

**DOMESTIC VIOLENCE ACT SECTION 498-A IPC AND ITS COGNIZANCE IN SAFEGUARDING
INTERESTS OF WOMEN IN INDIA**

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Abstract

Section 498-A is an offense under the Indian Penal Code, of 1860. It was brought into the IPC in 1983 to stop cruelty to married women because of dowry. Husband or relatives of the husband of a woman subjecting her to cruelty, whoever, being the husband or the relative of the husband of a woman, subjects such woman cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The term cruelty has been broadly defined to include acts of harassment with the intent to pressure a woman or her family into meeting any unlawful demand for any property or valuable security, as well as acts of bodily or mental harm to the

committee that looks into the matter and send a report on it within 30 days to the authority that referred the complaint. No arrest must be made until a report is sent by the committee. The normal time frame for submission of a charge sheet is 3 months. If it has taken longer, ask the investigating officer to issue a certificate that the 498 A complaint is false, go for quash on F.I.R. The accusation under section 498-A is considered a serious offense, is cognizable, non-bailable, and is a non-compoundable offense under the law.

Keyword: Section 498-A, F.I.R., IPC, Charge sheet, complaint, supreme court, welfare committee, cruelty, imprisonment, punishment, fine, cruelty, wife, sub-section, NCRB (National Crime Records Bureau).

Introduction:

Section 498-A was implemented in the IPC in 1983 following the institutionalization of law and policy to criminalize domestic violence. The section was enacted to deal with the threat of dowry deaths. It was implemented in the code by the criminal law reform act 1983(Act 46 of 1983), section 113-A has been added to the Indian evidence act to raise presumption regarding the abetment of suicide by a married woman.

The need for a law against dowry-related harassment dates back centuries. Indian traditions are very dear to the hearts of Indian people, especially rules related to marriage. However, traditions become problematic when they fail to evolve with society. Dowry was one of the most widely practiced traditions of marriage where the girl's family should give gifts to their daughter and their son-in-law. Women have been the more disadvantaged gender in society, the discrimination starts in childhood when boy-children and their education are prioritized over girls'. Secondly, thousands of people still believed girls to be a burden on their shoulders because, with their marriage, the family would also have to pay the dowry. On the other hand, if they had a boy child, they would receive money and property as a dowry from the new bride's family. Section 498A of the IPC helps women approach the court of law and punish the wrongdoer, this section is the most fiercely debated section of the IPC. The IPC crimes against women

have increased over the years, and most numbers of cases are reported from Delhi, India. Back then, 9 out of 10 deaths of young brides were related to dowry. Women are continuously forced, tortured, threatened, or abused to demand something or the other. The government of India needs to bring about gender-neutral modifications in the law and tighten handcuffs against harassment. Section 498-A provides lasting power to women to speak up against any discrimination they are subjected to, one of the primary benefits of including this section is that it protects women from being exploited. If any woman is subjected to cruelty as described above in this section, it will be considered a punishable offense and the convict would be sentenced to prison. Nonetheless, law 498-A has inspired women to come forward and file a complaint against domestic abuse.

Theoretical Background:

Violence within matrimonial relationships is all about power dominance and control. The purpose is to gain or maintain power over the victim by hurting or harming her physically and /or mentally. Violence within marriages cuts across barriers of wealth, education levels, social backgrounds, religion, and profession. As many as 70 % of married women in India between the ages of 15 and 49 are victims of beating, rape, or coerced sex. Internationally, the proportion of women who had ever experienced physical or sexual violence or both by an intimate partner ranged from 15 % to 71 % in different

countries, and between 4 % to 12 % of women report being physically abused during pregnancy.

