide is incapable of punishment but attempt and abatement are punishable under Section 306 and 307. There is very few case material available to show that an offence under Section 498-A of Indian Penal Code stands independently without other provisions. It is a matter of investigation as to why cases under this provision do not stand independently on the ground of cruelty alone. Even though it is a fact that in many cases conviction is made only under Section 498-A setting aside other provisions due to lack of evidence in support of related matters.

The question as to whether there is a need for the provision of 498-A after enactment of Protection of Women from Domestic Violence Act 2006 a mixed response was recorded. On many point the views are rambling. It was clearly spelt out by the lawyers that there cannot be any comparison between both the legal provisions as while the former is an offence as per the penal laws the later is purely a civil law. Even though order for shelter in the marital home can be obtained and the in-laws along with husband can be prevented to come to the close proximity of the women who obtained a protection order, there is no culpability under penal law. It is widely understood by lawyers that penal law acts as a deterrent to prevent crime.

Outcome of the Dialogue:

The engagement with lawyers who locate the present tension of law that it is misused unravels the fact that the criminal justice system is systematically organised with detailed descriptive procedural law and penal provision that one can hardly believe that the process of law is misused. The system seeks to accomplish ends of justice through examination and cross examination of facts, circumstances, witnesses and evidences. The dialogue with lawyers therefore, indicates that it is the system which has to be accountable for its action and also for causing injustice by abuse of power or due to negligent action without any due diligence in investigation.

Chapter-V

Interaction with Victims

A systemic engagement with victims of cruelty in marital and domestic sphere has been attempted in this research to gain knowledge and understanding concerning the level of critical legal awareness about the penal law as well as criminal justice system among victims of cruelty, the context in which FIR is lodged, the nature and extent of cruelty and at the end the aspiration of victims of cruelty from the criminal justice system. The attempt to investigate the matter with interaction with victims of cruelty has been made to unravel the position of law dealing with cruelty on women by husband and his relative with empirical evidences.

The interaction with the victims of cruelty has been made through a wide range of methods. A total number of fourteen cases[42] have been initially identified whose cases are either pending at present or who have lodged FIR recently. The cases are taken up from a Legal Service Centre run by a voluntary organisation in Odisha[43]. The periodicity of cases stretches between 2005 to 2011. It is required to be noted that while every case has been lodged under Section 498-A of Indian Penal Code in common, there is no case where Section 498-A has been used independently of other provisions. The allied provisions are varied covering a wide range of Sections of IPC such as Section 34 relating to Acts done by several person in furtherance of common intension, Section 506 relating to Punishment for criminal intimidation along with Dowry Prohibition Act.

In the process of enquiry into the cases, certified copies of FIR has been reviewed, verification of the record in the concerned courts has been made to know the progress and also wherever possible discussions were held with the police official under whose jurisdiction the cause of action arose and is registered, public prosecutors and the family members of the victim. In three cases out of the total fourteen cases which were taken for review interactions with the husband and the relatives of the husband (mostly mother and father) had been undertaken.

The interaction was held through interview method without any structured questionnaire. The views were recorded and corroborated with the certified court records particularly the information provided in the FIR. Interactions were held individually for a duration which stretched over something between

[42] The list of cases are appended to this report with case number, year and area where it is registered along with information about the provisions under which cases are registered.

[43] All the cases are identified and taken from the Legal Service Centre run by Committee for Legal Aid to Poor (CLAP) based in Cuttack. It is a registered NGO under Societies Registration Act 1860.

one to three hours. It was observed and recorded that in course of interaction with victims of cruelty as many as nine victims have reduced to tears while narrating the nature of cruelty and the way they were deserted. All the victims had negative impression about the criminal justice system and vehemently expressed criticism like abuse of power, gained over in exchange of money and nexus between the accused and law enforcement official along with inordinate delay in redressal of grievance. Six numbers of victims expressed concern for early release of husband and in-laws from judicial custody on bail. All of them made complains of receiving threat to their life either directly by the husband or indirectly through unanimous persons or from their family members. In all cases there are more than one case pending in the court of law on matters like order for maintenance, application for divorce and restitution of conjugal life. In three number of cases proceedings are also started for shelter and protection order under the Domestic Violence Act.

