

Report of the Research Project
On
Institutional Responses to Domestic Violence
(Draft for comments, not to be quoted/circulated)

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Chapter 1

Institutional responses to domestic violence: an introduction

Introduction:

There is something striking about the present moment in the history of women's movement's engagement with issues of domestic violence – which, for lack of a better word, one can call the institutional mode. The latter part of the decade of 1990s witnessed a renewed interest in the phenomenon called 'domestic violence', which till then had been predominantly conceptualised or understood as a more or less India specific phenomenon called 'dowry violence'. Domestic violence now refers to the violence and abuse that women face in their relationships with men, i.e., marital violence, whether the relationship is legally valid or not. A variety of surveys, researches and studies on the prevalence, intensity, effects of this violence have been undertaken in this period. This time, the focus is mostly on the responses of various institutions, both governmental and non-governmental.

As far as Andhra Pradesh is concerned, this can be called as the third moment in which issues of marital violence have come into public discourse in the post-independence period– the first being the moment when Progressive Organization of Women and later *Stree Shakti Sanghatana* brought violent deaths in the homes into the public arena through public campaigns around these issues – popularly known as dowry deaths; the second moment being the anti-arrack movement when rural women articulated the nature of public and private violence that they were facing in a forceful manner. At both these moments, institutions came into focus, but in different ways. It is the course of our project work and the findings on institutional responses to domestic violence at Anveshi, located at the third moment forced us to be attentive to the genealogy of the present moment and the significance of the disjunctures between these three moments.

Women's movement's engagement with the institutions such as law and police on the issue of marital violence began with the political demand that the deaths of women in their marital families should be looked as violations of the right to life of women, not merely as accidents or so called suicides. Through major campaigns aimed at politicisation, violence in the homes was brought into the public debates. It took a long time to make the state institutions take cognizance of the reality of this violence and abuse. However after two decades of such campaigns and activism, the picture that emerges of institutional responses to marital violence at the end of 1990s is fraught with new questions and complexities. Our project on institutional responses to marital violence at Anveshi started in 2000 with three objectives:

- one, to understand the needs and expectations of women from the institutions of police stations, hospitals, courts and family counselling centers;
- two, to understand the responses of the institutions to women;
- three, to see whether these two match in any way.

Before we go into the discussion of our project findings in the report, however, we think it is necessary explore the following sets of questions:

The first set of questions need to address the present moment: how do we make sense of the current or present historical moment in the articulation of domestic violence – as a progressive or gradual emergence over the previous submergence from the category of ‘dowry violence’? How do we understand the present imperative to ‘quantify’ domestic violence and find patterns? What has made this ‘empiricism’ possible?

The second set of questions needs to attend to our efforts at addressing institutions. What are the ways in which institutions have responded to our efforts at making them accountable to domestic violence? Based on their dismal ‘records’ should we dismiss them altogether or is there a need to look beyond records to see their ‘effects’?

The third set of questions needs to attend to the nature of demands being made by women: what is the nature of demands being made by women and how do we understand them? Do women see the abuse as a criminal offence at all? If they don’t, should we understand them as acting within the confines of patriarchal ideology? What are the implications of our accepting this premise? Next, if women are not seeking criminal investigation of their marital families alone what are the kinds of reliefs that they are seeking?

The following sections will go into the exploration of each of these questions. In the first three sections, the three sets of questions are sought to be explored. The last section will outline the methodology of the study.

I History of the present moment:

How do we understand the present historical moment in the articulation of domestic violence – as a progressive or gradual emergence from the previous category of ‘dowry violence’? From when did domestic violence began to be spoken about? What has bestowed this sudden visibility on the issue in the 1990s? What has made the present activism around domestic violence possible? What kinds of shifts in the women’s movement have made it possible?

The centrality of the issue of marital violence to the emergence of women's movement in the country is well-known. To recapture briefly, Radha Kumar mentions the emergence of the issue of wife-beating during protests by tribal women against alcoholism in the early 1970s in Dhulia district in Maharashtra.¹ However, it was in the 1970s that women's groups, some formed specifically on this account, all over the country began protesting against the suspicious deaths of newly married women in their marital homes, on the

¹. This is Shahada movement in Maharashtra, a movement of tribal Bhil landless labourers organized under Shramik Sanghatana from 1972 onwards, where women played a militant role in mobilizing and negotiations with the landlords. Soon they raised issues of men’s alcoholism and in that context the issue of wife-beating. Several instances of men getting beaten up in public and made to apologize to their wives came to notice of the historians of this movement – Radha Kumar (1991)

pretext of dowry. The ghastliness of these murders, highlighted by the women's groups through rallies, demonstrations, plays, meetings helped in mobilizing support for the issue in the media and therefore led to the formulation of new laws. The campaigns dispelled myths of safety for women in 'private' spaces of home and family. More importantly, they also brought out the patriarchal and gendered nature of the various public and private institutions. The state and its institutions became major focus of these campaigns. The indifference of the police, law and medical system to marital violence against women, their male-biases, their collaboration with the perpetrators of such violence against women was brought out in a forceful manner. This is when the present institutions came into existence. As a response to the critiques of the movement, the government established women's police stations, mahila courts and family courts as well as family counselling centres in the 1980s to address marital violence.

The mobilizations around the dowry related violence crystallized into several organizations all over the country. As Agnihotri and Mazumdar (1995) as follows:

'of all the agitations focused on violence the one most touched the public imagination, the media and the widest sections outside the pale of organization, was that which protested against dowry and dowry-related violence...(F)or those who became crusaders in the fight against dowry the movement transmitted a pulsating sense of energy which over time got transformed into a brand of activism which asserted women's agency in social change'. 'Anti- dowry' protests became synonymous with women's movement in the post-independent India.²

However, it is the same insistent focus on 'dowry' by the media and some sections of the movement which began to be seen as problematic. Even while laws were getting amended against dowry, the construction of this 'marital violence' as 'dowry violence' began to be critiqued by people like Flavia Agnes and Madhu Kishwar within the movement. Their concern was that the visibility bestowed upon dowry may be preventing other forms of marital violence – what Shah and Gandhi call 'the invisible and everyday wife-beating' from getting articulated and becoming public. The question that they raised was simple: can violence against women in the marital family be solely traced to dowry (Agnes, 1988 & 1992)³ or should one campaign against 'dowry' itself when that is the sole property that most women get in our society (Kishwar, 1986). Drawing from her own life as well as a small study in Mumbai Flavia tried to argue that marital violence is a much larger phenomenon that is spread across class and caste, much more than dowry-related. It is a result of systematic inequalities between men and women fostered in and through the family. Drawing from the accounts of women who approached Manushi, Kishwar argued that

² Shah, Nandita and Nandita Gandhi, 'Violence becomes a political issue' in *The issues at stake, theory and practice in the contemporary women's movement in India*, New Delhi, Kali for Women, 1993; Kelkar, Govind 'Stopping the violence against women: fifteen years of activism in India' in Margaret Schuler ed. *Freedom from violence Women's strategies from around the world*, OEF International, 1994; Kumar, Radha 'The campaign against dowry' and The agitation against rape in *The history of doing An illustrated account of movements for women's rights and feminism in India 1800-1990*, New Delhi, Kali for women, 1997.

³ Agnes, Flavia 'Protecting women against violence? review of a decade of legislation on violence against women: 1980-1989', *Economic and Political Weekly*, vol.27, no.17, 1992.

‘if they (women) refuse dowry but have to marry under the usual conditions, accepting a subordinate, dependent position within the family with few intrinsic rights, few women will see any point in refusing dowry’. Numerous cases recounted in Manushi testify to the fact that the absence of dowry is no guarantee that marital violence will not occur’.

It is perhaps the debates generated from these two critiques that we begin to see ‘wife-beating’, ‘domestic violence’ mentioned and described as an issue in the discussions, debates on violence against women from the early 1990s onwards, (Krishnaraj 1991), this time away from the searing focus of the media.

But the question arises whether the focus on dowry can be attributed to women’s movement alone? While the issue of why and how women’s movement found it difficult to question the institutions of marriage and family in a direct manner remains to be explored, it seems that the articulation of marital violence as dowry related violence, several other actors, than the women’s movement have played a major role. After the women’s movements’ mobilizations on this issue, governments and public institutions such as media, courts and police major role in ‘constructing’ this violence once they were asked to respond to it. While the police and courts have consistently responded only to dowry related violence, media even now continues to portray most of the marital violence as dowry related violence (APCLC 1987 and 1991, Vindhya 1997, Dave 2002)⁴.

Looking back, the narrative of ‘dowry’ as the cause of violence on women in the family’ seems to have become popular among the institutions and some sections of women’s movement because this kind of critique puts the blame away from the institution of family. It is possible to argue that for most of these institutions, ‘dowry’ an external agent coming through ‘modern desires and consumerist values’ was easy to accept than other critiques of the family that formed integral part of the women’s movements campaigns. Functionalist narratives of family, even now predominant in social science disciplines – ‘the natural family getting disturbed by external forces’- are easy to adopt and subscribe to- than substantial critiques of misogyny or violence practiced on an everyday basis in the family.

Coming back to the issue of domestic violence or wife-beating, apparently, the issue of domestic violence seems to have nearly gone ‘underground’ for almost a decade after receiving insistent focus in the 1980s to ‘appear’ in unforeseen quarters: such as development work in NGOs, gender training programmes, civil liberties/human rights activism, counseling centers, manuals/workshops on health, violence, microcredit programmes etc., in the intervening period before again getting a focus in the late 1990s. It is here that domestic violence makes its appearance repeatedly - sometimes through the initiatives of feminists, sometimes through the participanats who want to discuss these

⁴ *Dowry deaths in Visakhapatnam*, Andhra Pradesh Civil Liberties Committee, Vijayawada, Swechcha Publications, 1989; *Violence against women in Andhra Pradesh*, Andhra Pradesh Civil Liberties Committee, 1991; U.Vindhya, *Dowry deaths and domestic harassment of women in Andhra Pradesh: An analysis of socio-cultural dimensions and judicial outcomes of cases*, Insitute of Development and Planning Studies, Visakhapatnam - report prepared for Indian Council for Social Science Research, 2000.

issues at these sites.⁵ Similarly, the demonstrations now are not mobilized by the women's movement but are mostly local, as is evident from many newspaper reports that describe the boycott of families by the neighbourhoods, demonstrations by the local organizations etc.

In the late 1980s and early 1990s, quite a few of the activists who were in the forefront of mobilizations around issues of rape and domestic violence started institutionalizing their efforts - Jagori in Delhi, Asmita in Hyderabad, Women's Centre and TISS Special Cell in Mumbai are a few of these examples. Small though these organizations are, their linkages with many other grass roots groups have helped them reach out and these efforts at conscientization on violence cannot be termed as small.

Similar is the involvement of many feminists in gender training programmes for various NGOs and others. The 1990s saw the interest of developmental agencies in the area of gender and the evolution of gender-training programmes. Vasanth Kannabiran (2003) says that in this process, many of the women who have been activists also became 'trainers'. One of the contentious issues that came up in these programmes has been 'violence', whether at workplace or at homes. In Andhra Pradesh, post anti-arrack movement also saw routing of rural women's activism into DWACRA by the governments.

Another spectrum of groups that have worked on this issue constitute women's groups allied with left political parties. For instance in Andhra Pradesh, organizations such as *Mahila Chetana* and Progressive Organization of Women⁶ have played a significant role in bringing out issues of violence against women at home through demonstrations, protests and writings. Similar is the involvement of human rights and civil liberties organizations that have, however inadequately, worked on issues of violence against women. Violence in the homes got articulated as a human rights violation of women and was put on par with state violence by women activists working in these organizations. Andhra Pradesh Civil Liberties Committee brought out one of the first reports on 'dowry deaths' based on judicial outcomes in which it was noted that dowry was not the sole reason for violence against women in the family.

Looking back at this range of activism, it is not at all surprising that the reports commissioned by ICRW about best practices on domestic violence in four states of Karnataka, Gujarat, Maharashtra and Madhya Pradesh during late 1990s have come up with a range of organizations working with women facing domestic violence - though mostly as service-providers. In fact, the Background Report on Gender Issues in India (1995)⁷ mentions violence as one of the key areas of the NGO activity in relation to women.

⁵ Vasanth Kannabiran makes this point while analysing the gender training programmes in India and elsewhere in Kalpana and Vasanth Kannabiran ed., *Deerotising assault, essays on gender, modesty and power*, Stree, Calcutta, 2003.

⁶ The magazines run by these organizations, *Mahila Maargam* and *Maanavi* carry various reports of campaigns undertaken by the organizations, commentaries on new laws related to violence in almost every issue.

⁷ Prepared by Mary John and K.Lalitha for Overseas Development Agency – see the chapter on NGO activities on gender.

It is this widespread and low-scale activity that seems to have slowly created the phenomenon now being called 'domestic violence'. Despite long-standing activity of women's organizations, it is only towards the end of 1990s that one sees certain visibility being bestowed upon the issue of 'domestic violence', in terms of writings in the media, research, government's initiatives on law, services, health etc. Along with the visibility there are also efforts to quantify violence in various contexts.⁸ While National Family Health Survey conducted a survey to gauge women's opinions about domestic violence, coming up with certain statistics, International Centre for Research on Women conducted epidemiological surveys to estimate the prevalence of domestic violence. The need for empirical data is also being voiced by people active in human rights and women's movements, such as Vindhya (2003). According to her (the issue of domestic violence has) 'a thin empirical basis compared to other areas of violence research' such as caste violence or state violence. Similar sentiments are voiced by Mitra (2000) according to whom 'The women's movement in India has come around to realizing that it had overlooked the closest and most common form of violence in its enthusiasm to challenge the more visible, the more public and the more explicit of women's oppressions'.⁹

At a first glance, this need for empirical data seems a little intriguing. One can find any number of reports on domestic violence brought out by women's groups in their own local areas. Many of these texts are rich in detail and descriptions. Each of the bi-annual conferences of Indian Association of Women's Studies has had its themes, sub-themes on violence where domestic violence gets to be discussed through detailed case-studies. This is perhaps one of the themes that attracts largest number of presentations.¹⁰ Almost all the women's organizations that offer help to individual women also maintain records of their efforts. However, one slowly realizes that this kind of data might not be useful for policy-making. And the data of that order is lacking. Plain, normal, everyday wife-beating seems to have finally arrived on the scene of policy-making. One can almost see that the exhaustive work that women's organizations have put in through the past years in addressing issues of this invisible violence is now finally getting translated into issues for public policy. The enthusiastic support that new domestic violence bill got from nearly all corners of the country can be understood in this context. The focus on institutions also can be understood in this context. As domestic violence is an understood reality at least among the women's organizations that have been working on it for at least a decade the efforts seem to be directed at making institutions accountable for them. So, the demands for proper institutionalization in some contexts such as law and creation of spaces in institutions such as health care sector.

And it is here that the present moment is distinct from the initial articulations of 'marital violence'. What distinguishes this moment from the earlier ones is that this time, these

⁸ Some of the surveys are done by National Family Health Survey, 2000; Indiansafe: studies on family abuse in India, op.cit; Visaria, Leela *Violence against women: a field survey*, *Economic and political Weekly*, vol.35, no.20, 2000.

⁹ Mitra, Nishi *Domestic violence as a public issue A review of responses*, Unit for Women's Studies, TISS, 2000.

¹⁰ One can refer to the abstracts of conference papers published by IAWS for this: for instance Vo.6 of the proceedings of the sixth National conference titled Violence and the Community held at Mysore has twelve papers on violence against women. Ninth national conference which I attended also had presentations numbering more than twenty on the theme of violence.

suggestions for improvement or reform do not come from any popular mobilizations around this issue.¹¹ In fact, lack of popular mobilization is so stark that a need is felt to 'popularize' such suggested institutional reforms in some quarters¹²

II What do 'Women' seek from the 'Institutions':

Any assessment of the functioning of institutions needs to proceed with an understanding of what women expect and need from them, apart from what the institutions are required to fulfil. These two might converge once in a while. But many a time, non-convergence is common. Women's organizations and others acting on behalf of women situate themselves in this space and seek to fill this gap, claiming to be informed by the expectations and needs of women. From the numerous reports that women's groups and others have compiled as well as various studies¹³, there seems to be a fairly shared understanding of: which institutions women approach in situations of domestic violence; what they want from these institutions and the kinds of reliefs that they seek.

Which women:

It is necessary to address this question although it would appear to be superfluous: don't women from all classes, castes, age, regions and religions face domestic violence so would approach institutions would be the first response in such a context. However, what we seek to address through this question is to disturb the narrative of domestic violence that has become quite common now: that any women who faces domestic violence would approach some public institution if encouraged to do so which then would help them to put an end to it. In this context, it is important to ask the nature of access that women have to institutions. Women from various socio-economic strata come with different kinds of histories and are invested with different kinds of gendered consolidations As mentioned in the above section, each one travels through a variety of lanes to approach formal institutions. Apart from the frequently articulated gender biases of the institutions, one therefore needs to articulate the other biases of the institutions- which would throw light on burden of consolidations of gender, caste, class that bear upon these women and the resultant consequences for women's access. It is required because institutions also have complex histories (shared or effected upon) that entwine not only gender formations but formations of class, caste, religion and region. In order to disturb the pattern of 'the

¹¹ A crucial issue here is the involvement of international agencies in propelling this research and activism especially in the areas of health and law. Whereas the UNHRC model legislation has propelled, in more than one way, a move for an adaptive legislation by Lawyers' Collective, the World Health Organization's guidelines about health sector have definitely guided research and activism in this sector. The World Conference on Women at Beijing is usually acknowledged by many as having propelled a lot of concerted efforts in the area of domestic violence. Without taking a moralistic stand one can state that guidelines from the international donor agencies are definitely playing a major role in shaping this activism around domestic violence in our country in the post-Beijing period.

¹² For instance, Centre for World Solidarity, Hyderabad has started a network on domestic violence whose first task is to popularise the Domestic violence bill.

¹³ Vindhya (2003), Mitra (2000), Agnes (1988), Kumari (1988) and Abraham, Ammu 'Case Studies from Women's Centre, Bombay' in Krishnaraj ed. *Women and violence: a country report*, SNDT University, Bombay, 1990; Sakare, Seema 'Review of the growing violence against women, and the tools used by our voluntary organization to counter this violence in Vidarbha region of Maharashtra' paper presented at sixth national conference of IAWS in 1993; Shaikh, Nahida 'Special Cell to help women and children Bombay' paper presented at sixth national conference of IAWS in 1993.

woman' who frequents our discussions on domestic violence, it is necessary to remember that they are of a particular age, of a class, of a caste and of a religion.

- Our field-study in Hyderabad has found that there are significant class and caste differences among the women who approach institutions. A majority of women who approach lawyers and psychiatrists with issues arising from domestic violence belong to middle classes and upper castes. The proportion of women from this section lodging police complaints or complaining in the counselling centres is also low. A majority of women who approach counselling centres (more than 40%) are from lower middle or poor economic strata (Mitra 2000) and a majority of them belong to non-dominant castes and religions. They also form the majority of the patients in public hospitals admitted with burns injuries. Among those who had died under suspicious circumstances and whose cases have reached high courts under 304b in Andhra Pradesh, a majority of them belong to non-dominant castes, classes and religions. Very few of these women have approached anyone except their natal family and very few of them worked outside the home before their death (Vindhya 2000). In the recent years, very few 'dowry deaths' from dominant castes are getting reported, in contrast to the situation a decade ago.
- There are significant age differentials among the women who approach institutions. Almost all studies clearly show that women between ages of eighteen and thirty-five form the majority. Though there are women who have been married for more than ten years, a majority of these women have been married for less than five years. This is despite the recent finding that women continue to face violence long into marriage.
- It is women with parental support who are more likely to approach any public institution for help rather than those without any support. It is women who have had a recent incident of physical abuse who are likely to approach outside agency especially the police station, with the help of the neighbours or some neighbourhood organization.

In this context, the question that comes up is: Does domestic violence affect different women differently?

Which Institutions:

A sociological definition of an institution as a set of rules or practices that is fairly sustainable over a long period would be good to start with in our exploration of the institutions that women approach in situations of domestic violence. The first institution that comes up in this list is the family, (both natal and marital extended family), friends and neighbourhood, local strongmen, local women's self-help groups, local women's organizations either autonomous or affiliated to various political parties, caste associations, political parties – followed or accompanied by police stations, counselling

centres and courts. This list is not exhaustive. Many other agencies might be involved in negotiating the issues arising from domestic violence.

Our field study (as well as many other studies) has shown that women approach state institutions via the family or neighbourhood groups or local leaders because of the well-confirmed suspicion that they would not be taken seriously in these institutions. Most of the time negotiations precede and continue across many institutional spaces such as family, police station, courts, counselling centres etc. A substantial number of women go through this process alone too.

Crucially, these are the agencies or institutions which facilitate many women's access, especially from poor and bc or dalit caste background to institutions such as the police or the courts. That most women who go to the police stations to complain on their own receive bad treatment is a well-known fact but what is less evident is the fact that most of these women are from poor or low-caste background. They are abused, harassed and also ignored for days together until they get the support of some organization, political party or local gentlemen or gentlewomen. It is not uncommon to find this sight in many of the police stations or counselling centres for poor women to be accompanied by upper middle class women.

It became evident from many of our field interviews as well as other reports that quite a few women who approach these do not even go to the formal institutions. This fact need not be read as either as a bad comment on the formal institutions or as an indication of the patriarchal workings of these informal institutions. What it could be taken to mean is that the persuasiveness of these mediators might have 'settled' the issue for them.

Most studies of institutional responses to domestic violence either gloss over this finding to look into the responses of formal institutions such as police, judiciary, state counselling centres or look at these as unimportant. While there are attempts to understand the role of the 'non-governmental agencies' such as women's groups or organizations that provide various services or feminist groups, when it comes to others, even the attempt to understand the significance of their presence and functioning is missing. In this context, a brief sketch of the debates on these 'non-governmental' yet undebated institutions seems necessary.

The role of the family has been a highly contested issue. While Kishwar¹⁴ raised the issue of natal family's abandonment of the married women in Northern India during the debate on dowry thereby pointing out that marital family's maltreatment is only a continuation of it, later evidence from the various women's organizations, especially from Maharashtra and Southern states has not been so conclusive. Though this position remains uncontested openly, a lot of evidence to the counter-position has emerged in recent years. Many reports have consistently mentioned that the natal family's support has been crucial in

¹⁴ 'Dowry – to ensure her happiness or to disinherit her?' Manushi, no.34, 1986; 'Towards more just norms for marriage: continuing the dowry debate', Manushi, no.53, 1989; 'Continuing the dowry debate', Economic and Political Weekly, Dec 9th, 1989.

making women seek help from others in stopping domestic violence or at least that many women approach the agencies only from their natal family-homes.¹⁵

The role of caste and village panchayats also has been hotly debated one. There are contradictory reports of their efficacy. Many organizations working in metropolitan areas such as Hyderabad¹⁶ (and almost every report from Northern India) mention that caste panchayats have been very male-biased, some reports from rural areas in Andhra Pradesh at least mention that this is not so. Glowing reports of all-women nyaya panchayats and men-women panchayats initiated by women's organizations are available, thanks to ICRW which did case studies of these initiatives as possible best practices.

Locality-based women's groups working on a range of issues, whether affiliated to a political party or not, also seem to be one of the first ones to receive these complaints. Here again there are contradictory reports. While some of the first hand reports give a terrible picture of their dealings (corruption and inefficiency)¹⁷, some others suggest efficiency of amazing proportion.

In this context, the question that we need to address is: how does one understand their role in a meaningful way?

What needs do women expect to be fulfilled by the institutions:

Agnes (1988) was perhaps the first one to clearly articulate the needs of women who faced domestic violence in India: safe shelter, a job and free legal aid at the individual level, apart from sympathetic police, social workers, lawyers etc. As the focus shifted from the explication of domestic violence in the initial years to the response of the institutions to women facing violence (consequent to the establishment of new institutions) more attention began to be paid to what women wanted from these institutions. The most frequently articulated expectation of women is: stopping domestic violence and more space in the family. Other articulated needs expected to be fulfilled by the institutions include, in cases of breakdown of marriage, maintenance, child custody, judicial separation, divorce, property rights and criminal prosecution of the marital family, perhaps in this order.

The trickiest of these expectations is stopping of violence through a change of attitude in the husband by any means. It is especially tricky for a whole lot of feminist organizations. Quite a few women working especially with feminist orientation (and civil rights consciousness) have been (and continue to be) appalled by the veiled and sometimes open suggestions of women that they use any means to change their husbands so that they would live peacefully with them. During our field-work, however, we also came across

¹⁵ Vindhya (2000), Abraham (1991) are two examples of such reports.

¹⁶ Interviews with Aruna of *Navayuga Beedi Kaarmika Sangham*.

¹⁷ One of the women who approached Hyderabad women's collective gave an account of one Sonia Mahila Sangham operative in Hyderabad that collected quite a bit of money from her but refused to question the husband when the time came. However, in an interview with the president of the *Mahilabhyudaya Seva Samstha*, a Telugu Desam district committee president too, she claimed to have solved many cases where she got dowry articles back for the women, prevented harassment etc.

quite a few women's groups, especially attached to political parties, have no qualms in doing this – either through threats or through police beatings. Many also charge certain fees for doing this job.

Each of these needs however has not been 'there' but has been getting shaped through the negotiations between women and institutions. Each of them also seems to serve certain strategic purposes in women's negotiations with the institutions. For instance, if we take the issue of maintenance, while quite a few women from middle classes or with some property try to negotiate for the return of dowry articles or one-time settlement through various means rather than going to the court for it, some others forego it completely to get a quick divorce. Some others, not ready for a divorce, file for maintenance when the husbands file for divorce so that the husbands start negotiating for their return. Similarly, as there is a high premium on marital status for women, quite a few women choose not to divorce their husbands but live separately with their children.

The issue of complaint in the police station is also extremely interesting. A recent study (Dave, 2001) has revealed that criminal prosecution of the abusers ranks very low on the list of priorities of women facing violence. After several years of women's groups and women going back and forth on the criminal cases, now the police have invented a category called non-cognizable offence whereby the abusers will be taken into custody and dealt with severely. While this mode could be seen as subversive of the intent of the law, quite a few women and their advisers now see this option in the law as providing some negotiating space with the abusive marital families. Criminal complaint however is the last resort or is resorted to as a desperate measure in many cases.

However, none of these needs can be called the general need of the whole lot of women because most of the non-propertied section of women who themselves are wage-earners or run the households and therefore do not see the point in filing for maintenance. Several women resort to the police complaint when there is severe abuse but do not pursue it. While the police stations are generally not receptive to them, many reports suggest that there is less fear of a complaint breaking the families compared to middle class women. Several other women are content if the basti panchayats arrives at a certain resolution of the issue, even though it might be temporary.

In this context a question arises as to whether we can generalize or essentialize the needs of the women within or across class, caste, religion to name a few of the locations that women inhabit. Secondly we also need to address the of-repeated finding that many women want reliefs more than criminal prosecution of their marital families and its implications for demands on the institutions.

III Construction of domestic violence: Writing women's experiences into institutional languages:

The third set of issues that we need to address in the context of discussion on institutional responses to domestic violence is the way institutions make sense of domestic violence and our attempts to make domestic violence sensible to institutions, in short, to write

domestic violence in institutional languages: define violence as an issue of health, law and order or as a crime; modify definitions periodically and to arrive at more and more accurate descriptions of abuse experienced by women. The intention in addressing this issue is not to assess the current definitions of violence or to arrive at a more perfect definition of this violence, but to raise questions about the problems inherent in translating women's experiences into languages of institutions - the problems inherent in codifying 'our injuries'.

Before going into the problems in naming a brief recapturing of what 'naming' of abuse has accomplished for women's situation is in order. A major rupture in the patriarchal gender narratives about women's experiences of suffering in the family by women's movements has been to *name* these as 'abuse and violence', countering the victim-blaming ideologies that have been dominant. Women's movement in India has placed this abuse alongside abuses that women experience in non-familial spaces such as rape, witch-hunting etc. to highlight the 'gendered' nature of this abuse. For instance, most of the writings by women's movement activists discuss the issue of marital violence as a part of 'violence against women' in the society alongside issues of rape, female infanticide, foeticide, witch-hunting etc.¹⁸ While such a category can be accused of constructing a 'universal woman' from divergent experiences (in retrospect), it has been immensely useful in politicizing issues related to women's experiences of violence.¹⁹

Defining violence:

Efforts 'to define' (to list, to name, to describe) a particular kind of abuse such as domestic violence, however, have always run into problems. While some seek to sideline the issue (Vindhya 2003)²⁰, some acknowledge the problems and confine it to experiences of physical violence (Maitheyi Krishnaraj 1991). While some researchers use categories such as physical violence, mental violence, emotional abuse or verbal abuse, some tend to adopt a phenomenological approach thereby keeping the category open. Whereas opening up the category of violence to include more experiences of women is a welcome move, it appears to us that broadening the definitions might also give rise to some new and unforeseen problems.

The Bill on domestic violence prepared by the Lawyers' Collective can be taken as an example in this context. This bill is not an atypical one but an illustration of the current trend towards broadening the definition of violence in the domestic or familial sphere

¹⁸ See Krishnaraj (1991); Poonacha, Veena ed. *Understanding violence*, Research Centre for Women's Studies, SNTD University, Bombay, 1991; Kosambi, Meera ed. *Women's oppression in the public gaze*, Research Centre for Women's Studies, SNTD university, 1994 for such a line up of various issues of violence against women.

¹⁹ This foregrounding of 'woman's identity' in all these issues related to violence needs to be problematised urgently. Erasure of the particular historical, cultural, regional contexts inherent therein almost seems to nullify much of the political valency of these articulations and merge into the familiar 'victimizing' modes of articulating these issues, which forms one of the modes through which these issues are allowed to be articulated in the patriarchal regimes/ideologies. Though this note does take on this enterprise, it attempts to begin raising these questions about this 'universality' of womanhood in the context of domestic violence.

²⁰ Many researchers have resorted to the use of definitions arrived at through CEDAW or UN in various contexts or definitions arrived at in Western contexts; in fact, it is fairly common to find references (only) to Battered Women's Movement and Western research on battering when it comes to (theoretical) discussions on domestic violence in India, the most recent examples are Mitra (2000) and Vindhya (2003)

especially when we speak in the context of the institutional neglect of non-dowry related violence.

“domestic violence” means any action or behaviour that harms or injures or has the potential of harming or injuring the health, safety or well-being of the person aggrieved or any child in the care of person aggrieved or in her environment and includes but is not limited to

- Physical abuse or a threat of physical abuse;
- Sexual abuse or a threat of sexual abuse;
- Emotional, verbal and psychological abuse;
- Economic abuse;
- Intimidation;
- Harassment;
- Damage to destruction of property;
- Entry into the residence of the person aggrieved where the parties do not share the same residence, or the property of the person aggrieved without her consent;
- Demands for dowry, oral or written, in any manner, from the person aggrieved or any of her relatives;
- Any conduct which is of such a nature as to cause in the mind of the person a reasonable apprehension that it will be harmful or injurious for her to live with the respondent;
- Any conduct which is of such a nature as to cause or contribute towards the causing of mental disorder of the person aggrieved.
- Conduct of such a nature that the person aggrieved may not be reasonably expected to live with the respondent;
- Conduct which would constitute an offence specified in Schedule I to this Act and which affects the person aggrieved directly or indirectly.²¹

First set of problems with this definition arises from an almost uncritical use of the categories of ‘mental’ or ‘psychological’ violence. While one can make sense of these categories in an intuitive manner, a question arises whether we are paying enough attention to the debates that have taken place especially in the field of mental health on the issues of women’s mental health, violence and the related issues.

Second set of problems concern in this attempt where we seem to be trying to ‘translate’ ‘structural violence’²² or gendered exploitation in the family to ‘concrete categories of violence’ – such as ‘economic abuse’, ‘mental violence’ or ‘emotional abuse’. Structural violence is a category that was used in the initial theorization of violence against women that sees exploitative conditions, denial of economic or social freedom, socio-economic inequalities, bad health or nutrition etc as violence. It was an analytic category that sought to explain women’s living conditions as exploitative and violent. Can we use this

²¹ Lawyers’ Collective (Women’s Rights Initiative) Domestic Violence Against Women (Prevention) Bill, 1999.

²² Poonacha, Veena (1991)

explanatory category as an actual definition? Let us take the issue of 'economic abuse'. The bill's definition of economic abuse includes husband's refusal to contribute to the household as abusive to women. One can see that this refusal of the husband would make the familial life of women very difficult and understand it as exploitation of wife by the husband. The issue here is whether this exploitation can be fought through its translation as domestic violence, thereby bringing in law or other institutions into the picture.

Construction of domestic violence as a category also looks problematic from another angle. The point in approaching the issue in this way is to see whether the whole set of issues that are being raised by women as causing misery to them or making them suffer in the family can be put under the category of domestic violence. If one sees the historical trajectory of the definitions of this violence, the earliest writings about domestic violence construct domestic violence as 'physical', affecting the woman's body in a direct sense, whether it is beatings or excessive sexual demands. As women's groups or organizations began to accumulate accounts of women's abusive experiences, there is growth in the list of 'forms of violence'. Slowly there appeared a tendency to categorise various 'sources' or 'causes' of women's misery/suffering also as forms of violence. The following listing can demonstrate this trend.

An almost first report on domestic violence in India, Flavia's study²³ based on a study of fifty 'battered' women in Mumbai in 1980, adopts a very clear notion of violence as physical beatings and lists various types of beatings that women are subjected to including excessive sexual demands. The 'causes' or triggers of this violence are: arguments over money, jealousy and suspicion of the woman's character, instigation by in-laws, housework, alcohol, woman's desire to work outside the home or woman's high self-esteem, disputes over children, extra-marital affairs of the husband.

Ranjana Kumari's (1989)²⁴ study looked at cases of deaths due to burning reported at hospitals in Delhi, to see whether dowry was the cause of violence listed the following complaints that the women had to make before they died:

Niroj Sinha (1991)²⁵ cites an unpublished Ph.D thesis "Depressed Communities in Transition: Case of Bhangis and Musshars of Bihar" by Renu Ranjan (1985) in which a substantial percentage (45.75%) of the interviewed women (120 in number) said that they are beaten by husbands to get a hand on wife's earnings, alcoholism, suspicion and also to get the wives to do sex-work.

Ammu Abraham²⁶ cites the following reasons gleaned from fifteen case-histories of domestic violence reported at the centre from 1985 to 1990: demands for money or expensive articles, expectation of implicit obedience from the daughter in law. The forms of violence range from beatings, denial of food, locking up, sexual abuse and harassment to 'taking the children away or beating them up'. To cite, 'quite a few women here have faced sexual abuse and harassment, often of a violent, insensitive and sadistic nature.

²³ op.cit., (1988)

²⁴ Kumari, Ranjana *Brides are not for burning: dowry victims in India*, New Delhi, 1989.

²⁵ Sinha, Niroj

²⁶ op.cit., 1991.

Taking away the woman's children or ill-treating them are additional forms of violence and cruelty'.

By 1999, the definition has been made broad enough, as noted above, to include: 'physical abuse or a threat of physical abuse, sexual abuse or a threat of sexual abuse, emotional, verbal and psychological abuse, economic abuse, intimidation, harassment, damage to or destruction of property, entry into the residence of the person aggrieved without her consent' etc. including 'any conduct which is of such a nature as to cause in the mind of the person aggrieved a reasonable apprehension that it will be harmful or injurious to live with the respondent', 'any conduct which is of such a nature that the aggrieved person may not be reasonably expected to live with the respondent'. It includes some other categories too.

As one can see, the whole panorama of women's general living conditions in the families is included in this definition. It appears to us that this model legislation may be seeking to rectify almost everything that is wrong with the way women are treated in the families currently. Wouldn't defining domestic violence in this way make the familial lives of women 'wrong' and 'women' the always already victimised?

If these kind of definitions are problematic in themselves, they would be compounded when the institutions seek to 'interpret' or 'implement' them. A whole set of problems arose while institutions such as police or psychiatry seek to make sense of the available experiences of women from their locations.

Institutions in operation – the police, the counselling centres, the courts and the hospitals:

Some of the demands of the women's movements addressed to institutions about domestic violence which have been implemented in India are: new laws or amendments to old laws to address issues of violence against women in the family, creation of new institutions such as family courts and women's police stations to process women's complaints about domestic violence seriously, facilitating creation of 'counselling centres' to promote non-legal solutions to issues of domestic violence. As such various Departments of Social Welfare have facilitated, in terms of funding and personnel, opening of 'family counselling centres' in various states, some of which are attached to police stations, women's organizations etc. Family courts have been created to cater to issues that arise from contexts of domestic violence such as maintenance, child custody, divorce, separation etc. Women's police stations have been opened at least in some states to register women's complaints of harassment, abuse and violence. Now, efforts are being initiated to involve health care system to address domestic violence.

However, this kind of one-dimensional narrative completely erases the history of each of these institutions' engagement with issues of domestic violence and the complexities involved. Therefore, there is a necessity to go into each of these histories to get a sense of the operation of feminist demands in our institutional context.

The first in this order is the family counselling centre, an institution that has become almost ubiquitous in many metropolitan areas. Family counselling centres began to be established in mid 1980s under the aegis of Central Social Welfare Board in many states with the twin aims of 'protecting the family' and 'helping women in distress'. While there are certain FCCs run directly by the Social Welfare Board, some are attached to the police stations and many are run by voluntary agencies with a track record of working on women's issues. A large number of women's groups taking inspiration from the women's movement run counselling centres for women. Perhaps due to this reason, the arena of 'family counselling' has attracted very little theorization.

Ensnared in the welfare-bureaucracy or a variant of this mode, what the counselling centres did and do is to provide a 'neutral platform' for voicing women's complaints about domestic violence, which does not lead to criminal investigations or legal cases. Once a woman comes with a complaint of domestic violence what the counsellors do is get an oral and written narrative of abuse history followed by an investigation, according to a procedure that appears to ensure that both the sides would get an equal hearing. These investigations yield a set of 'reasons' or 'mistakes' or 'faults' in the behaviour of either of the marital partners or other family members, which they then are asked to rectify so that violence does not recur. In this process, abuse histories get transformed into stories of marital maladjustment.

Some of the criticisms (Agnes, 1989; Mitra 2000) raised against the counselling centres are: that the counsellors work within the patriarchal logic, many a time, very biased against women; that they are corrupt and inefficient and that they do not address violence. Many of these²⁷, especially those run by the government employ graduates of social work with little or no formal training in counselling. They learn(t) to deal with the issue 'on the job'. However there is a definite shift in the focus of critique over the years. While Agnes (1989) bemoaned the severe class and gender biases that the social workers have regarding domestic violence which lead to thorough discouragement or underplaying of abuse that women undergo, Mitra (2000) concentrates, in a study of FCCs in Maharashtra and Madhya Pradesh, on the logistics and efficiency of these centres in tackling the issues of violence. While patriarchal attitudes still remain, those run by women's groups certainly seem to have made changes in the tackling of the issues. The question that remains to be addressed, apart from the attitudes of the counsellors, the infrastructure that they have, their lack of training, the kind of mandate is what exactly happens here. It is necessary to pay attention to this process because it is essential to understand the role counselling centres play in addressing issues of domestic violence.