In India, dowry-related violence on women by their husbands and their relatives often culminating in continuous harassment, killing or suicide was on an alarming rise in the 70s and 80s. Due to the seriousness of the issue and demands by the women's movement to change the laws relating to dowry, a Joint Parliamentary Committee was constituted to locate the causes of the failure of the Dowry Prohibition Act 1961 and further suggest effective measures to eradicate dowry. The committee located several impediments such as the narrow definition of dowry, procedural lapses in filing cases, and lack of deterrent punishment against the offenders. It also recommended that the cruel treatment of a married woman for demanding and procuring dowry must be made punishable and stringent punishment was required to deal with the offenders.

In the 1980s, the incidences of 'dowry deaths' were steadily rising in India. A dowry death is the murder of a young woman; committed by the in-laws, when she was unable to fulfill their coercive demands for money, articles, or property, categorized as dowry. Organizations across the country pressurized and urged the government to provide legislative protection to women against domestic violence and dowry. The objective was to allow the state to intervene rapidly and prevent the murders of young girls who were unable to meet the dowry demands of their in-laws. As a result of the intense campaigning and lobbying, significant amendments were made to the Indian Penal Code, the Indian Evidence Act, and the Dowry Prohibition Act, to protect women from marital violence, abuse, and dowry demands. The most important amendment came in the form of the introduction of Section 498A in the Indian Penal Code (IPC).

Analysis of the section shows that this law deals with four types of cruelty:

- Any conduct that is likely to drive a woman to suicide,
- Any conduct which is likely to cause grave injury to the life, limb, or health of the woman,
- Harassment to force the woman or her relatives to give some property,
- Harassment because the woman or her relatives are either unable to yield to the demand for more money or do not give some share of the property.

In legal terms, 498A is an offense, which is:

- **Cognizable:** Offences are divided into cognizable and non-cognizable. By law, the police are duty-bound to register and investigate a cognizable offense. 498A is a cognizable offense.
- **Non-Bailable:** There are two kinds of offenses, bailable and non-bailable. 498A is non-bailable. This means that the magistrate has the power to refuse bail and remand a person to judicial or police custody.
- **Non-Compoundable:** A non-compoundable case, e.g., Rape, 498A, etc, cannot be withdrawn by the petitioner. The exception is in the state of Andhra Pradesh, where 498A was made compoundable.

In actual terms, 498A is an offense, which is:

- **Cognizable:** The police will register a 498A case since it is required by law, but they don't investigate and go on to arrest people because of the money to be made in bribes from both sides under the S.498-A case.
- **Non-Bailable:** Since bail is at the discretion of the magistrate, all sorts of games will be played to have families locked up while negotiations go on to settle the case. This may happen in cases where the magistrates are allegedly corrupt or, the public prosecutor and the cops are in cahoots.

- **Non-Compoundable:** Though 498A is non-compoundable, the courts are allowing the withdrawal of the case when the parties agree to reconcile or settle the case. In real terms, if you pay up, the case goes away. If you don't, you'll get stuck with a criminal case that will go on for years.

Except for actual terms, S.498-A is an offense, the Indian state has taken various initiatives in the form of policy, legislation, and institutional mechanisms to address the issue of violence against women. Violence against women was given top priority in the Tenth Five-Year Plan. Again, the Eleventh Five Year Plan has included violence against women as one of the three aspects relating to the problems of women besides women's economic empowerment and women's health. Eliminating discrimination and violence against women and the girl child is one of the objectives of the 'National Policy for Empowerment of Women'. As has often been pointed out, the Indian Constitution not only guarantees equality to women vide Articles 14, 15, and 16, but also empowers the state to adopt measures of positive discrimination in favour of women to achieve gender equality. Yet, crimes against women in the country continue to be on the increase. This has grave implications for the health and well-being of a woman. It has also been pointed out that in India, one incident of violence translates into losing seven working days for women. By keeping this in sight, several amendments were made to the IPC 1860, the Code of Criminal Procedure 1973, and the Evidence Act 1872. Apart from the introduction of Section 498 A in 1983, Sections 174, 175, and 176 were amended in the Code of Criminal Procedure (CrPC) directing post-mortem and inquiry in cases of unnatural death of a woman within 7 years of marriage to determine the cause of death. Section 113A was added to the Evidence Act