In course of interaction with the victims who have lodged FIR which are the subject matter of enquiry in the present research, at attempt was also made to ascertain the level of critical legal awareness about various penal provision especially on 498-A. It was observed that although the subject of research very often refer 498-A the knowledge about the provision is absolutely nil. When a question was put to each one that 498-A of which law, none of them were aware that it is a provision of Indian Penal Code. The attempt to understand the level of understanding about the overall content of 498-A also resulted in answers that it is about dowry. But did they have experience cruelty? Everyone almost reiterated that physical and mental cruelty did perpetrate on them by the in-laws and husband in the form of desertion, denial of food and cloth, beating and also attempt to murder.

The question as to who had supported them to file FIR, it was revealed that either a local voluntary organisation (7-persons), lawyer (3-person) and of their own effort (4-person). The support was given in the form of writing the FIR on behalf of the victim and accompanying them to police station for lodging FIR. It was revealed that based on their allegation the FIR had been prepared in exact verbatim. According to them no tampering or addition has been ever made in the FIR.

The respondent replied to the question with positive gesture when they were asked whether they are satisfied that FIR had been lodged and the accused were arrested. Looking at the nature and extent of perpetration of cruelty mostly on the ground of dowry the respondent do not realize their action.

On the question of the possibility of reunion with their husband, the respondent in all cases are ready for a compromise if it is assured that there shall be no further cruelty meted out on them or if there is no threat to their life. A recheck with the respondent about the reason for compromise indicated

that the plight subsequently to the action is difficult to bear. It was observed that the respondent are succumbed to the procedural complexities and delay in arriving at a decision.

Finally, the respondent expressed their dismay over the delay over their case and the way matter progresses. None of them ever expressed that any justice was ever rendered to them. Almost all of them feel that money and power matter for getting justice in time.

Chapter – VI

Analysis of Research Findings

The findings of the present research is based on a thorough engagement with the law, judicial pronouncement, institutions, victims and the major stakeholders in the process of delivery of justice. In course of investigation from original source of knowledge the findings are given a shape. It is essential to point out that the research findings are based on methodological interaction with women who have a case pending in the court of law relating to cruelty as envisaged under law and lawyers having practised criminal law as well as experience in dealing with Section 498-A, IPC. The response of the subjects is further fortified with enriching knowledge with review of laws and court records. Additionally, the judgment of the court of a particular period and the ongoing discourses on the theme of cruelty on women in matrimonial home has been reviewed to understand the present direction of legal provision and the societal debate.

The present research on the theme of legal provision relating to cruelty has been conducted primarily for the reason that since women are subjected to cruelty by their husband and in-laws in their matrimonial home for which the State in India responded to the situation by bringing a provision in the criminal legal framework. However, what has been once conceived as a protective measure for women in their matrimonial home from cruelty has become a matter of serious judicial activities on the ground of the provision being misused. The perception and development on this aspect of law was the focus in course of the legal research as the subject has been dragged changing the original perception about the incidence of injustice. What is important to mention here that the incorporation of legal provision on cruelty in the framework of criminal and penal law in India is a special provision in order to protect the interest of women as the research reveals that in the absence of such a provision the cruelty on human being including women can be dealt with by the provisions of penal law. The significance of granting a special provision for protection of women has to be seen in the overall discourse concerning gender justice and equality.

It was revealed from the research from analysis of data and statistics concerning crime especially crimes which are perpetrated exclusively on women that there has been an increase in the incidence of cruelty as envisaged in Section 498-A IPC. The statistical analysis indicates that the reported incidence of cruelty is the third major area of crime after rape and dowry deaths in Odisha.