Mostly working within the functionalist logic, counselling centres deal with a large number of women coming with a variety of issues related to family and violence and it would be superfluous to disregard the work that they accomplish. However, it is also essential, as pointed above, to keep in mind that once established they can largely function within this logic – as an informed and mostly neutral third party. Expecting them to take frontal 'pro-women' stands perhaps would disturb their delicate apple cart. As

²⁷ As indicated above, quite a few organizations that have emerged from the women's movement and operated in an activist mode.

evident from the accounts that Mitra provides, patriarchal arguments as well as liberal feminist arguments seem to work well in many cases. For instance, she quotes two counsellors from Madhya Pradesh telling their women clients: “You have status as a wife. If you lose heart, they will kill you. Become bold. You must take charge of your life” (male); “I tell the women, do not suffer, you have equal status as your husband. Learn to fight for it” (female).

So the questions that have to be addressed in this context are: When the social workers’ patriarchal leanings or gender biases (and lack of them) do not exhaustively explain their usefulness or their handling of this issue then how should we understand the happenings at the centre and the ‘successes’ at these?

Yet another classic case of such a translation in our context is that of police and ‘dowry violence’ – where after marital violence (both related to and unrelated to dowry) got criminalized, the police kept trying to fit all kinds of abuse only in this category. There are any number of accounts from the activists as to how long they had to struggle to get each of these amended laws (S304B, S306, S498A) implemented. For example, in Hyderabad, the Dowry Deaths Investigation Committee started this work and others such as Progressive Organization of Women continue it till today. Various institutional blocks – ‘ignorance’ of amended laws, resistance of the investigating officers, ‘failure’ to understand the implications of laws – had to be addressed. The police cadre, in short, had to be ‘educated’ about these laws.

Activists also learnt that the mechanical application of these amendments, proved counter-productive later in the courts of law. So, one learnt to ask for the application of one law rather than another in the course of this process. For instance when one asked for S304B in the case of suspicious deaths of women which, being a case of homicide, required stricter evidence, convictions became very difficult. Then one started asking for the section on abetment to suicide. Similarly, after the 498A amendment was introduced, it took almost ten years to get it into operation – with the efforts of the activists.²⁸ Being the only law to address domestic violence, one needed to really push the police to get it implemented. However, now it is widely accepted that it definitely acts as a deterrent.²⁹

The effectiveness of this criminalization of domestic violence (though not termed as domestic violence) has to be gauged from the echoes it finds, for instance, in the law and order community, which perceives it as a draconian law and keeps raising voice against its misuse periodically. Mitra (1997) cites a petition signed by two hundred leading lawyers in Mumbai to the government seeking abrogation of some of the provisions.

As pointed above, the law’s deterrent effects are not a result of the determined efforts of the police. As many studies have pointed out the police have acted and continue to act in extremely gender-biased, class-biased, caste-biased ways, have refused (and continue to refuse) registering of many crimes against married women, continue to demand bribes from almost all the complainants. They respond positively only if the complainants,

²⁸ Interview with Sandhya, Secretary, Progressive Organization of Women, Hyderabad.

²⁹ Mitra (2000) also argues that the deterrent effects of this law are widely accepted even by the police and the lawyers.

especially from poorer and dalit or backward castes are accompanied by organizations working on gender, caste or class interests or political party personnel. Apart from these, the organizational compulsions of the police, to keep the crime rates down, also have acted against registering the complaints of women.

However, once 'domestic violence' (498A) began to be treated as a 'proper crime' by the police, new troubles began. Over the years, the police also began to form new boundaries – they simply started applying the criterion of general criminal investigation to register a woman's complaint of domestic violence – which posed new obstacles to women who sought such criminal investigations.³⁰ Some women's groups have argued that such strictures are equivalent to put the clock back on the work they have been doing regarding registration of this crime.³¹

The questions that come up in this context are: The first set of questions need to address the deterrent effects of this law. If the deterrent value of the law is an acknowledged fact but the registrations and convictions do not reflect this in any way where should we look for evidence of this deterrence? Should we look merely at the registration of offences under specifically domestic violence acts or should we look at registration of other offences too? How should we understand and document the role of the 'police' and the 'police station' in the production of this effect of deterrence? Second set of questions arises as to how we should respond to this process of 'criminalization of domestic violence' by the police. In the context of feminist commitments to civil and political rights, can we afford to ignore the whole set up of police procedures that apply to every crime and ask for bypassing of these rules for 'crime' against women?

The history of legal engagements with the issue of domestic violence is perhaps the most documented. Courts have long demonstrated that they would see domestic violence only in the context of their established repertoire of family law, according to which the interests of the 'family' come first.³² However, does this mean that they are universally biased against women in any and every case? It would be difficult to answer in affirmative to this question. Till the last decade, women's movement as well as most studies of judicial responses to domestic violence have focused on the outcome of judicial prosecution of cases of violence, under various sections of assault as well as the specific section of 498A. It is only recently that an effort is being made to look at the operation of family courts, to look at civil remedies that are being asked for in the context of domestic violence. This effort has accompanied the turn away from criminal remedies within the movement towards the civil law remedies.

To briefly recapture the history, it is the judgements releasing the culprits in clear cases of murder that propelled demands for the amendments to laws from sections of women's movement. These amendments were the first to be carried out but very soon, their application/interpretation in the courts of law gave rise to a host of questions. Studies of

³⁰ At least in Andhra Pradesh, especially in Hyderabad, such a directive has been passed by the concerned directorate of police which makes it mandatory for an officer of Assistant Commissioner of Police to attest a woman's complaint before it can be registered.

³¹ Interview with Sandhya, POW, Hyderabad.

³² Vanita, Ruth 'Preserving family at the cost of women: the new family courts bill', *Manushi*, no.25, 1984.

high court judgements on 'dowry related deaths' from the mid 1980s (APCLC 1989, 1991; Vindhya 2003, Elizabeth 2001) showed that women's experiences of violence were sought to be filtered through the standards of Indian Evidence Act. The evidence of violence occurring within the confines of the marital family, which is the accused in most of the cases obviously fell short of such standards. Natal family's evidence gets considered as 'interested' therefore unworthy of consideration. Violence unrelated to specific demands for dowry again got to be interpreted as 'normal' behaviour of marital family towards newly wed daughters-in-law. In this context many of the suspicious deaths (charged as murder) got to be interpreted as unprovoked suicides, a result of hyper-sensitive, hysteric, mentally unstable character of the particular women.

Somewhere towards the end of 1980s, one begins to see a slow shift towards the other reliefs that women seek from the courts- such as maintenance, child custody, return of dowry etc. or divorce – which arise in the context of domestic violence. The underlying logic is that women need to be assured of their entitlements in the family to fight against domestic violence. Though one cannot define this moment, various debates that raged in the nineties such as debate on Shah Bano's case, Uniform Civil Code, Muslim Women's Maintenance Bill were around the issues of women's entitlements within the family. Beneath the debates about identity politics one can see anxiety about what women are left with in contexts of disruption of familial lives. However, it is the series of Bills on Domestic Violence (prepared by National Commission for Women, Lawyers' Collective) which clearly began to articulate the issue of 'shift from criminal to civil remedies' in domestic violence contexts. Both these bills put down provisions that sought to make it easy for women to seek and obtain reliefs mentioned above without registering a crime against the marital family. It is during this period that Majlis began a campaign for women's right to matrimonial home in Maharashtra and succeeded.

The shift towards civil law remedies, however, would bring one squarely into the operational domain of personnel laws, because it is these laws that define women's entitlements in the familial domain. However, with a few exceptions like Flavia Agnes, for various reasons personnel laws are not being openly explored as a possible positive legal space for women. One has to stress the word 'openly' because scores of women are getting reliefs (perhaps not entirely implemented) under these laws daily in the family courts and one does hear of progressive judgements in matters of maintenance and child custody. Despite this, there is an obvious quiet regarding these legal spaces.

Family court, an institution specifically established to 'resolve' domestic disputes or matters (an euphemism for cases of domestic violence), to put it mildly, remains a most understudied institution. Mitra (2000) describes the processes of the family courts in a very detailed manner and outlines the achievements of the family courts as: better rates of recovery of maintenance and provision, though limited, of injunctions against the violent husband from throwing the woman out. The 'fetters on justice' that she outlines are: the indispensability of the conciliatory stage, constraints on counsellors' powers, lack of legal assistance, in-camera proceeding and their limited number. While one does find an evaluation of the family court in terms of its professed aims and goals, one does not find here an account of how women are negotiating this space and what exactly these

negotiations are yielding for them. Similarly, one also does not find any forays into the actual working out of the various provisions of maintenance under various personal laws.

In this context questions that come up are: If there is a wide range of reliefs and rights sought by women from legal institutions in relation to domestic violence, is it right to keep the focus only on the outcomes of criminal investigations? If we think it is not, how then do we study or assess the response of the legal institutions to domestic violence? What kind of methodology needs to be adopted for the study of family courts and what are the questions that we should ask of this institution?

Medical system and doctors are relatively new entrants into the debates on domestic violence. That health care personnel should respond proactively to domestic violence is a very recent demand that is being heard in some quarters: through some studies, a few initiatives in the hospitals, workshops and seminars. The demand is that they should respond to women showing certain symptoms of domestic violence sensitively and provide referrals to other agencies wherever feasible. However, expectation of sensitivity from the medical personnel to women who face(d) domestic violence is not entirely new, considering the long chequered history of their treatment of women with burns injuries in India.

The most frequently cited problems are not with their medical treatment itself (in a narrow sense) but with the way they have ‘scuttled’ the possible criminal cases: by being indifferent to the state of mind of women, by not recording statements of women properly and by conniving with the marital family.³³ The most popular argument put forward by the doctors is that they would need to spend a long time to pursue each of the burns cases, that too against the resistance of women to reveal the actual causes. Moreover, women also keep changing their statements from time to time making their efforts worthless in the end.

While the reluctance and laziness of the doctors are definite factors in the explanation of their insensitivity, the question arises if can we stop with naming this insensitivity vis-à-vis domestic violence alone? Can we set it apart from other histories of medical engagements with women’s illnesses in this country? Hasn’t feminist engagement with medical system repeatedly shown that this insensitivity is not uncommon among many doctors when comes to many other illnesses of women, such as chronic backache, menstrual pain, white discharge, anaemia, sexually transmitted diseases – which are regarded as things that are not curable? A second set of questions needs to address the diagnostic logic of the medical system where the ‘cause’ of injury does not figure as a major category of analysis and socio-economic conditions of the patients do not figure as a factor of treatment except in a meagre way. In this context, how do we place the demands that the medical system take pro-active steps for women facing domestic violence?

³³ Devi, Geetha, Meghna Raghunandan, renuka and Shobhana of Vimochana, *Getting away with murder: how law courts and police fail victims of domestic violence*, *Manushi*, no.117.

Methodology:

It is the questions raised in the above section that we sought to explore in the study. We sought to understand the history of each of the institutions that we selected for the study, tried to understand the ways in which each of these institutions sought to make sense of domestic violence in its everyday operations as well as looked at the uses of these translations for women who interact with them.

For the field-study we adopted three methods for all the institutions: one was to interview or interact with women who have approached these institutions for redress; the second was to interview and interact with the staff of each of the institutions; third was to examine the records, if made available. The study is located in the twin cities of Hyderabad.

The size of the sample varied for each institution. Among the family counselling centres, there a wide variety of types of family counselling centres, some run by NGOs, some by political parties, some are autonomous women's groups, some by trade unions and some by social welfare board of the state. We chose five formal counselling centres that have offices, besides eight non-formal counselling set-ups, which operate without a permanent office. We interviewed the counsellors working in these with the help of a open-ended questionnaire. We also interviewed women who have approached these centres, set-ups. The number of women thus interviewed ranged from one to three.

For study of medical institutions, we chose one of the two major teaching hospitals in the twin cities, namely, Gandhi Memorial Hospital, wherein we interviewed doctors and nurses in four wards, namely emergency casualty, psychiatry, casualty and plastic surgery. In each of the wards, we spoke to the relatives of five patients. In the burns wards, we spoke to the relatives of twenty in-patients. We also interviewed ten psychiatrists, two of whom were from public hospitals and eight were from private sector, practising in various parts of the city.

For the study of police stations, we went to all the three women police stations in the twin cities; interviewed five of the staff members in each, ranging from SI to the writer. Three to five women who were present in the police stations were interviewed.

The study of response of courts involved one of two family courts in the city and interviews with ten practicing lawyers in family cases.

We have also spent considerable amount to time in observing the process each of these institutions in practice. The field-work was done during the years 2001 and 2002.

Chapterization

The report is divided into six chapters. This chapter provides the introduction. The second chapter is based upon the study of the family counselling centres in the twin cities. The third chapter is based upon the study of hospitals. The fourth one is on the police stations

and the fifth one on the study of the response of the courts. The last chapter is on the conclusions arrived at in the study.

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Chapter 2

Counselling Centres in Twin Cities

Introduction and Methodology

As noted in the introduction chapter, the beginnings of counselling for domestic violence can be traced to the women's movement in the 1980s. After violence against women in the families was brought out into the public sphere in late 1970s and early 1980s, attempts began to help the survivors of violence, through the establishment of some centres. Some of these centres were run by volunteers (Stree Sangham, Women's Centre) who actively took part in the anti-dowry campaigns. In a few centres such as Shakti Vaahini mothers of the victims played a major role. Some of these such as Jagori in Delhi, Forum in Mumbai, Vimochana in Bangalore and Asmita in Hyderabad began to address marital violence on an everyday basis as well as systematic and periodic public campaigns. Much of the work in these centres has been centred around making women aware of their rights in the family and society and securing these rights. Almost parallel to this process, the government also started family counselling centres with the twin aims of preserving the family, apart from that of helping women in distress. However, the distinction between initiatives inspired by women's movement and those funded by the government is not tight. Much of the initial funding provided by the government was sought by the women's groups which took an active role in the campaigns against dowry. Consolidation of their efforts into daily functioning required funding which was made available by the government through the Social Welfare Board. Hyderabad has six such centres funded by the Social Welfare Board. Three of these are run by non-governmental organizations and two are located within the offices of the social welfare department.

The initial sample for the project included two centres among the ones funded by the social welfare board and Asmita, as an example of an autonomous feminist organization. To understand the functioning of the counselling centres, we sought to adopt three methods: interviews with the personnel of the centres/organizations/groups; observation of the counselling process to understand what transpires in the way of counselling and the examination of the records maintained on the cases that they have handled. We designed our questionnaire to capture the 'process' that goes into making of the counsellor. Our questions address the interaction between their personal life and their work, the latter's influence on the former, the resulting changes in their understanding of both, the counsellor's understanding of the victim's caste and class background, their own assessment of their work and the organization, the powers that they have within the organization, the changes they seek to 'better' the service that they provide, and the changes that they seek to bring in the process of counselling. Questions about the nature of the 'cases', nature of women's complaints and their expectations from these centres, their ways of dealing with the women, the nature of their 'counselling', follow-up, the institutional structure, hierarchy and training are sought to be addressed during the initial interviews with the counsellors/social workers.

However, after the project started, quite a few of the assumptions about counselling had to be modified, requiring us to change our sampling, mode of understanding and analysis of the counselling centres. We were prompted to modify our understanding of ‘counselling’ as provision of any kind of help to the women facing violence. We were also made aware of the importance of mapping the ‘field of counselling’ in the city whereby the variety of organizations/groups/centres that are doing ‘family/domestic/marital counselling’, the variety of activities that are thrown under the rubric of ‘counselling’ and the variety of ‘actors’ that are involved in this counselling could at least be listed. Second, while we started with an awareness of the dynamics of power in ‘counselling’ such as caste, class and ‘kinship’ inequalities that operate in many ‘counselling’ settings on domestic violence, the field-work process also prompted us to think of the relationship of patronage/dominance between the counsellor and the ‘client’ in many family counselling centres’ staffed with social work graduates and the dominant note/tone of ‘neutrality’ in understanding marital violence. Third, three years of working on the institutional responses to women facing violence deepened our understanding of issues involved in this process and tempered our assessment of these counselling centres: the ever-increasing demands on the organization by the women, the changing nature of their demands, long time invested in the decision-making process, going back and forth on their decisions and simultaneous exploration of various options through various institutional mechanisms.

The following sections will go into the details of the findings and attempt an analysis of these findings. They are structured around the three sets of issues mentioned above. The first section would go into the field of counselling outlining the range of organizations, the kind of activities and the types of counselling settings that are operative in the twin cities. The second section would go into the methodologies of counselling, the ideologies, modes of negotiations, the caste and class biases, counsellor’s perceptions of domestic violence and counselling, and the match or mismatch between what the counselling set ups offer and what women expect from them. The third section will raise certain issues that seem to be ideologically and conceptually intractable.

a. The ‘Field of Counselling’:

In this section, we discuss three sets of issues. First, we outline the types of organizations that are involved in counselling, the kinds of ideologies that they subscribe and their varied histories. Second, we discuss the various types of counselling settings. Third we discuss the various meanings with which the term ‘counselling’ is being invested.

Organizations that are involved in counselling:

The first issue that we want to discuss is the involvement of a wide variety of agencies in negotiations around marital violence.³⁴ We started the project with the aim of studying

³⁴ This has also come out in the studies undertaken by ICRW (International Centre for Research On Women). ‘Domestic Violence as a Public Issue A review of Responses’ (a survey of institutional responses to domestic violence in Madhya Pradesh and Maharashtra) by Nishi Mitra, brings out the involvement of a wide range of non-governmental agencies that are responding to domestic violence. The

the family counselling centres established by the government or feminist groups. Therefore, in the initial sample, there were only four centres. But soon realized that the other agencies are playing a major role in the area of 'counselling'. As pointed above, we came across a wide range of agencies dealing with domestic violence. Left women's organizations, feminist organizations, trade unions, mahila mandals, caste associations, thrift groups, women's wings of political parties, leaders of the political parties, basti leaders are some of the agencies which are involved in this issue. The agencies or groups or organizations that we approached during our study are: Asmita Resource Centre for Women, Confederation of Voluntary Associations, Andhra Mahila Sabha Legal Aid Centre for Women, Mahila Abhyudaya Samstha, Indian Council for Social Welfare, Progressive Organization of Women, Andhra Pradesh Mahila Samakhya, Navayuga Beedi Kaarmika Sangham, Mahilabhyudaya Seva Samstha, Ankuram and Gandhi women's welfare centre, Human Rights Forum, Domestic Workers' Movement, Catholic Health Association of India and Amberpet Mahila Counselling Centre. Among these, Andhra Mahila Sabha offers legal aid for women, Indian Council for Social Welfare (which since then had become defunct) offered counselling for women, Asmita and Mahilabhyudaya Samstha are feminist groups offering counselling and legal aid for women, COVA offers counselling and legal aid, Mahilabhyudaya Seva Samstha offers legal aid and help with the police, Amberpet counselling centre offers counselling within the premises of the police station, POW and APMS are women's wings of left parties, CPI ML (New Democracy) and CPI (M) offering legal aid and other help, Ankuram and Ganchi welfare centre offers periodic counselling, Catholic Health Association of India conducted legal aid programmes for women on domestic violence. Asmita, Mahilabhyudaya Samstha, COVA, Andhra Mahila Sabha Legal Aid Centre, ICRW maintain offices with a particular set of counsellors. Mahilabhyudaya Seva Samstha also has women devoted to this purpose. Amberpet counselling centre operates from the police station. As far as possible, we made attempts to meet both the office-bearers and field workers of the organizations that we studied. A brief note on each of the organizations is included in the Appendix.

As hinted above, the above groups have a variety of histories of involvement with the issue of marital violence. They also emerged in particular historical contexts. Some counselling centres such as Asmita and Mahilabhyudaya Samstha are started by organizations and people who have a history of involvement in the women's movement in Andhra Pradesh, with an explicit agenda of helping women facing violence in families. While Mahilabhyudaya Samstha veers towards reform, Asmita has been working on issues of violence against women in a feminist rights perspective. POW has a slightly different history. It been working on a range of women's issues from wages to violence from its inception. Andhra Mahila Samakhya proclaims an agenda of working on behalf of women. Andhra Mahila Sabha Legal Counselling Centre has been started by organizations with a history that goes back to the nationalist movement. The centre run by ICRW was a part of a bunch of welfare-oriented programmes for disadvantaged groups that it runs. Apart from these which work with an explicit agenda of helping women in distress, a range of associations, organizations and communities with varieties

agencies range from feminist groups to government agencies to women's organizations to ashrams etc. However, she has not noted the involvement of agencies such as caste groups, caste panchayats, local leaders, local political activists etc.

of goals are being drawn into negotiating domestic violence in response to the demands made by women whom they are seeking to organize and represent. Prominent among these are self-help groups, local women's sanghas, local women's organizations and non-governmental organizations – which are being approached by the women in the locality for going to the police/counselling centres or for approaching other women's organizations. Thus, organizations whose goals do not explicitly include addressing domestic violence such as Ankuram or CHAI (Catholic Health Association of India) have begun to or had to address issues of domestic violence. COVA which primarily focuses on economic initiatives for women and programmes for youth started its counselling centre due to the continuous requests that flooded it in this regard. Navayuga Beedi Kaarmika Sangham, which is a trade union of women beedi workers got drawn into this issue after several 'dowry deaths' took place in the areas in which it was working. Another set of organizations that are getting involved are women's wings of mainstream political parties such as Telugu Desam and BJP. Mahilabhyudaya Seva Samstha has been established by a Telugu Desam party functionary (a district president) with the agenda of helping women. The activities that they undertake range from helping daughters from poor families to get married (by freely supplying 'taali) to flexing muscles on behalf of distressed women.

Among the organizations, some such as Asmita, POW, Navayuga Beedi Kaarmika Sangham explicitly state that they work for women's rights, some others such as Mahilabhyudaya Seva Samstha claim to be working for women's welfare and still others such as Government counselling centres, Indian Council for Social Welfare, Andhra Mahila Sabha Legal Aid Centre for Women claim to be working for the welfare of the 'family'. Some such as Mahilabhyudaya Samstha define women's welfare in terms of the welfare of the family. Counselling centres run by or activity undertaken by organizations with feminist agenda such as Asmita, Ankuram and Progressive organization of Women understand their activism as negotiating on behalf of the women. Many others, staffed by social work graduates, partly or fully funded by Social Welfare Board understand their role as neutral negotiators. Those who are in other positions of political power such as President of the district unit of the Telugu Desam party see their role as authority figures.

Apart from these organizations, a number of traditional and new authority figures are involved in counselling on marital violence in their individual capacity: locality leaders, family elders, caste elders, strongmen in the locality, caste panchayats, politicians in individual capacity, assertive women of the locality who are members of women's microcredit groups or local members of the political parties. These men and women mediate marital conflicts, disputes and violence at the local level, mostly after the intervention of the immediate family. The human rights activist from Human Rights Forum described how he has been looked upon as a *peddamanishi* in several disputes that he intervened. This role is usually bestowed upon caste elders but he was given it due to the name he acquired through activism. They also mediate the access of the distressed women to other organizations and institutions – whether they be the family counselling centres, local women's organizations or local police stations. Ankuram was approached by individual women in distress through its local coordinators in the bastis. Several women who approached Andhra Mahila Sabha Legal Aid Centre brought 'letters of introduction or recommendations' from these figures, especially political leaders.

Counsellors working in these centres mentioned basti, caste or village elders as one of the major facilitators in negotiations. Many interviewees from poor families and non-dominant castes, living in the bastis described the involvement of basti dadas in their issues, about which they have ambivalent attitudes. Many a time, the presence of the local groups or leaders determines the response of these organizations and institutions to individual women facing distress. For instance several interviewees from poor families reported positive response from the police station after they went accompanied by local groups and leaders. Prior to this step, the police personnel were either indifferent or harsh.

Types of Counselling-settings:

We came across three to four kinds of ‘counselling’ settings – one, primarily office-settings where three or four ‘counsellors’ are present during the day time, second, ‘counsellors’ mediating the issue at the locality of the women, third, counsellors ‘counselling’/mediating the issue at their own residence. Among those who maintain an office-setting, Asmita, COVA, Mahilabhyudaya Samstha, Andhra Mahila Sabha, in the first three, the counsellors also mediate the issue at the locality of the women. Ankuram, Mahilabhyudaya Seva Samstha, POW, Navayuga Kaarmika Sangham maintain the latter two types of counselling settings. Though ‘home visits’, i.e, visiting the ‘clients’ at their residence-locality are considered to be important and perhaps mandatory part of others’ work, they are subject to availability of funds and time.

There is active (though many a time unacknowledged) ‘interaction’ between community based groups/networks and the office-based counselling centres. At many office-based counselling centres we found that individual women come after exhausting the option of using the community based networks. Many a time, they approach these with the help of the members of the community-based groups/networks. Some times, they get recommendation letters or letters of introduction from the latter. On the other hand, the office based counselling centres report that the negotiations with the ‘community networks’ is a difficult but necessary process. As a counsellor working with Mahilabhyudaya Samstha says, ‘Every now and then, we go to villages for ‘recovery’ (of dowry etc.). All sorts of people and politics play a role there. They all come and speak on behalf of the man...There one has to respect the ‘customs’ of the village. Even though they scream at us in the beginning, if we explain the problem patiently then they come to carry the luggage of the woman.’

However, establishing one’s credibility here is a tough process. Asmita and Ankuram, POW understood the significance of the local bastis only through trial and error. Almost every organization has had a long struggle to get a foothold in the localities. In fact, it is only after they attain some credibility and foothold that they are approached by women to negotiate their issues. Some organizations such as Navayuga Beedi Kaarmika Sangham had to beat a retreat after the whole basti turned against them in one particular negotiation. They consistently faced the criticism that they were ‘outsiders’ and therefore should not interfere in the ‘internal’ affairs of the *basti*. However, organizations/groups such as Mahila Seva Samastha (*Apadbandhu*) do not report any such opposition, perhaps

because they are so openly associated with mainstream political parties with whom many other interests are also linked. Another reason might be the perceived ideological position of these two groups- while beedi sangham was perceived as a ‘women-sided group’, the MSS seem to have been perceived as a welfare organization.

Those who have offices, such as Andhra Mahila Sabha, Mahilabhyudaya Samstha, Asmita receive complaints during the office timings – mostly from 10.00a.m to 5 p.m (with the exception of AMSLCC which works from 5p.m to 7p.m). COVA, Ankuram and many others receive complaints through field workers or organizers who visit the areas regularly. Still others, such as POW can be reached over the phone or through their party office.

Those centres, which are fully or partly supported by Social Welfare Board³⁵ (are required to) employ graduates in Social Work. But in most others, whether they have feminist agenda or not, assertive women from local areas are given some kind of a hands-on training to deal with these issues. In both kinds of settings, (with the exception of Asmita) i.e., whether they are from social work background or not, rarely do they get opportunities to understand more about issues related to violence against women. What they might get, in rare instances, are two or three day ‘seminars’ on gender or gender issues where they are told about violence against women in the lecture mode.

The socio-economic and educational background of the counsellors is as follows: those who work in the office settings are all post-graduates and belong to dominant castes. Among the eight, six belong to Brahmin, kamma, velaman, reddy and kaapu castes. Those who work on the field-level mostly belong to backward castes, dalit and muslim background. All the counsellors at COVA, Mahilabhyudaya Seva Samstha, Amberpet Counselling Centre, Domestic Workers Movement, some at Asmita, Ankuram belong to non-dominant castes and religions. However, there are exceptions such as Karuna of POW and Pavani³⁶ of NBKS, both from dominant caste, who work at the field level too,

The meanings of counselling:

A range of activity is understood as ‘counselling’: speaking to the women in distress, on their behalf - negotiating with the marital family and community about taking the women back into the family, children, negotiations on dowry, negotiating separation, separate household for the marital couple, advising women about legal issues involved, accompanying women to the police station; as a neutral agent - mediating between the marital and natal families about marital conflicts/disputes/violence, mediating between the couple; as an authority – overseeing the mediation/negotiation, passing a verdict on the disputes and overseeing the implementation of the verdict. Asmita, POW, Navayuga

³⁵ Social Welfare Board, working under the Ministry of Women and Child Welfare runs or provides funds to NGOs who provide counselling services to women facing domestic violence. There are five to six counselling centres in Hyderabad which are run with these funds. The aim of these centres (according to their mandate) are to preserve the family as well as to help women in distress. The Board pays honorarium to two counsellors (RS.2,500 per month) and also provides for rent, stationary, travel etc. The counsellors should have done either an MA in Social Work or Psychology. The centres are supposed to spend 80% of the fund towards counselling services and the rest for other kinds of expenditure. The NGOs which receive funds from the Board are also supposed to have an advisory committee consisting of social workers, police, chartered accountants, advocates, activists etc.

³⁶ All the names of the people have been changed to protect their identity.

Beedi Kaarmika Sangham, Mahilabhyudaya Seva Samstha are involved in the first two sets of activities. Ankuram also comes into this category – but to a limited extent. Andhra Mahila Sabha, COVA, Amberpet Counselling centre and Mahilabhyudaya Samstha indulge only in the second set of activities. Various political leaders including the president of Mahilabhyudaya Seva Samstha and POW are also involved in the third kind of activities.

The activities that are undertaken can be largely explained to be a result of the combination of the history of the particular organization, its aims, the clientele, its ideology and the funds/facilities available to the personnel. However, they also seem to partly derive from the dynamism of the individual women who have ‘become’ counsellors in these groups. From the interviews with them it was apparent that except two, none of them received any training in dealing with the issues involved with marital violence – whether it is related to legal issues, the police station or dealing with communities. But each of them learnt on their job. And each of them had an idea of what would improve their work– whether it is the knowledge of law, lack of freedom to make more home-visits, less strictures from the higher-ups etc. However, it is the counsellors who received certain ‘training’ at Asmita who articulated their ideas of what a counsellor should be. For instance, a counsellor, who worked there for six years says, ‘In the Indian situation, a full-fledged family counsellor should also be willing to visit the police stations as well as negotiate with the local leaders in the women’s locality. It is only such kind of trained persons who can provide effective help to the battered women’.

Particularly interesting in this context is the way they sought to bring their own personal histories of abuse and violence in their marital families to think about the issues of their women clients. Eight among the fifteen interviewed for the study talked about personal histories of abuse in their own marriages or their immediate families, when asked about the reasons which interested them to get into this work or when they were simply asked about their familial background. Being able to help women who are in a situation similar to theirs seems to give them not merely a sense of satisfaction but also increase their ability to deal with their own lives better. A counsellor working with Mahilabhyudaya Samstha says, ‘I talk to the women who come here not as my duty but with empathy... Because of the nature of my work, I am able to deal with issues in my own family in a much better way. I am also able to offer good advice to women among my relatives who are facing abuse.’. A counsellor working with Asmita says, ‘Previously, when my husband harassed me about my inability to extract more money from my natal family, I would get hurt...But now, I am able to answer him... I am also able to deal with my mother-in-law better.’ A counsellor working with COVA says, ‘My children understand my work... Even if my husband does not like my work, I do it... He used to beat me everyday before we came to Hyderabad. But now, it has almost stopped. I do not know whether it is due to fear or because I am earning.’

b. Counselling Settings: Dynamics of Power

In this section, we discuss three sets of issues: the methodology of counselling/negotiations in these settings, issues of caste/class dynamics in them and last,

the match/mismatch between what women ask and what these centres are able to give them.

a. Methodologies of Counselling:

To delineate the methodologies of the counselling centres we need to look at the ideologies of counselling centres, their modes of negotiations of issues of marital violence, the kind of personnel and their training, the content of counselling and the ways in which they understand the role of police and law.

Ideologies and objectives:

How far does the ideology of the organization effect the strategies that are adopted in individual women's cases? As noted in the above section organizations work with various ideologies: Asmita, POW or Navayuga Beedi Kaarmika Sangham , Mahilabhyudaya Samstha claim to be working for women's rights, Mahilbhyudaya Seva Samstha claim to be working for women's welfare, some others such as Indian Council for Social Welfare, Andhra Mahila Sabha Legal Aid Centre for Women claim to be working for the welfare of the 'family'. For the former, the primary objective in 'counselling' is to work for securing the rights of women in the family and outside: whether it is to negotiate on their behalf with the marital family for their rights or take recourse to law. For the latter, the emphasis is on 'preserving' the family, preventing it from breaking up. As women's welfare is located in the unbroken family, more importance is given to keeping it intact.

However, in practice, many of these objectives do not tend to be aimed for. The organizational ideologies are mediated by many factors such as the background of the personnel, the ability of the parent organization to train them, the ability and interests of the personnel in the issue and the expectations of women who visit the organizations. Sometimes, while those who work for the rights of the women are being asked to reform the husbands, those whose objective is to preserve the family are being confronted with situations where they have to abandon that objective.³⁷ But one can discern broad trends in the emphasis or strategies: the organizations with the aim of preserving the family are more likely to stress on gentle mediation with the marital family and adjustment and less likely on recourse to law and police; the organizations with the aim of securing rights for women are more likely to seek the help of law and police as well as adopt tough positions vis-à-vis the marital family. Feminist groups such as Asmita have made conscious attempts to change the way counselling is done- in making social work graduates and others exposed to feminist debates on family and violence against women. Their investments in the counsellors changed the way counsellors listen to the women, negotiate with the marital family and provide other services.

Methods, modalities and content of counselling:

What are the methods that are followed to go about negotiations on issues of marital violence? How far are these methods being followed? A range of methods are being

³⁷ A detailed explanation of why it happens follows in the sub-section on match-mismatch between what women expect from the organizations and what they are able to give.

followed to go about negotiations around domestic violence after the women complain about it: listening to women's version either from the women directly or from her parents etc.; asking them to put down the problem in writing and receiving a copy of the complaint; counselling the women; recording the case-history; sending notices to the husbands/marital family; speaking to and counselling the husbands/marital family; 'joint' counselling; home-visits; assembling the local community and discussing with them; getting the 'couple' and/or the relatives to sign on agreements; follow-up visits.

While the modalities of going about the negotiations such as sending notices, having separate sessions with each of the couple, having joint sessions, getting the couple sign on agreements of good conduct etc. seem to be similar across the spectrum, claims about listening to women, maintenance of records, speaking to the marital family home-visits, follow-up visits etc. need closer examination in view of the frequently heard contention (from the counsellors) that they distinguish effective from non-effective modes of counselling.

Records:

In view of the oft-made suggestion³⁸ that records of violence need to be maintained for they play a key role when women reach out to law, we tried to look at the records of the organizations initially. While almost every organization asks for a written complaint (written either by the women or by some other person) and maintains these for their records³⁹, only a few organizations make their own records of such violence. Asmita and Mahilabhyudaya Samstha record it in their registers. However, while many women write about violence in a detailed manner,⁴⁰ much of it gets lost while getting translated into the records of these institutions⁴¹. But, we realized, this loss is not due to deliberate mischief. This happens either because the personnel do not recognize the importance of recording this violence in a systematic manner as is the case with Mahilabhyudaya Samstha or because they do not have the time to maintain these records, as is the case with Asmita. Mahilabhyudaya Samstha's records show that their categories of analysis are more to do with marital maladjustments⁴² and their categories for assessment of their performance are to do with how many women have found employment or referrals. No records of the caste and class background of their women clients is available anywhere, though it is considered most important in dealing with individual cases.

Listening to women:

Our initial assumptions about the importance of listening to women in counselling were shaped by our reading of women's movement. To us it seemed that a major intervention of the women's movement in India has been that women need to be heard – about the

³⁸ By studies supported by ICRW on women's organizations.

³⁹ The 'in-take proformas' of two organizations are included in Appendix.

⁴⁰ The copies of these detailed complaints cannot be produced here because none of the organizations was willing to let us make copies of them due to reasons of privacy.

⁴¹ As an example of this, a six-monthly report of Mahilabhyudaya Samstha which is submitted to the Social Welfare Board is attached in Appendix.

⁴² Ibid.

violence in their lives, which is what the society refuses to do. All the counselling centres started by women's groups were meant to be listening groups. This requires time, energy, personnel as well as some willingness on the part of the listeners. Willingness comes either due to the spirit of women's movement or due to the philanthropic spirit. It can also be acquired through training.

When we started our field-work with these assumptions, it seemed that that the process of listening to women is followed only in breach in many office settings. First, the physical conditions to make the women comfortable are absent in many offices. We found that at many offices, complainants have to wait for a long time for their turn. Many women along with their relatives can be found hanging in the corridors or under the trees. Very few chairs are available. While some middle class women are offered a seat, most women from SC and BC background have to stand while speaking to the counsellors. Asmita seemed to be the only place where the seating arrangement was non-heirarchal, where everyone sat on the floor.

At some places such as Andhra Mahila Sabha Legal Aid Centre, which is open only for two hours in the evening, during the rush hour, the counsellors want the women to rush through the process of telling her story. At places which are not so crowded such as Mahilabhyudaya Samstha and Indian Council for Social Welfare, it seemed like the counsellors were impatient with the women for not being coherent. As soon as women complete their narration, they are asked to list out the reasons for their husbands' and/or in-laws' abusive behaviour – as to what triggered off the current abusive episode or the contexts when they become abusive. Unless the women have a ready-made story which they have rehearsed many times, it becomes impossible for them to narrate it in five minutes. Some times, even weeping or crying during the narration is not appreciated. They are rudely told that they should stop. “Why do you cry now? Didn't you know before (the situation came to this?) Look how many people are sitting outside (waiting for their turn)?” Faced with this treatment, it is not uncommon to see many women bewildered and more disheartened with their first meetings. ‘They do not listen to our woes’ was a fairly common refrain.

Compared to the office-based organizations, those organizations that work through informal networks or field workers seemed to function better. Women approached these through their neighbours or field organizers of the organizations who are frequent visitors to the neighbourhood. The initial meetings took place mostly in the locality itself giving the women a chance to speak to their heart's content about their problem. Neighbours or colleagues filled in the missing details.

Thus, our initial impressions, based on the observation of the process at office-based family counselling centres and interviews with field-based counsellors were that the office-based networks are not good for listening and that field based set ups are good for listening activity. That social work trained counsellors and lawyers are not good listeners and those counsellors who are from the women's movement background or those who work at the 'field' level tend to be good listeners. This dichotomous picture of the process of listening in the office based family counselling centres and other set-ups got shaken after we began to interact with more women during the duration of the project.

Observation of the handling of cases by the non-office based organizations gave us a pause to rethink our assumptions. During this session where a woman facing violence was meeting the 'counsellor' for the first time, the latter began to advise the woman to be strong and face the situation even before the former had a chance to speak about her issues. While the advice was valid in itself, the woman felt that she was not listened to. She felt that she was being treated the same way she was in other set ups such as extended family or psychiatrists where she was given advice even before she had a chance to speak.

The similarities in the listening processes compelled us to think anew about our assumptions about listening. Our initial assumptions about the counsellors being better if they come from women's movement background got shaken. If counsellors claiming to work with the spirit of women's movement also are prone to fall into the mode of listening which those without this background adopt, then questions arise as to whether one needs to delink the activity of listening to women facing domestic violence from the counsellor's social and political background. Two kinds of productive enquiries can be made. One goes in the direction of more training in listening for both. The other goes in the direction of asking questions about listening to domestic violence stories itself. Considering the number of women in distress, can we assume listening to be a linear process? Should one expect a family counsellor to be unaffected by all the previous listening and be ever ready to listen to the women afresh? And how is listening possible in conditions when the proportion of women reaching out to the number of available counsellors is very high? If we assume that they do get affected, what possible modes of de-stressing are available or should be made available for counsellors working on this issue?