1872 in 1983 stating that if a woman had committed suicide within 7 years of her marriage and her husband or his relatives had subjected her to cruelty the court will presume that such suicide had been abetted by her husband or such relative of her husband. Thereafter in 1986, certain other amendments were made to the Indian Penal Code and the Dowry Prohibition Act. The offense of dowry death was introduced in Section 304 B of the IPC. An amendment was made in the Indian Evidence Act with the insertion of a new Section 113 B which raised a presumption that if a person had subjected a woman to cruelty or harassment in connection with a demand for dowry soon before her death, he would be presumed to have caused the death. These slews of amendments resulted in several complaints being filed by women across the board and within all castes and communities throughout the country. As Section 498 A was cognizable the police were sometimes forced to register FIRs and make arrests. However, in some cities like Delhi, special Crime Against Women Cells was opened for the express purpose of counselling women before registering a complaint. Though some cases were solved by these cells, women mostly complained that they were being pressurized to settle cases and not register FIRs.

Objectives of the Study:

The study of Domestic violence act section 498-A and its cognizance in safeguarding the interests of Women in India has the following objectives

1. To strengthen the national policy for the empowerment of women.
2. To find the roots of the dowry system in the Indian marriage system.
3. To understand the Supreme Court's guidelines after lodging F.I.R. under section 498-A.
4. To inspire women to come forward to speak up against domestic abuse.

5. To study the need for amendments to dowry prohibition Acts.
6. To study the need for the introduction of Act 498-A in the Indian Penal Code as a criminal offense.
7. To study the types of cruelties subjected to women occurring.
8. To understand 498-A criminal offense in legal terms and actual terms.
9. To statistically and graphically analyze S.498-A IPC crimes against women head-wise and state/UT-wise.

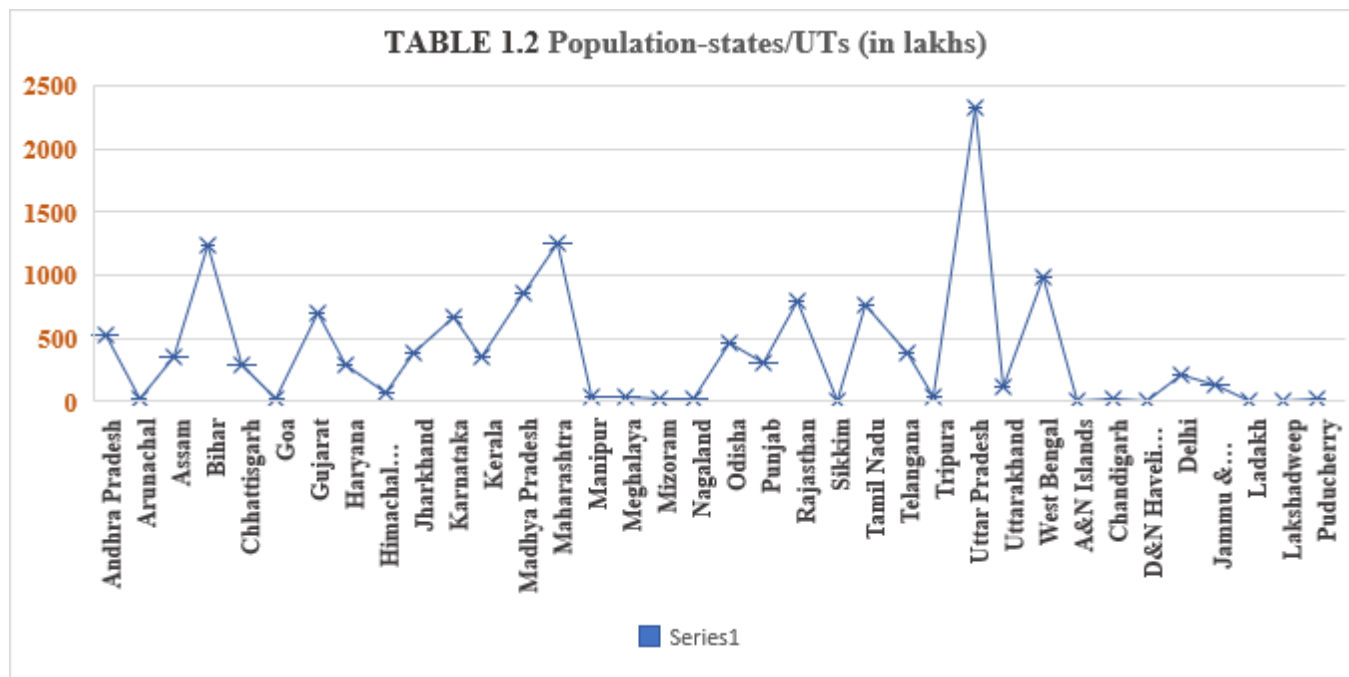
Methodology:

In this paper, the methodology consists of mathematical methods, statistical analysis methods, graphical analysis methods, library methods, and critical, and descriptive analysis methods depending upon secondary data. To study the Domestic violence act section 498-A and its cognizance in safeguarding the interests of Women in India essential prerequisite for peace, liberty, stability, and social and economic development of the country by predictive analysis and focus group discussion method.

STATISTICAL ANALYSIS OF CRIME RATE UNDER S.498-A AND ITS PERCENTAGE:
TABLE 1.1 Projected population-states/UTs

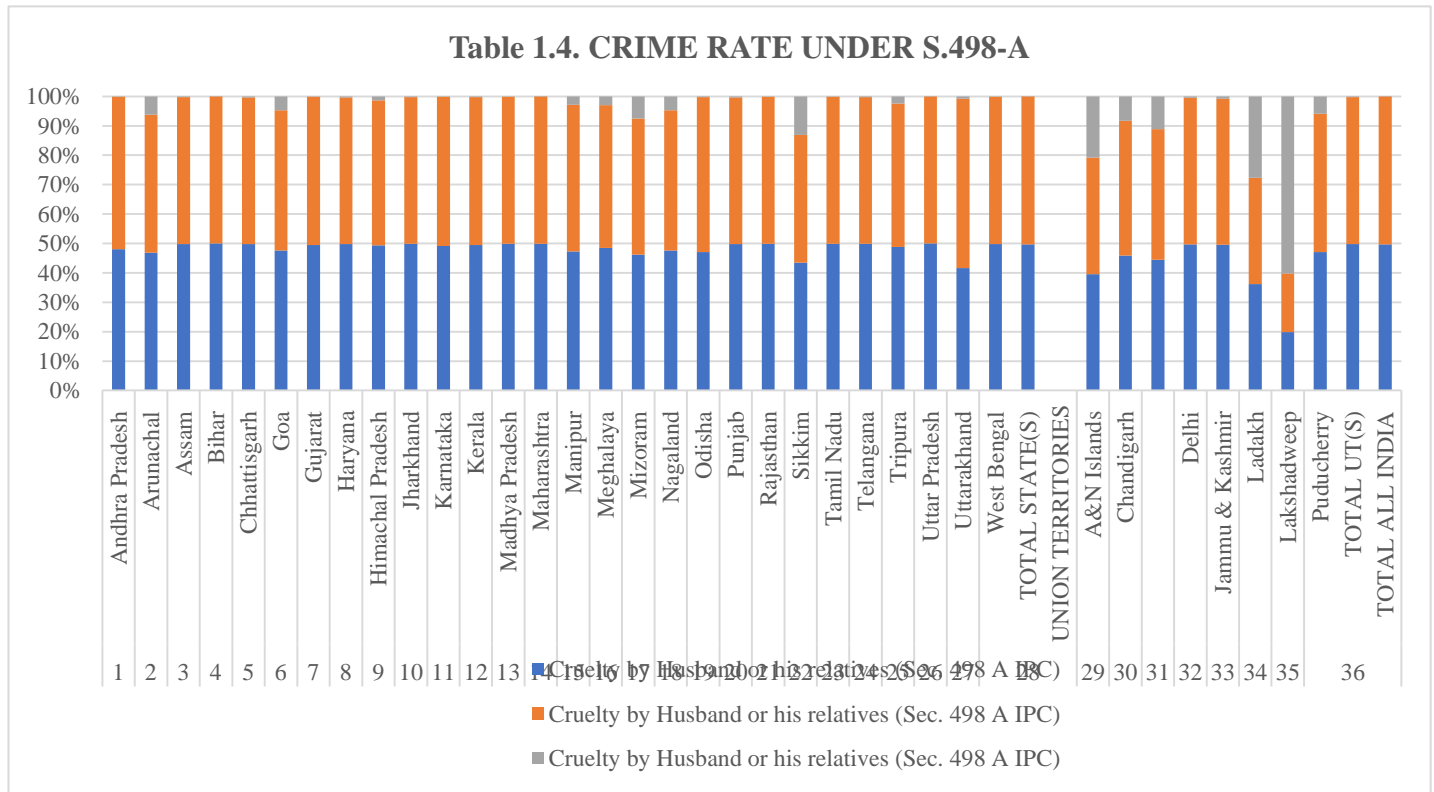
Population Source: For States/UTs: Report of the Technical Group on Population Projections (July 2020) National Commission on Population, MoHFW (by Ministry of Health and family welfare, estimated population of 2021 based on 2011 Census). **Note:** The Totals of the Population Figures, inside the publication may, however, vary due to rounding off to a single decimal.