The review of judgment and orders of High Court of Odisha as appeared in different journals of law indicates that there are 26 cases (one case is tied up hence the number of cases is 27 from that angle) which were dealt with by the High Court. It must be admitted that the number of cases which were dealt with must be higher than the number of cases which were reported in different journal. As a general rule of reporting those cases are reported which are considered as trend setting or where a principle of law is decided. Very often judgments which are long and comprehensive are also reported. Although the research due to its limitation had been confined only on reported judgments between a period of 15-years (1998-2012), nevertheless adequate for the purpose of the research. The review of judgment indicates that in 3 numbers of cases the women whose cases were heard have already died for which the cause of action arose. Out of the total cases only 11 cases were those matters which were heard by the High Court to decide on conviction or acquittal. It indicates that only 11 out of 26 cases were actually concluded. Other matters in practice did not decide the allegation of cruelty on its merit. Hence, for the purpose of the present research only 11 cases bears significance. Out of those 11 cases where the matter have come to a conclusion at the level of trial court and High Court, it has been observed that there are 9 cases where the trial court decided conviction and 2-cases were disposed off by trial court with acquittal. The review of judgment of High Court on these 11 case brings to the notice that all the conviction orders of the trial court were set aside except in one case (practically two cases which were jointly heard as one) where the conviction order for one person was upheld. In that single case the High Court allowed reduction of sentence considering the old age of the person who was convicted. It was converted into a fine of Rs 5000/-. In 2-nos of cases where the trial court concluded the case with acquittal order for which the prosecution (State) filed appeal, the High Court, upheld the acquittal order. This analysis indicates that only one case the matter of cruelty could be finally sustained with reduction of punishment. The other issue which requires attention is that in one case the High Court disposed off the matter quashing the case for non-availability of strict proof of marriage. The underpinning of all the cases which deserves mention is that the time span involved in the final decision of the matters upto High Court level. By and large it took more than 10-years for the final disposal both at trial court and High Court level from the origin of the case.

The overall finding of this research from the review of judicial decisions and orders about the reason for acquittal of accused in all cases or for that matter from the perspective of defence (in this case the women against whom cruelty was alleged to have been committed) tend to indicate that the prosecution could not establish the cases with adequate material evidences and witnesses. There are instances where the High Court refers to the prosecution witnesses who were hostile in course of trial for which the cases came to judicial scrutiny. The incapacity of prosecution including the law enforcement

official to investigate and build a case with material evidences and strong witnesses which were the prime reason for acquittal, perhaps leaves an impression among lawyers and judiciary that the provision of 498-A is being misused.

When the findings of research concerning analysis of judicial decisions stands like this as mentioned above, the interaction with the women who complained of cruelty by their husband and relatives of husband for which cases are lodged under Section 498-A recently between 2005-12 brings to focus that they have experienced in the matrimonial home various kinds of situation like denial of food, merciless beating, desertion, wrongful confinement, cruel behaviour etc for which they had no option but to knock the door of police without even knowing what kind of protection they are going to receive. As has been revealed in course of interaction with the woman the level of awareness about the provision of 498-A almost negligent. None of them knew what does it mean to say, it is a non-bailable, cognizable and non-compoundable provision. All these women know is that a dowry case is lodged by the police. It is essential to reiterate the fact that in course of interaction the women on several point complained why the husband or their family members who have subjected them to so much of pain were granted bail. These women often levelled charges that due to financial position the law was used in support of their husband and relatives of the husband. It was further revealed that the level of understanding of a trial in court is demonstratively poor. On the question as to what evidences they have with them to prove their case in course of trial and whom do they rely who can be the witness, the women by and large repeated their story of plight rather than being able to show the material or people who can be of help in making the decision go in their favour. Although they all have little faith either one or two person who are either the family member or the neighbour of the husband who helped them when they were undergoing any kind of physical or mental cruelty, the women during interaction expressed doubt about their support in the court.