The 'process' of negotiation:

Another issue that is important to discuss in this context is that of the process of negotiation: as to what happens in the process of negotiation. As noted in the above section, the negotiation process is set in motion after the counsellors first hear the woman out. Those in the offices send three notices to the concerned husbands and in-laws to inform them of an impending counselling session. The offices report that nearly sixty percent respond by the second notice and a twenty percent send replies through lawyers while another twenty percent do not respond at all.⁴³ Those who work through the field organizers claim to have a better rate of response. Visits to the offices of the erring husbands or home-visits to marital families by the counsellors seem to evoke a better response. As a counsellor from Asmita says, 'when we make home-visits, there is a fear (among the household members) because we are from a women's organization'. They either meet the concerned husbands and in-laws directly or through a letter.⁴⁴

When the marital families or husbands come to the centres or when they meet the counsellors, they usually are defensive and have a long list of complaints about the women: inability to cook to husbands' liking, according to the time requirements of

⁴³ However, details of which men respond and which do not could not be obtained. The counsellors were generally in agreement that many middle class men respond with lawyers' notices.

⁴⁴ A copy of such letter sent by COVA is attached in the Appendix.

husbands; demanding that they be taken out and be sent to their natal family-households; refusing to concede to sexual demands from husbands; seeking a separate household; talking back to the husbands and in-laws; inability to take care of children properly; suspecting husbands behaviour, not respecting the in-laws, staying for a long time in the natal family household etc.

The counsellors' perspective and orientation plays a major role in the way they interpret these complaints and carve out women's stakes. Those who believe that it is the sole responsibility of women to keep the family intact advise the women to amend their ways, adjust and get on with life. This is what seems to happen at Amberpet Mahila Counselling Centre, which is attached to a police station and to some extent at COVA. Those who believe that the family is the main locus of welfare for the women, but women need not be completely subordinate, tend to adopt the following strategies: they first try to assure the husbands/marital families that they are not there to break up the family; they say that as a neutral party they would listen to both the sides before coming to any conclusion; say that they are the third party or neutral party in this conflict who are available to facilitate the resolution of the problem and that they will not involve the police or the law. 'Police are rude, corrupt and unsympathetic to women'. In their view, 'family matters are too delicate to be handled by the police'.⁴⁵ The legal counsellors at Andhra Mahila Sabha Legal Aid Centre, despite being lawyers, hardly mention the provisions of 498A while negotiating with the husbands. Then they try to match the complaints of women and that of men, asking each of them certain questions, based on their earlier talk with both of them. This gives apparently gives both the parties an equal chance to speak out or state their case. But, one finds that, the outcome of this 'match' depends upon a host of factors: who among the couple or families is more articulate, more coherent, more apparently reconcilable, less taciturn and finally more comfortable with the counselling settings. When the men pass out of this match, they are given mild advise, but women get strong doses of advises on adjustments that they need to make to have a working relationship. But when the men do not pass out, they get scolded and are asked to look after the wife better. However, it is not surprising to find that it is more men than women who win this 'match'. But as it happens this scenario gets enacted less frequently. Many men, assured of no threats do not seem to turn up for the second counselling session. Among those who continue to attend, only a small percentage of men agree to amend their ways and sign the certificates of good conduct. Quite a few, even when they continue to respond to, keep reassuring the counsellors that they would do as they have promised but also postpone doing whatever they have promised to do. This is what seems to be happening at family counselling centres run by Social Welfare Department, Andhra Mahila Sabha Legal Aid Centre for women and Mahilabhyudaya Samstha counselling centre.

A variant of the above type of counselling is being done by political party functionaries such as Sheela, of Mahilabhyudaya Seva Samstha. She also operates in the paradigm of 'women's welfare located in the unbroken family'. Using the aura of a 'good, influential, well-connected, dominant caste woman', she performs the role of a feminist 'peddamanishi' negotiating a conflict or a discord. When families and women approach her with an issue of marital discord and violence, it is her power and wisdom, to which

⁴⁵ A counsellor at Mahilabhyudaya Samstha.

they appeal. After listening to the story of a woman or a man she intuitively understands and then decides which side is at fault. Women are always given a sympathetic hearing. Then necessary efforts are made to 'scold, talk to and advise' the couple to adjust and live together. The extent of scolding or talking to or advice depends upon the extent of 'faults' on either side. "Now a case has come. They do not know what to do. The police have taken the man away. It is the man's parents who called us. Do we do justice to the boy or to the girl? Shouldn't we always do justice only to women? So, we will scold the man. That is what I told them. If the woman is there at the natal home with three children, how much this fellow would have harassed her? Even today, she must have felt bad. Just because this guy had come to us, we should not be carried away by him. Of course, his mother was crying. She is also a woman. But, just because of this how can we do justice to her son? Tell me. So we will tell the mother, 'Your son should rectify his behaviour. Otherwise, why would your daughter in law be in her natal home?' May be there are some faults with her also. So, we would talk to both of them to adjust and send them." This set up seems to be amenable for middle class or upper class women who do not want to go public with their issues, thereby jeopardizing their marriages and families. Police are not trusted because 'they are one-sided, eat a lot of money and beat up people'.

Counsellors and organizations which do not work in a social work or legal aid framework such as Asmita, POW, Ankuram seem to adopt a different approach: during the initial meetings with the husband they convey the message that they are present at the scene on behalf of the women and, if necessary they also invoke the law. As they understand women's position as an unequally placed in the family, they do not try to put both the parties on the same footing. Instead, what they seem to do is to make it evident to the marital family. While they also allow the 'match' of complaints, instead of putting the whole burden of answering marital family's complaints on the women, they take an active role on her behalf. For example, in one of the instances when the marital family was trying to project their daughter in law's complaints to various agencies as 'tantrums', the counsellor told the family that they need to understand the fear and insecurity faced by a daughter in law in a completely new environment of marital family. Her tantrums, she told them, seen in this light, might appear absolutely legitimate. As family is not understood to be a private sphere to these organizations, police and law are not untouchables. Police and law play a major role in the negotiations of these organizations.

For Asmita and POW, it is a matter of strategy – to use the police to strengthen the women's position vis-à-vis the marital family. POW especially uses the police stations in many ways – to conduct panchayats, to threaten stubborn husbands and in-laws so that they come to the negotiating table as well as to file cases. However, the instances of filing charges are less compared to the number of times the police are approached. Many a time, when the negotiations do not work out, husbands are called to the police station. After being threatened with dire consequences, when the husbands retract from their hardened positions, 'agreements of good conduct' are written in the police station, in the presence of the police personnel with the threat of the police case hanging on the head of the marital family. Asmita does not seem to indulge in these practices.

In this negotiation process inspired by feminism and human rights, women are less prone to loose out. However, the effectiveness of this process also is subject to the conditions and choices available to each of the women. They determine the ability of women to make use of this process. The reasons for this will be explored in the section on match/mismatch between the expectations of women and what the counselling centres provide.

Issues of caste and class:

An aspect of listening and understanding of marital violence that plays a crucial role in the counselling process needs elaboration here – which is the issue of caste and class inequalities. This is an issue that is specific to the counselling centres that are predominately staffed by social work graduates, who are mostly from dominant castes. It could also be an issue at the many mahila mandals that are primarily run by dominant caste women. The majority clientele at both these places is from non-dominant castes. But as the present study does not cover the latter, we will stick to the former.

In the above counselling centres it is usual to find a variation in the tone, language and attitude of the ‘counsellors’ with respect to women from varying social background. Women from middle class (most probably dominant caste) background are listened to sympathetically and even offered a seat, if possible. Women from poor (primarily dalit and backward castes) socio-economic background are usually heard with mild incredulity instead of empathy and patience. A counsellor is reported to have said this to a woman who came to the centre, “Isn’t all this abuse and beating usual in ‘your’ households? Won’t a man beat once in a while? Is it not common in your households for men to leave women and come back later?”

That desertion, neglect, violence, abuse are ‘usual’ in them is an assumption that seems to be shared quite widely. While it might be a fact that they are usual in non-dominant castes as they are in the dominant caste families, the problem comes when this understanding effects the treatment of the women and the analysis of their issues. According to the counsellors the social work training helps them to ‘ignore’ the differences of caste and class between them and their clients, ‘we are told not to complain that the women smell badly or that they do not speak well’. But, such ‘ignorance’ also seems to distance them from the reality of the lives of non-dominant castes. Their perception of familial life is still modelled on that of the middle class women, who are predominantly from the dominant castes. They identify with this reality and treat the others’ reality as one to be measured against one’s own. For instance, during the many discussions with us, they frequently tended to make a distinction between one’s own and ‘their’ families. This distance effects the manner in which they analyse the issues of non-dominant caste women, the mode of counselling and the support that they are able to offer to the women. The manner in which it affects the counselling outcomes is dealt with in the section on ‘match/mismatch’.

Counsellors’ understanding of marital violence:

An important part of understanding the methodology of counselling is to look at how the counsellors make sense of marital discord and marital violence. As noted in the section I women from varied backgrounds are involved in counselling, drawing on a range of ideologies from welfarist to feminist. Here again, a range of understandings can be discerned, from those that justify violence for particular reasons to those that completely reject any such rationale for violence. In between are those understandings that seek to 'help out' women out of misery and those that try to ignore the presence of violence. The first set, represented by some of the counsellors at Amberet Mahila Counselling centre, assumes that physical violence is justifiable in circumstances where the women refuse to comply with the husbands sexually or when they do not perform their household duties satisfactorily. They believe that their own personal experiences have enough to teach them about marital relations and discord. 'I have worked with women on many issues: on thrift, getting them gas connections, getting them pregnancy benefits and benefits of family planning. (Is it not sufficient?) Why do we need experience in dealing with issues? Can't we distinguish between what is good and what is bad? .. I don't think any training is needed to tackle these issues.'

It is the women with an understanding that lies in between these positions who seem to form the majority. Those who believe in the welfarist position claim to 'know' not only that women are subordinate to men but also that men and women can live in 'harmony' given the right conditions. Therefore, many counsellors operating in this paradigm, as discussed in the above section on listening, seek to find out the reasons for the recent bout of violence or what preceded the recent quarrel. Informed by the feminist theories of marital violence which argue that marital violence is not 'caused' by particular reasons as such, the counsellors' insistence on finding out the reasons seemed really puzzling, if not shocking, to us initially. Slowly, we began to understand their reasoning: they seem to make sense of marital violence by translating it into 'reasonable' or 'explicable' and therefore possibly controllable phenomenon. For them, marital violence is not inherent to the family as it is structured now, but comes mostly due to the external factors such as urbanization, modernization, increasing aspirations of women and men etc. This understanding of marital violence comes from the functionalist model of family.

Moreover, most of the present social work counsellors do not seem to have got any exposure to critical work on women's issues. While many women social work graduates do projects and do 'placements' at some counselling centres as a part of their course work, their curriculum does not contain much that is critical about family and gender relations. A cursory glance at the curriculum of the Ruda Mistry College of Social Work, Hyderabad demonstrates this: violence against women is included in the paper on 'Welfare of Youth, Women and the Aged in India' but not in the paper on 'family welfare'. Here, 'marital discord' is included as a factor in 'family counselling' but not 'marital violence'. Thus, many do not have any tools to understand 'violence' in marriage. In this context, it is not surprising that counsellors at Mahilabhyudaya Samstha admitted that they have never looked at women's problems as issues of violence.

The last set, drawing from feminist perspective of the family takes marital violence to be a part of the iniquitous gender relations in the present family. The family itself has to be located in the patriarchal gender relations in the society which are maintained through

ideologies and material factors. Women are locked up into these relations due to reasons that range from economic ones to those of personal security. The primary focus of counselling therefore is to strengthen the individual women, victimized by abuse, by listening to them empathetically, avoid blaming them, giving them a sense that they are not alone in their suffering, giving them a sense of their rights and offering them moral and legal support in their efforts to reduce this violence. However, this perspective does not come 'naturally' but has to be acquired through learning, reflecting and working on the issues. It is here that feminist organizations such as Asmita seem to have made progress by making their counsellors aware of the feminist thinking on the issue of violence. The counsellors at Asmita articulate the need for discussion of the issues that arise during counselling as well as writing about them.

Match/mismatch between women's expectations and what the counselling centres offer:

Considering the non-sympathetic hearing that many counselling centres offer and the gruelling process that women have to go through, one would think that women would stop approaching them for help after a while. Instead many of these centres are almost thronged by women seeking help and a majority of them would have come to know of these centres through word of mouth. This suggests that women do get some relief from these centres, perhaps not what they have come to get.

In order to understand whether the counselling groups or organizations match or do not match the expectations of women one needs to look at: what women's expectations, wants or needs are, what sense counsellors make of them and then what the intended or unintended consequences of the counselling process are.

What do women seek from the counselling set ups?

Women's expectations can be gauged from their written complaints to the centres, the interviews with them and interviews with the counsellors. The foremost among the expectations is that their husbands would be reformed and would take care of them after going through this process. They want a non-violent husband and conducive and peaceful relations in the marital family. They expect the centres to support their claims and strengthen their position vis-à-vis their marital families in order to obtain this result. Second set of expectations follow upon this: that the husbands should stop seeing other women, stop drinking, contribute to the household income, work regularly for an income, stop suspecting her, stop harassing her for money, set up a separate household away from the in-laws. Many do believe that a visit to the police station changes the husband's demeanour and they want the organizations to do this. Third, those who have come to the conclusion that the man is not reformable, seek separate household with children away from the husband, maintenance. Fourth, those who decide that they do not want the abusive man in their life seek to lodge a police complaint, file for a divorce, want their dowry to be returned etc.

But this description of the expectations of women is a standardized one. This neither represents what an individual woman may seek over a period of time nor a particular

class or caste or women. At the time, when women approach the counselling centres, they are also negotiating with a variety of other actors such as the extended family, family or caste or village elders, women's groups or associations and weighing other options such as going to the police station, filing a case, taking divorce, finding a gainful employment etc. What they seek from the counselling centres is also therefore subject to the outcomes, consequences of these various other actors and factors.

How do counsellors make sense of what women seek?

As mentioned in the above sections, counsellors work with-in various ideological frameworks. Apart from these they also arrive at some 'practical' guidelines which can be found across the ideological spectrum: that they should not take the complaints of women at face-value; that most women want to go back to the marital family or husbands despite what they say to the contrary; that women should exhaust all the options before they decide to break away from the marriage, excepting reasons such as impotence of the husbands, that police and courts should be the last resorts. Here again, it should be remembered that these operative principles are arrived at from different perspectives and that plays a role in the processes of counselling and outcomes. For instance, the principle that family is the only space available for women is derived from two kinds of perspectives. Many of the social work trained counsellors take it as the 'natural' place for women, irrespective of what women suffer, which then requires one to try to adjust to the existing conditions. The counsellors working in the left-feminist mode, such as Karuna of POW, have arrived at it after years of trying to find alternate spaces for women, which are safer than that of the family. They argue that it has not been possible for them to show women alternate spaces so it seemed better to carve out a better space for women within the family.

What happens at the counselling centres:

The outcomes of women's encounters with counsellors and counselling centres have to be placed in this context of the above outlined factors.

In most office-centred organizations, counsellors seem to be able to deal with families/issues that come to the negotiating table. These issues are about marital discord and separation which may or may not be related to marital violence. Here, one needs to take note of the ways in which issues of marital violence are converted into issues of marital discord due to the counselling processes and methodologies adopted at these centres. As marital violence is seen only in terms of external conditions that disturb the internal harmony of the family, most issues of violence are converted into issues of marital discord.

In some cases, serving notices itself seems to give certain relief to women, either because men are scared or are feel ashamed of being brought to a 'public place'. At this stage itself, some women also drop out when abuse abates a little bit, after the first meeting with the counsellors. When men and marital families respond positively to the notices, the talking sessions at the counselling centres seem to help in pushing the balance to some extent in women's favour, making for some allowances on the part of the

marital families. It is here that some good will agreements get written. When the response from the husbands and in-laws is positive, many women either ask for a separate household or go back to the marital families after the good will agreements are written. In this process, some women who have come with the intension of taking divorce or separating from the marital families are also 'counselled' to get back to marital families. However, it is the hope of 'authoritative intervention from the counselling centres bringing a change in the husbands and marital families' which can perhaps explain the popularity of many of these centres.

The centres and counsellors are also useful to women (especially from middle classes) who seek divorce on the grounds of sexual impotence and consequent problems rising from it. The centres especially are most sympathetic to these women. Many marital families also seem to be willing to settle the issues through these centres, regarding the return of dowry, mutual consent divorce etc.

In the cases where the marital families and husbands respond negatively, the very issuing of notices from the counselling centres would result in husbands responding with lawyers' notices, that further worsens the situation. One sees that the counsellors' ability to deal with abusive husbands and in-laws goes down with those who refuse to come to the negotiating table. It is in this context that the issues of non-dominant caste/class women do not seem solvable- the women do not often know the address of the husband, sometimes they do not even know their own address. If it is difficult to send even a notice for the husbands how can they be brought to the negotiating table? This inability, combined with their casteist and anti-poor attitudes, mentioned above seems to result in their indifference and lack of empathy towards the problems of non-dominant caste/class women. At the end of many sessions, one of the counsellors is reported to have told a woman, " How many more times do we have to talk to your husband? Why don't you change according to his wishes? It is a waste of time to go around the panchayats and the police. It is a waste of money too. You only loose peace of mind with all these." The inability of the counselling centres in the context of hostile reactions from husbands and in-laws adversely effect women who want these centres to support their claims, reduce marital violence and strengthen their position vis-à-vis their husbands or marital families within the families.

Counselling Experiences: Sumati's Case

Sumati's (psudonymn) account of her experiences at a counselling centre: "The woman I work for told me about this centre. Yesterday night, my husband came home after getting drunk and beat me and my children till we bled. He threw us out in the night and did not allow us inside the home. It was cold, there were mosquitoes, children were hungry. I pleaded with him to allow them into the house, then he came out to kick my son because he was crying; I was describing to the big madam as to what happened but she started scolding me, 'you must have done something to provoke him. First talk about that.'. I told her, 'Yes, I refused to give him Rs.200 and spent it on the medicines for my daughter'. Then she asked me for my address. I told her that I did not know and that I would get it tomorrow. Then she scolded me even more for that. The next day I got the address written by my neighbour and gave it to them. They sent a notice. My husband got pretty scared seeing that. He thought it came from the court and that he would be punished. For two days, he was quiet. He said, 'I will look after you well. You don't go to work. Stay at home and look after the children. I will give all my earnings to you.' But he has said all these things at many earlier panchayats. So I told him that the madams at the office wanted him to come and got him to

the centre. When the madams asked him what the problem was, he said, 'She does not care two hoots about what I say. She does not cook or give me her earnings. She wants to go to her natal family home all the time.' I wanted to intervene and answer but the madams scolded me saying, 'If you do all these, won't he beat you?' Then they scolded him too and said, 'If you both want to stay together, you write here. If you want to leave your husband, you can go elsewhere. We do not tell the police. We do not even approach the court. You think about all this and come back after fifteen days'. Both of us went back. My husband was alright till 8.00pm. Then he got drunk and started beating me even more, 'How dare you go and complain against me? What can they do to me? Nobody can do anything even if I kill you. I have every right to beat you.'. My problem got exacerbated after I came here.'

It is here that the mobility of field-based groups and organizations seems to help women. When the counsellors are willing to come to the houses and localities in support of women, it seems to be of great help for those who have to struggle to with the demands of modernity asked by the office-based centres. The willingness of these counsellors to throw their weight behind the women also helps. The similarity in socio-economic background of the counsellors also helps in this regard. When the local community is brought into the process, they get obliged to respond and many a time also respond positively, as reported by Ankuram, POW, Mahilabhyudaya Seva Samstha and others.

Counselling for violence against women: Some contentious Issues for Feminism

Counselling on domestic violence is one of the most under worked areas in India. Considering the wide variety of counselling centres and counsellors functioning everywhere, it seems surprising that not only published accounts but personal accounts are also rare to come by. Recent study by Mitra (2000) examined the functioning of family counselling centres in Maharashtra and Madhya Pradesh and suggested that the counsellors need training and more infrastructural support to address issues of marital violence. From the standpoint of the women's needs, the study examines the quality of support given by the institution of counselling centres. The counsellor's articulated a need for better salaries, autonomy and infrastructural support to be able to deliver the services needed by women. While the counsellors contacted during our study also articulated the need for these needs, they also articulated certain dilemmas that seem to be more difficult to 'resolve'. It is to this set of issues that we now turn to.

This section discusses some of the seemingly intractable issues that are raised repeatedly by groups involved in counselling. They have also come up during the discussions at workshop on rethinking counselling that we organized. In the conversations among feminists, they keep coming up as points of blockage in feminist revolution, as points where groups get frustrated, as things that are preventing women from breaking out of the circle of violence- in the conversations of those who do not claim to be feminist – they also get converted into a version of 'women themselves are to blame for all this'. These issues are: women expecting the organizations to 'reform' the husbands under any threat (what do they think we are – some goondas?), women's reaching out to various agencies simultaneously (they are secretive, they are not transparent) and inconsistency in women's stand vis-à-vis the marital families (they are not consistent about their stance).

How do women think that we can reform their husbands?

As mentioned in the above section the foremost demand from the women who face violence is that the agencies should reform their husbands. The demand becomes more intensive on the organizations which are perceived to be pro-women and strong. To quote an activist of Beedi Kaarmika Sangham, “women expected that if we (being associated with CPI ML party) threaten the husbands, they would start behaving themselves. How is it possible? Men and women cannot be made to live together by force.” The exasperated ‘how can we’ is frequently heard from many counsellors. While one reading of such a demand is to see it as borne out of naïve hope and desperation, one can also see it as a demand of women living in urban metropolitan areas where kinship networks and caste associations (which might have regulated the behaviour of men in the past) have become weak in enforcing any moral claims.

Women are secretive:

That women approach many agencies simultaneously without informing the agencies involved is also another complaint that is articulated. This seems to have the effect of counsellors deciding not to believe women’s story of victimization and also leaving the burden of continuing the pursuing of the case on the women. While one can understand the discomfort of counsellors with this ‘secrecy’ of women, the question that seems more important ask in this context is – why women reach out to so many agencies.

Women’s inconsistency

Women’s changing stances about her marital family – regarding whether to live or not to live there – is a constant complaint that is also frequently heard. Many counsellors get so exasperated that they start blaming the women for not being able to make up her mind. Such an exasperation does not seem to consider the immense pressure that the woman is under and the multiple factors that weigh her decision about it. Here again, there is an urgent need to go for an explanation that does not end up blaming the women.

In conclusion:

In the light of the study we seek to raise the following issues for discussion. First, the implications of, the involvement of the variety of groups in the activity of counselling, the ability of women to invoke these groups in negotiations around marital violence and the involvement of women with histories of marital abuse in the activity of listening. Second set of issues concern the assessment of the quality of counselling. And a third set of issues raises the questions of feminist counselling.

Implications of the involvement of variety of groups in the activity of counselling:

Given the involvement of the variety of groups, organizations, agencies in the activity of counselling on marital violence as outlined in the section on the ‘field of counselling’ in the city it is important to probe a little into its implications. It seems important to read this

involvement not as a consequence of the ‘failure of formal institutions’ to respond to women who are bringing the issue from ‘private’ to ‘public’ sphere. Two implications suggest themselves to us: one, considering the involvement of caste, family and village elders to this extent suggests that the issue of marital violence was perhaps never a ‘private’ one in the strict sense but has been negotiated in familial and kinship networks and as such this is a continuation of the ‘old’ practices; but, what seems to be ‘new’ is the engagement of these groups with ‘modern’ groups such as counselling centres, women’s groups. Apart from social work trainees, the women who are getting engaged in this activity seem to be those who have experienced abuse in their own marriages. How does one read this involvement? Here, one can only speculate on the possibilities: one strong possibility is to read it as a consequence of these women’s reaching out to various agencies to address their own issues whereby they also get involved in this sort of work. Women’s ability to invoke various agencies in this context also seems to be facilitated by the larger political shift in governmental practices where women’s labour and services are sought to be used for ‘public’ purposes.

Assessments of the quality of counselling:

In the context of the varied set of factors in which many counselling centres and counsellors work with, what are the ways in which one can assess the quality of counselling services offered? One way is to see whether women get what they seek from the counsellors. But, as many counselling centres and groups claim to have ‘successfully’ ‘resolved’ cases without the maintenance of proper records of what women have sought and what they have provided it is difficult to take their claims at the face value. Moreover, as discussed in the above section, what women seek gets changed in the course of counselling. There seems to be a need for the arrival of different set of parameters to assess their performance in which the quality of environment provided at the centre, by the group, the quality of time and content of counselling too is included. It seems important in the light of the above discussion where we pointed out that there the atmosphere at the counselling centres is not conducive to listening and that many counsellors do not seem to be able to understand what the women are saying due to lack of exposure to critical work on marital violence and other issues related to provision of services.

What would consist of feminist counselling in our context:

Apart from the above outlined factors that should go into a good counselling service, what would be the factors that would characterize feminist counselling in our context? Based on our study one sure thing that we would be able to say, one that is sensitive to issues of caste and class, one that recognizes that women’s familial lives are different in different contexts. But would this be sufficient? How about engagement with communities- not as a operative principle but as a matter of politics? This aspect needs to be discussed because we have realized in the course of our work that it is the feminist organizations which are foremost in invoking law and order machinery in issues related to marital violence. The clarity with which they invoke law is difficult to obtain when

they speak of working with communities, of which they speak in terms of practical issues. In the light of their own acknowledgement that women's lives are embedded in families and communities, would it not be imperative to speak of communities in the issues of marital violence?

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Chapter 3

Can domestic violence be a concern for medical community in India?

Introduction and methodology:

Attention on the response of the medical system to domestic violence in India has re-emerged in recent times mostly through attempts that focus on research. As Jesani's (2002) attempt at the survey of literature in this area indicates, however, research in this area still seems to be at an exploratory stage. Jesani relies mostly on non-medical studies, reports, notes produced by women's groups, social scientists, to understand the extent of damage to women's mental and physical health due to domestic violence. He has found only one study that specifically looks at the health care system - response of the doctors to this issue (Prasad, 1996) which examines the health care professionals. Two of the recent studies that give a picture of the state of affairs are Daga et.al (1998), Jaswal (1999). Daga, Jejeebhoy and Rajgopal look at the records of the emergency ward in a Mumbai's J.J hospital to understand the age, extent of injuries, the time when the women are admitted etc. Jaswal examined various urban and rural health facilities at Thane, a satellite city of Mumbai. Apart from looking at the extent of violence that gets reported at each of these facilities, she also tried to look at which of them gets to know first about this violence and to what extent they respond.

We started the study with pilot interviews with two sets of private practitioners and a group discussion with gynaecologists working in a public maternity hospital. Two of them worked in public hospitals and two were in private practice. Two were general practitioners and two were psychiatrists. In these interviews we tried to understand whether and how health care professionals acknowledged or understood marital violence.

The interviews and discussions were productive. It did come as a surprise that all the practitioners were quite sympathetic to the issue and have addressed it in their own ways: scolding the husbands, threatening the husbands and in-laws, reporting it to the police when the women wanted it. Using their power as medical doctors they warned the husbands that their wives would become unfit for any activity if the violence continues. It also became clear during the discussions that they are aware of the issue, in the way it affects women's health, in the form of injuries, suicide attempts that often result in deaths, sexually transmitted diseases, mental health problems, unwanted pregnancies etc. However, they neither think that they need to discuss it as a major health issue nor do they think that they need to do anything about it, as a medical fraternity. As far as they are concerned it is a social issue that requires the attention of the women's groups and policy makers but not the medical community.

A slight variation of this theme was discernible in the discussions with the psychiatrists. They stated that a majority of her female patients had or do suffer due to marital violence

affecting their mental health. However, it was rare for this issue to be discussed in professional conversations or conferences.

The discussions on the results of the initial study yielded two fruitful ways to be followed for the field study: the first is to trace the journey of a woman with injuries from domestic violence within the hospital; the second is to see the ways in which psychiatrists understand this issue and their modes of treatment.

There are two major public teaching hospitals for twin cities, Osmania Hospital and Gandhi. Gandhi was selected for the first component of the study. Over three months, all the doctors, nurses and other staff from Casualty, Emergency, Burns and Psychiatry wards were interviewed. In each of the wards we spoke to the relatives of at least five patients. In the burns ward we spoke to the relatives of twenty in-patients.

For the second component of the study, we interviewed ten psychiatrists from the public and private sector.⁴⁶ The purpose of the interviews was to test how far this was a common practice- for women or the family members of women to go to the psychiatric clinics to resolve issues related to marital violence, to deal with distress arising out of domestic violence or to seek psychiatric advice for domestic violence. It was also to understand how many of the psychiatric community shared this understanding of the links between marital violence and mental health of women. Most importantly, we also wanted to understand the nature of counselling that psychiatrists offered to women because while studying the 'counselling centres' we realized that it has close links with the disciplines of psychology and psychiatry.

Accordingly, we interviewed ten psychiatrists in the twin cities, of whom two are currently working in the Insitute for Mental Health, Yerragadda and the rest work at various private clinics and hospitals. Two of them are women while the rest are men. Six of them are in the age group of 30-45 while the rest are above sixty years of age. While many of the younger group claim to be specifically trained in psychotherapy, the older lot claims that it was integral to their training. Two from the younger group are trained abroad, in US and UK and two others are trained at NIMHANS, Bangalore in psychotherapy.

Findings in Brief:

Gandhi:

Quite unsurprisingly, our 'findings' about the nature of violence that women report or the way doctors and public hospitals record and respond do not vary with the findings of the existing studies [Jaswal (1999) and Jeejebhoy et.al (1998)]: that women between ages of eighteen and thirty reported maximum violence, that women do not report the perpetrator, that women access health care facilities only when violence requires medical attention

⁴⁶ The number was not pre-determined but was decided during the course of interviews. As the findings from the interviews were becoming repetitive, we decided to stop them at this stage. Interviews with patients could not be taken up because the issues of privacy are more strictly followed in this field.

and that most of the doctors and other personnel from non-emergency wards do not perceive the injuries that women report as violence.⁴⁷

The findings from initial interviews were confirmed in this field study: most of the personnel were aware of the violence but do not think that it is an issue for medical or health care professionals. More important were the reasons that they outlined for this state of affairs: the most common was to find fault with women for not naming the perpetrators; the second reason, voiced by a lone woman doctor was that that of male dominance within the system, where the diseases and health issues of men dominate and are given priority, despite the presence of equal number of women in the system.

Emergency ward personnel, doctors and staff seemed to be an exception to this trend to the general trend of not regarding marital violence as a major health care issue. The doctors from the burns ward not only are aware but sensitive to issues of violence. The focus on the burns ward proved productive in two ways. It not only gave us an opportunity to understand the institutional processes of the medical system when confronted with 'clear' cases of marital violence but also the issues that play a role in women's decisions to report or not report. These go beyond the oft-noted biases of the medical staff, familial pressures from the marital families of women. Why is it that marital violence does not get reported even when the staff is sensitive and receptive? This question is pursued in detail later in this report.

Psychiatrists:

Considerable number of women and men are approaching psychiatrists and psychologists with mental health problems arising from marital violence and discord. The findings from the pilot study got confirmed in the later interviews. Almost everyone claims to have encountered this issue in their daily practice and so came up with estimates of the percentages of their women patients with 'abuse histories'. However, diagnostic methods and modes of 'treatment' vary widely. When we look at the ways in which the diagnosis is done, it ranges from intuitive methods to questionnaire to interview sessions. The treatment also ranges from relying on medicines to therapy for the individual to family therapy. The ways in which the violence is understood also vary but nearly all seem to take into account the unequal power relations between men and women in the family.

After probing into the efficacy of their methodologies and 'success' of their methods, although curtailed by our inability to interview any of the patients, one query that came to us was: is reliance on a pathological or medicalized mode of treatment the answer to dealing with issues of mental health of women raising from marital violence?

Framing the issue:

However, after the field study it seemed to us that framing the issue of domestic violence in the context of health care in India in this manner (that it should respond to women

⁴⁷ Due to the denial of permission, we were not able to access the records of the hospital. Most of the information therefore is from the interviews with the staff.

facing domestic violence) is quite problematic. Such a framing seems to make many unexamined assumptions about women's access to health care, the relationship of the health care personnel to the women, the state of the hospitals and other medical facilities that women visit, the kind of 'care' that women receive at these facilities and finally, women's expectations from the hospitals. We felt that before we frame the issue in this manner and go on to write a report of the 'response of the medical system to domestic violence', many questions need to be addressed.

- Has domestic (marital) violence been an issue of concern for women's groups working on women's health in India? How has it featured in the critical literature of the women's groups on the politics of women's health in India?
- What has been the history of the response of the medical personnel in situations to people in vulnerable situations when they have been subjected to violence by dominant forces in the society such as communal riots and police violence on dalits/adivasis and women?
- How and when did the issue of health care system and domestic violence get framed in this manner? Where does this demand that the medical system/health care providers should be responsive to domestic violence originate – from the Indian medical community, or Indian women's movement, or from the Indian government? If it has not, why has it not? Or is it the demand borne out of international women's activism? If so, when does domestic violence emerge as an issue in the international arena?
- What are the implications of the research agendas that are being advocated by the international agencies?

How does critical literature on women's health in India look at domestic violence against women and its impact on their health?

All the writings that are examined in this section are a product of critical health movements and women's movements. Critiquing the existing state of health care system in India for its class, caste and gender biases, they propose a perspective where health issues need to be understood as located in the specific socio-economic context of India. Writings produced from the perspective of women's movements seek to challenge the control of women's bodies by patriarchal social system and medical knowledge by demystifying women's bodies for women and discussing the health problems of women, often dismissed by medical doctors. These writings, often the product of detailed discussions and workshops with wide sections of women take into account their experiences to be significant in building knowledge about health issues of women.

In most of the writings that discrimination, violence and cruelty towards women families, workplaces, hospitals by women is understood to be integral to an explanation of women's ill-health, their access to medical system and their 'illogical behaviour' with the medical system. Women do not get their fair share of food, resources, care, bear disproportionate burden of child care and house work within the family, are given most laborious tasks at the workplace which make them vulnerable to various illnesses, treated in a dehumanising manner, as mere mothers or would be mothers, by the medical system.

A few texts also explicitly mention violence such as rape, sexual harassment and domestic violence. However, what is significant is that none of them articulate or even suggest that the health care system should or could respond to or deal with women facing domestic violence.

We start with *'Backpain in Women'* (1987) written by Veena Shatrugnu et.al, because we think it makes significant departures in thinking about health care system and women. While investigating the 'causes' of osteoporosis related injuries that women report at a public hospital in Hyderabad, the study raised questions about the 'treatment' that women receive. Pointing out that most of these injuries are a result of prolonged nutritional deficiencies in women borne out of poverty, it puts into question the mode of treatment that is prescribed for women. More importantly, pointing to the dehumanising way in which both poor patients and their female attendants are treated at the hospitals, it raises questions about the responsibility of the medical system towards women. It also raises questions about the medical categories such as 'absconders' that are reserved for women who leave without the completion of the treatment, by pointing that most women cannot afford to be in the hospital for prolonged periods.⁴⁸

'In Search of Women's Bodies (1987)', produced by Shakti is an outcome of a workshop on 'Feminist perspective on women, health and reproduction', with doctors, researchers, women's group activists and women health workers. Seeking a feminist perspective of health, health programmes and health education, this book sought to highlight the perspective and ideologies of the existing health system. The various authors tried to argue that the current health policies are rarely formed with women's well-being as the priority. It is the political and social positioning of women, as carriers of dowry, as producers of children, as persons responsible for household work which determine the policies and technologies used for them, i.e., care is taken not to disturb this positioning, thereby perpetuating it. As such, the abuse and violence that women face in the families is neither acknowledged nor taken into account. The ways out, the action plans of the book indicate, would be to make women as self-sufficient and autonomous of the medical system as possible.

Savalaksha Sandehaalu (1991), a book analysing the politics of women's bodies and women's health in the Indian context that demystifies many of the women's health issues such as anaemia, back pain, contraception etc. in a language that is easily accessible to literate women. Discussion of these issues is informed by an understanding that women are caught in familial situations that abuse their bodies with excessive labour and little care thereby putting their health in jeopardy. Domestic violence, here comes through in a richly textured manner. However, no quick-fix solutions are given with reference to the medical system because the discussion is also informed by women's difficult relationship with the medical system in terms of access, care and perception. Medical system or doctors or hospitals here are dealt with as a part of the problem (of systematic violence that women experience in their lives) rather than a part of the solution.

⁴⁸ Interestingly, Jaiswal's study also came out with the large number of absconders among women who are hospitalised for injuries related to domestic violence at the urban health centres.

Naa Shariram Naadhi (1992) A product of a series of discussions with rural women this book brings up the issue of 'gender violence' as a factor in the social construction of gender. The rural women whose experiences this book conceptualises bring up issues of domestic violence, sexual harassment and sexual abuse while describing their familial and other life experiences. Significantly, many women narrate experiences of sexual abuse in the encounters with doctors. In this writing also, violence, including domestic violence, comes through as *one* of the 'violent' experiences that many women deal with in their daily lives. Hospitals or the medical system is also a site of possible violent experiences. Neither the authors of the book nor the women ever hint that doctors might be a source of positive response for women in the case of domestic violence.

State of India's Health (1993) by Voluntary Health Association of India gives a detailed account of the state of women's health in India – connecting it with their low social status and discrimination in the family. Various health consequences such as malnutrition, anaemia, high mortality rates, high maternal mortality rates etc. are discussed. Occupational health hazards for women who work as agricultural labourers, beedi workers, construction labourers etc. are also discussed. Then it goes on to discuss issues of sexual and physical violence that women are subjected to such as rape and domestic violence. While the victims of rape suffer from long-term mental trauma, women who experience violence are either driven to death or sometimes killed by the marital family. Violence is also discussed as one of the major reasons for women's mental health problems. However, while discussing violence against women as an issue, it does not either directly or indirectly identify health care system as a possible helper for women. It concludes that 'the answer lies in changing attitudes. As long as the preference for boys over girls prevails and unless our values are overhauled, nothing is likely to change. Until the girl is taught to value herself and her contribution, the cycle of neglect, indifference and conscious discrimination will continue unabated with all its adverse consequences'. (p.300)

Lakshmi Lingam's edited volume '*Understanding Women's Health Issues*' (1998) brings together the state of art research on women's health issues in India under the groupings assessment of women's health situation, social determinants of health, attitudes to the body, women, reproduction and the state, women and health- issues beyond access. It is the last section that addresses issues of gender-based violence and abuse which is practised through current reproductive and sex-selection technologies.

Part of the weariness of women's groups and other critical health groups with the medical system comes from the complicity of the medical community with the state in the 'population control' programme without thinking about the health consequences for women. Another factor that has contributed is the collaboration of the doctors with powers that be in during what can be called 'public violence' on women, i.e., violence by the police, people from powerful upper castes etc. as well as other issues of gender discrimination.

What has been the record of medical doctors in the issues of gender discrimination and violence against women?