Population (in lakhs)					
SL	State/UT	2021	SL	State/UT	2021
1	Andhra Pradesh	528.49	19	Odisha	457.93
2	Arunachal	15.37	20	Punjab	304.04
3	Assam	351.55	21	Rajasthan	795.72
4	Bihar	1236.95	22	Sikkim	6.78
5	Chhattisgarh	296.07	23	Tamil Nadu	764.79
6	Goa	15.61	24	Telangana	377.71
7	Gujarat	700.75	25	Tripura	40.81
8	Haryana	296.04	26	Uttar Pradesh	2317.04
9	Himachal Pradesh	74.06	27	Uttarakhand	114.39
10	Jharkhand	386.37	28	West Bengal	982.85
11	Karnataka	669.86	29	A&N Islands	4.01
12	Kerala	355.37	30	Chandigarh	12.12
13	Madhya Pradesh	848.60	31	D&N Haveli and Daman & Diu	11.08
14	Maharashtra	1247.62	32	Delhi	207.03
15	Manipur	31.72	33	Jammu & Kashmir	134.40
16	Meghalaya	32.95	34	Ladakh	2.98
17	Mizoram	12.19	35	Lakshadweep	0.68
18	Nagaland	21.98	36	Puducherry	15.84

GRAPHICAL ANALYSIS OF PROJECTED POPULATION-STATES/UTs (in lakhs):

TABLE 1.3
IPC Crimes against Women (Crime Head-wise & State/UT-wise)

SL	State/UT	Cruelty by Husband or his relatives (Sec. 498-A IPC)		
		No. of incidences/cases(I)	No. of female victims(V)	Crime rate per lakh population(R)
1	Andhra Pradesh	7092	7651	26.8
2	Arunachal	112	112	15.0
3	Assam	12950	12964	75.0
4	Bihar	2069	2069	3.5
5	Chhattisgarh	963	963	6.5
6	Goa	1	1	0.1
7	Gujarat	2271	2309	6.8
8	Haryana	5755	5755	41.3
9	Himachal Pradesh	221	221	6.1
10	Jharkhand	931	931	4.9
11	Karnataka	2336	2408	7.1