The engagement with lawyers in a dialogue revealed that there is a common perception about misuse of legal provision relating to cruelty on women. Though professionally, based on law and legal procedure, the lawyers felt that without the support of police who finally decides the nature of case and the provision under which the complaint as mentioned in the FIR is going to be lodged it is impossible for women to misuse the process of law. The lawyers also mentioned categorically that except for the initial steps like cognizance by the police and if it is a cognizable offence then arrest of the accused, the next steps in a case goes through a series of judicial scrutiny like framing of charge etc. One essential findings of the dialogue with lawyers was the opinion about the fact that by and large the cases on 498-A as an independent provision is almost negligent. Most of the time a case primarily on cruelty on women

consequentially in course of police enquiry is also tagged with many other provisions of Indian Penal Code and especially The Dowry Prohibition Act.

The dialogue with lawyers therefore indicates; firstly to the fact that the police and prosecution lawyers take the decision about the nature of case and how it is going to be presented in the trial; secondly there are few cases where 498-A has been only made applicable as an independent provision for dealing with cruelty on women and; third the nature of materials and witnesses are essential factors in determining the case to be established under the provision of 498-A which is often relegated as focus goes to the fact as to whether dowry demand was made or not.

The engagement at various level and spheres to locate the position of the provision of 498-A which was incorporated in the Indian Penal Code to protect women in their matrimonial home clearly reveals that this aspect in the criminal justice system did not help women who suffered cruelty much and the failure of the enforcement agencies and prosecution is viewed and termed as misuse of process of law by women who sought assistance to protect their life and liberty as envisaged under different human right instruments.

Chapter – VII

Recommendation and Key Message

On the basis of extensive engagement in course of research and relying on the findings of this exercise, a set of recommendation is proposed in this Chapter. Besides, the research would also like to offer a key message for the society on the subject of cruelty on women by husband and in-laws in the matrimonial home. This key message of the research is coined on the basis of learning from the engagement with various materials and stakeholders. The recommendations are systematically arranged below which are intended for a cross section of the society and various agencies of governance:

Literature on Cruelty:
It has been observed in course of review of literature that in the present context a handful of studies are available on the specific theme of cruelty on women by husband and the in-laws in the matrimonial home. The subject does not emerge thematically as an independent area for scholarly activities. The few scholarships that are available are very much integrated in overall discourse relating to violence on women, gender justice and equality notions. Most recently studies on the implication and impact of 498-A had been made by scholars[44] and organisations[45]. There is a need to contribute to the void created in the absence of scholarships particularly legal scholarships which can provide direction to the law, delivery of justice, institution of governance and also enrich the existing knowledge on the subject. As cruelty as a theme and the provision of 498-A are such matters where multi-disciplinary approach in studies are required to deal with the theme, it is recommended that such initiatives be made by government, academic institutions and women organisations. While conducting a study adequate emphasis is required to be given so that the subject does not loose focus and it is not narrowly designed.

Statistical Figure and Data:
It is recommended that there is a need to fill the existing void in relation to availability data, statistics and information on (a) progress of case, (b) disposal of cases, (c) rate of conviction, (d) nature of rehabilitation rendered etc. It has been observed that statistics are available on the basis of number of cases registered and wherever information is given about disposal that does not reflect registration and disposal of cases yearly. There is perhaps no data available about the general time frame required or invested in each particular case. A purposeful information system is essential to monitor the

[44] A Study on Status of 498-A in Hyderabad and Ranga Reddy Districts has been made by Tanay Agarwal and a team of Researcher.
[45] A Study on IPC Section 498-A – Used or Misused? was conducted by CSR, New Delhi.

state of affair in relation to understand the progress and direction of legislative arrangement made for protection of women.