Complicity of the medical doctors with dominant power holders first came out during the campaigns against rape in the 1980s. Many grassroots activists pointed out that women doctors falsify medical evidence so that they do not need to go to the court.⁴⁹ Stree Shakti Sanghatana⁵⁰ had this to say about the tampering of medical reports in the cases of rape by the police, ‘ In the Rameeza Bee case, the medical report was kept at the hospital, and on the instigation of the police, extensively tampered with (by no less a person than the Professor of Forensic Medicine) before it was handed over to the Commission. Mathura’s medical report was totally inadequate. It only stated that she was not a virgin and that intercourse had taken place. As has been pointed out earlier, if there had been any struggle, the marks of it were more likely to be on the rapist than on the victim, and it was only fair he should also be subject to a careful medical examination. The Law Commission had agreed, suggesting that both the victim and the accused should be medically examined and the reports in both cases should be forwarded to the Magistrate immediately, to avoid any possibility of their being tampered with”. Mukhtadar Commission, which investigated rape of Rameeza Bee by two policeman stated that the forensic doctor behaved so deplorably that he deserved to be indicted by the Indian Medical Council. The report deplored the efforts of both police and forensic department to allege that the marks of semen and blood on Rameeza Bee’s clothes were old and not due to rape at the police station.⁵¹ Significantly, strictures against the medical doctors were not included in the amended rape law. That the situation has not changed came out during the trial of rape of Bhanwari Devi where the medical report was inadequate and was helpful in dismissal of the case.⁵²

Another issue that brought out the complicity of the medical community with discriminatory practices against women was the issue of ‘sex-selective abortions’. The widespread abortion of female foetuses was made possible by the doctors who were only too willing to do these for additional income, despite it being against medical ethics. Doctors were, among others, vociferous in defending these tests by claiming ‘that they were doing a service to women by aborting their female children because in our society to be a woman is bad enough but to be a mother of girls is the worst humiliation’. They not only defended the tests in front of the expert committee set up by the Maharashtra Government to discuss a bill banning the misuse of these tests but played a major role scuttling the major import of the bill – which is to ban misuse by the private centres and laboratories. As Flavia Agnes puts it, the ‘tests also raised the issue of neutrality of science and technology and the indifference of the medical community to issues of social justice’.

⁴⁹ Vimal Balasubramanyam quoting Vasudha Dhagamvar in *Rape – Morality Norms Remain in Women, Law, Landmark Judgements and Media*, Pune, Saraswat Prakashan, 1990.

⁵⁰ *Where does the Rape Bill Take us?*, Mainstream, Jan 3, 1981.

⁵¹ Vimal Balasubramanyam quotes A.G.Noorani’s article on “*Doctors and Human Rights*’ (Economic and Political Weekly, Oct 22, 1983), *ibid*.

⁵² English translation of judgement of district and sessions court in the case of State Vs Ramkiran and others given on 15th November 1995 at Jaipur.

Though it does not amount to complicity, a major area where the compliance of the medical community with the policies of the government, despite the knowledge that they have adverse health consequences for women is that of the population control policies of the government – which Karkal (1998) calls state sponsored violence against women. Several untested sterilization techniques and drugs have been used on women, without informing them of the consequences. Despite the enormous pressure that the government has put on the doctors to implement the targets, very few objections seem to have been voiced by them. It was the women's groups such as Stree Shakti Sanghatana which brought out the disastrous health consequences application of new methods such as Net-en and challenged their use in the court of law.

If neither the women's movement nor the medical community did articulate domestic violence as an issue of health care, how has it come about? The following section points out, it could be the activism of the international women's groups that has led to its appearance in India, through international agencies.

Domestic violence in the context of health as an issue in the discourse of international and multinational agencies, forums:

This section tries to trace the route of international attention to this issue so as to understand the context in which this issue makes an appearance in India. It also seeks to explore the nature of 'interest' that a range of international organizations and agencies have developed and the kind of investments that they have made in the issue of domestic violence in the 1990s. The sample of texts identified is purposive – so as to reflect the variety of actors which are active in articulating the issues of violence and health of 'third world women' or 'third world' in the international arena.

First, the route in which interest in domestic violence as a health issue began. One rarely finds this issue being mentioned in the literature on women's health in the 1980s. Most of the agencies seem to be overwhelmed by the burden of Beginning from the 1990s one sees an almost explosive kind of attention being paid to this issue. Lorie Heise (1994) identifies two factors that have helped this issue emerge on the international agenda: the activism around violence at the grassroots and second the emergence of regional and international women's NGOs and foundations (some of which are Women, Law and Development in Africa, Isis International, Latin American Committee for the Defense of Women's Rights, The Center for Women's Global Leadership, Instiute for Women, Law and Development, The Global Fund for Women, Women's Rights Action Watch, Asian Pacific Forum on Women Law and Acton Watch) that have facilitated linkages among anti-violence activists. The list of international agencies, as she identifies, which held conferences on this issue from 1992 to 1994 range from UNIFEM, World Bank, United Nations Statistical Office, U.S.Centres for Disease Control, American Medical Association, the Pacific Institute for Women's Health, Pan-American Health Organization etc. In 1996, WHO commissioned a multi-country study on women's health and domestic violence against women to obtain estimates of violence, document health consequences, identify risk and protective factors and explore strategies used by women who experience domestic violence.

As will become evident in the following detailed examination of the various reports, the interests and investments of the various agencies are of varied nature. While the World Health Organization is concerned about decreasing morbidity rates among women, World Bank is seems to be concerned about the increasing burden on the health care system as well as possible adverse impact on the ongoing family planning programmes and AIDS prevention programmes in the developing countries. There are definite commonalities in both the agendas. Both are interested in obtaining more information about the nature of domestic violence against women, the nature of violence that is getting reported at the health care facilities and more research into the existing policies and initiatives to deal with this issue.

Social Science and Medicine:

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A premier journal on critical perspectives on health issues, including those of the developing countries, it began publishing articles on gender differences in accessing health, morbidity etc. in the 1980s. However, domestic violence was slow to appear. Even those articles that investigated non-war violence, political violence in the developing countries, mental health do not mention domestic violence as a factor. It is towards the end of the 1980s, that an investigation into the injury and pregnancy related deaths of women in rural Bangladesh appeared specifically mentioning domestic violence as one of the reasons for the deaths of women. Injuries and violence accounted for 31% of all deaths among women aged 15-19 years, among whom 10% were married. In 1994, the journal published two articles specifically on domestic violence which dealt with the extent, impact on women's health, the kind of international activism that brought attention to the issue, the nature of policy initiatives needed etc. as well as the theories that sought to explain domestic violence.

World Bank:

Two reports of World Bank and one discussion paper commissioned by it have been looked at to understand Bank's understanding and shifts in priorities. The World Bank's *1993 World development report: Investing in health* highlighted violence against women and pointed out that many workdays are lost due to the illness effects of violence. However, *World development report 2003: Sustainable development in a dynamic world transforming institutions, growth, and quality of life* does not have any space for violence against women, though it talks about encouraging women to involve more in development process.

It is the discussion paper by Hiese and Germain titled '*Violence against women, the hidden health burden*' which 'draws together existing data on violence against women worldwide and reviews the literature on the health consequences of abuse. The paper describes the scope and evolution of the problem, reviews the health consequences of gender-based abuse, and provides a primer on violence against women

The discussion paper while listing the many kinds of injuries that women suffer due to domestic violence goes on to link apparently unconnected things to convince the Bank of

the importance of the issue. In an effort to convince the Bank, it tries to argue that domestic violence prevents women from accessing family planning services, that it makes them more vulnerable to sexually transmitted diseases including HIV/AIDS and that it poses a heavy burden on the already overburdened health care systems in the developing countries by increasing the morbidity among women.

Five kinds of programmes are identified as steps toward eliminating violence against women: justice system reform, health care system reform, prevention programmes, programmes to assist victims and treatment programmes for perpetrators.

World Health Organization:

WHO's interest in this issue also began in 1993 when it began its activities on injury and violence prevention. The first report that deals with this violence is *Psychological and Mental Health Aspects of Women's Health*. While giving an overview of the critical literature on women's mental health in the 'developed' countries, it identifies two sets of psycho-social factors as crucial in determining women's mental health one of which is physical and sexual violence. The adverse impact of violence on women's mental health is discussed in detail and its effects such as depression and anxiety disorder are discussed.

Following upon the Beijing Platform of Action which WHO endorsed, it declared violence as a public health priority and convened the first WHO consultation on violence against women, which 'brought together researchers, service providers and women's health advocates, as well as staff from several WHO programmes. It reviewed existing information concerning the magnitude of the problem, health care interventions, and ongoing research initiatives; identified gaps and made recommendations to WHO'. Then it commissioned a multi-country study on women's health and domestic violence against women to obtain information on the prevalence and frequency of different forms of violence against women, the health consequences of violence, including the measurement of mental distress, reproductive health problems and use of services, risk and protective factors at the individual, household and community level and the strategies used by women in violent relationships to end or minimise violence, the health and other support received and where they would have liked to get help. The report has come out recently in October 2002.

The Pan American Health Organization, the regional wing of WHO, sponsored and monitored domestic violence programmes in the health sector of several South American countries. Under this programme, the health care staff was trained to screen, detect women facing domestic violence and pilot projects on universal screening were implemented.

In the context of the above happenings in the international arena where domestic violence is being recognized as a problem especially of the developing countries, perhaps it is not surprising that from 1996, we find attention to this issue. International Centre for Research on Women commissioned epidemiological studies on violence against women in various states in India in 1997. It also supported study of response of the health care

system in Thane district in Maharashtra, whose draft report came out in 1999. In 1998, at an international conference organized by CEHAT in Mumbai on 'Preventing Violence, Caring for Survivors Role of health profession and services in violence', there were at least four presentations that touched upon the issue of domestic violence, especially the debilitating impact of this violence on women's mental health. Binoo Sen, Member-Secretary, National Commission for Women also talked extensively about how health care providers could help women facing violence. Ford Foundation organized a workshop at Jodhpur with its partners in programmes on violence against women from six Asian countries in 2000 where existing programmes, policy initiatives, obstacles to the furthering of this issue and future strategies were discussed.⁵³

What is important in this context is the way research questions in this area are getting formulated. Jaswal (1999) locates her study in the context of international human rights standards on domestic violence and lack of data from low-income countries, "over the last two decades, the growth of women's movement in India and other low-income countries has generated a wealth of qualitative data in the form of anecdotes and life experiences. However, there is a dearth of empirical community based information on the magnitude and patterns of domestic violence in low-income countries. In the absence of such information health facility based information along with anecdotal data, could be utilized to gain insights into the problem".⁵⁴ While empirical data of this nature is extremely important to convince the medical community of the health consequences of domestic violence as well as the burden it poses for the public health system, what seems a little disturbing is her location within this larger international discourse rather than as a response to the local need and pressure. Such location of the problem merges with the concern that Heise et al (1994) articulate 'Activist organizations have used personal testimony as an effective political device, but they have not maximized the potential value of more sophisticated qualitative and quantitative research'. While empirical data on the extent of violence is extremely useful in convincing the medical community that violence is a public health priority, the suggestions that follow from these research studies about a more sensitive and efficient recording system is needed seems to speak in a vacuum. The following section goes into a detailed investigation of burns wards in two major public hospitals in Hyderabad, Osmania and Gandhi, where efforts have been made to 'record' the causes of violence, the perpetrators etc. The next section that follows tries to examine the suggestions for improvement of health care system's response in the light of these investigations.

'Burns' Ward:

There have been many investigations of the happenings in the burns ward regarding the insensitivity of the doctors, the way in which they tamper with records and the way they sabotage the building of the legal case by not recording the statements of the women properly. Vimochana's (2000) report is the latest in the line. In the context of all such bleak reports, one is surprised to find three doctors very receptive to the issue of domestic violence, one retired and two currently working (among the eight doctors from casualty,

⁵³ And in 2000 Anveshi started a research project to look into the response of the institutions to women facing domestic violence, including that of medical system.

⁵⁴ Jaswal (1999), p. 2.

plastic surgery, acute medical care and psychiatry wards). One of the latter has worked under the former as a junior. These two, both male doctors, both trained as plastic surgeons, sensitive to the violence that women face in the family, have made determined attempt to record the 'actual' or 'real' causes of the burns that women patients come with. One of them even made presentation at one of the medical conferences on the causes of this violence contesting the theory that dowry is the root cause of this violence. In the tenure of both these doctors, the number of women reporting or not reporting has remained constant, however. Two kinds of questions come to mind in this context: why have the women remained immune to the sensitive personnel in the ward? Are there reasons beyond the sensitivity of the personnel that motivate the women from disclosing the perpetrators of violence to the personnel?

A brief note on the burns ward is in order. At Gandhi hospital, burns ward constitutes a part of the Plastic Surgery Department. There are separate wards for women and men. Till almost ten years back, burns victims were treated along with other surgery patients in the general surgery departments, which created problems of co-ordination. Ten years ago, a separate department was created to cater to the needs of the burns patients at Gandhi, under the department of the Plastic Surgery. It functions with a team of three doctors, one professor, one assistant professor and one house surgeon. The doctors are present from 10 AM to 2 PM. Five posts of plastic surgeons are yet to be filled. No one has come forward for the past some years to apply. There is a head nurse, two nurses and two nursing students. Three ayahs complete the staff. The required number of staff includes five more plastic surgeons, one or two dressers, one psychiatrist, one physiotherapist and some more fourth class employees. The department suffers from a chronic shortage of funds, like most other departments in the hospital. However, many patients have made generous donations including the daily equipment such as surgery knives etc. that is now being used.

The female ward is located at a corner, at the end of the female surgical ward. It has twenty beds for in-patients and a small changing room. The beds are all occupied most of the time. Patients who get admitted with more than 90% of burns are generally placed at the corner of the ward. Female patients are mostly attended by close female relatives, mothers, sisters and very rarely, in-laws. Most of the nursing care is also provided by them. Male relatives (fathers, husbands, brothers, father-in-law) can be seen hanging around the ward, outside the ward and the building.

From the available information collected through the interviews with the doctors, since 1975, women have constituted most of the burns victims. From 1995 to 2002, nearly six to seven thousand cases of burns have been reported at this particular hospital. From 1995 some kind of reliable statistics are available. Of the total of nearly thousand to eleven hundred burns patients, 65% are women, which nearly comes to 650 women per year. Of these 650, 90% are married women, the rest are children and young adults. From 1995 the number of women patients has remained more or less the same, while the number of male burns patients has slightly increased. Nearly two new patients are admitted everyday from Hyderabad, Rangareddy, Medak and Nalgonda districts. One can say that most of the patients are from lower middle class and poor classes. From the

impressionistic observations, it seems that many are from BC and SC castes or from muslim community.

From the accounts of relatives of the women it was evident that each of the women had suffered abuse and violence for at least two years. But what seemed to be more important was the sequence of things that follows the burning. It is mostly the marital family who bring the woman to the hospital. They can be seen influencing or controlling the happenings in the ward, through bribes etc. Natal family comes in only slightly later. Often, they are too traumatised to take any decision or influence the woman to tell the truth. Though they are the ones to provide care to the women, they are often unable to bear the various costs of treatment. Often it is they who are in a position to incur the costs and so would control women's testimony to the police, magistrate and at the doctors.

The criminal case hangs in-between, determining the negotiations around the injured woman – who would provide the care and who would incur the costs. The injured woman is also caught in a dilemma: to tell the truth or not. Very often when she decides to talk, it is already too late.

It is in this context that the single-minded devotion of the present head of plastic surgery and the retired head of plastic surgery at Osmania to the maintenance of records and data on women patients. While the one at Gandhi wants to collect and process the data so that facilities at the ward can be improved and more allocations can be made for personnel and equipment, the retired doctor, claims to have done it purely for altruistic reasons. Convinced that the 'real' perpetrators of this violence should come out, he decided to maintain proper records- which contain the 'real' reasons behind a woman's burns.

Now to the maintenance of proper records. He knew, like others, that all the women who are brought into the ward maintain that they have had a kitchen accident. While in a few cases women confess that they have attempted suicide driven by marital violence later to the magistrate, in many cases, women maintain the same story at all the three points of inquiry: casualty, the magistrate and the burns ward, till their death. In order to make these women speak the truth, he would train the nurses at the ward to persuade them. The modes of persuasion were two-fold: cajoling and mild threat. The threat that would be given to the women was that if they did not speak the truth, the doctor would not give them proper treatment. This was only a threat but was nevertheless given to the women. Invariably women would come out with the 'real' story- that they tried to burn themselves, in the heat of an argument, or after a bout of beating from the husband, after prolonged alcoholism-related problems from the husband, unable to bear an extra-marital affair of the husband or unable to bear the harassment for more money from the in-laws. In rare instances, they were also set ablaze. Paradoxically, many a time, this truth was of no use to the women themselves. Since they had already spoken to the others, it was almost impossible to do it a second time. It could not be entered in the court as an evidence from the side of the medical doctor because it would be difficult for him to defend it. It also could not be entered in the existing medical records of the hospital because it would create problems. So he decided to print his own case sheets and fill them up along with hospital case sheets to fill in this information. In this manner, he has

collected nearly 14,000 case-sheets of burns patients over twenty years (from 1976-1996) half of which belong to women.

Now, going by the emerging standards, would he not fit the category of sensitive and conscientious doctor and a record-keeper? The implications of insisting on certain standards or protocols without changing the conditions in which medical system operates are obvious: records would perhaps be kept in order but at the cost of more dehumanisation of the treatment given to the women.⁵⁵

But what if women spoke of or talked of domestic violence and asked for help? Women do not seem to be reticent in talking about domestic violence in all the settings – such as in the presence of psychiatrists, perhaps due to the confidence that it would not become a police case. The following section looks at the way domestic violence is understood and is addressed by the psychiatrists/psychotherapists in Hyderabad.

Seeking help from Psychiatrists/Psychotherapists.⁵⁶

How do issues of marital violence come into the picture during psychiatrists' encounter with women? They come in directly when women seek help for reducing husbands' aggressiveness or when marital families bring their daughters in law to be treated because they have become dysfunctional. They come in when the psychiatrists probe into the history of mental health problem and women come out with abuse and violence. They also come in when the psychiatrists are attentive to the interpersonal interaction between husbands and wives when either of them approaches them for treatment.

How and when did they start looking for violence as an important issue in the histories of women patients? Almost everyone claimed that she/he has been aware of it from the beginning of their training as psychiatrists or even before, though not of the links with issues of women's mental health or of the nature of its impact on women's mental health. None of them, however, could say very clearly when this awareness started getting translated into their daily practice. Only one, a female psychiatrist, almost 'confessed' that the awareness of the issue did not translate into daily practice of psychiatry in the initial years of her practice. It is only after many women began to approach her with this issue in a direct manner that she began to take it seriously.

To what extent are the women patients effected by marital violence? Prevalence of marital violence in the lives of women patients who visit the ten psychiatrists that we spoke to varies from 40% to 60%. For all of them, the number of women patients effected by marital violence and who also talk about it has increased over the years. In fact, one psychiatrist admits that it is this development that has made her think seriously about the issue. Now, almost everyone claims that they 'check' for domestic violence when women

⁵⁵ To be fair, it should be mentioned here that all international protocols give explicit and specific instructions for all people in charge of health care provision to not pressurize the women to reveal the details, to ask gently and in an atmosphere of confidentiality about the violence that they might be facing. See Issac Nancy E and Pualani Enos 'Documenting domestic violence: how health care providers can help victims', *Research in Brief* brought out by *National Institute of Justice*, Sept.2001. The full text is included in the appendix.

⁵⁶ The questionnaire that has been used by us is included in the Appendix.

patients approach them or are brought to them⁵⁷. What are the mental health problems that seem to be associated with or caused by domestic violence. Anxiety disorders, depression, suicidal tendencies figure in the accounts of all the psychiatrists. The definitions of domestic violence varies- from 'a largely undefinable category' to 'any violence produced in lieu of marriage by anyone in the marital family' to 'regular, unprovoked continuous violence, either physical or psychological, sometimes connected to mental illness, alcohol, drug addiction.' Though the association between domestic violence and mental health problems is strong from their own accounts, many are reluctant to conclude that domestic violence would 'cause' mental health problems in women. Moreover, all are reluctant to talk about domestic violence in the society because they feel that they know about it only in the context of mental health issues.

However, their explanation of the why and how domestic violence occurs are definitely derived from an understanding of power relations in the family and society.

- First set of explanations focus on the mental illness in men and women. Men suspect or beat up their violence due to various delusional disorders, paranoia, schizophrenia and/or alcoholism. Some men, suffering from 'anti-social disorders' such as violent anger, torturing people, refusing to see the pain of others etc. also indulge in beating up wives. Women's mental illness also makes them vulnerable to violence from family members and husbands because the families do not understand it.
- Second set of explanations focus on the Indian family. It is a product of the authoritarian nature of the Indian families. Abuse of women is most when the power in the family is concentrated in one person. Authoritarian families do not have non-aggressive modes of power-sharing. A new wife is expected to be assimilated into the family of the in-laws. She is to agree to be assimilated without protest and is assumed to have the skills to be assimilated. Even her small mistakes are seen as failures. And she is made a scape-goat. A lot of tensions in the marital family also get transferred onto her.
- Third set of explanations rely on structural-functional understanding of a family. There is a role-confusion in the families. Caught in the changing value system where old 'morals' are going and new 'materialistic' values have made an entrance, the old people want to cling on to the values denying the younger people, especially women, basic freedoms. Women, especially those who have been socialized to be meek become more prone to mental distress because they bottle up the stress and are unable to resist.
- Fourth set of explanations focus on men and masculinities. One, men find it difficult to live up to the masculine ideals in the current social and familial milieu and indulge in domestic violence. Second, in the authoritarian set up of the Indian families, they are under pressure to 'control' their wives and prove their loyalty and masculinity. Before he has the chance to understand his wife he is pressurized to prove his loyalty to the family. A husband is not allowed to respect his wife due

⁵⁷. While some claim that they would know about it by the way the women are treated by the male relatives who accompany them, some claim that they would try to know about it through the use of a questionnaire or a 'psychological test'. Two of these schedules are included in the in the Appendix.

to the fear of the relatives and caste groups. Third, as a result of these factors perhaps, men feel insecure if their wives are empowered, sociable or talented. They continue to be attached to their parents/mothers and refuse to defend their wives from the onslaught of their parents/mothers.

While all the explanations for the occurrence of domestic violence are sociological, the ways in which psychiatrists address this issue are mostly medical and pathological. First, as people concerned with curing mental illness, they address domestic violence only as a secondary issue, a derivative one. Second, while they do claim to rely on a combination of therapy and drugs, the reliance on drugs seems to be more. In fact, quite a few of them firmly believe that domestic violence can be wiped out with the help of the recent and new drugs. Those who practice therapy more seriously try to draw the family members into the process, through cajoling, mild warnings etc. When men do turn up, their behaviour is explained as not desirable in a non-offensive and indirect manner. They are asked to save their relationship by mending their behaviour. Men rationalize their behaviour or deny that their behaviour is offensive or indulge in self-pity or express their helplessness. But the response of the family members, including the husband to these overtures, is not good, though it is better than in the past. So, many a times, the psychiatrists or therapists end up prescribing drugs for reducing aggressiveness or violence, without the men's knowledge.

That their approach is mostly medical is evident from their refusal to go beyond their brief as psychiatrists. Very few of them suggest to the women (patients or wives of the patients) to go to the other agencies when the violence does not stop even after medication, therapy/counselling.

In conclusion:

In the context of our analysis which points to the immense difficulties in making health care system respond sensitively to women facing marital violence, an obvious question that comes up is: should we stop engaging with this system altogether. Considering the interest of the international agencies to pursue this issue in India, combined with a little from those in India, it seems certain that one cannot ignore stop it. What would be the modes of addressing this issue in our context? What kind of referents do we have?

Three kinds of literature seems to be useful in this context: the first one examines the functioning of the regular hospital system, its diagnostic methods and its gender biases in the context of women's movements' raising of issues of marital violence; the second kind is produced by the international agencies on the various experiments to sensitize the health care systems in various countries of the 'South' to issues of marital violence; third is the literature produced by feminists working on women's health in the background of the women's movement.

a. Diagnostic Methods:

Daga (1998) and Jaswal (1999) have revealed that women's injuries do not get recorded by the medical personnel in the hospitals and suggested that they should be recorded. While it could be interpreted as a malady of the third world country, similar explorations by Warshaw (1997) in the US context show that the problem is much deeper, rooted in the nature of diagnostic methods that the western medical system has developed. In these methods, the physicality of injuries become all too important to the neglect of the context in which they occur. The excessive importance given to the physical symptoms leads one to ignore what the patient is reporting. Many a time, it leads to bizarre situations where physical symptoms are reported as if they exist on their own. This excess is exacerbated when it comes to the injuries of women because of the deep gender-biases ingrained in the western medicine. Added to it is the masculinist emphasis of medical training where a successful doctor is equated with one who can control emotions and is in control of the situation. Narratives of domestic violence have the impact of destabilizing this situation of control. This disables the doctors from being able to listen to the patients empathetically and respond sensitively. And it is precisely this empathy, which is the prerequisite for a sensitive response to women facing domestic violence.

Reports from Central American context where Pan American Health Organization has supported a variety of programmes on improving the responses of the health care system corroborate these insights. Several doctors interviewed during the implementation reported inability to respond to the situations where women patients speak about domestic violence and reported improved ability five years later. In fact, once they were convinced that the three minutes that they spend with the women might save a lot of time later treating her injuries, the recording of domestic violence improved considerably.

In this context, the experiences of Dilaasa, an initiative taken up by CEHAT in a Mumbai hospital seems important. It has undertaken the difficult task of sensitising the hospital staff to domestic violence. In the context of the above discussion, it is important to understand the nature of work and the impact that this programme has on the working of the hospital.

b. Reporting:

That empathy and sensitive handling would lead to more women reporting the violence at the health care facility is a finding that has come up repeatedly in many studies including the above. However, mere sensitive handling might not be enough as became evident in our study of the burns ward. Fear of criminal investigation might prevent women from reporting violence, even in terminal cases as well as dissuade doctors from taking an active role in the investigations. This is a finding that has also come up during the above mentioned PAHO study. Wherever, the reporting of domestic violence was linked to criminal investigations, the doctors took less interest.

A method that has been suggested to improve reporting in this context is that of 'universal screening' of all women patients for domestic violence, instead of at particular

wards. Within the ambit of PAHO project, in those hospitals where universal screening has been implemented the results were better than when the screening was linked to particular programmes. The above-mentioned PAHO study demonstrated that though this procedure is costly, if implemented within a limited time, for the entire staff and applied for all the women who come to the hospital for all the programmes, its results have proved very beneficial for the women as well as for sensitising the personnel. But the issue of universal screening begs the question of referral services. Is it ethical to obtain information about violence without any provision of referral services? The existing situation, as is evident from our study of the burns ward is extremely inadequate to the handling of abuse even in a limited sense. The ward, as noted above, suffers from serious inadequacies of basic staff and equipment. In this context, in what ways can one speak of referrals?

c. Referrals:

The issue of referrals needs separate attention because of the several suggestions for them that comes through the international reports on the response of the health care system mentioned (in section on international attention to the issue) above. For instance, Hiese suggests that ‘the health sector could be doing much more, in terms of providing holistic and responsive care to those affected, referral to appropriate legal and counselling agencies The health sector, at various levels could and should also be much more active in working with others, especially the organized women’s movement..’ The PAHO’s study, for instance, came up with the finding the programmes aimed at improving the response of the health care professionals were more successful when there were local networks to which the women could be referred to. Such suggestions, while immensely laudable, come across two kinds of obstacles. One, as our study revealed very few medical professionals, including those who are sensitive such as the psychiatrists that we interviewed, might think it is necessary to refer their patients to these social networks or other agencies for help and support. They think that it is out of their mandate as a medical professional. Second, the social networks that can offer this kind of support might not exist at many places, as is the case even with a city such as Hyderabad, where very few women’s organizations have the willingness and capacity to offer this support.

One can assess response of medical system to women facing violence in the families if there were a demand that has already been made on the system to do so. In the Indian context, the demand seems to be very recent making it imperative on the part of the researchers to trace the path this demand has traversed. The findings of our study have been interpreted in the light of this history that left us with more questions and inquiries to be pursued.

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Chapter 4

Women and police stations

Introduction and methodology:

The activism of the women's movement in the late seventies and the eighties brought out many kinds of violence perpetrated against women within and outside the family. Rape, dowry deaths, dowry harassment (cruelty against women) were named as violence towards women in this period. Giving and receiving of dowry was made into an offence way back in 1961. But the violence that was perceived to be around this exchange of dowry was brought into focus through campaigns against dowry related violence and deaths in the late 1970s and 80s. A central feature of these campaigns was law reform – where the effort was to make the law take cognizance of the reality of this violence. The state responded to the campaigns by either amending existing laws or making new laws.

One of the important laws passed during this decade⁵⁸, in 1983, was section 498A, ostensibly, to curb the 'menace' of dowry harassment. This law came to be popularly known as the 'dowry harassment' law. It is the first law in the Indian context pertaining to violence within the home. Until then the general provisions of hurt and assault could be used to prosecute a husband who beat his wife. Prosecution for any other violence within the home was unheard of. As Agnes argues, different criteria had to be evolved to measure hurt and injury in a domestic situation. The general assault laws were not equipped to take into account the hurt caused in a domestic situation. S 498A was welcomed since it also took into account violence other than the physical. Despite the fact that it was brought into the Indian Penal Code at a time when the activism around dowry was at its high point, this law does not make any mention of dowry. The least it does is to refer to harassment of the woman around 'unlawful demand of property'.

This law has now been in existence close to twenty years. Among the many laws passed to criminalise oppressive practices against women, section 498A has been most controversial and news worthy. Police personnel, lawyers and judges constantly refer to the misuse and abuse of this section by 'arrogant' women. Judgements have often referred to the misuse of this section by 'educated women' for trivial claims. In women's police stations, personnel who are meant to help women register these complaints are vehement in pointing out that women file only 'false cases' either for financial settlements or legal separation.

The statistics reveal a dismal picture in terms of investigations and convictions but the heated discussion that it has generated has been phenomenal. On one hand even after twenty years of the presence of this law in our midst, many women still find it difficult to register complaints under this law. The convictions are few, the investigations are tardy⁵⁹ and humiliation of the woman as she tries to convey her complaint to the police continues. On the other hand we have accounts of misuse of this law not necessarily by

⁵⁸ These are Section 304 which pertains to 'dowry death'; Section 306B pertains to abetment to suicide of women;

⁵⁹ Similar situation prevails regarding deaths of women in the homes.

women alone but by police and lawyers. It is reported that this law is used to 'settle scores' by warring families. With the intention of curbing irresponsible and illegal arrests, a circular was issued from the Police Commissioner's Office directing that arrests under section 498A should be affected only with the prior permission of the Deputy Commissioner of Police. The Circle Inspector of the women's police station has no longer any independent powers to arrest the accused.⁶⁰ Such a stipulation has been passed in the state of Maharashtra too.

The study is located in this context where several such modifications have been affected in the everyday operation of this law. Two such modifications need to be mentioned in this context. One is the extensive use of the non-cognizable case in the women's police stations. Second is the phenomenal 'compromise' mode of resolution for these cases. The study focuses on understanding these everyday operations of this law in the police stations. It is the contention of this study that these departures are no less determined by women's demands in making new spaces available for themselves in the rigidity of criminal process.

There are twenty-seven women police stations in the state of Andhra Pradesh. Hyderabad district has three women's police stations located in Control room, Begumpet and Charminar. The women's police station located in Control Room covers the jurisdiction of East and West zones, while the Begumpet Women's police Station comes under the North Zone and Charminar Women's Police station covers the South Zone. The first women's police station was started in 1992 in the premises of the Control room in a small room behind the main building. This police station got its own building in 1997. The rest of the police stations were started in 1997. The women police force consists of 1250 constables.

Women's police stations have the provision of registering cases under sections 498A and 406 of the Indian Penal Code. The former refers to physical and mental cruelty meted out to the wife from the husband and his relatives while the latter refers to criminal breach of trust, which is filed for the return of dowry and other articles from the marital home. Bigamy cases (S 494) can also be registered in the women's police station. Cases of death (S 304B) can be registered only in the area police stations. The women police stations thus have a limited mandate given to them.

As part of the study we visited all the three police stations in the twin cities. A minimum of five visits was made to each station. The Assistant Commissioner of Police (ACP) of Begumpet and Control Room, sub-Inspectors at three police stations and some of the constables attached to each station were interviewed. Statistical information regarding the number of cases registered, investigated and tried were collected to the extent of the available records. During the visits we also spoke to the women who were waiting in the station with their complaints.

⁶⁰ This circular was issued on 6th April, 2002 by the present Commissioner M.V. Krishna Rao.

Definition, Cognizance and Compoundability of the Offence

S 498A has a separate chapter to itself in the Indian Penal Code - Chapter XX A of the Penal Code. Chapter XX deals with offences relating to marriage and XX-A refers to cruelty by husband or relatives of husband.⁶¹ This section of law was introduced in the Code by the Criminal Law (Amendment) Act, 1983 (Act 46 of 1983). By the same Act, S 113A⁶² was also introduced in the Indian Evidence Act to raise a presumption regarding abetment of suicide by a married woman. S 304B was introduced three years later, in 1986, by another amendment to the Code with parallel changes in the Indian Evidence Act. S 304 B in the Penal Code was accompanied by S 113 B in the evidence Act which raises a presumption regarding the husband and his relatives.

S 498A is defined in the Indian Penal Code as follows:

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation:- For the purposes of this section, 'cruelty' means-

- 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) of the woman; or
- b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security is on account of failure by her or any person related to her to meet such demand.

S 498A has been declared as a cognizable offence in the First Schedule of the Code of Criminal Procedure. The First Schedule refers to all offences under the Indian Penal Code dividing them into cognizable and non-cognizable offences. The basis of the categorization rests on the seriousness of the offence. The seriousness of the offence in turn depends upon the maximum punishment provided for the offence. By and large, the First Schedule makes a general rule whereby all offences punishable with imprisonment for three years or more have been made cognizable and others non-cognizable. Naming an offence as cognizable enables prompt police action for the arrest of the offender

⁶¹ The placing of this section itself is quite controversial. Flavia Agnes argues "This amendment 'cruelty to wives' is not situated within Chapter XVI-offences affecting the human body either under the section 'causing hurt' or under the sections dealing with assault etc. where it would have been more appropriate. Instead, it is ironically placed as an appendix to S 498. S 498 is an obnoxious and extremely derogatory provision which treats women as the property of men, giving every husband a right to prosecute any man who takes away his wife even though this has been done with the wife's consent. Ss 497 and 498 are a constant reminder to women about their subordinate status within the IPC. Terming this new and important section as S 498A ought to have been a cause for protest. But surprisingly, it did not raise any criticism from legal experts either within the movement or outside". P. 541, 1992.

⁶² Section 113A is the law of presumption with regard to the abetment of suicide of married woman: When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband and subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

without a warrant and investigation into the case. But there are exceptions to this rule. There are many offences within the Indian Penal Code which do not have the maximum punishment prescribed but are recognised as cognizable offences. For instance, offences against public tranquility are punishable with less than three years imprisonment, yet they are classified as cognizable. On the other hand offences relating to marriage like bigamy, adultery, cohabitation caused by man deceitfully inducing a belief of lawful marriage, fraudulent marriage ceremony are offences which can be punishable to a maximum term of five to ten years. These offences have been classified as non-cognizable offences. Non-cognizable offences are considered more in the nature of private wrongs and therefore the collection of evidence and the prosecution of the offender are left to the initiative and efforts of the complainants.

Interestingly S 498A occupies an ambiguous position even within the First Schedule. It has specific conditions requisite for initiation of proceedings. S 198-A was introduced in the Criminal procedure code by the same amendment to define the conditions of the operation of this law. S 198 A clearly states the persons who can initiate proceedings on behalf of the wife.

No Court shall take cognizance of an offence punishable under S 498A of the Indian Penal Code except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister, or by her father's or mother's brother or sister, or with the leave of the court, by any person related to her by blood, marriage or adoption.

It implies that neighbors and friends cannot register a complaint on the woman's behalf.

S 498A till a few months back was a non-compoundable offence. The general scheme for the compounding of the offences has been stated in S 320 of the Criminal Procedure Code. Compoundable offences are of two types. One set refers to those cases where the aggrieved person who has filed the complaint can withdraw the complaint. Another set of offences can be compounded only with the permission of the court before which any prosecution for such offence is pending.

Not all offences are registered, investigated and tried in similar ways. Not every reported crime leads to initiation of criminal proceedings. There are restrictions on the criminal process. Even in cases where criminal proceedings are initiated, they may not necessarily lead to a full fledged trial resulting in judicial determination of the guilt or innocence of the accused.

For diverse considerations, it may not be expedient or advisable to allow the criminal process to run its full course... where the offences are essentially of a private nature and relatively not quite serious, the Criminal Procedure Code considers it expedient to recognise some of them as compoundable offences and some others as compoundable only with the permission of the court.⁶³

⁶³ Kelkar, Criminal Procedure Code.

The Criminal Procedure Code has classified S 498A as a cognizable and non-compoundable offence. While the Criminal Procedure Code defines the offence in this way, the way this law has evolved in the police stations and courts is significant.

Procedures of Registration of Complaint in the Women's Police Stations in Hyderabad.

A complaint/petition can be directly presented in the police station upon which action will be initiated. The complaint carries the name of the complainant, the causes of complaint, the address at which the accused are residing and the prayer that action be taken upon this complaint. The day after presenting the complaint, the police station assigns and sends its constables to the address mentioned in the complaint and produce the accused in the police station. This does not amount to an arrest of the accused. It is an informal arrest. The accused is generally kept in the lock-up or is seen to be wandering around the police station. Women accused are not even kept in the lock-up. It is mostly the husband who is brought to the station in the first place. He is the first accused in most of these cases. If the complaint also includes other women members of the family, they are asked to appear in the police station at a given time.

By about 10am in the morning, the Sub-Inspector (SI) and the Circle Inspector (CI) arrive in the station. By then the complainant is asked to come to the police station. Generally the families of both accused and the complainant are present. Or sometimes the complainant can be alone too. But it is not common to see lone women coming to the police station. The SI or the CI then call the accused and the complainant to his/her room and start the process of examining the causes of the complaint. Both the parties are briefly asked to state their case. After listening to them and the other family members from both the sides, the police officer gives his own interpretation to the complaint and accordingly chastises either of the parties. This process is called reconciliation. If the reconciliation succeeds, a document is drawn up in the police station on stamp paper and both the parties state that their differences have been resolved in the presence of elders. The presence of the police is not mentioned in this document. The result of this reconciliation process is important for the further follow-up of the case.

If the reconciliation fails, the First Information Report (FIR) is registered and the inquiry/investigation commences. The complainant is asked to come to the police station to have her statement recorded. She is also asked to bring all possible primary and documentary evidence supporting her complaint. The statements of the witnesses who are generally the parents, siblings and neighbors of the complainant are recorded. Once this is through, the formal arrest procedures commence. With the new direction of the Commissioner, prior permission has to be taken from the Deputy Commissioner of Police. If consent is given, the accused will be arrested and remanded to judicial custody. After compilation of the entire evidence, the police file the charge sheet in the designated court. These cases are generally forwarded to the Mahila Courts, in the Nampally Criminal Courts Complex.