SL	State/UT	Cruelty by Husband or his relatives (Sec. 498-A IPC)		
	States	No. of incidences/cases(I)	No. of female victims(V)	Crime rate per lakh population(R)
13	Madhya Pradesh	7929	7932	19.3
14	Maharashtra	10095	10101	16.9
15	Manipur	18	19	1.1
16	Meghalaya	21	21	1.3
17	Mizoram	11	11	1.8
18	Nagaland	2	2	0.2
19	Odisha	4889	5488	21.5
20	Punjab	1714	1715	11.9
21	Rajasthan	16949	16973	43.8
22	Sikkim	3	3	0.9
23	Tamil Nadu	875	875	2.3
24	Telangana	9468	9468	50.4
25	Tripura	355	355	17.7
26	Uttar Pradesh	18375	18383	16.6
27	Uttarakhand	519	719	9.3
28	West Bengal	19952	20052	41.5
	TOTAL STATE(S)	130873	132580	20.3
	UNION TERRITORIES			
29	A&N Islands	4	4	2.1
30	Chandigarh	95	95	17.1
31	D&N Haveli and Daman & Diu	6	6	1.5
32	Delhi	4731	4746	48.9
33	Jammu & Kashmir	501	501	7.8
34	Ladakh	9	9	6.9
35	Lakshadweep	3	3	9.1
36	Puducherry	12	12	1.5
	TOTAL UT(S)	5361	5376	29.5
	TOTAL ALL INDIA	136234	137956	20.5

GRAPHICAL ANALYSIS OF CRIME RATE UNDER S.498-A AND ITS PERCENTAGE:

Findings in Domestic Violence Section 498-A and its Cognizance in Safeguarding Interests of Women in India:

There are some loopholes in section 498-A, hence in society misuse of section 498A of the Indian penal code is increasing rapidly and the Supreme Court and many high courts from time to time pronounced many judgments to stop this evil in society. The Malimath committee in 2003 also proposed that Section 498A be made bailable and compoundable because misuse of this section is high in the society, but this amendment was opposed by many of the women's groups and finally, the legislative assembly doesn't work properly on this section.

1. S.498-A IPC become a common practice as a weapon rather than a shield by the disgruntled wives.

2. The simplest way to harass is to get relatives of the husband roped in under S.498-A, no matter whether they are bedridden grandparents of the husband or relatives living abroad for decades.
3. The women frivolously make false allegations against their husbands to get rid of them or simply hurt the family.
4. The women often educated know that this section is both cognizant and non-bailable, impromptu works on the complaint of women placing the man behind bars, making an innocent person undergo stigmatization and hardship.
5. It is downright on the part of the police to include the whole of the family as the accused.

6. S. 498-A may heartless provisions that make the offense non-bailable and non-compoundable operate against reconciliations.
7. There is a general complaint that section 498A of the IPC regarding cruelty by the husband or his relatives is subjected to gross misuse and many times operates against the interest of the wife herself.
8. This offense is non-bailable and non-compoundable. Hence husband and other members of the family are arrested and can be behind bars which may result in the husband losing his job.
9. Unfortunately, this law has been misused to harass men and their families rather than protect genuine female victims of harassment.
10. The object of this provision is the prevention of the dowry menace, but as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with an oblique motive.
11. The major problem in Section 498A is that the offense is not compoundable, non-bailable, and cognizable, because once a complaint is lodged the accused has to suffer. The police in such cases register FIR and forward the charge sheet without proper investigation in most of the cases.
12. According to the constitutional provision of this section is harassing the husband and relatives and violet their fundamental rights.
13. Married sisters are prime targets, dragging even her in-laws into the case to exert pressure. Since the law is cognizable and non-bailable, police have a free hand in arresting anyone whom it deems fit as per the written complaint by the woman without 'any' investigation.