Improving Criminal Justice System:
As the research reveals that the prosecution always fails to establish the cases under 498-A and also in matters of demand of dowry and dowry death, as revealed from review of judicial decisions and orders it is recommended that a proper system must be brought in place to oversee the exact reasons for failure to establish the case. Why it is always impossible to be successful at the level of appeal in the High Court. It needs to be understood the system for communication between the prosecution lawyers in the trial court and the state defence counsel in the High Court. There is a need to build effectiveness of law enforcement agencies and prosecution. Besides, the judiciary has to examine the fact as to how the effectiveness of the trial court can be improved as in all cases of conviction the High Court comes to the conclusion that the judgement is erroneous and therefore, quashed by the High Court in appeal. It appears that the huge gap between the origin of the case and its final disposal impacts the process of decision making as due to inordinate delay in arriving at a decision leaves the evidences, witnesses and the investigating agencies powerless or hostile.

Nature of Evidence:
As it has been proved that the cases of women relating to 498-A could not withstand the scrutiny of higher court therefore, an occasion arises where the nature of evidences and witnesses are to be determined. It is impossible for women who alleged cruelty in matrimonial home to collect evidence and pursued witness to speak in their favour. Therefore, it is essential for the higher judiciary or for the legislators to contemplate the nature of evidence and witness as well as timeframe to record the statement to overcome the issue of lack of evidence or witness being hostile.

Addressing Ambiguity:
Even though the courts almost always observed on various occasion that the section 498-A is not ambiguous, on the contrary the research reveals that the provisions is ambiguous and the ingredient to satisfy for establishment of a case is not clear not only to the investigating agencies but also to the prosecution lawyers and the trial court. In order to overcome it, there is a need for capacity building and also contemplation of a guideline to be followed by the functionaries in the criminal justice system.

With the above recommendations for improvement of enforcement of law and bringing effectiveness in criminal justice system, the research offers the following key message:

Key Message:
The provision envisaged under 498-A has a special position as it addresses a deep rooted historical problem of cruelty on women. However, in course of delivery of justice in the process of law if due to incapacity or failure of enforcement agencies, prosecution and the other institutions of criminal justice system the alleged offence on women could not withstand the test of merit of the case in judicial scrutiny at higher court; it is indispensable upon the State to build effectiveness of its institutions and structures below.

Chapter – VIII

Conclusion

Legal research is an essential part of delivery of justice in the process of law particularly when it is evidently clear that the provision of law does not work to achieve its objective. The present research tends to enrich the knowledge as to why Section 498-A does not work in a society for a fresh look in to the subject. The development of jurisprudence relating to offences against women especially the cruelty on women by husband and in-laws in matrimonial home is negatively shaped so far. Perhaps it is a right time to peep into the arena of criminal justice system with original sources of knowledge to make it more effective. The void created in the discipline of law is enormous in terms of knowledge and scholarship. This research made an attempt to contribute to the existing void in the area of administration of justice in matters of cruelty on women.

Based on the findings of the research recommendations are offered to make the criminal justice system work for women to ameliorate the condition of women in the society. Hopefully, the research findings and recommendations would find adequate legislative and policy attention to bring about a change in the lives of women who suffer injustice in spite of the provisions of law. The life and liberty of women are of paramount consideration to realise women's human right. The State has the responsibility and obligation towards its subjects to secure justice for them and prevent injustice.