Alternately, a private complaint can be filed in the court having the jurisdiction. In this instance the court directs the police station to take cognizance of the case. On orders

from the court, the FIR is registered and reconciliation is conducted. Depending upon the result of the reconciliation process, arrest is effected. This is a process that is being increasingly resorted to avoid harassment in the police station for filing the complaint. Despite the fact that this is a circular process, it avoids police interference in the registration process.

The above account of initiation of proceedings in the women's police station can at best be seen as the ideal version envisaged by our law-makers. However law makers or women's groups would not have foreseen the role that 'reconciliation' would play in the processes of 498A in the police station. Any conflict in family matters is seen to be fit for a few rounds of reconciliation. Yet another word which comes up often is 'counseling'. There need not be any formal framework or acquisition of skills to conduct 'counseling'. The family seems to lend itself to any number of commonsensical attempts of counseling. It is true that this counseling assumes a different role since it is in the presence of the armed might of the police. Reconciliation which is now so central to the women's police station is perhaps played out only in reference to this offence in the Penal Code. As one of the police officers stated "conducting reconciliation is part of the investigation of the case".

The women's police station was set up with the express intention of facilitating a sensitive atmosphere for women suffering violence. It was also assumed that the exclusivity of the police station will help in the speedy resolution of the increasing number of cases. It needs to be noted that every section of law has to travel and mediate along many nodes before it bears any result for the complainant. This is true of any police station.

There are women who visit the police station any number of times without ever getting their complaints registered. The pressure that a woman can exert over the police personnel is crucial. The pressure can be in terms of money, caste connections, and political party connections. The registration of the complaint and the response of the police is directly dependent on the force of these connections. Women's organisations, other voluntary organisations, lawyers etc. mediate the process of women's engagement with the police station. Stark and fresh evidence of physical violence can be another factor that pressurises the police force to act immediately.

Since the time of filing of the complaint the woman has to visit the police station a minimum of four to five times to make sure that the police remember her complaint. To seek an appointment with the Sub-Inspector or the Circle Inspector in the station itself can be a harrowing task. And then begins her process of convincing them about the genuineness of her complaint. Even today, after twenty years of the introduction of 498A in the Penal Code, her complaint can be brushed away. She can be humiliated and asked to keep quiet. This is true of many women who approach the station without the empowering attributes like education, caste, family and money. They hang around the police station hoping that their perseverance can lead to some response from the police.

The next stage refers to those women who have succeeded in getting their complaint registered and the police make an inquiry. During the process of the inquiry, if the police get the impression of “promiscuity” of the woman, the investigation gets stalled. None of these are direct ways of dismissing the case. Many of these insinuations work in a circular way. For instance the police will not go ahead with the investigation on the pretext that constables are busy in other activities, or that the husband is not available etc. The possibility of the husband’s family being powerful and thus having the power to stall the investigation process is common too. The husband can also convince the police the uselessness of his wife. Repeated visits to the police station wears the woman out and she might even stop going.

Family and community can also bear pressure on the police station. The woman’s community makes sure that the constables who are assigned to arrest the husband are bribed and there is follow up to see that the husband and his family are brought to the station. Depending upon the insistence/priorities of the woman and her family the police register the case and effect the arrest. To have a lawyer or a women’s group or any other pressure group accompany the woman enables a relatively speedier process of registration, inquiry and arrest. The process of the registration of crime under this law depends to a large extent on the priorities of the woman. Police investigation and progress of the case is linked directly to the interest evinced by the complainant woman in pursuing the case.

At this juncture it is important to take into account the expectations of the women from the police station. The significance of this question is clear when it is contrasted to the following assumption about crime and criminal justice system: One, every complaint is automatically translated into a crime and results in the investigation and prosecution; two, all women are aware and seek such a course of action for their complaint. Women come to the police station with a wide range of complaints and possible solutions for their complaints too. They come with complaints ranging from varying degrees of physical violence, desertion of the husband, lack of maintenance of herself and the children, harassment from the marital family, humiliating climate in the marital home, threat of being harassed or even being killed.

The decision of going to a police station is not generally the woman’s decision alone. Her family and community determine this decision to a large extent. There are many instances where the woman’s distress propels her natal family to take up concrete action. Concrete action involves seeking outside help, which may involve women’s organisations, lawyers, police and courts. In many of these instances, the decision of filing a complaint in the police station is made by the father and brothers. The woman’s consent is not necessarily respected or acknowledged. This fact is corroborated by the findings from the study conducted by the Special Cell, Mumbai in their study of domestic violence wherein their statistics show

In all the FIRs, the woman is the complainant, but the detailed statements reveal that fathers, brother, uncles, or brothers-in-law (i.e appropriate male authorities)

gave their approval and took the lead to register a case. In one case, the sanction was further consolidated by the patronage of a male political leader.⁶⁴

There are also women who come to the police station with a finality, having made up their minds about a separation. Such women approach the police to register a criminal case so that the husband comes to negotiate with her on the terms of the settlement. The process and humiliation of a criminal case, courts, judicial custody and the trial creates an intimidating picture for the husband and his family. The criminal case thus provides the strategic space for the woman to bargain for child custody and property settlement. Some women want their husbands to be merely threatened or even beaten up so that he behaves himself well at home. Yet another category of women use the criminal case to 'teach a lesson' to the husband that she means action. Seeking 'justice' for the wrongs committed against her seems to be the domain of a select literate middle class woman. She comes with the firm idea of having been violated and therefore seeks penal punishment for the husband and his family.

Shabana's case

One of the accounts of the women who came to the Charminar police station is as follows. Shabana lives in a joint family with her mother-in-law, co-sisters and their families. Her complaint is that she is harassed by them. She is refused soap, water, food. The common amenities of the house are denied to her. Moreover, her husband who works in Dubai also ignores her. The husband brings gifts for the entire family but not for her or her child. That seems to have been the most humiliating aspect. The charge against her by the husband and in-laws is that she does not adjust and she is always dependent on her natal home. Shabana was forthright in her complaint and stated it clearly and she had a strong clear voice to match. The Sub-Inspector who was conducting the reconciliation spoke to both the parties separately and later jointly. The husband said that his wife was not amicable in settling the matter and that she refused to adjust. The SI asked the family members to leave and asked the woman what she wanted. He asked her if her husband should be arrested and sent to jail. Shabana was silent for about two minutes and then said that the husband and the family should be warned by the police that they should treat her well. An agreement was written to that effect in the presence of the SI on stamp paper and everybody left.

Thus we have women with a wide range of problems seeking an equally wide range of reliefs through the police station in general and S498A in particular. It is important to understand the heterogeneity of women's experiences of violence and also their expectations. The significant issue is that not all seek the regular trajectory of a registered crime.

Critique of 498A: Research Studies and Women's Groups' Experiences

Section 498A is a section of law that has, as earlier noted, provoked a in a complex set of responses. Apart from the general allegations of misuse from men's groups, lawyers and police officials, this section has attracted doubtful questions from within the women's movement too. In this section we seek to list out some of these voices across the country and also our own findings from the police stations.

⁶⁴ Dave And Solanki (2001) P 180.

Studies were initiated to assess the efficacy of police stations and the process of 498A in dealing with women's complaints of domestic violence. Prominent among them are studies commissioned by Indian Council for Research on Women,(ICRW)⁶⁵, Tata Institute of Social Sciences (TISS)⁶⁶, Women's Rights Initiative of Lawyer's Collective⁶⁷, and Vimochana, a women's group based in Bangalore⁶⁸. In Andhra Pradesh, a report was published analyzing the socio-cultural dimensions and judicial outcomes of cases of dowry deaths and dowry harassment.⁶⁹

Analysing the data of some of the cases filed in police stations in Maharashtra and Madhya Pradesh as part of the ICRW study, Mitra sees the deterrent value that S 498A holds for husbands. Her study indicates the poor conviction rate of about 2.2% of the registered cases. Mitra suggests two interpretations.

One, the general interpretation made by police and judges about the cases being trivial, the second the contention of the women's groups that the judicial process in the country is flawed. That the cases cannot stand judicial scrutiny has much to do with the insensitive legal procedures requiring evidence that is impossible in the patrilocal setting and also patriarchal attitudes of the society and judiciary that compel women to compromise rather than question...A quarter of the cases ending in reconciliation similarly can be interpreted in more than one way. Whereas, it has been interpreted as the handiwork of a hysterical woman who slaps S.498A on her husband and/or in-laws at the heat of the moment only to withdraw at a later date. It needs to be also seen in the light of the fact that women too often are compelled to compromise on account of family, children, and economic compulsions.⁷⁰

The same finding is reflected in the data compiled by Special Cell for Women when they contrasted the number of cases received and the number registered as 498A cases. This data was collected from women's organisations in Mumbai between the years 1986 and 1996⁷¹. The findings of the Special Cell point out that the police register cases under S 498A when there is danger to women's lives. As far as convictions are concerned they continue to be poor even when the crimes are serious in nature.⁷² The following is a table compiled by Special Cell which shows the number of complaints received women's groups and the number that were registered as cases in the police station. This data also shows the reluctance of women in filing cases in the police station as a possible resolution for their distress.

⁶⁵ The ICRW study documented an analysis of variety of social responses to domestic violence against women with the intention of defining "best practice". The study was carried out in two states of Maharashtra and Madhya Pradesh.

⁶⁶ Special Cell for Women and Children (a TISS action project) has been collaborating with Mumbai police for the past twenty years. The Special Cell contains trained social workers located in police stations and at the Mumbai Police Head Quarters. They work with cases of violence against women in the area of both pre-litigation and litigation. The Special Cell has conducted a study of domestic violence in the city of Mumbai.

⁶⁷ Women's Rights Initiative have drafted and circulated a new law addressing domestic violence.

⁶⁸ Vimochana 2000.

⁶⁹ U. Vindhya, 1997.

⁷⁰ P.43

⁷¹ Source: Shades of Courage: Women and IPC Section 498A, 1999.

⁷² Dave And Solanki, p.184.

Period	Organisation	No.Cases	registered as 498A
1986-96	Swadhar	2,250	7
1988.97	Janwadi Mahila Samiti	90	1
1986-96	Women's Centre	1,000	10
1983-97	Special Cell	6,017	9
1986.96	Mahila Dakshata Samiti	1,829	65
1986.96	Stree Mukti Sanghatana	1,500	0
	Mahila Nyaya Manch	1,200	8

In Andhra Pradesh the study conducted by Vindhya in the four districts of Hyderabad, Vizag, Anantapur and Guntur in the five year period of 1988 to 1992, analyses the socio-cultural dimensions and the judicial outcomes of cases of dowry deaths and dowry harassment. While discussing the judicial outcomes, one of the findings of the study is that while the total number of charges under S.498A were 564, out of which the number of convictions were 87 and acquittals 477, giving a conviction rate of 15.4% and a high acquittal rate of 84.6%⁷³. The study analysed the records of the cases to locate the reasons for the low conviction rate. This led to the finding that “most of the cases were acquitted due to the ineffectiveness of the prosecution in bringing forth evidence to prove that harassment had taken place, witnesses, including parents, turning hostile, and finally, the judiciary’s interpretation of dowry and dowry related cruelty”.⁷⁴

The findings in the present study are similar to the earlier findings. The record of cases filed in Begumpet and Charminar Women’s police station is evidence of this trend. The record of the cases registered, compromised in police station and court etc are listed below. Police stations generally maintain two registers for the incoming cases--cognizable and non-cognizable. The non-cognizable depending upon the reconciliation variable tends to be either disposed off or gets registered as a cognizable case. The police stations were not willing to reveal the number of cases registered in NC register. Some did not maintain the records for this category.

⁷³ Vindhya, p.143.

⁷⁴ Vindhya, p.168.

Begumpet Women's Police Station

Year	Total Cases	Compromised in PS	Charge Sheeted	Pending Investigation	Pending Trials	Compromised in Court	Non-Cognisable
1997	13	4	8		2	6	
1998	128	72	61		26	25	
1999	130	57			50	27	
2000	119	28	88		71	17	494
2001	109	29	55	9	52	3	
2002	25	4	5				

Charminar Women's Police Station

Year	Total Cases	Compromised in PS	Charge Sheeted	Pending Investigation	Pending Trials	Compromised in Court	Non-Cognisable
2000	240	159		29	38	12	
2001	223	143		25	38	15	232
2002	215	105		98	11		357

Not much analysis is required to understand the process of the trajectory of domestic violence into a crime. Compromise either in the police station or court is the central feature of the data. One distinctive feature is that the number of cases getting compromised in the precincts of the police station is far higher in the Charminar police station compared to Begumpet police station. According to the Circle Inspector of Charminar Police station, this station receives complaints primarily from Muslim women since it is located in the old city of Hyderabad. The number of cases that end in convictions in both the police stations are either non-existent or negligible.

It is a limitation of this study that it has not been able to piece together the details of the 'compromise'. To what extent this 'compromise' has been useful to women is a question that needs to be addressed if one truly wants to assess this law. Whether the efficacy of this law can be discerned at all using the yardstick of conviction rates in the trial in the light of the evidence, which shows the few cases that reach the trial stage.

In Conclusion: Dilemmas and Questions of Domestic Violence as Crime

In this concluding section we intend to focus on some key issues that have surfaced in the investigation of police stations and the registration of section 498A.

Compoundability of Section 498A: Ways of seeing

As mentioned earlier, till a few months ago, this section has been a cognizable and non-compoundable offence. Yet police records show evidence to the contrary. For a cognizable, non-compoundable offence to be increasingly put to use as a non-cognizable and compoundable offence is an interesting departure that needs to be studied. None of the studies quoted above refer to this shift. Section 498A may probably be the only section of law in the Penal Code wherein such a shift is openly discussed and documented. Police stations have records of both cognizable and non-cognizable cases. The number of cases registered in the NC register is far higher than the ones registered as FIR.

How do the police explain it? It is clear from the statements of the police that they see domestic violence as too trivial and mundane to be raised to the status of a crime. 'Exaggeration' of the incidents by the women is an oft-repeated theme in any conversation with police personnel. They see it as a waste of time to register crimes which women will anyway not follow it up. The high figures of withdrawal supports their contention that the complaints are made in a 'fit of rage', unable to stand the test of time. Due to these reasons, the police state that they have been forced to innovate along the way to suit women's requirements. According to them registering this violence as a crime does not help the woman.

A consequence of this thinking and 'innovation' is that the due process of the criminal justice system is pursued only at the instance of the woman. Observation of police action in these cases shows that domestic violence is considered largely to be a 'private wrong' and not an offence against the state. The state prosecutes only if the woman insists.

But the high rate of withdrawal needs to be explained from the woman's end too. Otherwise it tends to become an equation that is completely determined by the police inaction. There are many instances in which the police have complained that despite their effective 'investigation' and successful remand of the husband to judicial custody, the woman complainant has turned hostile. Some complaints are either withdrawn in the police station itself while others are withdrawn in the courts. In some cases the woman turns hostile in the court and states that the complaint was taken from her by force and under duress and that her husband is being unduly harassed by the police. In some other cases the women do not get back either to the police station or to the court. The police closes the case as 'action dropped'.

This leads to the obvious question as to why women withdraw their complaints? There can be many explanations for this phenomenal withdrawal of cases. The woman may not be getting what she wants from the police station. She may be tired of pursuing the lethargic, patriarchal and corrupt police. She may be forced to compromise with her husband due to lack of support systems outside her marital home. The 'visit' to the police station may provide a temporary respite in the family and therefore pursuing the case might seem to be futile. Pursuing the case also involves financial expenditure.

The use of a criminal case for women:

The logical process of an investigation of the crime is the effort to prove if the violence took place or not? It is a process to prove who is right, the man or the woman. But, as pointed above, distressed women seem to be going through the additional burden of proving their claims of being harassed, in the process of attempting to register a case against their husbands, both due to the place given to this crime in the hierarchy of the police as well as their own situation.

This whole process gives rise to a question as to how far it is useful to name domestic violence as a crime. The criminal justice system provides only a punitive remedy for women. Her rights to the matrimonial home, maintenance, child custody etc cannot be provided even as a final relief by the criminal justice system. The system after a long and tedious trial can only hold the accused husband guilty and convict him for a maximum sentence of three years.

Recommendations to improve the functioning of the police also seem to miss the predicament of women caught in this path. For instance one of the recommendations of Special Cell is “Capacity building for skilful investigations of crimes against woman will help in sensitive handling of cases. A protocol or ‘drill’ for investigation in cases of S 498A should be developed. The focus should be on women as citizens experiencing violence within the family.”⁷⁵ When a majority of the cases do not reach the stage of investigation at all, how useful would such a recommendation be, even if it is implemented?

The entire process of Section 498A from the police station to the court is heavily litigated and marked by the presence of lawyers. A large percentage of cases are ‘compromised’ in the police station. A small percentage of the complaints are registered as FIR. After the registration of the FIR and before the filing of the chargesheet, the cases can be compromised. In cases where the police station does not cooperate or the woman is firm, lawyers file quash proceedings in the High Court to get the complaint quashed. If the complaint survives all these compromises, the chargesheet is filed and the matter is ready for trial. At the time of trial too the case can be compromised. Various procedures of compromise have been worked out by lawyers and Judges in this context. Sworn statements by both the parties to the case and the settlement application are filed in the trial court which enables the Magistrate to dispose the case. Yet another mode is also possible. Cases on the brink of ‘compromise’ are referred to the Lok Adalat which is presided by a Magistrate and two advocates. The matter is referred to the Lok Adalat at the time of evidence or judgement, i.e after the trial has begun. Cases began to be referred to the Lok Adalat when certain women complainants back tracked and got the case reopened on the grounds that their consent was obtained fraudulently or by coercion. To avoid this turn around of the woman, compromise matters are now referred to the Lok Adalat from which no appeal lies. The presence of the lawyer is vital to mediate these numerous processes.

⁷⁵ Dave, p.189.

It is important given the complex field in which the discourse of section 498A is located, to rethink critically in mapping our expectations from police stations. This section of law is actually caught between two extreme positions. While one position, from women's experiences conveys the inefficacy and lack of relevance for women, the other position vehemently portrays the picture of misuse and gross violations by women. The low conviction rates under section are well known. If this is so why is this section attracting such major criticism? What could be the possible grounds for this criticism? Should one look for evidence other than that offered by the fact of conviction rates? Does the efficacy of this section lurk in the 'compromises' that is worked out as part of this process. The silence on the 'compromise' aspects of this law also points to the possible potential of this mode of resolution.

Section 498A reveals the peculiar trajectory of a law meant to protect women from violence in the home. Out of court settlements is a feature present in all trials. Section 498A is no exception to this rule. But the extent of the settlements that this law attracts is the cause for anxiety. The picture becomes far more clear when this law is compared to the other law, S 304B that was introduced to penalise women's deaths in the home. Observations show that since this section includes death, the 'compromise' factor is not so blatantly evident. There is growing awareness that trials of 304B are marked by hostile witnesses which is another form of compromise or out of court settlements. Moreover trials of 304B hinge entirely on the dying declarations of the woman which is the only evidence that withstands the settlements between the two families.

Both these laws are indicative of trends which raise uncomfortable questions for the women's movement. S 498A and 304B emerged as state responses for the campaigns initiated in the eighties on the issue of violence within the home. Today, both the laws are increasingly being viewed as having failed women in their quest for justice leading to a serious interrogation of the utility of criminal law remedies for women in marital distress. The law of 498A also conveys the inherent limitations of the police station in accomodating the wide range of women's complaints of violence.

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Chapter 5

Domestic violence and response of the courts

Introduction

It is close to two decades since the Family Courts Act, 1984 was passed and also the penal sections of 304B and 498A⁷⁶. A number of developments has taken place in the ensuing jurisprudence of these two amendments which can be broadly classified as civil and criminal procedures of law. Both the processes have been subject to studies and analyses to understand the import of these laws for women. Women's experiences in the court rooms on one hand and the studies on the other have consistently pointed to the ineffective modes of operations of these laws.⁷⁷ Women's groups involved in legal activism have made sustained efforts, over the years, in compiling new laws to improve judicial outcomes for women which has been discussed in the earlier chapters. The latest effort in this direction is the campaign to legislate a civil law on domestic violence. The efforts have resulted in moving the present NDA government to draft a Bill for domestic violence. It is amidst these developments that the present study was carried out.

A large number of women are articulating complaints of harassment in the marital home and seeking a range of resolutions. Evidence from various quarters establishes this fact. In the civil and criminal trial courts, the volume of litigation is high. The family court is the busiest court and works long hours in the entire civil court complex. Even an impressionistic overview will attest to the above fact. In the jail, the number of men and women convicted for offences of harassment and dowry death are considerable. In the women's jail, fifty percent of the convicted women are for offences involving the daughter-in-law. In the appellate courts a fair number of cases coming up for appeal are of 304B and 498A.

Women's groups with a wide range of ideological commitments to the woman's issue are locating themselves as mediators for men and women in marital conflicts. Women with complaints of harassment are reaching out to many formal and informal institutional spaces as is evident from the earlier chapter on 'counseling' centres. Lawyer's offices, police stations, psychiatric clinics, women's groups and caste associations are spaces accessed by women depending on their caste, class and community locations. Various modes of listening, conciliation and settlement are carried out in these spaces. To what extent and when, the option of taking recourse to the formal law of the courtroom is exercised depends on many factors. Police station and the court as options hover in the background of these settlements. The interesting question is the extent to which law,

⁷⁶ 304 B and 498A correspond to the penal sections of dowry death and cruelty against women in the Indian Penal Code.

⁷⁷ Mitra, *Best practices among responses to domestic violence in India: a study in government and non-government responses in Maharashtra and Madhya Pradesh*, (Women's Studies Unit, Tata Institute of Social Sciences, 1999); U.Vindhya, *Dowry deaths and domestic harassment of women in Andhra Pradesh: An analysis of socio-cultural dimensions and judicial outcomes of cases*, Institute of Development and Planning Studies, Visakhapatnam – report prepared for Indian Council for Social Science Research; *Patterns and Trends of domestic violence in India: an examination of court records* (Centre for Women and Law, National Law School of India University, 1999); Vimochana 'Getting away with murder: How law courts and police fail victims of domestic violence', Manushi, No.117,

either civil or criminal is invoked as a leveraging tool to negotiate women's terms and conditions in the marital family.

As far as legal options are concerned, women suffering abuse in the marital relationship have to locate their grievance in the criminal section of 498A, matrimonial laws, the criminal section of maintenance (Section 125) and the civil laws of injunctions. Seemingly, a hierarchy of legal remedies are available to the woman. Coming to criminal law, domestic violence is played out in the obvious equations of crime and punishment. The controversial Section 498A is the specially amended section to the Indian Penal Code on demand from the women's movement. It is close to twenty years since this law has been in operation. It operates in the framework of the criminal justice system of police investigation followed by trial by the prosecution. Those aspects of the criminal laws that have repeatedly come under serious criticism are: the interpretation of women's complaints of violence by the police and the courts, the negligence and indifference in the criminal investigation of complaints, the biases of the police personnel, the apathy of the prosecution in the trial courts and the reluctance of the judiciary to take cognizance of the reality of violence in the family. (Vindhya 2003; Elizabeth 1999)⁷⁸. It is actually a difficult task to see the ways in which this law has worked especially in the light of the evidence of the low conviction rates it has achieved. At the same time the range of issues that have been played out on the terrain of this section is phenomenal. The dynamics of the process of turning domestic violence into a crime has been discussed at length in the preceding chapter on police stations.

Complaints of violence are adjudicated in the civil courts too though under different heads since civil laws have different objectives. Matrimonial law, which is adjudicated as civil law, deals with formulations of marriage and its breakdown. It envisages various states of the marital relationship. The focus is the stipulations for marriage and breakdown. While the terminal form of a matrimonial remedy can be divorce, the other intermediate options are judicial separation and restitution of conjugal rights accompanied by ancillary issues of maintenance, custody and guardianship. Matrimonial laws were originally tried in regular civil courts until the advent of the Family Courts Act in 1984. Since this Act came into force, family courts are the courts in which matters concerning the family are to be tried.

In this study, the focus is primarily on the law and procedures in the family courts. In matrimonial law, there is no separate section that talks about cruelty, except as a ground for matrimonial relief like divorce, restitution of conjugal rights and so on.. Domestic violence is not spelt out distinctly in any of the matrimonial statutes. None of the present laws refers to the term 'domestic violence'. Civil law remedies as distinct from matrimonial and criminal remedies are gaining a new significance in addressing women's complaints of domestic violence. The various problems linked with the criminal offence of domestic violence has not only pushed the need to rethink domestic violence as a criminal offence but also to explore civil law remedies as possible legal spaces for women.

⁷⁸ Some of the extremely useful forays in this direction have been made by Agnes (1998); Mukhopadhyay (1998); other useful text that outlines these efforts are Jaisingh (1996);

Objectives & Methodology

Cases of violence can be tried both in family (civil) courts as well as in criminal courts. Generally, women are advised to file cases in both family and criminal courts, though not all women may want to pursue such a strategy. Technically, the cases are in two different courts involving two different results and objectives. However, for the woman, the relief that she is seeking is located in the midst of both these cases. Thus lawyering involves deft handling of the processes of both the courts. For instance, a criminal case can be used to a woman's advantage in the civil court.⁷⁹ It is the hypothesis of this study that the case rests to a large extent on the counsel given by the lawyer. The lawyer constructs the case depending upon the contents of the woman's complaint and more importantly his/her understanding of the civil and criminal courts. To study the mediating role of the lawyer is the first objective of this study.

Counseling and reconciliation are processes that power both the criminal and family courts. To examine the contents of these procedures and their usefulness and limitations for women is the second objective.

The third objective is to study how the family court functions as a 'different' civil court for women and the extent to which the Family Courts Act, 1984 is followed in these courts.

The methodology for this study consists of two major components. The first part is to review the laws, amended laws and case law on matrimonial reliefs. The latter is crucial since the maintenance provision is used often by women in family courts. The second part consists of field study, consisting of three components: to interview women who have approached the courts for various remedies; to interview the lawyers who deal with these cases and mediate women's interaction with the court; the third is to follow the procedures of the family court. Five women who had accessed family court were interviewed for the study. Ten lawyers and one former family court judge were interviewed. Apart from these, a month was spent in observing proceedings in the family court in Hyderabad.

The following report is organised in four sections.

- In the first section, we discuss the history of the legal initiatives on family and securing women's rights within the family – in which we seek to locate the bill on domestic violence – this would include the significant changes in matrimonial laws, criminalizing cruelty towards women within the marital family and establishing separate family courts to negotiate marital issues.
- In the second section, we discuss the findings from field work in two major components: that of the functioning of the family court and the role that the lawyering plays in mediating women's demands;

⁷⁹ This is again not true of all regions. For instance, in Bombay, the number of 498A cases filed are relatively few in number.

- The third section discusses in detail the various bills on domestic violence that have come up in the last ten years.
- The fourth section attempts tentative conclusions and recommendations.

Section 1 Securing women's rights in the family: a history of legal initiatives

This section sketches three important arenas of legal initiatives, which we think are relevant to understand the response of the courts to women facing violence within the families. The first set of relevant laws in this connection are those that criminalise cruelty towards women in the domestic context; the second the matrimonial or personal laws that guide women's rights in the family, and the third, the family courts act through which a majority of these rights are adjudicated. The first part, i.e the section on laws criminalising cruelty has been already discussed in the earlier chapter on police stations.

Laws governing women's rights in marriage:

This section makes a selective survey of the crucial rights of women in marriage and breakdown of marriage. Cases of domestic violence are frequently located within the ambit of these laws: a woman complaining against desertion may be advised to file for maintenance and restitution of conjugal rights; a wife whose husband does not financially support her may seek the relief of maintenance either under the criminal law or civil law; an injunction can be sought for a wife who is being threatened to be thrown out by her husband; a case of violence may move gradually to a divorce settlement. While a majority of these laws are civil in nature, Section 125 CrPC that also provides the right of maintenance is a criminal provision.

Matrimonial laws encompass conditions of solemnisation of marriage, levels of breakdown of marriage, grounds for breakdown, maintenance, custody and guardianship, succession, inheritance, legitimacy and adoption. In this section, the salient points of the personal laws of the Hindu, Muslim and Christian communities as well as the changes that have taken place in these laws are discussed⁸⁰. Apart from the personal laws, there are customary practices that govern each caste and sub-caste in the Hindu community. In courts, these customary practices are valid only if they are proved to be in existence for a long time. Evidently, it is a mammoth exercise even to sketch a cursory background. At the same time this is a major pointer to the fact that the study of the family court is entrenched on a wide canvas, located along many vectors.

The matrimonial laws in turn are adjudicated according to the principles of the Civil Procedure Code and the Indian Evidence Act which concern procedural aspects of the law. The focus of the discussion is the maintenance provisions and the place of cruelty as they are of paramount importance for women in situations of abuse and helplessness. However, as each law has developed on its own course, an effort has been made to describe the important amendments and their import for women.

Personal laws have evolved through a long history of regulation and codification, spanning at least 150 years. The Indian Constitution, defining itself as secular has had a

⁸⁰ The omission being the Parsis who also have a personal law for their community

troubled relationship with the existence of personal law, because their basis is the 'religious community'. As such, the four major religious communities in this country are governed by their respective personal laws. To abolish these separate personal laws in the 'interests of a national unity' and to have a 'common law governing all communities' has been debated right through the Federal Assembly and Constituent Assembly. Unable to arrive at a consensus, the framers of the Indian constitution have made it into a directive principle of state policy. Not surprisingly, each of the personal laws, caught in the politics of secularism, nationalism and religion, has had a chequered history in India. At various points in post-independent India, judiciary has directed the central governments to formulate a uniform civil code, for instance, as in cases like *Shah Bano*⁸¹ and *Sarla Mudgal*⁸².

Hindu Law

The history of major reforms in Hindu law spans a period of fifteen years from 1941 to 1956. It was discussed in three parliaments of historical significance i.e. the Federal Parliament, the Provisional Parliament and the first parliament of the newly independent nation. At each stage, it went through a reformulation and finally the Hindu Code Bill emerged as a set of four acts in the year 1956: The Hindu Marriage Act, The Hindu Adoptions and Maintenance Act, the Hindu Succession Act and The Hindu Minority and Guardianship Act. The legal equality that the legislators planned for Hindu women has been marked by many contradictions. The Hindu Marriage Act (HMA) is an instance of the formal equality of the sexes. Let us examine some of the prominent features of the Hindu Code Bill.

- The spouses were deemed equal and had equal rights and obligations towards each other. Both men and women were granted equal rights to matrimonial remedies and ancillary reliefs.
- The HMA introduced the concept of monogamy for the husband and the wife. Section 5 of the HMA states that one of the conditions for the solemnization of the Hindu marriage is that "neither party has a spouse living at the time of the marriage". Section 17 of the Act specifies that bigamy will be treated as a criminal offence.
- The intermediate remedies of judicial separation and restitution of conjugal rights is provided by sections 9 and 10 of HMA. The HMA allows either partner to seek a divorce on specific grounds. Section 13, the divorce section, consists of seven grounds for divorce amongst which cruelty and desertion are the commonly used ones. By an amendment in the year 1976⁸³, Section 13-B, the provision of divorce by mutual consent was introduced in the Act.
- Sections 24 and 25 of the HMA define temporary maintenance and permanent maintenance. In the provision for temporary maintenance, the expenses of the proceeding can be sought by either party. The main feature of this maintenance

⁸¹ Mohd. Ahmed Khan V Shah Bano Begam AIR 1985 SC 945

⁸² Sarla Mudgal v Union of India & others (1995) 3 SCC 635

⁸³ Marriage Laws (Amendment) Act, 1976

- provision is the (negative) leap made in terms of providing for both the husband and the wife, the right to seek financial support.⁸⁴
- Section 18 of the Hindu Adoptions and Maintenance Act, 1955 (HAMA) specifies clearly the right of the Hindu wife to be maintained by her husband during her life time. Sub section 2 of this section also specifies the conditions in which a Hindu wife can live separately from her husband and yet claim maintenance. While there are seven positive conditions wherein a wife can seek maintenance living separately from her husband, she forfeits her right if she is found to be unchaste or ceases to be a Hindu.
 - Section 23 of HAMA mentions the amount of maintenance that a court can grant to a wife. In determining the amount of maintenance, the court takes into consideration the following factors: a. the position and status of the parties; b. the reasonable wants of the claimants; c. if claimant is living separately, whether the claimant is justified in doing so; d. the value of the claimant's property and any income derived from such property or from the claimant's own earnings or from any other source; and e. the number of persons entitled to maintenance under this Act.

While the above constitute the letter of the law, it needs to be examined as to how these laws have been interpreted in various courts across the country. Taking only the example of right of maintenance for wives, our enquiry into the case law suggests the following trends. These trends are based on precedents set by many High Courts in the country, which can confirm each other or even differ. Not all decisions of the different High courts have been confirmed by the apex court of the country. But the legal commentators on family law see these as some common trends in awarding interim maintenance and permanent maintenance. They also indicate the common grounds that a husband invokes while defending himself.

Here, it needs to be mentioned that these principles usually hold true for granting of maintenance for women of all religions, with some variations for Muslim women. Among the matrimonial laws of all religions, only Hindu and Parsi law provides the right of maintenance to the husband too. Two levels of maintenance are provided by all matrimonial laws, interim and permanent.

On interim maintenance:

The following contentions have been upheld by various High Courts and will operate as precedents for other cases on similar points.

- The provision of interim maintenance is a very important right for women to fight cases. The purpose is to enable an indigent spouse to litigate a domestic dispute

⁸⁴ Criticizing this section of law, Agnes notes, 'While a basic inequality between men and women persisted within the scheme of inheritance rights, under the perverse logic of equality the Hindu woman was under a legal obligation to maintain her husband. The concept did not exist under any prevalent notion of marriage in the Indian context-Hindu law, either scriptural or customary, or the Muslim law or even in the modern and secular Special Marriage Act enacted in 1954. The concept was introduced for the first time under the HMA and was based on the western notion of formal equality'.

- on an equal footing with a wealthy spouse. Case law strongly supports the contention that a petition for interim maintenance should be decided as quickly as possible. Moreover the adjudication of this petition will be made independent of the main matrimonial case which can be for nullity of marriage, restitution, judicial separation and divorce. The issues raised in the main matrimonial case are not supposed to influence the hearing of the interim petition.
- The application for interim maintenance should be decided before the main case is decided.
 - The applicant has to show that she has no independent income sufficient for her maintenance and support and that she has no means to meet the expenses of the proceeding. It should be noted that the emphasis is on independent income. It is immaterial that the applicant has some independent property, movable or immovable. If the property does not yield any income, then it is of no consequence.⁸⁵
 - The property or income held by the father of the woman will not be taken into consideration in fixing the maintenance amount. It is the income of the husband and his status that have to be taken into account and not that of father. The husband's obligation to provide maintenance to his wife could not be obliterated just because the wife was being looked after by her father or relations.
 - The wife may have the capacity to earn but that doesn't relieve the husband's duty to maintain her.
 - In a case where the fact of marriage is in dispute the wife has been held to have a right to interim maintenance.
 - The words "income sufficient for her support" in Section 24 HMA, 1955 do not mean only such amounts as will be sufficient to enable her to have existence at subsistence level, but will cover such amount as will be necessary for necessities suited to status and station which the wife enjoyed when she lived with her husband.⁸⁶
 - It is the duty of the husband to disclose his income when his wife had made an application for interim maintenance. Invoking Section 106 of the Evidence Act⁸⁷ the courts have held " the amount of the husband's income would be within the special knowledge of the husband and when the issue before the court is the amount of such income, the onus under S 106 of the Evidence Act would be on the husband to disclose the same and if he fails to do so without any good reasons, the court would be entitled to presume against him and to accept the allegations of the wife as to the amount of income derived from such reasonable sources as would be available to her..."⁸⁸
 - In case of lack of evidence of the earning capacity of the husband, the court can take into account the daily wage of an unskilled labourer in town in which the husband lives in order to grant maintenance to the wife and child.⁸⁹

⁸⁵ Shella Sen vs Hitendra Sen, AIR 1966 Mysore 178.

⁸⁶ Chitra Vs Dhruva AIR 1988 Cal 98.

⁸⁷ S 106 Evidence Act: When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

⁸⁸ AIR 1988 Cal 83

⁸⁹ 2(1989) DMC 264 P&H

- Allegation of adultery and other matrimonial misconduct are irrelevant at the stage of awarding interim maintenance.⁹⁰
- The Indian Divorce Act, 1869 embodies the “one-fifth rule” of maintenance which means that the maintenance ordered shall in no case exceed one-fifth of the husband’s net income. In the absence of other criteria, courts have been generally influenced by this rule.

Generally case law is deployed as support material for the actual facts of the case. It helps Judges to arrive at a decision in deciding the case. Some of the above principles are positive case law on the right of maintenance. There are many negative judgements too that do not support women’s claims. Usually a case is decided using the literal letter of the law and the interpretations of the law across the country. Sometimes the case law is so well entrenched in the minds of the lawyers and the judges that it need not be cited separately and is awarded an equal status of a law. In other instances when case law is not as apparent, it needs to be cited separately to swing the case in one’s favour and convince the Judge to come to a decision. The lawyer’s expertise comes into play in making strategic use of case law to support a client’s claims in the court.

On permanent maintenance:

The objective of providing maintenance to a wife on dissolution of marriage is that on divorce she should not be left destitute. An order for permanent maintenance can be made at the time of passing a decree in a matrimonial case or at any time subsequent to the passing of the decree in a matrimonial cause.⁹¹ The important point to be noted is that even divorced wives can seek maintenance either at the time of the passing of the decree of divorce or even after the passing of the decree if she continues to be unmarried and unable to support herself. The considerations for fixing the amount of permanent maintenance are as follows with some differences from the provisions of interim maintenance.

- The first factor that the court takes into account is the income and any property, movable or immovable, that parties hold. Thus, it is not only the income of both the parties that are taken into consideration but also the properties that they hold.
- The main question before the courts in such cases is to get at the truth about the financial position of each party. When a party makes an application for permanent maintenance, the other party is required to give all details and makes full disclosure of his income and properties. There is an obligation on the party to make full, frank, and complete disclosure of all relevant circumstances.
- It is an established point of law that while considering the wife’s application for permanent maintenance, the court will not take into account her capacity to earn or her potential income. The fact that she is supported by her father will not be a relevant consideration for fixation of maintenance.⁹²

⁹⁰ AIR 1949 Mad 877; AIR 1979 Bom 264; AIR 1990 P&H 83.

⁹¹ Under the Indian Divorce Act, 1869 permanent alimony can be passed only at the time of the passing of a decree in a matrimonial cause.

⁹² AIR 1980 All 130

- An able bodied husband capable of earning should provide maintenance to his wife even though he is not earning at the time of the order.
- The maintenance is also determined by the conduct of the parties which will include 1. Conduct of the spouses towards each other, 2. Conduct of the spouses towards the marriage and 3. Conduct of the parties towards the court. There is a long line of cases on the relevance of pre-divorce conduct of the respondent. For instance some courts have held that a wife who is guilty of the matrimonial misconduct, such as adultery, is not entitled to permanent maintenance. In such cases the court might grant her maintenance but the amount awarded will be less.⁹³

Except for some technical differences the principles of awarding permanent maintenance are similar to other matrimonial statutes. The award of maintenance is dependent on many factors such as: husband's earnings; wife's conduct; wife's earnings and many other issues. There is copious case law on these issues which includes a number of negative judgements against too.