Recommendations:

The following recommendations and suggestions have to be considered for effective implications of domestic violence section 498-A IPC and its cognizance in safeguarding the interests of women in India

1. The legal authorities and lawmakers have to review the situations and legal provisions to prevent the falsifications of S.498-A from taking place.
2. To make S.498-A non-biased to any individual such that the guilty are punished and the real victim is given justice.
3. For the fault of the husband, the in-laws or other relatives cannot in all cases be held to be involved.
4. Roping in of the whole of the family including brothers, sisters, and in-laws have to be depreciated unless there is a specific material against them.
5. Women NGOs should investigate complaints properly without any bias towards the woman keeping in mind the law is being misused largely to harass more women in the husband's family.
6. Women should not encourage anyone to file criminal cases against their in-laws for trivial matters.
7. Govt. organizations and NGOs should educate the people about the consequences of S.498-A.
8. The government should establish organizations to help harass men and their family members.
9. The government should create family counseling centers across the country to help aggrieved families.
10. The reduction in false cases will reduce the necessary burden on the judiciary and will expedite the processing of real cases.

11. There must be a clear definition of mental cruelty in the act which does not leave the scope of misuse.
12. There should be a provision in the act for men to file a case for mental cruelty by their wives.
13. The government should create awareness among police officers to stop the misuse of S.498-A.
14. The provisions should be made to prevent innocent old parents, pregnant sisters, and school-going children from languishing in custody without any fault of them.
15. Arrest warrant should be issued only against the accused after cognizance has been taken.
16. Whenever any court concludes that the allegations made regarding the commission of an offense under S.498-A IPC are unfound, stringent action should be taken against the person making the allegations.
17. Even if the wife is willing to condone and forgive the lapse of the husband and live in matrimony, this provision comes in the way of spouses returning to the matrimonial home. This hardship can be avoided by making the offense bailable and compoundable.
18. There is also a need to create awareness of the provisions, especially among the poor and illiterate living in rural areas who face quite often the problems of drunken misbehavior and harassment of wives.
19. The court should take cognizance of the dowry givers and initiate the proceedings against them under the relevant section of the dowry prohibition act.
20. The easy access of aggrieved women to the Taluka and District level Legal Service Authorities and/or credible NGOs with professional counselors should be ensured by appropriate measures.

Conclusion:

It is a well-known fact that no Society can succeed without the rule of law or a necessary social order, which is an essential prerequisite for peace, liberty, stability, economic growth, development, and a host of other characteristics which we now take for granted. This profound fact has resonated in our minds when we are reminded of horrific atrocities that are occurring daily in our society, from the Nirbhaya gang rape to the Nithari killings, and the list goes on. We are quick to condemn, in the most vociferous manner, inhumane and barbaric atrocities committed on fellow citizens and stand united when faced with such an outright threat to the Rule of Law that we have strived to achieve. On the other hand, we ought to ask ourselves, whether this outrage in the face of an obvious threat would be equally demonstrated when encountered with an implicit threat to our liberty and equality.

The Indian Legislature has passed various enactments to protect the rights of women and to eliminate cruelty against women in all forms. Some of these significant Legislations are The Protection of Women from Domestic Violence Act 2005, The Sexual Harassment of Women at the Workplace (Prevention, Prohibition, and Redressal) Act 2013, The Commission of Sati (Prevention) Act 1987, the Dowry Prohibition Act 1961, the Immoral Traffic (Prevention) Act 1956, The Indecent Representation of Women (Prohibition) Act 1986, The National Commission for Women Act 1990 and The Indian Penal Code 1860. These issues are not peculiar to the Indian context and such laws are enacted in various countries with similar objects. Some of these laws worth mentioning are The Australian Domestic Violence and Protection Orders Act 2001, The Japan Prevention of Spousal Violence and the Protection of Victims 2001, The Malaysia Domestic Violence, The Mauritius Protection from Domestic Violence Act 1997, The Singapore

Women's Chapter 1961, The South Africa Domestic Violence Act 1998, The Sri Lanka Prevention of Domestic Violence Act 2005, The United Kingdom Domestic Violence, Crime, and Victims Act 2004 and the Zimbabwe Domestic Violence Act 2006.

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