List of Cases

Sl. No.	Name of Parties	Case Number	Date of Disposal	Reference
1..	Chandra Sekhar Senapati vrs. Sumeet Senapati and another.	Crl. Misc. No. 2244/1996.	15.10.1998	(1999) (I) ORL -129
2.	Shantilata Parida vrs. Nrusingha Ch. Behera and another.	Crl. Rev No. 716/1994.	05.05.1999	87 (1999) C.L.T. 354.
3.	Smt. Dipali Chakrabarti and 2 others vrs. State of Orissa.	Crl. Misc. No. 1265/1999.	21.09.2001	1.2001 (II) OLR – 527
4.	Debaraj Mallik and Another vrs. State of Orissa.	Crl. Misc. No. 5058/1998.	03.04.2002	(2002) 23 OCR-22
5.	Benumadhab Padhi Mohapatra and others vrs. State.	Crl. Appeal No. 367/1992.	28.08.2003.	3.2003 (II) OLR - 538
6.	Sarala Moharana and another vrs. State of Orissa.	Crl. Appeal No. 104/1999.	15.10.2003.	4.2003 (II) OLR – 632.
7.	Kunu @ Chhabindra Dalei and others vrs. State of Orissa.	Crl.Rev. No. 573/2003.	22.01.2004.	11.2006 (II) OLR – 169.
8.	Prasanna Kumar Moharana and others vrs. State of Orissa and another.	Crl. Misc. No. 3074/2002.	06.02.2004	6.2004 (II) OLR – 702
9.	Hemanta Kumar Behura and others vrs. State of Orissa and others.	Crl. Misc.No. 837/2004.	11.05.2005.	7.2005 (II) OLR – 296.
10.	Sarbeswar Pradhan and others vrs. State of Orissa and another.	Crl. Misc. No. 1305/2005.	23.11.2005	9.2006 (I) OLR – 47
11.	Umashankar Agrawal @ Umashankar Singhal and others vr. State of Orissa.	Crl.Misc. No. 227/2006.	11.04.2006.	Soft copy.
12.	Sarba Prasanna Panda vrs. State of Orissa.	Crl. Appeal No. 66/1998.	19.07.2006.	10.2006 (II) OLR – 311
13.	Namita Nayak @ Namita Kumari Nayak and another vrs. State of Orissa.	Crl. Misc. No. 2681/2006.	23.02.2007.	14.2007 (I) OLR – 518
14.	Nanda Kishore Singh and others vr. State of Orissa and another.	Crl. Misc. No. 2308/2006.	13.03.2007.	13.2007 (I) OLR – 557
15.	State of Orissa vrs. Attar Khan.	Govt. Appeal No. 16/1992	09.04.2007.	15.2007 (I) OLR – 735
16.	Bichitra Behera vrs. State of Orissa.	Crl. Rev. No. 303/2004.	25.04.2007.	22.2007 (I) OLR – 766
17.	Abhimanyu Mohapatra vrs. State.	Crl. Appeal No. 42/1990.	11.07.2007.	17.2007 (II) OLR – 514
18.	Chandra Chudamani Patnaik and two others vrs. State of Orissa.	Crl. Appeal No. 276/1996.	31.07.2007.	18.2007 (II) OLR – 356
19.	Dhani @ Dhaneswar Sahu and another vrs. State of Orissa.	Crl. Appeal No. 229/1989.	07.09.2007.	20.2007 (Supp. – II) OLR – 250
20.	Smt. Mounabati Jena and anothers vrs. State of Orissa.	Crl. Misc. No. 1407/2007.	05.10.2007.	Soft copy
21.	Smt. Kiranmayi Mishra vrs. State of Orissa.	Crl. Rev. No. 216/2006.	12.10.2007.	19.2007 (Supp. II) OLR – 284
22.	Prahallad Budek vrs. State of Orissa.	Crl. Appeal No. 211/2003.	13.12.2007.	23.2008 (I) OLR – 243
23.	Sanatan Mallik and others vrs.	Crl. Misc. No.	17.08.2009.	Soft copy

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24.	Deepak Pradhan vrs. State of Orissa.	Jail Crl. Appeal No. 19/2000.	09.02.2011	2011 (I) OLR – 999
25.	Jitendra Rout vrs. State of Orissa.	Crl. Rev. No. 355/2003.	18.09.2011.	2011 (Supp. II) OLR - 781
26.	(i) Brajabandhu Acharya vrs. State of Orissa. (ii) Girijanandan Acharya vrs. State of Orissa.	(i) Crl. Appeal No. 53/1999. (ii) Cr. Appeal No. 56/1999.	04.11.2011.	Jointly Heard. 2012 (I) OLR – 215

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