To recap the earlier discussion of Hindu law, the wide sweeping reforms carried out in this matrimonial law became a benchmark for the other matrimonial laws to follow. The introduction of monogamy, divorce and the equal right to maintenance were viewed as pioneering rights forgetting the fact that Muslim and Christian laws had consolidated some of these rights way before. As is well known the concept of monogamy in the new Hindu law has been repeatedly used as a marker of liberation for Hindu women and that all women should enjoy this right. The fact that Muslim law allows the right of polygamy for Muslim men became the undercurrent for all discussions of law reform in the minority community. The Muslim woman's right to maintenance is the prime example of such a discourse. The following section will attempt a brief comment on the existing law of maintenance for Muslim women and the twists and turns that this crucial right has undergone in the last two decades.

Muslim Law

In India a number of legislations both central and local, constitute Muslim law. Among the many enactments that have been in vogue, the important ones connected to matters of marriage and family are:

- Muslim Personal Law (Shariat) Application Act
- Dissolution of Muslim Marriages Act 1939
- Muslim Women (Protection of Rights on Divorce) Act 1986

The Shariat Application Act was passed in the Federal Legislature in 1937 and was envisaged as a central law that would apply to the Muslim population of the entire country.⁹⁴

⁹³ (1974) 76 PLR 135

⁹⁴ P. 147, Parashar, Archana, *Women and Family Law Reform in India*, Sage, New Delhi, 1992.

Following are some of the important features of the prevailing Muslim law.

- Muslim marriage is a civil and dissoluble contract unlike the indissoluble sacramental marriages of Hinduism and Christianity.
- Stipulation of mehr at the time of marriage is an important aspect of a Muslim marriage, which is meant as a safeguard for the woman. Under the Shariat law, the woman has a charge over her husband's property for the payment of her mehr, even after his death.
- There is a provision to enter into a pre-marriage agreement pertaining to regulation of matrimonial life and stipulations regarding dissolution of marriage.
- As far as property is concerned, a Muslim cannot will away more than one-third of his property. Wills also cannot be made in favour of legal heirs. The heirs have to inherit according to the rules of succession as laid down in the Shariat. Women are granted defined shares under the scheme of succession.

The Shariat was followed by the Dissolution of Muslim Marriages Act, 1939 primarily to provide for divorce of Muslim women. The Statement of Objectives and Reasons of this Act clarifies the context in which this Act was passed. "An act to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie". This Act provides nine grounds for dissolution of marriage for the Muslim woman. An interesting feature of the Act is the definition of cruelty, which is absent in other matrimonial laws. Section 2 Clause viii of the Act reads thus:

That the husband treats her with cruelty, that is to say

- habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment
- associates with women of ill-repute or leads an infamous life; or
- attempts to force her to lead an immoral life; or
- disposes off her property or prevents her from exercising her legal rights over it; or
- obstructs her in the observance of her religious profession or practice; or
- if he has more wives than one, does not treat her equitably in accordance with injunctions of the Quran;

Subsequent to this legislation, the Muslim woman figured again in law-making in the year 1973. Many amendments were carried out in the Criminal Procedure Code. One of them was Section 125 which was to replace the earlier Section 488 that dealt with maintenance of wives. The special feature of the amended Section 125 was that it invested the right to maintenance even for a divorced wife if she had not remarried and was destitute.

Section 125 of the CrPC was created in 1973 for the specific purpose of providing maintenance to wives, dependent children and parents. It amended Section 488 of the

CrPC of 1898, which also had made a provision for the maintenance of wives and children. The ostensible aim of Section 488 was to prevent destitution in the event of a man not supporting his wife and children. In 1973 this section of the CrPC was revised and the new section 125-128, popularly known as chapter IX cases, was introduced. According to Agnes, the impetus for amending the old Section 488 has been,

Under the old criminal code the right to maintenance was limited to married women. This restriction placed a double edged weapon in the hands of Muslim men. When the wives approached the courts for maintenance the husbands could divorce them by merely pronouncing the word talaq thrice and then plead that under the Muslim law a divorced woman does not have the right to maintenance... Moreover, the Dissolution of Muslim Marriages Act of 1939 did not confer upon Muslim women the right to claim maintenance and children's custody as an ancillary relief in a divorce petition, a right which exists under other matrimonial laws. This legal position rendered the situation of Muslim women extremely vulnerable.⁹⁵

Section 125 made departures from Section 488 both in terms of content and procedure. In terms of content the law on maintenance now covers the right of elderly parents who are unable to support themselves to maintenance from their sons who have sufficient means. In the new law a 'wife' who can demand maintenance is not only one whose marriage subsists but also one who has been divorced. In terms of changes of procedure it simplifies the application for maintenance by wives and allows them to apply at a court close to the place they are residing. Most importantly, the divorced Muslim woman was brought within the purview of Section 125 CrPC".⁹⁶

This provision came in direct conflict with Muslim law which held that divorced wives had no right to maintenance. Commenting on the debates around Section 125 Mukhopadyay writes

At the time when Section 125 was being debated in Parliament, Muslim legislators asked for Muslims to be exempted from this provision. A Muslim marriage terminates at the point of divorce, it was argued, and thus the provision for maintaining a divorced wife violated Muslim personal law. The government satisfied the objections of the Muslim legislators by saying that if the post-divorce entitlements under the personal law had been realized by the divorced wife, this would be taken into account when settling cases under Section 125.

The right of the divorced Muslim woman to seek maintenance was indeed delicately poised. Very soon the courts began to adjudicate this section of law. The trend of Supreme Court decisions in the cases of Bai Tahira and Fuzlunbi showed a certain caution. The court limited itself to addressing the issue of destitution of women and held that payment of an illusory amount under customary or personal law does not absolve a husband from the purview of Section 125.

⁹⁵ P 143, Agnes Flavia, *Give us this day our Daily Bread: Procedures and Case Law on Maintenance*, Majlis, Bombay, 1992

⁹⁶ P143

Agnes' analysis of case law points out that the High Courts in Kerala, Andhra Pradesh and Guwahati apart from the Supreme Court were trying to consolidate the divorced Muslim women's economic rights using the limited language of Section 125. The judiciary performed this role without interfering or unduly commenting upon the Muslim personal law and limiting itself to the humanitarian objectives of prevention of vagrancy and destitution of women. This had been the trend of cases between 1973 and 1985. In 1985, after twelve years of the enactment of Section 125, the Shah Bano judgement was delivered by the Supreme Court.

In the landmark case of Shah Bano⁹⁷ the appeal to the Supreme Court was filed by Mohammad Ahmad Khan against a High court order directing him to pay maintenance to his divorced wife Shah Bano. Khan claimed that under his personal law he was not bound to pay maintenance to his divorced wife after iddat. The initial contradiction of the 'divorced Muslim woman' that was simmering since 1973, surfaced again in this appeal to the Supreme Court. A number of cases were pending in the Supreme Court challenging Section 125. The Supreme Court had to decide whether Section 125 of the CrPC applied to Muslims. A five judge Bench held that 'Section 125 was enacted in order to provide a quick and summary remedy to a class of persons who are unable to maintain themselves....Neglect by a person of sufficient means to maintain these and the inability of these persons to maintain themselves are the objective criteria which determine the applicability of Section 125'. It was also mentioned that even though 'they do not supplant the personal law of the parties ...the religion professed by the parties or the state of the personal law by which they are governed, cannot have any repercussion on the applicability of such laws'.⁹⁸

Having declared the noble intention of Section 125, the Bench surged ahead not only to further explicate the relationship between the personal law and the 'secular' provision of 125 but reinterpreted the meaning of mehr in the Shariat. The Muslim Personal Law Board took objection to the judgement as a gross interference with Muslim personal law and decided to organise the Muslim community to stop this 'interference'. To put it mildly this judgement has determined the course of Indian politics, law making and the stakes of the women's movement in the question of justice for women.

In view of the intense public debate on the validity of the Supreme Court judgement in the Shah Bano case, the matter was referred to the Law Ministry. The intensity of the agitation compelled the government to actively propose the making of a new Bill that would set aside the precedent in the judgement and also bring in a new law that would provide for the interests of divorced Muslim women. The Muslim Women's (Protection of Rights on Divorce) as the Bill was called, was passed in the Parliament in February, 1986. This law carried criminal consequences for contempt of maintenance orders, similar to Section 125 CrPC.

⁹⁷ Mohammed Ahmad Khan v. Shah Bano, 1985 (1) SCALE, P 767.

⁹⁸ P 770.

Commenting on the way in which this new law was received in the courts, Agnes notes that the courts were trying to consolidate divorced Muslim women's rights yet again.

Some High Courts ingeniously interpreted the clause 'maintenance and fair and just provision in S. 3 of the Act as maintenance for the iddat period and fair and just provision for the future to be made and paid within the iddat period. While interpreting the clause the courts relied upon the preamble of the Act, which states that the aim of the Act is to protect the divorced Muslim women.

The account of this Act and the subsequent results of adjudication does not end here. The constitutionality of this law was challenged in the Supreme Court by some women's groups on the ground that this Act was enacted as an appeasement policy. Challenging the constitutionality of the Act was one way in which the women's groups were expressing their protest against the conditions in which the Muslim Women's Bill was enacted. As the writ petitions were pending in the Supreme Court, the Act started to unfold itself in various courts across the country. The story of this challenge is extremely interesting and indicates the many consequences of a law in the process of adjudication in the courts. Investigating the process of adjudication in the courts, Agnes writes

Appeals from the decisions of various high courts gradually started accumulating, along with the original writ petitions. What was intriguing was that while the writ petitions were filed by groups agitating for women's rights, the appeals were from husbands aggrieved by the verdicts of various High Courts. This fascinating phenomenon provided the first indication that perhaps the ill-famed Act could be invoked to secure the rights of divorced Muslim women.

The appeals of the husbands brought to light judgements of the High Courts which were carefully interpreting Section 3(1) of the Muslim Women's Act. This section stipulated, "Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to: a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband". This section was read in combination with the Preamble of the Act, which clearly stated that the Act was meant "to protect the rights of Muslim women who have been divorced by, or have obtained divorce from their husbands..."

The judicial interpretations of the clause 'reasonable and fair provision' resulted in lump sum provisions for Muslim women. This seemed to be a better safeguard against destitution, than the meager sums which women were entitled to under Section 125 through a monthly recurring entitlement. Agnes notes that a reading of the High Court judgements "indicated that the Act had rid itself of the agenda of alleviating vagrancy and destitution among divorced women and had extended itself to the claims of women from a higher social strata, than merely those who live below poverty line".

The Supreme Court heard arguments on this issue from women's groups, Muslim Law Personal Board and the individual petitions of aggrieved husbands revolving around the

constitutionality of the Act. Finally, on September 28, 2001, the Constitutional Bench of the Supreme Court upheld the constitutionality of the Act.

From her perspective of a matrimonial lawyer, Agnes upholds the statute as introducing a new principle in the realm of matrimonial law, of lump sum settlements at the time of divorce. It is true that this is the aspiration of a divorced woman from every community, in place of an extremely restrictive, recurring monthly entitlements, which are difficult to enforce.

It is clear that the discussion in Muslim law has centered around the right of maintenance for Muslim woman and the mode in which the struggle progressed from 1973 to the latest Supreme Court judgement in the year 2001. No other matrimonial law has witnessed such a long drawn out battle on this issue. In contrast the significant issues discussed in Christian law are those of adultery and divorce. The following section is a brief account of the struggle of the alliance of women's groups with church groups in demanding that the state amend the existing Christian law of divorce.

Christian Law

Christians all over India have a uniform law for marriage and divorce. With respect to marriage and its dissolution, there are two central laws in operation for Christians: The Indian Christian Marriage Act, 1872 stipulates conditions of the form and contents of the solemnization of the Christian marriage and the Indian Divorce Act, 1869 lays down the dissolution of the marriage, property settlements, alimony, custody of children and related issues.

Unlike the other matrimonial laws which had lent themselves to levels of regulation and codification, the Christian personal law had remained unchanged over the years. Parashar notes that the promulgation of the Government of India Act, 1935 did not result in Bills being introduced to reform Christian law in contrast with Hindu and Muslim law. It was only much later the Law Commission prepared two reports to reform Christian law in 1960 and 1983 respectively.⁹⁹ The government introduced the Christian Marriage and Matrimonial Causes Bill¹⁰⁰ in the Lok Sabha but it never became a law.

Subsequent to these moves from the State, in February, 1996, the Joint Women's Programme along with a representative section of Christian women belonging to different Women's Fellowships of the Churches in Delhi presented a memorandum to the Prime Minister. Their main contention had been that the prevailing Christian matrimonial law was antiquated and made divorce difficult for Christian women.

A well known fact is that in the divorce provisions in Christian law, the grounds of divorce for the woman had to be coupled with adultery. Adultery was a major component of this law.¹⁰¹ This discriminatory provision contained in Section 10 of the Act had been

⁹⁹ Fifteenth and Ninetieth Reports of the Law Commission of India 1960 & 1983), See Parashar, Archana, 1992

¹⁰⁰ Bill 62B of 1962

¹⁰¹ Mary Roy's fight against the Travancore Christian Succession Act, 1916 is a landmark case in which the Supreme Court declared that the Indian Succession Act, 1925 supercedes the Travancore Act. The reaction to this judgement bears comparison with the

struck down by the High Courts of Bombay, Kerala and Andhra Pradesh. Despite these judicial pronouncements, the Indian Divorce Act continued to be the substantive law for Christians in the country.

Agnes involved in the negotiations between the Church and the State writes, “The struggle for amending the archaic statute has been long and chequered with the orthodox and conservative opinion within the various churches thwarting every move to modernise the statute since the 1960s”. A Bill along the lines of the Special Marriage Act was prepared after many consultations and was sent to the Prime Minister’s Office in 1993. After eight years, in 2001, the process took another twist when Arun Jaitley, the law minister in the NDA government announced that the controversial Bill would be shelved and instead amendments will be introduced to the provisions of the Indian Divorce Act. Even the amendments had to be discussed again and a consensus had to be arrived at. Finally all parties agreed to the amendments that were to be carried out for the Indian Divorce Act, 1869.

The Indian Divorce Act was amended in August 2001, a mammoth task that involved a sustained dialogue between the law minister, Christian women’s groups and the church hierarchy. Some of the significant aspects of the amended Christian law are:

- Cruelty, adultery and desertion have been made into independent grounds of divorce thus releasing the Christian women from the condition of having to prove dual grounds of adultery along with cruelty or desertion in order to obtain a divorce.
- The remedy of mutual consent divorce as a ground of divorce and thus doing away with the need of proving a matrimonial fault.
- The ceiling set upon maintenance that it should not exceed one-fifth of the husband’s income has been removed.
- The decree of divorce passed by the district court need no longer be confirmed by the High Court thus doing away with ‘procedural unreasonableness’.
- The jurisdiction of the courts has been expanded to entertain petitions in both the place of marriage as well as the place of last residence. Earlier the petition could be filed only from the place of last residence which proved to be difficult for women.
- The provision entitling the husband to claim damages from the adulterer or the power of the court to settle an errant woman’s property in favour of her husband/children has been deleted.

Each matrimonial law has existed with its unique high points. While Hindu law is a ‘reformed’ law with a clear mandate for monogamy, divorce and maintenance, case law has proved that the right of monogamy has been a severely restricted right which very few women can avail. Hindu women are also burdened with the additional ‘legal’ duty of paying maintenance to their husband if he is destitute. Moreover Hindu women are assumed to be the bearers of the most progressive law of the country in contrast to other communities whose laws have seen no reform. But the process of

law reform in the Muslim and Christian shows the steady consolidation of crucial rights for women be it in terms of maintenance for the Muslim woman or the rights of divorce for the Christian woman.

The process of law reform in the Muslim and Christian matrimonial laws confirms the role of judiciary in consolidating pro-women interpretations. Thus Shah Bano is the perfect example where one can witness the judiciary providing different interpretations. The account of the consolidation of the right of maintenance in Section 125 is a fascinating history to understand the many facets of the judicial system in the country. In the Christian law, the various High Court decisions pronouncing Section 10 of the Indian Divorce Act unconstitutional is another example. As Agnes points out in her compilations of legal decisions in the Muslim Women's Bill, most of these cases were fought by ordinary lawyers and progressive judgements were rendered by a range of judges from Magistrates to High court Judges.

Section 125 Criminal Procedure Code

Apart from the provision of maintenance in the matrimonial laws, the Criminal Procedure Code too provides a speedy option of securing maintenance for a destitute woman. This law of maintenance has evidently moved through many stages as is evident in the discussion of this law for Muslim women. The old code of the CrPC provided the option of maintenance for married women. The divorced woman could not apply for this right. The new code of CrPC, 1973 included the right for a divorced woman too which created the account of Shah Bano's struggle. Presently the Domestic Violence Bill and also recommendation to the reform of the criminal justice system (Malimath Committee Recommendations for the reform of the criminal justice system) are suggesting that the right of maintenance under this provision be secured for the second wife too.

Coming to the technical issues, there are many advantages of filing a petition under this section of law. Firstly, a petition under this section can be filed without taking recourse to the matrimonial remedies like judicial separation, divorce or restitution. A petition under section 125 can be an independent petition. Married and divorced women can file for maintenance under this provision. Secondly, arrest warrants can be issued against the husband if he refuses to pay the amounts ordered. Thirdly, the maintenance trial under this section of law is of a summary nature not requiring elaborate evidence.

The case becomes complicated only when the validity of the marriage is questioned or the paternity of the children is disputed. Filing the case is comparatively less expensive for the woman. In the present context where the ceiling on the amount of maintenance is removed, it has become far more advantageous for women to file under this section.

The Family Courts Act

While many changes/reforms were taking place in the various matrimonial laws and the criminal law of maintenance, one important feature was that these laws were continuing

to be adjudicated in regular civil and criminal courts. However progressive the law may be, they were all subjected to the rigours of the adversarial trial. This concern was expressed way back in 1974 by the authors of the phenomenal report on the status of women. As part of making institutions sensitive to women's interests women police stations and courts were demanded on the lines of labour courts.

In 1984 the Family Courts Act was passed prescribing many conditions for the trial of a family matter distinct from a regular civil matter. Various states adopted this Act and made rules accordingly though not immediately. In the state of Andhra Pradesh the Act came into force in the year 1995. Until then matters related to the family were being adjudicated both by criminal courts and district courts. The Statement of Objects and Reasons that follows the Family Courts Act indicates the context in which family courts were set up.

Several associations of women, other organisations and individuals have urged, from time to time, that the family courts be set up for the settlement of family disputes, where emphasis should be laid on conciliation and achieving socially desirable results and adherence to rigid rules of procedure and evidence should be eliminated. The Law Commission in its 59th Report (1974) had also stressed that in dealing with disputes concerning the family the court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. The Code of Civil Procedure was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings related to matters concerning the family. However, not much use has been made by the Courts in adopting this conciliatory procedure and the Courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. The need was therefore, felt, in the public interest, to establish Family Courts for speedy settlement of family disputes.

Three points emerge from the above statement. One, that radically different procedures should be followed in the family court. Second, a conciliatory procedure has to be adopted instead of the usual adversarial procedure. Third, a settlement should be facilitated before the commencement of the trial. The Family Courts Act makes the above points clear in the following sections.

Section 9 states that "if, in any proceeding, at any stage it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement".

Section 10 defines the Family Court as a civil court and follow the provisions of the Code of Civil Procedure for all suits and proceedings. However this section makes it clear that nothing shall prevent the family court from laying down its own procedure with a view to arrive at a settlement. Section 13 provides that the appointment of a lawyer is to be an exception and not the rule.

Section 14 enables the Family Court to receive as evidence any report, statement, documents information or matter that may, in its opinion , assist it to deal effectually with a dispute, whether or not the same would be relevant or admissible under the Indian Evidence Act, 1872.

While explaining the procedure for the Family Court it states that it shall not be necessary for the family court to record the evidence of witnesses at length. After the examination of each witness the Judge shall record or cause to be recorded, a memorandum of the substance of what the witness deposes. As far as the execution of decrees and orders is concerned, the rules contained in the Civil Procedure Code and the Criminal Procedure Code will be duly followed for matters civil and criminal respectively.

It was envisaged that the above provisions would facilitate the family court to function as a different court. What emerges is that the family court is a civil court determined by the Code of Civil Procedure and the Indian Evidence Act and at the same time capable of making radical departures from these over arching codes of procedure. The mandate for the family court seems to be a combination of sensitivity and settlement. The Family Courts Act has provided for special procedures for the court to adjudicate litigation arising from the family. It provides discretion to the Judge to settle cases in a conciliatory mode rather than pursue the adversarial trial. It enables the Judge to turn the family court away from the functioning of the regular civil court and shift it in the direction of settlement and reconciliation. It empowers the Judge to adjourn proceedings if there are chances of reconciliation between the husband and the wife. The FC Act provides for a swift trial involving easy procedures of evidence and a speedy adjudication of cases. Moreover the family court judge is given discretion to move around the rigid procedures and evidence. The extent to which the Family Court has internalised these departures will be evident in the next section.

Thus matrimonial laws of different religions, Section 125 petitions and injunctions are adjudicated in the family court. What was earlier distributed between the Magistrate's court and district courts were brought under one umbrella. S 498A cases, however, continue to be tried in regular criminal courts.

Contemporary Problems with Existing Law

The following discussion draws on the field work conducted in the twin cities that includes the observation of the proceedings conducted in the family courts and the interviews conducted with lawyers practicing in the twin cities of Hyderabad and Secunderabad . The objective of the section is to identify certain common problems faced by women in the family courts, and to provide a general critique of the institution of courts. The profile of the lawyers, as already mentioned earlier, ranges from women lawyers working with a feminist perspective, associated with a women's group and women lawyers who have developed into matrimonial lawyers by the sheer presence in

the family courts for long years.¹⁰² Male lawyers including Muslim lawyers practicing in the family courts were also interviewed.

There are seven family courts in the state of Andhra Pradesh in the districts of Vizag, Vijayawada, Kurnool, Tirupathi and Warnagal. There are two family courts located one each in Hyderabad and Secunderabad. Both the family courts are burdened with a large number of cases. The family court is part of the larger civil court complex. The maintenance cases under Section 125 CrPC have presently been transferred to the Nampally Criminal Courts due to the over load of cases in the Hyderabad family court. S 125 CrPC cases are now heard by the Special Judge for the trial of Jubilee Hills Bomb Blast Cases Cum Additional Family Court Judge.

The institution of the court is mediated centrally through the presence of the lawyers. This is despite the stipulation in the Family Courts Act that the presence of the lawyer is an exception rather than a rule. The family court which was initially designed to cater to the interests of the parties in person seems to have become a regular court room. The seating arrangements of the Judge, advocates and litigants continues to follow the old tradition. While the Judge and the lawyers occupy the privileged spaces within the courtroom, the litigants continue to squat in the corridors. The family court rooms are small and dingy and generally packed with lawyers.

In-camera proceedings are not practiced in the family court. Except for the reconciliation that takes place in the Judge's chambers, the rest of the proceedings take place in the open court room. Evidence, arguments and other processes of the trial are open to all. The procedure of filing petitions and the long list of documents that are involved even in the simplest of the maintenance cases acts as a deterrent for men and women to have independent access to the courts. Lawyers are therefore present in all the cases.

Despite the stipulation in the Family Courts Act, 1984 that conciliators should be present in the family court proceedings, there are none. The Family Court Judge conducts conciliation proceedings too. The conciliation proceedings are more of an investigative nature. A few questions are asked to ascertain the nature of the problem and lasts not more than fifteen minutes in the first session. The subsequent sessions are of even shorter duration.

Since lawyers play such an important role in guiding men and women through the processes of the court, they were interviewed to locate their perspectives in defending men and women in marital conflicts.

Lawyering: Perspectives and strategies

We sought to understand the perspectives and strategies of the lawyers on issues related to marital discord, violence and associated litigation, which spans the family courts and

¹⁰² Annie Mathews, Renuka Rajagopalan and S Vani were the three women advocates interviewed for this study. Annie Mathews runs a support centre for women and children called Ashish located in Secunderabad. She defends women's cases and calls herself as a feminist lawyer. Renuka R provides legal support for women approaching Asmita, a resource centre for women in Secunderabad and also Shaheen Asmita, a centre for women in the old city. S. Vani is a lawyer who is known as a competent matrimonial lawyer.

the criminal courts. In this section, we seek to outline them around the following sets of issues: marriage and marital breakup; counseling and reconciliation; maintenance; injunction orders; criminal proceedings in the cases of abuse and last the proceedings and functioning of the family courts.

Marriage & Adjustment:

The general belief amongst all lawyers is that the volume of litigation emerging from the 'family' is undeniably high. On the question of why marriages are breaking up, there seems to be, by and large, a certain uniformity in the perceptions of male lawyers. Their perceptions can be broadly summarised as a. women are increasingly becoming independent and not adjusting to various realities at home; b. women are mostly non-negotiating, stubborn and self-obsessed in contrast to the woman of the yester-years who was well-adjusted in the home; c. she does not allow other members of the marital family to enjoy her husband's attention; d. seeks a separate unit to live with her husband and wants complete control over the husband's financial and emotional reserves; e. some women have extra-marital relationships or the hovering presence of a former lover.

Apparently, much of the blame for the break-up of the marriage is attributed to the woman-her jealousies, stubbornness, desire to control, possessiveness, promiscuity and so on. Another important reason suggested by male lawyers is the role played by the natal family of the woman. Their contention is that the interference and undue support of the natal family's actually exacerbating marital disorder and conflicts. Instead of counselling their daughter/sister to adjust and compromise, they assert, the members of the natal family are the first to convert an ordinary marital misunderstanding into a legal issue.

Interestingly women lawyers have cited a very different set of reasons for marital conflicts and break-up. The woman matrimonial lawyer's focus was on the problematic sexual relationship that the spouses shared. She referred to cases of sexual incompatibility, impotence and sadism as important factors for the breakdown of the marriage. All her examples were cases relating to the sexual relationship between partners and linked it to the lack of sexual education in our society leading to problems of co-existence within the marriage.

The women's group, on the contrary have made no mention of sexual problems. Their explanation centered around issues of beating, desertion, second marriage and non-maintenance. One of the woman's group lawyers argued that, over the years, the reasons for wife-beating have changed and physical harassment was not only for dowry but also for the woman's income. She finds the middle class woman who is not earning a wage as the most disadvantaged woman in these conflicts; it is this woman who finds it difficult to exit her marital context.¹⁰³

Counseling and determining the course of action:

¹⁰³ Excerpted from the interview with Annie Mathews.

Only a small percentage of women opt for the terminal option of severing ties from the husband or the matrimonial home. Most women approach lawyers with the problems of desertion, bigamy, physical violence and lack of financial maintenance. They hope that the court procedure can be deployed to bring the man back; to eliminate the presence of the second woman; to stop the beatings; to make the man pay for the family regularly; not spend it on his relatives, gambling, alcohol; stop him from suspecting her or allow her to have a separate residence etc. Very few come with their minds made up. They approach the lawyer to see if this course of action has anything to offer to them and use lawyer as a third party to counsel their men. The point we need to note is that the woman is unsure, seeking intervention, and is open to reconciliation on certain terms and conditions of her own. Conciliation and settlement are thus situations that often arise in this long process.

Lawyers in general insist that counseling is an important step in litigating family matters. Most of them readily don the role of the counselor. Depending on the class and caste location of the client, lawyers try to see if the matter can be resolved amicably in their offices.

The women's group lawyer stated that after the initial hearing, she refers the woman to the office counselor. She admitted that she did not have the time and skills to listen to the woman's long narration. Family cases require prolonged attention and many sittings in contrast to other cases, which are relatively quicker. Moreover, most of these advice sessions are not paid sessions. Lawyers are reluctant to spend long periods of time on counselling and would rather opt for the legalisation of the complaint. It is no wonder that the general impression people have is that lawyers' intervention tends to turn women's complaints into a 'legal case'.

The women lawyers said that they usually do not pursue any legal course of action unless and until the woman is sure of the same. They felt that poor women make up their mind quickly, have clarity about their situation and aware of the actions that they have to pursue. Being working women, they do not depend on the husband to maintain her and the family since she was anyway performing that task prior to the separation too. It is the middle class woman who looks for every kind of assurance from her family and community. She is doubly worried about censure for her actions.

The lawyers' notice works differently for different classes of people. The notice can be despatched from a women's group or a lawyer. The notice makes the husband come to the women's group. In the working class milieu, the husbands are mostly daily wage workers. A selective combination of threats and persuasion makes the husband acknowledge the wife's complaints. Often such a notice and the presence of the women's group in the locality provides a sense of assurance to the woman and makes the man cautious. The women lawyers say that this may be criticised as a short-term relief, but provides some space to the woman. The Muslim male lawyer also referred to a similar process where he merely mails a postcard to the husband asking him to report to his office. The postcard works as summons and he feels confident of settling the matter. Sometimes notices are also sent to the workplace of the husband seeking the support of the senior officials in resolving the marital matters.

There are also many instances in which the husband ignores the notice and does not acknowledge it. The women lawyers narrate instances where the husband does not cooperate with the marriage counselor in the counseling sessions. Notices of this kind can also trigger more serious consequences from the husband depending upon his class and status. There are cases of husband and his family applying for anticipatory bail fearing a criminal case from the wife.

Criminal Proceedings:

With respect to the role of 498A in these negotiations the interviews indicate that it looms large over most matrimonial proceedings. However, as mentioned earlier, there are differences among women and men lawyers regarding the usability of this section. While women lawyers advise the women to file under this section only as a last resort only when women do not see the chances of survival of their marriage. They feel that women are often advised to file criminal cases without explaining the complexities of the criminal case. Male lawyers on the other hand advise this route when women seek a speedy settlement. (One of the male lawyers has had the record of filing 35% of criminal cases in the Mahila court). As the civil suit is long-drawn the relief expected in a civil suit is accelerated by filing a criminal complaint. It is assumed that a pending criminal case acts to the advantage of the woman in the civil court in settling matters of maintenance, custody, return of her property and divorce.

Filing the 498A case is not effective when one approaches the police station directly. Lawyers instead use the route of the 'private complaint' through the court to get the complaint registered in the police station. The long wait, uncertainty and humiliation in the police station is partly avoided with such a move. Nevertheless filing of a case under the Section 498A involves a considerable amount of lawyering in filing private complaints, anticipatory bail applications, regular bail applications and in a few cases the complete trial too. But the 'increasing' use of criminal cases seems to have led to the judicial trend of the criminal case being viewed as an act of cruelty by the wife towards the husband. In many cases, husbands use this fact as a ground for filing divorce. Referring to such a trend the family court judge we interviewed stated that this seems to be causing major damage to the woman's case.

Maintenance:

The bulk of cases filed in the family court are of maintenance both under the matrimonial and criminal laws. Almost every petition in the family court has a maintenance angle to it.

- Women lawyers felt that in the majority of the cases, they were unable to serve summons on the husband.¹⁰⁴ Most maintenance cases fail at this level itself.
- The wife, in most cases, is incapable of providing proof of her husband's income or assets. The businesses are either in the joint family or in partnerships and thus women have no concrete sense of the investments made in these ventures nor information of their husband's incomes. The courts are rigid and inflexible in seeking evidence in

¹⁰⁴ Two years ago, the ceiling of Rs. 500 in Section 125 CrPC was removed.

these matters¹⁰⁵. No investigation is conducted by the Judge to ascertain the husband's income. The matrimonial lawyer felt that the court should be able to ascertain the husband's income even before the trial begins, in the very first appearance of the husband. The judges are generally reluctant to make such an investigation and to invoke the presumption of Section 106 of the Evidence Act against the husband.

- At the other end of the spectrum lie the daily wage husbands against whom the orders are again ineffective. Women lawyers find that maintenance cases work best in case of salaried employees, especially in the government offices. In the case of the private sector jobs, subsequent to a maintenance order, the husband changes jobs and thus evades payments of maintenance dues.
- Maintenance cases are contested when the husband either denies the validity of the marriage or questions the paternity of the child. It is in these instances that the trial is long drawn, evidence becomes mandatory for proving the marriage or medical evidence to decide the paternity question.
- The maintenance law stipulates a separate set of procedures for executing the maintenance order. There are many instances where the woman might have a maintenance order but may not pursue the execution of the order as they are another set of proceedings involving time and money. Fatigued by the earlier proceedings, some women give up. Sometimes, the husband may offer separate residence or other terms demanded by the wife, to avoid payment of maintenance.
- The male lawyers see maintenance cases as a weapon to make the husband agree to some of the terms of the wife. Along with the criminal sanctions of Section 498A, the maintenance case is seen as a pressure on the husband. However some maintenance orders get executed and lump sum settlements made after filing the criminal case.
- Some Judges compound the situation by being lenient to errant husbands. In cases where the husband has to pay a huge arrears amounting to thousands of rupees, the husband escapes by paying a minimal sum of Rs. 500 and seeks the next adjournment which would be a month away. The Judge does not make the threat of arrest or attachment often.
- The execution proceedings take a minimum of six to eight months. Salary attachment, property attachment and finally arrest proceedings are any of the final results of the execution proceedings. In the case of the decree of the property attachment, at times the husband agrees to pay a lumpsum amount as fixed deposit. In the case of salary attachment, an account is opened in the bank wherein the salary is automatically deposited in the account. The woman has to merely withdraw the amount deposited every month. Alternately, as noted earlier, there are lumpsum fixed deposits in the bank. The salary attachments work best with men working in government offices. Usually a private sector employee quits the job to find another job in a new company due to which serving of notice gets problematic and thus leads to stalling of the entire proceedings. In the case of small amounts there are also exchanges in the court in the presence of the Presiding Officer.

¹⁰⁵ One of the instances stated by the matrimonial lawyer was as follows: in a maintenance case to prove the husband's income, the woman's lawyer filed the brochure of the company in which the husband was working which clearly mentioned that the husband was the Managing Director of the company. Yet the Judge did not accept that brochure as evidence of the husband's capacity to pay maintenance.

Injunction Orders:

Injunction orders are primarily civil rights used by women lawyers extensively to prevent the woman from being evicted from the matrimonial home, to restrain the dispossession of the home, to protect the custody of children and other issues. Male lawyers found no scope of the use of injunctions in marital matters. One of them asserted that the criminal case is far more effective and quicker than the right of injunction.

The procedures of the family court:

Most lawyers agree that presently the family courts in Hyderabad and Secunderabad are over burdened with cases. The volume of litigation is very high. While the other civil courts conclude their work schedules by afternoon, the family court judge works till late in the evenings. This Judge has to work all six days of the week, since his/her duties are manifold. The reconciliations take a considerable amount of the Judge's time. The Judge has no time to record his judgements and has to usually carry his work home. The energy and commitment required in the case of the family court judge is much more than other judges. As a result, the rate of transfer of these judges is quick as they find the court very burdening.

The family court judge has no special training to act as a judge in this court. They are routinely transferred to this court. Both men and women are appointed as Judges in this court. The Judge thus adjudicates with no understanding of the matters of the family except the commonsensical. Judges work mostly with stereotypical and uncritical notions of men and women's roles in the family. Crude remarks are passed in the open court about men and women.

It is fairly common to see that there is no respect for the woman who has filed for a relief. The judge always tries to assess if the woman is living with another man or whether she is simply trying to get away from the rigors of living in a marriage. There is a tendency to examine the woman's complaint with suspicion. Moreover the result of the adjudication still largely rests on the woman's articulation of her complaint. If she is firm and non-compromising, there are chances of the process going against her. It is not favorable in the court if the woman dresses well and seeks maintenance. She has to give the impression of vagrancy and destitution. To say the least, a subtle physical examination is carried out in the process of adjudication. The mere recognition that the woman is exercising her right to maintenance or any other relief is conspicuous by its absence in adjudications.

The judges are not trained to do marriage counseling for settlement and reconciliation. A major problem with this lack of training is that they pass judgements that can possibly be detrimental to the further proceedings in the case. For instance, while conducting reconciliation in a particular case, a Judge remarked on the file that 'the woman arrogantly refused to live with her husband'. Such a comment on the main file of the case will be detrimental to the woman in the subsequent trial proceedings. As mentioned

earlier, though the FC Act stipulates the presence of counselors for the family court, they are absent in the family courts in twin cities.

The family court has become inaccessible due to other procedures as well. Every court has an administrative section attached to it. This is the place where cases are filed, scrutinized and then forwarded to the Judge. There are rigorous rules concerning the filing of papers, documents etc. Each section prides itself on its technical expertise. At the family court section the scrutiny of documents is so rigid that it causes great hardship to people approaching the family court. At present, the section works like a regular civil court section and is oriented to the expertise of lawyers. Many lawyers felt that the rules of filing papers should be accordingly changed in the section keeping in view the objectives of the FC Act.

There are indeed several problems with the current functioning of the family courts. All legal proceedings are time consuming and involve considerable expenses. The inefficiencies of lawyers and the apathy of the judges, combined with the notions of the 'normative family' work against the women to make litigation a challenging and difficult process. Any petition for maintenance or other relief inevitably places on trial the roles of a wife and husband in the family. The courts abound with stereotypical notions of 'good wives' against which women have to stake their claims. Consequently, the accounts of women's cases are inevitably stories of delays, marginalisation, humiliation and apathy. Since domestic violence is not mentioned clearly in most matrimonial and civil laws, it is a battle to establish it at every turn of the litigation process.

The battle thus squarely depends on the empathy of individual lawyers and judges. But, the ignorance of the lawyers about various strategies also seems to limit their usefulness in supporting women's interests. An example would be the use of injunctions to consolidate women's position in the matrimonial home. Male lawyers are unaware of the use of injunctions in this context. They would rather use the criminal section, 498A than the civil remedies unaware of the loss to the woman's interests in filing a criminal case.

That a good lawyer or a sensitive judge can read the laws in a woman's favour has been accepted for some time now. However, as is clear from the above account, the actual situation is far from this ideal. What kind of safeguards can one provide in the absence of such lawyers and judges? This has been the ongoing concern for women's groups in drafting new laws. Some feel that there is a need for laws that will define domestic violence and the relief explicitly so as to leave no doubt in the mind of the judges. In the recent times, the objective of drafting new laws has been to make sure that women's stakes do not depend exclusively on the expertise of lawyers and judges. The aim is to create laws and procedures that would automatically provide relief for women with as fewer mediations as possible. In the following section, we turn to the new laws that have attempted to transform the courts relatively more accessible to women facing violence.

The new bills related to marriage, family and domestic violence:

A tremendous caution is evident in framing new laws for women's entitlements in the family because of the intense political attention it has attracted all along, especially on communal lines. Since the 1980s the overarching climate of Hindutva politics has made the project of 'new laws' a much more complex one. Yet there have been many attempts by various organisations to formulate better laws for securing the rights of women. The Shah Bano case acted as an impetus for many groups to formulate a common civil code and since then we have seen several attempts to formulate a uniform civil code and/or to change the existing laws, including those related to violence against women. National Commission for Women also contributed its own share towards this enterprise. The Lawyers Collective Bill in 1999 was the latest in formulating the Domestic Violence Bill. In this section, we discuss these attempts at length with an emphasis on the shifting focus of these various drafts.

Latest developments in law reform indicate a shift towards constructing a law around domestic violence that foregrounds civil remedies. What is interesting is that the domestic violence law carefully seeks to lay out reliefs outside the regular matrimonial laws and does not interfere with the form and content of those laws. When we look at the responses that the domestic violence draft Bill has drawn, it is surprising that it has not provoked any polarization on communal lines, if only because violence is seen as purely 'women's' issue. One is almost tempted to say that the domestic violence Bill points to possibilities of making laws that can circumvent the sticky issues of gender and community. Perhaps, as Flavia Agnes notes, in the context of the proposed formulation of the UCC,

The legislative history of last fifty years reveals that it is possible to enact uniform legislations in specific areas of family law without invoking the controversy of majority-minority politics. The Dowry Prohibition Act, 1961, the Medical Termination of Pregnancy Act, 1971, introduction of new offence of cruelty to wives under Section 498A IPC in 1983 and the Family courts Act, 1984 are indicative of this possibility.¹⁰⁶

One of the earliest drafts was proposed by the Bar Council of India in 1986. Some of the salient features of the draft Bill centered around compulsory registration of marriages; ceiling on Section 125 CrPC to be removed, protection of children's interests; parents' property to be settled in favour of the children; and most importantly the concept of joint ownership of matrimonial property.¹⁰⁷

In the same year, ILS Law College Pune, drafted a Bill titled "The Indian Marriage and Matrimonial Act". The Bill provides for the repeal of all existing matrimonial statutes. The draft incorporated provisions of maintenance under Section 125 CrPC, conviction for bigamy under Ss 494, 495 and 496 of IPC and also punishment for the non-payment of maintenance. Other features included compulsory registration of marriages and invalidation of non-registered marriages. Women and children's rights to maintenance

¹⁰⁶ P 213, Agnes, Flavia, *Law and Gender Inequality: The Politics of Women's Rights in India*, Oxford University Press, New Delhi, 1999

¹⁰⁷ P 170

was sought to be protected in non-registered marriages. An ambiguous right to matrimonial property was also incorporated in the draft.¹⁰⁸ The concept of an optional code was debated in both the Bar Council and ILS Law college draft Bills. The anxiety of repealing existing laws and bringing in a brand new set of laws was an important point of discussion in these drafts.

In 1988, Vimochana, a Bangalore based women's organisation and the Lawyers Collective held a three day Law-School for social activists, lawyers and women who were victims of marital and social harassment. During the course of the Law School, the group formulated a series of recommendations for amendments to existing legislation.¹⁰⁹ Some of the important recommendations of this workshop were:

- Compulsory registration of marriages
- The rights on marriage to include a. all property acquired after the date of marriage to be jointly owned by the husband and wife, b. the wife should have the unconditional right to reside in the matrimonial home, c. the husband should not be permitted to sell the matrimonial home without the consent of the wife, d. if the matrimonial home is tenanted, the husband in whose favour it is tenanted, should not be entitled to surrender the tenancy except in favour of the wife.
- Divorce by mutual consent, irretrievable breakdown of marriage should be available in all personal laws; the husband's right to divorce his wife unilaterally without recourse to family courts should be abolished in all personal laws; no divorce demanded by the husband shall be granted on this ground if the wife objects, unless the husband makes adequate economic provision for her; if the wife is in possession of the matrimonial home, she shall not be dispossessed at the time of the divorce; lumpsum payment of alimony and transfer of assets at the time of divorce.
- Substantive and procedural changes in the law of maintenance.
- Custody of children to be made in the best interests of the child. The recommendations specially protects the mother's right to custody by stipulating that custody should be given to the parent who has taken responsibility of looking after the child in the past.
- Procedural changes in the family courts leading to simplification; counseling should not be mandatory.
- In criminal cases investigations conducted by women's organisations should be admissible as evidence and the law of presumption in Section 113 A of the Indian evidence Act in cases of suicides of women should be amended to make it mandatory and not discretionary.
- A new domestic violence law authorizing ouster injunctions against a violent husband with power of arrest for violation of such orders.

National Commission for Women (NCW) drafted two bills in 1994 named The Marriage Bill 1994 and Domestic Violence to Women (Prevention) Bill 1994 to introduce

¹⁰⁸ P.171, Agnes, Flavia

¹⁰⁹ Recommendation of Lawyers Collective Bangalore Law School, in Indira Jaising ed. *Justice for Women: Personal laws, Women's Rights and Law Reform*, Other India Press, Goa, 1996.

significant changes in marriage laws which were under consideration of the then government. The Marriage Bill 1994 sought to repeal all the existing acts covering marriage and divorce aiming for a uniform civil code. Some of the important changes envisaged by the Marriage Bill were:

- Compulsory registration of marriage. If no entry is made in the marriage register it shall be presumed that no such marriage has been performed. Non-registration of the marriage will attract penalties too to the extent of Rs.100 per day.
- Mandatory period of separation for dissolving marriages by mutual consent is not less than three months. Additional grounds for divorce would include addictions to alcohol and drugs, and AIDS infected spouses.
- The family court should adjudicate criminal cases too.
- A time schedule for the disposal of the cases. A total maximum time period of six months for disposal of both civil and criminal cases arising under the Act.

The Domestic Violence Bill, 1994 proposed the following relief:

- A petition may be presented by any other person on her behalf to the Protection Officer for the passing of a protection order.
- The Bill defines Court to include a family court and a Mahila Panchayat consisting of three members of a Gram Panchayat.
- Delay in service of summons is avoided by making it returnable in seven days. Pasting of the copy of the summons on the main door of his residence will be deemed to be validly served and shall not be called in question in any court.
- To provide safe shelter to the woman within the matrimonial home or alternatively, feasibly in a separate residence.
- The definition of domestic violence is expanded to include a wide range of acts that would constitute violence.¹¹⁰

A private Member's Bill was introduced by a Congress Member, Veena Verma, in the Rajya Sabha, in May 1994, titled The Married Women's (Protection of rights) Bill 1994. Flavia notes that this Bill grants rights to women over all the property of the husband and does not confer similar rights to husbands. This right is a contrast to the other Bills which grant women the right to that property of the husband that is acquired after the marriage. Moreover the other Bills make this right mutual. This Bill also drafted the following rights:

- The right to live in the house of her husband, whether owned by him or by members of the joint family, the right to food, clothing and other facilities;
- The right to an equal share in the property of her husband;
- The right to be consulted in matters of family business and other financial transactions regarding the husband's property.¹¹¹

¹¹⁰ Biraj Tiwari, *Marriage Laws to be Revamped*, in Indira Jaising ed. *Justice for Women: Personal Laws, Women's Rights and law Reform*, P 336,

¹¹¹ Agnes, Flavia, *Law and Gender Inequality: The Politics of Women's Rights in India*, P 186.

Flavia notes that this Bill was discussed in the Rajya Sabha during three consecutive sessions and despite some stray comments, the Bill was unanimously accepted. Unfortunately, the Bill was shelved due to elections and the new Government that arrived did not uphold the promise that it would be introduced as a Government Bill.

After a gap of five years, in 1999, the Lawyers Collective came out with its draft law on domestic violence. About the Bill, Indira Jaising says

By this time most women's groups were united towards the need for a law on domestic violence. And they saw this as a way in which the State would issue a statement, recognizing that half its citizenry faces a peculiar kind of gender-based violence. At the same time the statement would also mean that this fact is not acceptable to the State. It was also agreed that the law addressing domestic violence will be civil in nature, as the existing criminal laws had proven to be inadequate to meet the needs of the women.

Commenting on the draft of the bill, Akshay Khanna says,

“Matrimonial remedies such as divorce, judicial separation, guardianship etc do not address the immediate need for protection. Although courts may be approached for emergency orders, the limitations of such laws make them unsuitable to cases of domestic violence. The focus of the Bill is to provide an expeditious civil remedy to deal with domestic violence. The Bill recognizes domestic violence as a civil wrong and provides unique remedies such as protection orders.”¹¹²

Taking into account the limitations of the processes of criminal and civil adjudication in women's cases the Lawyers Collective Bill covers the following aspects: exhaustive definition of domestic violence and domestic relationship; right to matrimonial home; protection officers and accredited service providers; protection orders, emergency monetary relief and suspended warrants with prescribed time frames. The central relief in the Bill is the right of the aggrieved person to reside in the matrimonial home and seek protection orders. The protection order may prohibit the respondent from:

- committing any act of domestic violence
- enlisting the help of another person to commit any such acts of domestic violence
- entering the shared household, provided that the court may impose this prohibition only if it appears to be in the best interests of the person aggrieved or any child;
- entering the place of employment of the person aggrieved or, if person aggrieved is a child, its school;
- entering the residence of the person aggrieved;
- attempting to communicate in any form whatsoever with the person aggrieved, including personal, written or telephonic contact;
- committing any other act as specified in the protection order;

¹¹² Khanna, Akshay, *Domestic Violence Against Women: Requiring an Attitudinal Change*, *Lawyers Collective*, November, 1999.

The protection order may further

- restrain the respondent from dispossessing the person aggrieved from the shared household
- direct the respondent to restore the possession of the shared household or a part thereof to the person aggrieved;
- restrain the respondent from alienating or dispossessing the shared household or encumbering the same; or
- restrain the respondent from renouncing his rights in the shared household.

The court may also direct the respondent to pay emergency monetary relief. Keeping in view the dismal scene of execution of maintenance orders, the Bill provides that the protection officer may direct an employer or a debtor of the respondent to directly deposit with him a portion of the wages or salaries or debt.

The Bill makes breach of the protection order an offence. While granting protection orders, courts are required to pass suspended warrants of arrest that remain suspended until there is no breach of such protection orders. In the event of a breach, the woman has to file an affidavit and produce the suspended warrant before the police who may then execute the warrant before making an arrest. Thus the civil remedy is closely followed by police support.

Major efforts were made by the Lawyers Collective-Womens Rights Initiative to gather consensus for the Bills across the country. Many consultations were held with women's groups to debate the possibilities of the draft Bill. The objective was to make the Government recognise the draft Bill and reintroduce it as a Government Bill.

On March 8, 2002, the Government introduced its Bill on domestic violence in the Lok Sabha titled 'The Protection from Domestic Violence Bill, 2001. To say the least the government Bill was a mockery of the entire history of the struggle of making a law for addressing domestic violence. From the definition of domestic violence, to the people who can avail protection under this law, to the remedies available under it, the government Bill drew flak from women's groups across the country. The Bill made no significant departures from the existing civil and criminal provisions for women. At the same time the Bill brought in new pretexts for the husband and coined concepts like 'habitual assault' and 'violence in self defense of not only himself but also his property' as grounds to justify the husband's violence. However, the Parliamentary Committee that was established to review the bill took into account most of these objections and made recommendations to revise the Government bill.

In conclusion:

In the formulations of new laws, apart from the shift from seeking criminal to civil law remedies, there also seems to be an attempt to bypass the controversial terrain of

matrimonial laws in securing rights of women in marriage. Indira Jaisingh's argument on behalf of the bill prepared by Lawyers' Collective illustrates this trend.

“We want to encourage women to explore legal remedies in civil law as well. Civil law allows a woman to fashion the remedies that she wants according to her needs, such as monetary relief, damages for causing harm, injunctions restraining dispossession from the home, custody of children and so forth. In a manner of speaking civil remedies often resolve an issue, making it unnecessary to take recourse to the criminal law or matrimonial remedies. It is important to establish a hierarchy of remedies suited to the gravity of the situation; there are times when both civil and criminal remedies may be invoked simultaneously, depending on the facts of the case...This is not to state that the existing civil law is inadequate. It is not. It is mainly based on common law remedies, and continues to view domestic violence as a private matter. Matrimonial laws are also unsuited to address domestic violence as they deal mainly with issues surrounding marriage and its dissolution. There is thus an urgent need for a civil law addressing domestic violence and its known culturally specific forms. We need to look at domestic violence as a violation of the fundamental right to live with dignity and of the right to equality and the equal protection of the law guaranteed under the Indian Constitution.¹¹³

This new bill by the Lawyers' Collective seems to have internalised the women's movement's understanding of the hurdles that women face while accessing courts. A wide range of relationships in which women live, as opposed to the registered monogamous marriage has been incorporated. Second, a broad and unambiguous definition of overt and covert forms of domestic violence that operate insidiously against women in their homes as opposed to physical or dowry violence, has been incorporated. Third, the provision of emergency relief in contrast to the long-drawn relief in the regular courts. Fourth, the presence of Protection Officer and the NGO service providers who will oversee and mediate women's access to courts.

In the context of these current demands, it may be useful to examine the objectives of the F C Act. The concept of family courts was an important project in the campaigns of the women's movement. It was hoped that the family court would be a space where a non-formal, non-adversarial and speedy resolution of cases would take place. While the Act was criticised by women's groups that it blatantly made family unity as its main point, it needs to be noted that this Act also had many other important features apart from its statement on family. The Act enabled the Judge to depart from the rigid principles of Civil Procedure Code and Indian Evidence Act and to use a judicial discretion in deciding family matters. Conciliation procedures were envisaged as a parallel activity to adjudication.

The existing scenario of family courts, however, is hardly encouraging. In the first place, not all states in the country have established family courts. Further, these family courts are to be found more in the metropolitan cities than in the districts. Andhra Pradesh, for

¹¹³ P v, Jaising, Indira, Law of Domestic Violence: A User's Manual for Women, Universal law Publishing Co. New Delhi, 2001

instance, has established family courts only in the year 1995 which is about ten years after the enactment. While there are twenty three districts in the state, we have only seven family courts. Family matters in the rest of the districts are tried by Magistrate's and district courts.

While the central Act provides that conciliators should be present in the court to aid the Judge in resolving matters, the family courts in Andhra Pradesh have no such facility. The Judge continues to conduct counseling and conciliation. Much against the spirit of the Act, the proceedings continue to be formal and adversarial in nature. The proceedings vary from one family court to another with no uniformity in procedures. The process is still heavily determined with the expertise of the lawyers and the judicial-moral discretion of the Judge. There is no special training for Judges to adjudicate in family matters. A Judge is routinely transferred from a regular civil/ criminal court to the family court.

This is the state of affairs after twenty years of passing the central legislation and eight years after the state rules were passed. It is evident that, by default, in the absence of pressures from a pro-woman lobby, the family court easily lapses into the format of a regular civil court. It is here that one is forced to ask the question whether new laws can change these operative contexts of lawyering and adjudication? It is evident that new law, whatever their content may be, will continue to operate only in an adversarial system where women's claims will be contested legally and ideologically. To what extent can a law by itself safeguard women's claims?

While the new law on domestic violence is true to the claims made by feminist politics on the violence that women face at home, it is equally important to gauge it against the background of other laws similarly advanced by the women's movement in different phases of the last two decades. It is assumed that a new law will automatically operate in the interests of women. The results of the study however show the extensive mediations which take place in the courts when women fight for their rights. Moreover the letter of the law becomes just one factor in the dispensation of justice. Perhaps it is equally important to grasp the significance of the wide range of mediations that structure the outcomes of the law.

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Chapter 6

Conclusions

The objectives of the project have been: to understand the needs and expectations of women from the institutions of police stations, hospitals, courts and family counselling centers; two, to understand the responses of the institutions to women; three, to see whether these two match in any way. Our major assumptions were that these four were the primary institutions that women facing marital violence would reach to and that these institutions were not “adequately” addressing women’s needs. We wanted to understand why this was so. Three years down the lane, these two assumptions are certainly shaken. In what follows, we seek to list some of the major conclusions reached in the study and raise questions for further exploration.

Family counselling Centres:

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A variety of groups, organizations, agencies are involved in the activity of counselling on marital violence ranging from women trade unions to women’s wings of political parties. The nature of activity ranging from negotiating between the families to facilitating women’s access to courts. They also operate with a range of ideologies from that of welfarist to feminist.

Many centres lack the basic facilities such as furniture and space. At most of the counselling centres, the atmosphere at the counselling centres is not conducive to listening and many counsellors do not seem to be able to understand what the women are saying due to lack of exposure to critical work on marital violence and other issues related to provision of services. Apart from the class inequalities, caste inequalities and differences seem to play a major role in shaping the nature of counselling that is taking place.

In the absence of access to records of counseling centers it was difficult to verify claims to ‘successful resolution’ of the cases but women do stop coming after a while indicating either that they have got short term relief or that they have moved to some other agency for relief.

In the light of the findings, it seemed that a useful way of assessing the quality of services should include the quality of environment provided at the centre, by the group, the quality of time and content of counselling. Apart from the above outlined factors that should go into a good counselling service, one sure thing that we would be able to say is that it should be one that is sensitive to issues of caste and class, one that recognizes that women’s familial lives are different in different contexts.

2. Medical system:

The demand that the medical system be proactive in responding to women facing violence at homes is quite new in the Indian context. Reasons for the absence of such a demand in the Indian context seem point in the direction of the history of negligence and indifference of the medical system towards issues of gender violence and their active participation in the governmental programmes of population policies, which are not attuned to the needs of women, to say the least. The articulation of this demand seems to have arisen in the context of the interests of the international agencies and associations.

From the study, it was clear that most of the medical personnel do not recognize that violence is a health issue, except those who come into touch with women who speak about it such as psychiatrists and the doctors who work in the burns wards or who have had exposure to critical thinking on gender.

Psychiatrists report that the proportion of women patients who face or have faced abuse and violence has increased many folds in the last ten years. While their analysis of the issue is mostly sociological, the diagnosis and treatment, however, seem to be in the pathological and medicalized model. Referrals to other agencies are extremely few.

The staff at the burns ward, unlike in the other wards, seem to be sensitive to the nature of violence suffered. But women still seem to be reluctant to report the perpetrators of this violence or those who provoked it because of the immediate circumstances that surround the incident of burning such as the cost of care, the possibilities of living in a maimed condition apart from those of children.

Considering the limited exposure of the medical personnel as well as the non-existent referral network between the hospitals and other agencies, any improvement in the reporting of and recording of violence would require considerable effort.

On Police Stations:

During the study of police stations we found that in Hyderabad, Section 498A has been through several modifications in the twenty years of its existence. Registrations under this section have been made subject to prior permission from higher authorities and moreover many of the cases are being filed through private complaints in the courts. The majority of cases in the three women police stations in Hyderabad under Section 498A are now being filed or categorized as non-cognizable whose perusal depends to a large extent on the women complainants and which are subject to compromises and reconciliations.

However, the number of women who come to the police station with the primary intension of registering a criminal case against the husband seems to be limited. Several women come with the expectation of either reforming the husbands or obtaining some reliefs through the threat of the police case.

As such, the processes of reconciliations and compromises cannot be understood only as a clever ploy of the police to water down women's complaints though that happens too. Women's readiness to compromise and/or reconcile with the husbands and marital families seems to have allowed the police to deploy the category of non-cognizable 498A cases, which was a legal anomaly till a few months ago.

Considering that women's expectations from the police stations are not concentrated towards the registration of criminal cases against their husbands and marital families, the imperative of the police to keep the number of these cases down as well as the recent debates within the women's movement regarding the untoward consequences of focussing on the criminalization of domestic violence, it seems to us that caution needs to be exercised regarding the improvement in the functioning of the police stations.

On the response of the Family Courts:

In Andhra Pradesh, there has been little follow-up with the setting up of the family courts and the functioning of the family courts. By default, in the absence of pressures from a pro-woman lobby, the family court seems to have lapsed into the functioning of a regular civil court, with attendant problems of inaccessibility.

In the context of functioning of family court in the mode of a regular civil court, it has become necessary for women to engage lawyers. This in turn has made family court as expensive as other courts especially in terms of engaging good lawyers.

The appointment of judges to the family court also does not seem to follow any special criterion regarding their inclination or suitability to the court. Judges are routinely transferred from a regular civil/criminal court to the family court. There seem to be very few efforts to prepare them for this posting, in terms of training etc.

Most cases for maintenance seem to get stalled at the stages of serving summons, ascertainment of the income of the husband and the execution proceedings. While obtaining a maintenance order may be possible, getting it executed seems to be proving extremely difficult. Maintenance cases continue to work best against husbands employed in government jobs. The uncritical attitude of the judges and lawyers in agreeing to husbands' efforts at reconciliation in return for the avoidance of paying maintenance also seems to go against the execution of maintenance orders.

In the context these issues, it seems to us that there is scope for improvement of the structures and functioning of family court in our state.

Along with these findings, the study has thrown up several other issues that need elaboration and further exploration. They are as follows:

Histories and contexts:

We have come to understand that institutions of courts, police stations, hospitals and family counselling centres have different histories and different functioning logics. While

police, courts and hospitals were invoked early on in the struggles against marital violence, counselling centres came later. Each of these function with a varied primary focus -- police stations - investigations, courts - adjudication, counselling centres - mediation and hospitals - treatment. Again, what women seem to be seeking from these four might or might not match the logic of the institutions. For instance, quite a few women seem to want police intervention but not police investigations into marital violence. Moreover, the demands of women's groups and women's movement from these institutions also seem to be undergoing changes, whether in response to the changing demands of women or in response to the functioning of these institutions. For instance, while doctors were asked to re-act sensitively to burns victims i.e., recognize the history of violence in the cases of burns victims, in the recent times they are being asked to be pro-active and to find out violence lurking behind 'ordinary' illnesses. As far as legal aspects of domestic violence are concerned, there seems to be a major shift from demanding punitive action to seeking civil remedies. The new Domestic Violence Bill 2001 locates itself in this context. Therefore it seems important to ask questions about our framing of the issue of institutional responses itself – would it be more useful to locate the responses in the context of the histories of the institutions and our demands on them?

Mediations:

These four institutions do not seem to be the predominant spaces in which marital violence is negotiated or dealt with. A range of social and political formations, old and new, from caste and village panchayats to local women's groups, community-based groups to political parties are involved in negotiating the issues around this violence. They not only mediate among families but also mediate individual women's access to formal public institutions. As outlined in the first chapter, the understanding of the workings of these social and political formations is still at a preliminary stage. We came across these formations in our study of all the four institutions, sometimes hovering in the background, sometimes a party to the proceedings. Our explorations into the workings of these formations have indicated that they act as support groups, as guarantors of agreements reached, as vigilance groups, as courts that conduct summary trials, as well as corrupt bodies that castigate women facing abuse as responsible for situation. However, further inquiry is needed to understand the useful ways of thinking about these groups or formations and their mediations, which run alongside the formal institutions.

Ways in which institutions figure in the lives of women:

The analysis of women's interaction and negotiations with institutions has shown us that we need to think afresh of ways in which these four institutions figure in the negotiations around domestic violence, in the lives of women. Very few women take the path of a 'final resolution' or walk out of the relationship that is abusive, at least in the first instance. They constantly weigh various options – try to postpone this decision, try mediations through family, relatives and friends, then approach the issue formally – through some institution or some one outside the circuit of family and friends, like the local politician or the basti dada to fix the male partner and have some solution. As such, their expectations from the institutions are also not fixed. It became evident in the perusal

of women's course of action in the family counselling centres, police stations and courts, women change their course of action depending on the outcomes of other efforts. The oft-repeated complaint of many institutional personnel that women never make up their mind- why are women so 'inconsistent' -is true in certain senses. They go back and forth on their decisions. An important question that arises at this point is – do institutional spaces provide any room for such back and forth movements of women, such inconsistencies? If yes, how do we look into this roominess?

Assessing institutional performance:

Following the above, another aspect that needs elaboration is whether the performance and attitudes of the institutions can be categorised into simple pro or anti women stances or there has to be a different mode of enquiry itself? We have come to understand that each of the institutions is useful to the women in particular ways, in terms of its own functional ethos and the demands made on it. For instance, while family counselling centres have been established with the aim of helping women in distress, they have been useful to some middle class women desirous of separating from the husband in obtaining their dowry back or obtaining a one-time financial settlement outside the court. Similarly, we found that when poor and lower caste women do manage to approach the police in the case of marital violence, the police intervention without any registration of the case stops violence at least for a while. The questions that seem relevant in this context are: what are the ways in which institutions are useful to women; under what circumstances are they useful; and to which women are they useful. Actually both in our earlier understanding and in the responses of the institutions, it is the needs and expectations of the middle class women that seemed to have played the central role. The last question brings in the issues of class, caste and religion that consistently challenged us in terms of framing our questions. To put it straight - what could be the ways of framing our questions of institutional responses that would be attentive to caste, class and religion?

On recommendations for institutional improvement:

While there is a certain space being given in the public sphere for the articulation of 'violence', the complex set of issues that impinge upon it are yet to be explored and understood. It in many ways reminds us of the relative ease with which dowry- as an outside agent was taken up as the cause of marital violence, ignoring the myriad issues of gender inequalities in the family raised by women's movement, some time ago. This has often made some feminists ask – is it useful to start understanding marital violence at the point of violence? Would it not be more productive to start somewhere else -with an investigation of the family– what is happening in/to the family? The interesting ways in which natal families play a key role in many decisions of women facing violence also set us thinking about the changes in the notions and ideologies of the family during our study. This also made us wonder about the reform proposals for institutions like courts, hospitals or police stations. In fact, isn't the training of most institutional personnel innocent of contemporary debates on family, violence and inequalities?

On rights framework:

In the Indian context, much of writing and thinking on the institutional responses to domestic violence is informed by the rights perspective. Within this perspective, the state and public institutions are expected to treat women as individual citizens bestowed with various constitutionally guaranteed fundamental rights. To a large extent, it has shaped our understanding of the inadequacies of the institutions. But in order to conceptualise their actual functioning with their uses for women, their responses due to varying influences, their impasses it is not. What kind of theoretical understanding of women and institutions would accommodate these insights?

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Appendix

1. Questionnaires:

1.b Questionnaire for medical doctors:

Have you come across cases of domestic violence among your women patients?

How many cases do you generally come across?

If they do not, do you guess? What are the medical symptoms that you consider when you conclude this?

Do they ever report to you directly or how do they broach the topic?

If they do, how do you deal with it?

Do you ignore it or treat them only as patients or listen to them or give them advise (medical or other wise)?

If they suffer from symptoms of psychological distress, do you refer them to other appropriate service providers?

After this many years of practice, have you developed any ways of dealing with these women patients who face from domestic violence?

Does the hospital that you work with have any referral services for women patients who face domestic violence?

Do you and your colleagues ever discuss it? How do you discuss it?

Did it ever figure in the meetings of your professional bodies?

Does it ever get discussed as a major health hazard?

Do you know of any WHO guidelines regarding treating domestic violence as a health hazard?

Questionnaire for Psychiatrists:

How long have been practicing? Where all have you practiced till now? What is your patients' socio-economic background?

When you started to practice, what was your understanding about women's mental health and domestic violence? Has this understanding changed over time? Why?

What are the usual problems with which married women patients come to you? Do they come in the context of the marital conflicts/ disturbance or marital violence or anything else?

How many of your women patients with mental health problems have histories of domestic violence?

What are the usual symptoms that such women come with?

Who brings them – is it the natal family or marital family or friends?

How do you define domestic violence against married women for your diagnosis and treatment, broadly?

How do you diagnose/determine that a woman's mental health problems arise from domestic violence that she has been undergoing? What are the usual methods that you adopt to diagnose? Do your methods differ from those of other psychiatrists?

What is the usual course of 'treatment'? Do you involve women's family members in the course of the treatment? How do they respond to your counselling/advise/treatment?

Do you think that such problems can be 'treated' and the patients cured through psychiatric treatment? If yes or no, why?

Do you consider domestic violence as a major health hazard for women, especially their mental health?

Questionnaire for police:

The number of personnel in each police station and the date of establishment of each station.
What kinds of women approach the station?
What are the procedures followed after registering the woman's complaint?
What type of registration occurs upon the woman's complaint?
What are the procedures of investigation?
At what stages of the investigation are the accused arrested?
What is the quality and quantity of evidence procured during investigation?
What is the role of marital and natal family in the registration of the complaint?
Do women withdraw their complaints and if so under what circumstances?
What is the role of lawyers in the registration and investigation of complaints?
What is the training received by police personnel in the women police stations?
How many complaints, FIRs and chargesheets are filed in each police station?
What is the role of other mediations like women's groups, lawyers and other actors in the registration of the complaint?

Questionnaire for lawyers:

When do women approach lawyers and whom are they accompanied with?
What kind of complaints do women have?
What is the first step taken by lawyers when women approach them?
To what extent does counselling help the resolution of the marital dispute?
What are the other preliminary proceedings taken up by lawyers?
What are the legal options presented to the woman?
What options do women generally choose?
How do you use criminal and civil remedies for securing women's rights?
What are the general problems in cases of maintenance?
What kind of settlements are arrived at in maintenance cases?
Is the law of injunctions used in securing women's rights?
To what extent do out of court settlements help women?
Are family courts responsive to women's demands?
Who would constitute a 'good' family court Judge?
Can women pursue proceedings without the presence of lawyers?
What is the role of the administrative section in the family court?
What kind of compromises are worked out in the Mahila courts?
Are women indecisive about legal proceedings?
What is the training imparted to a Family court/Mahila Court Judge?
What is the role of counselling in family court proceedings?

2. Brief sketch of the organizations:

1. Amberpet Mahila Counselling Centre:

It was started in March 2001 with the aim of quickly resolving the cases of marital dispute which come to their police station. Three women who have been active in thrift groups were selected as counsellors at this centre. A woman constable and a home guard are also put up here to support the counsellors. The cases of marital violence which come to the Amberpet police station are sent here. The aim of this centre is to prevent the breakup of the family and ensuring welfare of the family.

2. Andhra Mahila Sabha Legal Aid and Family Counselling Centre:

It was started in 1983. Among the first members in the executive board of directors were Durgabai Deshmukh, Sugunamani and Vanaja Ayyengar. At present, Sugunamanai, Rekha Prasad, D.S.R.Krishna, Susila Devi are among the prominent members. Each of them holds the membership for two years. However, it can be extended too. The stated objective of 'counselling' done here is to prevent the family from breaking up, through the reconciliation of the warring couples. All the 'counsellors' here are advocates. All of them work here on a voluntary basis and do not receive any salaries or honorarium.

The centre works for five days in a week from 5.30 p.m to 7.00 p.m. On any particular day, two senior advocates and one junior advocate are present at the Centre. The junior advocates are asked to 'observe' the process of counselling done by their seniors for three months. This is considered to be the 'training period' for the juniors. If the juniors complete one or two years of continuous presence at the centre, they are allowed to do 'counselling' on their own, without the presence of the seniors.

The Centre receives six to seven cases per day. The complainants either come directly to the centre or through the other women's organizations, mahila mandals, community elders, house owners, colleagues and women who have previously approached the centre. The police and the DWACRA groups send some women too. Though women across caste approach this centre (karma, golla, muslim, reddy, kamma, Brahmin, dalit) women from SC, BC and minority communities constitute the majority. Most of them are city-dwellers. Educational levels also vary. Quite a few men, especially from the middle class, also approach this centre. Women explore many options before approaching this centre, such as the local community leaders, mahila mandals, caste panchayats etc.

The Centre does not receive any written complaints. The counsellors ask the women to narrate their story and while they do so note down the details and facts of the cases under the respective headings in their files and their comments under the headings of remarks. After sending the initial notice to the offending families/husbands/in-laws, they wait for fifteen days to send the second notice. Almost everyone responds to the first notice itself. After they respond, the counsellors explain to them the necessity and importance of the family, the problems that they would face if the families break-up etc and try to reconcile the couple. The aim is to unify the couple. This would take four to five sessions. Even if the women decide to take divorce, the counsellors ask them to rethink their decision. Many a time the men drop out of this counselling. Women then are advised to adjust and change so that men will follow them. If their mediation does not work, then they help file and pursue cases in the courts. However, they refuse to take up those cases where the women want only legal aid and no counselling. There are no follow-ups. The case file is closed if the women do not approach the centre till four or five weeks. If the women do come back after six months or a year, a new file is opened for them.

3. Ankuram:

Discussion with activists of Ankuram involved: how and in what manner they got involved issue of domestic violence, how they deal with it, whether their methods have changed over time, whether their presence in the slums has encouraged the women to approach them, what the women's needs and expectations are and how far they have been able to handle these expectations. Ankuram has been working in areas of health and rights of women and girl children for the past four to five years. It operates in sixty

slums in Hyderabad. In each slum they have the local women as their nodal points. It is after they started their activities through these women that the other women started approaching them for relief from familial violence. Most of the problems are dealt with by the local women volunteers themselves and the difficult ones are brought to the main office to be handled by the higher ups.

At Ankuram we had discussion with Sumitra, Lakshmi and two other field activists (who are not the same as local volunteers). The field activists asserted that physical and other kinds of violence are rampant in the slums. The major complaints of women are as follows. Men are generally alcoholic and beat their wives. They do not work and quite a few of them have non-marital relationships with other women. Desertion is also not uncommon.

Ankuram involves the various formal and informal institutions in its dealing with the cases of domestic violence. It involves *basti* leaders, approaches the police, moves the court, and uses the short stay home (run by the government) for helping women. They also help the victimized women to find employment so that they gain economic independence. However, this has not been the case from the beginning. They have learnt to involve these institutions through trial and error. The support of the *basti* leaders and the threat of the police, they have learnt, are important in restraining the husbands from brutalizing their wives. Their local women's collectives (credit groups) are actively involved in resolving the matter.

They assert that during the course of working with victims of domestic violence they have learnt to accept that certain key issues will be hidden from them. This has taught them to keep a certain emotional distance from them and to accept women's decisions about their lives, even if they are contrary to what these women have suggested. A certain note of pessimism and frustration is discernible in their tone when they discuss the cases of women who continue to live in abusive relationships even after approaching them.

4. Asmita Resource Centre for Women:

It was started in 1991 by women who have and still play a major role in autonomous women's movement in Andhra Pradesh. One of the main aims of the organization is to fight against violence against women. It has adopted methods of street theatre, training workshops and *jatras* to sensitize women about their rights and gender violence. It works on a range of issues – from political participation of women, violence against women including domestic violence, rape, sexual harassment, reproductive rights of women, issues related to girl children, women's writings, panchayati raj, censorship etc. It is perhaps the first feminist organization in Andhra Pradesh, which started a counselling centre for women facing violence in families. They provide legal and non-legal counselling. They employ both social work graduates and women who do not have such training. They have consistently provided opportunities for the counsellors to get to understand issues related to violence against women – through workshops, seminars and regular classes. In their work on domestic violence, they work with both formal institutions such as police and the courts and informal networks such as *basti* leaders.

5. Catholic Health Association of India:

6. COVA:

It was started in 1984. The aim of the organization is the social, economic and political development of muslims. They work in nearly seventy bastis on issues of education, population control, thrift groups and community development. They started receiving complaints about domestic violence when they celebrated women's day in 1996. After consistent pressure built up, they started the counselling centre in 1997. It is open from 9a.m to 5 p.m.

7. Domestic Workers Movement:

8. Human Rights Forum:

9. Indian Council for Social Welfare:

This was started in 1991 and is headed by Roda Mistry. It claims that it does into take 'woman's side' but takes women and men's points of view on an equal basis. Their counselling as such is aimed both at women and men. Legal help is also offered. While the center is open through out the week, lawyer is present only on Saturdays. It receives six to ten women per month. The counselors take the complaint from the women either orally or in a written form. Each case is taken down in a register. They also take the help of the police if they think that the husband would be reformed.

10. Mahilabhyudaya Samstha:

Malladi Subbamma and Ramamurthy started it to work voluntarily on women's issues. Their work in the anti-dowry deaths committee and dowry deaths defense committee prompted them to establish an autonomous women's organization and to register it in 1989. The counselling wing was started with funding from the government. The aims of this wing are to offer legal help to the women victims of domestic violence, to provide relief to the women from the growing violence on them and to promote the welfare of women in the family. Right now, Subbamma heads the executive committee of the organization as the director.

Right now, there are two counselors at the center, both of whom have done their masters in social work. They claim to have been trained by Ramamurthy. The center is open from 10.00am to 5.00pm. The center receives ten to fifteen women complainants every month. The women have to write their own complaint (or get it written by someone) and give it at the center. The counselors fill the information in a pre-given form and start a file for the woman. The method of processing this complaint is the same as the AMS Legal Aid Centre. However, this center is not averse to involve the police in its dealing with the men, especially when they think that the husband would be reformed through threats

Counselling is done with the aim of preventing the family from breaking-up. The counselors involve the families on both the sides in the counselling process. If the women are bent upon taking divorce, then they would be advised to go for divorce by mutual consent. Then they make arrangements to get an out of the court settlement in the presence of a lawyer. They also undertake to retrieve the furniture and dowry from the in-laws' family and transfer fixed deposits to the women etc. Some women are sent to the short stay homes. Some attempts are also being made by the counselors to provide employment or livelihood for these women.

11. Mahilabhyudaya Seva Samstha and Apadbandhu: (Uday Mary)

Apart from being the president of Rangareddy district unit of Telugu Desam party, Uday Mary plays a key role in *Mahilabhyudaya Seva Samstha*, a federation of nearly two hundred local *mahila mandals* in the city. Born and brought up in a backward village of Nizamabad she began dealing with issues of family violence at the age of eighteen, mostly in the families of the farm labourers on their family farm. After migrating to the city, she started *mahila mandals* in many *bastis* and saw to it that they are headed by SC and BC women from the local areas. After these groups reached a substantial number she registered them as a federation. From the inception, the organization has been handling cases of domestic violence under its Apadbandhu programme. Though they do not receive any funds from the government, they maintain the programme from the contributions of the voluntary groups¹¹⁴ as well as contributions from some of the rich families whose problems she solves. While some of the cases are handled by the local women themselves, difficult ones are brought to Uday Mary who gives them instructions about handling the case. Women from poor, middle class as well as rich families approach her.

Though she does not claim to be a feminist, she believes that women are exploited and harassed in the society and family. Women, despite contributing disproportionately to the family are not given their share in the family resources. That is the reason why, while handling cases of domestic violence, she always takes side of the women. Even when there is pressure from the party, she does not succumb. She claims that women approach her instead of going to the police stations because in the latter people loose

¹¹⁴. Though Uday Mary denied that they take any fees from the women who approach them, I saw her sistant demanding fees to cover her travel etc. from one of the women.

their money as well as prestige. The police are not only rude but loot the people. Despite being women, they lack sympathy for women's problems. She never sends any one to the police station. If there are any legal issues involved, they take the help of their advocate. Her house also doubles as the office where the details of the cases are filed and preserved. Asked whether any women come back to her with the same problem she replied in the negative.

12. Navayuga Beedi Kaarmika Sangham:

It is a trade union affiliated to CPI (ML) Janasakti, a Maoist left organization, popularly known as a naxalite party. It has been involved in mobilizing women beedi workers on issues of wages for more than a decade. After getting involved in protests about some dowry murders in their localities, it was approached by women facing violence in families. Almost all the women approached their organization with the expectation that being a naxalite-affiliate it would be able to re-form their husbands with threats. The members found that it was very difficult to negotiate with the basti leaders – because they were always termed 'outsiders' and not given legitimacy. In their experience they found that *basti* or caste/community *panchayat* always were always been hostile to the women. In the recent period, they have stopped attending to these issues because they found them to be extremely time-consuming.

13. Progressive Organization of Women (POW)

Affiliated to CPI (ML) New Democracy party, POW works on wide ranging issues related to discrimination and violence against women – from the issues of wages to the issues of displacement, to sexual violence including domestic violence. It organizes protests, gives memoranda and uses media to highlight many of these issues. It has established/developed extensive links with the police stations/personnel during their work on these issues in the past one and a half decades. It offers legal help and other kinds of counselling/negotiations in individual cases. The members involve basti leaders, community/village/caste elders in many negotiations around domestic violence.

3. Workshop Reports:

3.1 Report of the Workshop on Rethinking Counselling for Domestic Violence

The workshop was attended by a wide range of activists, academics and counsellors. Suneetha during her introductory remarks tried to outline the background of the project. She placed the project in the context of the women's movement. Violence against women in the families was brought out into the open by the women's movement in the late 1970s and early 1980s. The movement questioned the mask of privacy and honour that surrounded this violence and asserted that this is a violence that has roots in the inequitous social structure in which women are subordinated to men. The initial phase of the women's movement focused on bringing out this violence, especially murders and deaths (that came to be known as dowry murders later on). However, later attempts began to help the survivors of violence, in the shape of a variety of counselling and legal services. Jagori in Delhi, Forum in Mumbai, Vimochana in Bangalore and Asmita in Hyderabad are examples of this shift. They began to address domestic violence on an everyday basis as well as periodic campaigns. Consequent to this, the government started services for women such as women police stations, family counselling centres or family courts. However, most of these institutions remained in the framework of preserving the family. None of the institutions question priority to the needs/rights of women vis-à-vis the family. Perhaps a major reason for this is the relative absence of questioning of the family ideologies by the women's movement itself, as a result of which 'domestic violence' still remains a non-public issue. This is not to say that in the everyday working of the feminist institutions there is no understanding of the issue. But in the 'public' arena there is recognition only for dowry violence and not for domestic violence. It is in the late 90s that the recognition for domestic violence has slowly begun. And it is in this context that the study of the institutions began. While there have been studies in other states, in Andhra Pradesh, only the attitudes of the judiciary has been studied. The study therefore was thought of in this context. The study seeks to understand the response of the four institutions of police stations, courts, hospitals and family counselling centres to women who approach them for help or support. So far, six family counselling centre in the twin cities have been studied. However, we did not confine ourselves to the

formal counselling centres which employ social work graduates. The study also considered counselling being done by a variety of women's groups. It became clear during the course of the study that the silence around domestic violence has been broken to a large extent. Now a lot of women are want to resist this violence but the support for them remains limited. Moreover, the women are approaching a variety of organizations for help such as caste panchayats, caste elders, thrift groups, political parties etc. Most of these groups are doing 'counselling'. When we tried to analyze these various kinds of counselling we found that it is done with a variety of ideological positions. Some of the counsellors expressed the need to have a common platform to share their experiences and discuss their problems. It is in this context that we are organizaing this workshop. However, we think that there is a need to focus on certain issues in the discussion: what is our understanding of the family and its ideologies? Do we think of the family as a breakable entity or a unit that should be preserved at all costs? Second is the understanding of violence. Do we understand the everyday violence that women face or do we think of only physical violence as worthy of attention? Third, how much are we aware of the differences and inequalities among women? How much are we aware of the caste and class background of the women and the consequent advantages or disadvantages that they have in terms of support from the family, material resources etc.? Fourth, how much self-reflexivity do we have about the counselling that we do? Is there any scope for the counselled woman in this process to talk back to us? Do we ever rethink about the counselling that we do?

Sandhya:

Sandhya, an activist from Progressive Organization for Women gave the first presentation on family violence. In her presentation she traced out a history of work by the women's movement with regard to violence against women in the family. She was active in the Dowry Deaths Investigation Committee as well as with Stri Shakti Sanghatana. Recalling the work in the initial stages, she said that it was not possible to talk of this violence as domestic violence. Talking about it as a dowry related violence, as recognized in the law itself, was difficult. Even though the laws were changed, the police did not take any cognisance of this violence nor did they register the case against the marital family. Each time they wanted the police to register a woman's murder as a non-suicide, they had to fight a battle with the police. To make the law work they had to fight. However, now the situation has changed so much that the police register the case without any fuss, as a result of the pressure mounted by the women's movement. But, the police, in this process, have not become sensitive to various kinds of domestic violence that women face. They insist that any kind of violence has to be registered as a dowry related violence.

One also finds that there is very little research on various aspects of this violence. Research is urgently needed in many aspects of domestic violence. Some of the issues that she outlined are:

When we talk about family violence it is important to draw attention to the UN Declaration on the 'family', which insists that the existing patriarchal family should be destroyed so that a democratic family can be created. This would be quite useful in countering domestic violence, especially in non-legal settings.

When one discusses domestic violence, there is a need to go beyond the marital situation. Nowadays, many women are being 'ditched' by the men in the name of marriage. In the past six months, at least twelve women have come to her with this complaint. There is no law to address this sort of exploitation of women and therefore one feels handicapped by it. Similarly, sexual exploitation and rapes of girls by male members of the family has also increased. It is important to address this issue.

While discussing domestic violence it is important to remember that there is public recognition for violence by the husbands but there is no recognition for the violence by the brothers and fathers. This comes to forefront especially when the women marry against the wishes of the family, such as in inter-caste marriages. Families nearly abandon these women. Perhaps, this is why there are many more suicides or unnatural deaths of women in these marriages compared to parents-arranged marriages. There is a need to discuss the politics of these 'love' marriages.

Within the marital context, several aspects of violence that women face remain unaddressed. First, there is an urgent need to discuss the sexual violence that women are facing today. Women are not able to counter the aggressiveness of male sexual demands and are suffering due to this. Since there is no way they can

articulate this, they complain about the general harassment by their husbands and in-laws. Second, women face a lot of violence when they give birth to girl children. This has till now remained unaddressed. Third, the new technologies that have come, such as the DNA tests are being used by men to harass women more. The men are now going for paternity tests, to ascertain the paternity of their children by paying huge fees.

Several myths surround this domestic violence that need to be dismantled. First of this is that if there is education, all problems would be solved. The present government's insistence that if women become literate, they would be empowered. This is a myth because violence persists in many families, in which both women and men are highly educated. Similarly, it is said that in 'good' families, violence is less. This is also not true. The good reputation that the family and the man only makes it more difficult for women to establish that she is facing violence. Third, the characteristics of a 'good wife' are in such huge circulation that it is difficult to oppose them.

When it comes to caste elders or caste panchayats, there is no recognition that violence against women is a violation of the fundamental rights of women. Here, any issue is addressed through 'adjustment' policy. While the man may be scolded ten times, the woman is scolded four times but both are asked to go back and adjust to each other. Many caste elders assume that certain kinds of violence is acceptable, therefore there is a need to campaign here that any kind of violence is unacceptable.

The questions and discussion after this presentation centred around:

- Why do even highly educated women accept violence silently?
- One should understand 'love' marriages as signs of women asserting their rights.
- Has she come across cases where women are getting beaten because of their lesbian relationships?
- Though strong families on male side are dangerous for women, women's bonds with her natal family are seen as dangerous by the society.
- What else can we expect from the police stations except mechanical response?
- Why do the police not accept the intervention of women's groups or women friends on behalf of the woman?
- If we set aside the assumption that all individuals do not need to approach the police for help how do build the support systems that are non-legal and non-statist, to fill the gap between the individual and law?
- In the rural areas, especially tribal areas, women are scared of the police, precisely because of the ill-treatment meted out to them by the police. How can we advise them to go the police station?

Dr. Aruna Reddy:

Dr. Aruna Reddy, a teacher in the Ruda Mistry College of Social Work focussed on the ways in which the professional counsellors should empathise with the people/women in distress. A counsellor needs to distance oneself from the problem that the client is facing so that she could look at it neutrally and dispassionately and suggest ways of dealing with it. In order to be able to help the clients in distress, especially in the case of marital/domestic violence, counsellors themselves need to be able to practice what they are saying in public. Only self-empowered women can become good counsellors.

The process by which the professional counsellor can help the client is by making her/him aware of the 'choices' that the client has, whatever may be nature of distress. The client has to be led from the path of 'victimhood' to the path of 'victory' over circumstances and her own life.

She illustrated what she was saying with two examples through out – one the example of a privileged hindu woman whose husband died at an early age and who went on to become the vice-chancellor of a university and the second, of a muslim domestic maid, who was facing severe domestic violence at home but who took her life into her own hands, separated from her husband and educated her daughters.

This presentation provoked a lot of heated debate. Some of the comments and questions that came up were:

- The use of the term 'client' in the social work paradigm is extremely problematic. Taking a leaf from the disciplines such as medicine, where the dismissal of the knowledge of the 'patient' about herself is now being questioned, one should also be sceptical of the moves to deny the knowledge that the woman who is facing domestic violence has about her own situation, in the social work knowledge system.
- The way in which neutrality and distance are privileged in the account are extremely problematic. It seems to be negating the very spirit of the women's movement which asked for engagement with the problems of women by various disciplines, including that of the social work. The history of social work in the West, and in India too suggests that social work did not recognize domestic marital violence as a problem because it borrowed heavily from the structural-functional paradigm of traditional sociology. It is mostly the poor women who were the 'objects' of social work and the women's movement who forced the social workers to deal with the issue. In fact, it was the women's movement which started crisis centres for women facing domestic violence and the build support networks.
- What have been the critiques of social work from within the disciplines by feminists? Foundational assumptions of many disciplines have been questioned by feminists in each discipline. Have there been any critiques of these discipline of social work by the feminists? If so, what bearing did it have on the nature of the discipline itself?
- The use of the term 'choice' is extremely problematic in the context of domestic violence and the family. It indicates the ability to choose 'free and voluntarily', which is hardly available to many women. 'Choices' are circumscribed for women by the structures of the family and the women's socialization into the structures and ideologies of the family.

Dr. Poornima Nagaraja:

Poornima, a practising psycho-therapist and psychiatrist, in her presentation focused on the continuing prejudices about mental ill health in India, noted some of its differential gendered effects on men and women as well as the its relation to domestic violence. In India, the awareness about mental ill health is very low and help is sought very late by which time the disease would be deep seated. In general women are more prone to mental ill health caused by stress of various kinds. Though this stress is not definable in any concrete sense of the term, its effects are very well manifested through physical symptoms. While men and women are equally effected by stress the symptoms through which it is manifested in women and men are different. Similarly, the effects of mental ill health on the lives of men and women are also very different. While it is easy for men and their families to desert women with mental ill health, it is not so for women.

Professional counsellors are important but counselling need not be done only by professional counsellors. Any person with empathy can become a marital counsellor. However, a good counsellor needs to be mentally strong, able to take the other peoples' stress and have a lot of mental courage.

Many a times, domestic violence is linked to the mental ill health among men and women in a marriage. Among her patients both men and women become aggressive with mental ill health. However, it is men who resort to physical violence much more than women. Lack of understanding about and inability to deal with mental ill health also leads to a lot of ill treatment of men and women.

Questions and discussion centred around:

- How do the psychiatrists distinguish between psychiatric disorders and psychological disorders?
- How do they distinguish between psychiatric disorders caused by bio-chemical processes in the body and the ones caused by social stress?
- As a lot of domestic violence is related to alcoholism, in what way does psychiatry understand alcoholism?
- Since the rate of relapse in mental disorders is very high, how does one understand the mode of treatment through continuous medication?
- Since when has she started receiving women and men seeking marital counselling?

- Which class/caste men are more amenable to counselling?
- What is the discussion around domestic violence within the discipline of psychiatry? Has there been any critique of psychiatry from a feminist perspective?

Annie Mathews:

Annie Mathews, a lawyer working with women facing domestic violence, also runs a counselling centre in Hyderabad. For her, domestic violence should not be understood as violence against women alone. It crucially includes violence against children very often. It is important to keep in mind while devising strategies for counselling regarding domestic violence. In India, there is no law on domestic violence so it is difficult to fight domestic violence.

For her, more than the legal counselling, it is important that the lawyer gives confidence to the woman. Since the women who come to the legal counsellors are in distress, the lawyer should be able to build their self-confidence.

For most women, it is the issues of maintenance and child custody that are important when they consult a lawyer for dealing with domestic violence. For counsellors working with facing domestic violence it is important to build links with other institutions involved, such as police stations and medical doctor. And it is also important to work in tandem with a lawyer.

Thinking beyond particular cases, it is important to work on issues of property rights for women and awareness among young women, regarding their legal rights, in order to devise effective and preventive strategies about domestic violence.

The questions and discussions focused on

- How does one ensure that women are given maintenance?
- How does one overcome the fear of local police in the towns and villages?
- How does one ensure that the women get their child custody rights?

3.2 Report of the Workshop ‘The New Government Bill on Domestic Violence: Issues at Stake’ conducted on 6th April, 2002.

The workshop was organized to understand legal activism around violence in the family especially the specific legal initiatives to address domestic violence, one of which was being tabled in the Parliament. Prior to this, the project team had circulated a response to the Government Bill and circulated it to many organizations in Andhra Pradesh and outside. The workshop was a follow-up of this small campaign. It was also intended to be precursor to the study of legal responses to domestic violence that we were to start later in the project. Therefore we invited leading feminist lawyer of the country, Ms. Flavia Agnes from Majlis, Mumbai and Ms. Veena Gouda, also from Majlis for a day-long workshop. Suneetha gave an introduction to the workshop by laying out the ongoing study and our own anxieties of the Bill. The workshop was well attended by about seventy women from many organizations in the city.

In her presentation, Flavia laid out the context of the legal campaigns initiated by the women’s movement at various points in the post-independence period, thereby bringing into light many unexpected and unknown aspects of legal activism around gender and law in India. She started by stating her anxieties on the subject of law making, “There are any number of people who have been in this venture of making new laws ranging from activists in the women’s movement to law school students. There is a certain passion for making new laws marked by an impatience to see what the existing law is all about”.

Then she set about her presentation concentrating on ‘what the existing law is all about’. Focusing on the long list of laws that independent India has witnessed, Flavia spoke about various implications of these laws. The Hindu Code Bill was passed in 1955 which stipulated laws for marriage, divorce, maintenance, adoption, succession, custody and so on. With this legislation, monogamy was made mandatory and right

to divorce was granted to both husbands and wives. Christian women had the right to divorce since 1869 and muslim women had the right to divorce since 1939. Many people assume that the most progressive right for Hindu women has been their right to divorce. *Very few are aware that the Hindu woman's right to divorce was actually drawn from the Muslim woman's already existing right.* Moreover the law basically held its significance only for upper caste Hindu women, as this right to divorce and remarriage existed among other castes and communities within the country, even before.

The passage of this Hindu Law also brought in strict rules of monogamy resulting in many problems. The foremost being that it is western concept and unthinkingly applied to the Indian context. With this provision only one woman, the first wife got the right to maintenance. The Muslim wife has a right to 'mehr', a financial settlement upon the dissolution of her marriage, whether she is the first one or not. The codified Hindu law reduced a man's liability to the first wife alone, thereby making the plethora of conjugal relationships that he is involved in redundant. *The 'kept woman', who is legally recognized in Muslim law, remained outside the legal circuit of economic notion of marriage in Hindu Law.* The Hindu woman's 'right to divorce', touted as very progressive, therefore has remained empty, without any substantial content. It is no wonder that many women feel that they should not divorce the husband, merely because her husband wants to marry another woman. *Flavia contends that feminists in India have never questioned the nature of assumptions that the law of monogamy entails.* The feminist position is quite contradictory when it comes to the law of monogamy. A western model has become or remained our model of marriage.

Commenting further on the Hindu Marriage Act Flavia notes that it gives equal rights of maintenance to both men and women. But, a similar concept of equality somehow does not apply to women's right to ancestral property. Women have no rights in ancestral property. Even the limited rights that women have in the separate property of their father can be abrogated. There is a provision for the father to will away his property with no limitation. Therefore, in reality the limited right to property that daughters have has hardly worked for their benefit. Most often the conditions of love and coercion make the daughter will away her share of property.

Flavia then took the discussion to the eighties, the next phase of the women's movement, wherein violence against women was the central feature. The number of laws that were passed in the decade of the eighties to address the issue of violence against women is well known. Prominent among them were the campaigns against rape and dowry. The initial campaign was against police rapes or better known as custodial rape. Prominent among the custodial rape cases in that period were Rameeza Bee, Mathura and Maya Tyagi. Flavia's main contention is that a campaign that began with critiquing the abuse of power by the police moved on to strengthening that very same power. *The campaign that took on many more issues of violence against women ended up in appealing and strengthening the power of the police in addressing this violence.* It moved ahead conveniently forgetting the links between issues.

Close on the heels of the rape campaign was the issue of dowry. The dominant theme of this campaign was the woman dressed in bridal finery contrasted to the charred woman. This became a national phenomenon. One needs to note here that in contrast to the 'victims' of custodial rape such as Mathura, young women who were dying in their homes were women like us: middle class, educated. The deaths of women in their homes sparked off the demand for a new law that recognised the special circumstances of this death. The campaigns resulted in a culture specific offence within the Indian Penal Code for the first time. Section 304B was specifically named as the dowry death section. Dowry was hailed as the reason for women's deaths. The concept of the dowry death spread like an epidemic. Rape was assumed to be happening in the public spaces whereas dowry deaths were taking place in the domestic space.

Flavia contends that both the dowry and rape issues have been Delhi-centered issues. *The dowry campaign played out domestic violence in a very sensational way in terms of murder or suicide. The imagery was shocking to say the least. Her contention has been that the woman died not due to dowry but due to violence.* The assumption was that it would be easy to prove a cultural offence like dowry. Ironically, in this shift, the woman's murder got sidetracked.

Whenever domestic violence was articulated as an issue in itself, it was dismissed as an academic issue and as a personal issue. Flavia cites the study that she conducted to clearly show that dowry was the reason for

harassment/murder only in a couple of cases. The rest of the cases displayed a wide range of oppressive behaviors against women. Flavia's demand was that the understanding of women's harassment/death should not revolve around dowry alone. *Today the question is if the gains of the movement would have been different if dowry had not been made into the central issue of the campaign.* In a sense the complex nature of the harassment that women underwent in the domestic spaces was simplified to the single unit of 'dowry' and thus a new exclusivity was created.

Moving into the next section of law S 498A, which came in 1983, Flavia comments was one offence, a small thread in this dense context of dowry related violence, which did not mention dowry. But it took years of sensitisation programmes for the police to de-link their understanding that women suffered violence in their homes not because of dowry alone.

Flavia draws attention to the fall-outs of these culture specific offences. *One important consequence being that violence against women steadily got excluded from the general law of assault. Today, one is in position where one has to fix all the violence that women face in the marital context in the rubric of 498A and not in general assault laws.*

While most campaigns for legal redress centered around violence, *the one campaign that brought center stage, economic rights, was the case of Shahbano.* The Supreme court granted rupees one hundred and eighty to Shahbano who was the wife of a well to do lawyer. The husband refused to pay this meager maintenance and the case finally reached the Supreme Court on appeal. The furore that resulted from the Supreme Court judgement in this case has gained legendary proportions in the context of communal politics in our country. *This judgement was soon followed by the Muslim Women (Protection of Rights) on Divorce Bill which got passed by then Congress government in 1986 which effectively removed Muslim women from the purview of maintenance granted under S 125 Criminal Procedure Code.* At that point this law was considered to be a negative law for Muslim women since it was depriving them of their right to maintenance under the criminal provisions. A petition was filed in the Supreme Court challenging the constitutionality of this law by some women's groups.

Flavia points out that however courtroom adjudication gave a new direction to this law. A hitherto unknown feature was introduced by the courts using the provisions of this law. *The courts were encouraging the practice of providing for a lump-sum settlement for the woman upon divorce. A close reading of judicial outcomes and adjudicatory practices revealed that this law was marking new reliefs for Muslim women. The interpretation of this law shifted the monetary relief for the woman from the maintenance mode which is periodical and temporary to making a permanent settlement. Thus the law provided for a radical departure not simply in the case of Muslim women but in the entire matrimonial law of the country.* This new development was missed by women's groups who were continuing to contest the law as unconstitutional.

Flavia concluded her talk by discussing at length the possibility of empowering women in marriage. The wife should be invested with certain rights upon marriage in the joint property of the family. *According to the present law married women are powerless both upon marriage and divorce. The crucial question regarding the latest domestic violence Bill is whether it empowers women economically firstly in marriage.* The move should be towards investing the woman with positive rights in the law. The right to matrimonial home is a highly significant right that needs to be worked out. Flavia's important question is whether right to matrimonial home and property be brought through the backdoor of laws dealing with violence? She opines that matrimonial rights should have a status and standing independently of the problems in the marital situation.

Coming to the discussion on the domestic violence Bill, the presentation was made by Ms. Veena Gowda, an advocate working in Majlis. Her argument being that the new government Bill on domestic violence has taken away even the existing rights that women have accessed in the Civil Procedure Code, Family Courts Act and the Specific Relief Act. A long detailed discussion on the advantages of an injunction order under the Specific Relief Act listed out the many ways in which an injunction order can be put to use. The injunction order can carry a wide range of reliefs pertaining to either violence, custody or property. For instance an injunction order can prevent the husband/father-in-law from alienating the joint property. If a

woman apprehends being thrown out of her marital home she can seek an injunction order that would prevent the husband from throwing her out of the home. The present Bill does not seem to be making any departures in the law of injunction.

The present Bill has no definition of domestic violence and moreover the Bill specifies that the violence has to be habitual for it to gain legal notice. The self defense clause is another clause limiting the woman's actions. Property is not defined nor classified into stridhan and other kinds of marital property. Such clauses can be used to maximum advantage by lawyers. Moreover the new law is opening new doors for violence/harassment to be justified.

Discussion: These campaigns redefined the sphere of the private. Legally they were major steps. These campaigns centered around the law also had the effect of touching people's lives and it made sense to so many people. It was an important landmark. They opened out many institutions of the state like hospitals, police stations, courts to an interrogation. No other movement/campaign had questioned these institutions as effectively as the women's movement. Disagreeing with the essentialist construction of dowry as the sole indicator of the campaign, many in the audience recounted their own (local) experiences of apparently named campaign called dowry. They felt that there were far too many issues articulated as part of this campaign. The issues at no point of time were limited to dowry alone. The workshop concluded on the note that the government Bill on domestic violence has not only made any new departures from the existing law but has also clipped the few hard earned reliefs that women have been enjoying under the present laws.

3.3 Report of the Workshop 'Special Cell in Mumbai: Mediating between the Women and the Police' held on 14th December 2002.

This talk was organized as a part of an effort towards understanding the responses of the police stations to women's complaints of violence and abuse in the families. After the completion of the field work in this regard, we felt that it would be useful to invite someone who has worked on this aspect to share our findings and discuss with. Ms. Anjali Dave, who teaches at the Department of Social Work in the Tata Institute of Social Sciences Mumbai has been working on this aspect for more than a decade. She pioneered in the experiment of TISS at Mumbai Police Headquarters where the social work graduates would work along with the police in dealing with the complaints of the women about violence in the families.

The talk was held on 23rd December and was attended by more than forty people, ranging from counselors working on issues of domestic violence to researchers and activists.

Ms. Dave, in her presentation focused on the ways in which issues of violence faced by women could be translated into the language of rights of women as citizens. Redress for domestic violence through the police would become more feasible only if one works in this paradigm. She began by outlining the various laws related to this violence, rights guaranteed for women in the Indian Constitution, various international covenants and conventions that Indian government is a signatory of which for her provide a framework for working on issues of domestic violence for women in India. Then she listed the various agencies that are at present dealing with these issues such as the counseling centers, courts, NGOs etc. The family counseling centers, she said, were beset by the problems of lack of infrastructure, adherence to familial ideologies and poor training. Many women do come to the police stations for registration of cases and help to prevent violence. So it becomes imperative on the part of the women's movement to work with the police stations to improve their reception, treatment of women and their investigation of crimes related to women.

The TISS experiment began seventeen years ago and their entry into the police stations was facilitated by the fact that they projected themselves as supplementing the work of the police. Perceived largely as supportive personnel, they did not receive too much resistance from the police officers but they still need to continue negotiations everytime a police officer is transferred from a particular police station where the social workers are stationed. Periodic petty harassment, however, still exists.

The Special Cell primarily mediates between women, the family, the police and the law. The social workers listen to the women's complaints, suggest the options available to them, frame their complaints to the

police and assist women in approaching the courts. However, it is important to note that the social workers do not suggest that women register their complaints as the first resort.

Dave argued that many years of work and research allowed them to make spaces within the police system. According to her, one needs to understand the logic of the police in order to make these spaces. It is here that the framework of the constitutionally guaranteed rights that came in handy. She argues with the police that they should treat women as 'rights-bearing citizens' rather than acting as their brothers or fathers. Since this is the logic of law, the police do not voice too much opposition to it.

Another important variable that facilitated the success of this effort was the research that the Special Cell undertook periodically. The Special Cell team used the data/evidence from the police records to question the working of the police, to expose their biases, prejudices, laxities in the investigations of crimes related to women. The latest study undertaken with the support of International Centre for Research on Women also helped a great deal in this effort. It is a tribute to this experiment that the number of these special cells has grown over the years in Mumbai.

Animated discussion accompanied and followed Ms.Dave's presentation. Some of the crucial issues raised were:

- Isn't there a need to address issues related to domestic violence outside this framework of the police-law after all these years of working with the police?
- What kind of treatment do the police reserve for women from dalit castes and poor background?
- Hasn't a decade of work with the police led to changes in their (Special Cell team's) understanding of the police-law after all these years – away from that of 'patriarchal police getting reformed through consistent pressure'?
- Isn't there something else happening at the level of the police stations: beyond victimized women negotiating with the powerful police – such as the powerful police unable to deal with the oscillating demands/behaviour of the women complainants who are under terrible pressures to mend themselves? Haven't women's demands changed or shifted over these years?
- In fact, how do we understand the operation of 498A on the ground especially in the light of the heated passions that it evokes among the legal community? Can we look at its operation beyond the success-failure paradigm (beyond the number of cases registered under it etc.), as to the effects it produces in its unregistered form, which might be beneficial to women sometimes?
- How did the nature of women's negotiations with the police changed over all the years that the Special Cell team has worked – for better or for worse?

Ms.Dave responded to almost all the questions. Her response to the non-legal ways of negotiating domestic violence was a well-formulated one. She said that after working outside these powerful systems for a long time whereby one ended up criticizing the police, she became convinced of the need to work within the police set-up to change their attitudes about violence. Since there are many women who approach the police for redress in domestic violence situations, it is necessary that the police be made more responsive. It is this conviction, which has propelled her to work for more than fifteen years with the police. Initially one is appalled by their insensitivity to this issue. But considering their heavy work-loads and terrible working conditions and lack of training, one tends to understand their behaviour and attitudes.

As to the actual operation of Section 498A on the ground, she replied that it is still effected by one's position in the social hierarchy, the kind of political connections one has, the kind of money one is willing to offer etc. The police continue to be rude and dismissive to the women from dalit casts. None of the biases has substantially changes. But the Special Cell has worked within these constraints helping the women. However, the Special Cell data is not caste-specific.

4. Report of the national conference on ‘The Public and Private of Domestic Violence’

The conference was held as a part of the project on the ‘institutional responses to domestic violence’ that has been going on at *Anveshi* for three years. The conference had two objectives: to address the questions that have come up during the project and to share the findings of the project. The questions related to the history and genealogy of the concept of domestic violence in India, the history of institutional responses to domestic violence and the demands of women’s movements on institutions and the responses of the women’s movements to the issue and the ways in which it had figured in the public arena. We also wanted the findings of the studies of institutions of the police stations, hospitals, courts and family counselling centres to be discussed. After several discussions, we arrived at four themes around which sessions could be organized: frameworks, interventions, institutions and movements. A background note that briefly described the problems and questions that we had was circulated to the speakers, who were asked to respond to specific sets of issues, related to their work in the area. The conference took place on 1st and 2nd of August 2003, at Indo-American Centre for American Studies.

Rekha Pappu of *Anveshi* welcomed the participants and chaired the first session on ‘Frameworks’. It had three speakers: Suneetha, co-ordinator of the project, Mary John from JNU and V.Geetha from Chennai.

Expanding upon the issues raised in the background note, Suneetha first spoke about the way in which domestic violence as an issue emerged in the Indian context, where till recently, dowry violence has been the predominant description for violence experienced by women in the marital context. While the women’s movement has been criticised for highlighting this aspect, the role of institutions cannot be underplayed. Dowry seems to have come in handy for all those who were not ready to accept the feminist critiques of the structure of the family. The seemingly sudden raise of ‘domestic violence’ needs to be placed in the context of the continuous engagement of the women’s organizations with the issue of marital violence on an everyday basis through counselling centres, training programmes, developmental work etc. over the decade of the 1990s. It is perhaps the intractable nature of the issues and the fatigue associated with it that have provoked positive responses to this violence to be placed in the institutional context at the end of 1990s. The second part of her presentation focused on the questions that arose from the project findings on women and institutions. One finds that several assumptions underlying the posing of the issue of institutional responses to domestic violence need to be rethought. Assumptions about women’s expectations from the institutions, which institutions women approach and the nature of access that women from various classes and castes have to these institutions. It becomes necessary in the context where several social and political formations are addressing the issue, where women seem to find it convenient to approach them for redress, where women’s access to formal institutions is significantly influenced by these formations and where what women expect from these institutions also changes over a period. Assessments of institutions therefore need to be placed in the context of these factors, along those of the history of the particular institution. Taking the example of family counselling centres, she argued that the emphasis on mediation in the training of the social work graduates does not prepare them to deal with violence as a result of which they seek to turn women’s narratives of violence into those of marital maladjustment.

Anuradha Kapoor, Flavia Agnes, Surinder Jaswal, Srivats participated in the discussion. Questions related to: the definition of domestic violence that was followed in the study, the question as to why the speaker thinks that the definition of domestic violence should not be expanded and how one understands the notion of victimhood.

Mary John’s presentation looked at the shifts in the ways family, sexuality and violence figured in different historical moments – pre-independence social reform, the second wave women’s movement in the 1970s and the contemporary moment. During the social reform period, issues of marriage and sexuality occupied a central position in the debates. However, during the second wave women’s movement, there was little debate on family and sexuality. Coming to the contemporary period, she raised two issues which have

refocused attention on sexuality and family. The incident, rather the phenomenon of Nisha Sarma who was supposed to have rejected dowry is the first one. On close reading, one finds that she was not against 'voluntary dowry' but against 'demands of dowry'. The second instance was that of the committee on sexual harassment on the Jawaharlal Nehru University Campus which has been established with the purpose of sensitising the campus about the issue as well as looking into all cases of sexual harassment. Over the two years of its functioning, the only cases that have come to the committee are that of student-student cases. Many women students are bringing cases of harassment against their boyfriends who have abandoned them. But, even among them, those with political background find it difficult to bring it to the notice of the committee. The committee in its functioning has mostly sought to deal with the issue through punishment. In this context, two questions suggest themselves about institutionalisation: how is it that this sort of a committee has received mainly student-student cases and not teacher-student ones? Secondly, should this sort of a committee focus on punishment rather than other modes of dealing with it?

The discussion that followed was mostly on this committee. Several people participated in the discussion. Students from NALSAR Law university wanted to know the modalities of this committee. An ex-student of JNU proudly announced that thanks to this committed no male student could look at a female student for more than thirty students. Several people expressed dissatisfaction with this turn of events and said that this is exactly the turn which is dangerous: where the secular spaces that women have occupied after a long struggle might be turning into sexual spaces where women would be primarily looked at as primarily sexual beings.

V.Geetha's presentation titled 'Confounding love with violence: Confounding Violence with Love: An Enquiry into the Nature of Conjugal Intimacy, tried to draw a map of the conjugal field, so to speak, which allows one to see its various coordinates: the experiences that anchor it, the ideologies which inform it, the structures that contain, regulate and manage its expressions; to talk about these meaningfully, in a register that renders them matters of civic importance, of a thoughtful public debate on sexuality. Arguing that in our feminist attempts to redress women's pain borne of violence through discourses of rights, we did not pay sufficient attention to the bonds of conjugal love and intimacy, which prompt many to hold onto the marriage. How does one understand the victim and her predicament or come to terms with it, without losing sight of the intentionality of domestic violence, and the everyday workings of patriarchal authority? There are issues of reading involved here and misreadings – for clearly women who notate violence as proof of love, and abuse as a mark of possession are 'misreading' their situations, but we need to understand this as something more than the workings of a false consciousness. We need to grant this to be love, in the first place, a wile love, but love, nevertheless. However, our discourses of rights and justice do not offer a language to understand this amalgum of love and hurt. Perhaps, languages such as the Bhakti literature where the bhakt, many a time a man, invites pain and hurt so that the beloved, the God may notice it, may offer a peep into this world. Then she went on to discuss the various dilemmas that one faces when listening to the women's narrative of violence where it is important to be attentive to the nature of the violence, to work through its details, and arrive at an understanding – of whether it is part of a 'normal' cycle of hurt that is characteristic of the relationship in question, in which case, the woman is not bound to view it as seriously damaging her notions of love and intimacy; or whether the violence that the woman is experiencing signifies the crossing of a threshold, the breakdown of a tacit compact between her husband and her. Coming back to the question of how one can create public language to speak of these issues, she suggested that the law has been a favoured site of reform for the Indian women's movement and there is no reason why it should not work for this purpose. Here, perhaps asking for a law against marital rape and a re-definition of marriage, so as to broaden and limit simultaneously the notion of 'conjugal responsibilities' might engender a debate on experiences that have become so naturalised that they appear the very stuff of commonsense. Also, the law, resonant with secular power, would automatically desecralise marital intimacy; render it more amenable to interrogation by a social reason based on rights.

Girija, Rekha, Veena, Anuradha Kapoor, Flavia Agnes and others participated in the discussion. The discussion centred on Geetha's articulation of women's misreading of violence as love. Several people contested this notion: that women's staying back in a relationship cannot be traced to sexual intimacy but has to be placed in the context of material hardship; that women are capable of distinguishing between hurtful touch and loving touch; that this excessive emphasis on touch as a marker of love is not convincing.

The afternoon session on 'Interventions' was presided by over Madhumeeta Sinha, from Anveshi, who is working on media studies. It had two speakers. One was Anuradha Kapoor, founder member of Swayam, an organization that works with women facing domestic violence in Calcutta and second, Flavia Agnes, founder member of Majlis, a cultural and legal centre for women in Mumbai who is a prominent feminist lawyer and legal activist in the country.

Anuradha Kapoor's presentation was titled, 'Beyond the criminal justice system: working with survivors of domestic violence'. She spoke about Swayam's experiences of dealing with survivors of domestic violence with brief reference to the police, hospitals and judiciary. She focused mainly on the other interventions that they have made with women and their children both at an individual as well as group level. The interventions include theatre, music, writing, workshops both local and outstation, support groups and addas which they have evolved over the years. Swayam's work with women facing violence in the families started seven years ago. A significant part of their work involves working with institutions such as the police, judiciary and the hospitals as part of offering support to women. But a substantial part is non-institutional, which is where she thinks they have been able to make some creative departures. This is the work which has enabled them to sustain over years. Although it was difficult to accept the decisions that women made in the initial years, they learnt to accept them as the time went by. They have sought to organize women who have come to them seeking help into self-sustaining groups that would deal with issues arising from domestic violence in their particular localities. Over the years, they have developed nearly twenty to thirty such groups, which meet periodically to exchange their experiences. Another strategy that they sought to develop was to involve women in theatre: through enacting plays which depict the violence that they have faced, Swayam sought to externalise their experiences and remove the sense of shame that is associated with this experience. The theatre group enacts these plays wherever they are asked to- street corners, colleges, NGOs etc. Running a magazine for women also helped women to negotiate their sense of community: those women who were not able to meet regularly could communicate what they felt and experienced. Although the proportion of women who came into these initiatives remains small compared to the number of women who seek other kinds of help and do not return, Anuradha felt that is significant enough to make a difference. For instance when the theatre group performed for a meeting of judges, the latter were so moved that some of them joined the interactive play.

The discussion that followed this was intense and long. Vasudha, Sajaya, Mary Alfonso, Suneetha, Surinder, Mary John, Rani Cohelo participated in the discussion. Many respondents felt that the picture that emerged from her presentation was too rosy. The discussion revolved around whether one could accept or follow what women wanted from the organization without any reservations, sense of burn-out, a sense of failure as well as political ambiguities.

Flavia Agnes spoke about the legal intervention strategies that they have evolved at Majlis over the years. As Majlis is a cultural and legal resource centre, the latter could always draw upon the former when drained out. Being a legal resource centre, they also strived to keep the activity of litigation to the minimum. Similarly, Majlis does not undertake any other kind of counselling apart from that of legal counselling because women come there only after they have gone through a whole of set of such counselling either at Special Cell or at other women's organizations. Flavia spelt out their strategy for women who had to access to law for various kinds of relief: women need to be prepared for litigation. Only certain women would be able to litigate, either due to economic constraints or due to the absence of required documents or scope for litigation. As such, among the women who approach Majlis for litigation, only some are advised to actually take up litigation. Usually women come to file a case for maintenance or child custody without any preparation. Flavia's contention is that the courts usually prefer not to disturb the status quo. So, she first wants to make the woman's position secure even before filing the case. If they had come out of the marital home, they are asked to go back to the marital home, collect the required documents and evidence such as ration card, wedding photographs etc. before being able to file a case. Similarly, if they want child custody who is in the custody of the father, they are told how to secure the confidence of the child, slowly turn the child towards them, take the child away from the father's house, and then move the court. Unwilling to disturb the status quo, the courts usually rule in favour of the women and pass injunctions accordingly. Flavia argued that the law is a double-edged weapon and could be used for women, if one strategizes carefully. Therefore, new laws are not always needed if one understands the law and courts in this way.

V.Geetha, Mary John, Mary Alfonso and others participated in the discussion that followed her presentation. It centred on her perspective of law and courts: if one follows this logic, then shouldn't all the efforts be confined to training an army of lawyers who could use the courts for women? And, how does she position her argument vis-à-vis other kinds of feminist political positions on law – where law itself is seen as not central to the securing of women's rights?

The second day had two sessions. The first session on 'Institutions' was presided over by Sheela Prasad of Anveshi who teaches at University of Hyderabad. It had four presentations by Surinder Jaswal of TISS, by Padma from Dilaasa, by Vasudha of Anveshi who worked on the project on domestic violence and by Sajaya of Anveshi.

Surinder Jaswal presented a part of her study, which examined hospital records regarding domestic violence. Her study followed her involvement in medical and psychiatric social work regarding domestic violence for some years. The study examined the hospital records at various levels: primary health care centres, urban health facilities and the referral hospital in a primarily industrial suburban area of Mumbai: at which facilities do women report violence the most, where does violence get recorded, what kind of injuries get recorded in the medical records, whether the perpetrators of these injuries get mentioned in the records and which of the injuries get recorded as violence. She took the records of medico-legal cases at various health facilities to examine these issues. They found that, unlike what the doctors at these health facilities asserted about the absence of domestic violence among women patients that they treated, enormous evidence of domestic violence in the records: where the causes of injuries did not match the nature of injuries that they reported, where the category of perpetrator was left absent and where the violence could be seen from the injuries but not probed for by the medical personnel. The number of clear cases of violence and probable violence came to nearly 70% of all the MLC cases that women reported at various health facilities. And a majority of these women were referred from gynaecological and surgical wards. Subsequent to this study, she negotiated for and started an OPD for women at the referral hospital where all women could come without divulging their destination, either to the hospital personnel or at home.

The next presentation was by Padma from Dilaasa at Mumbai. Dilaasa was a programme started by CEHAT at the ...hospital in Mumbai where the staff of the hospital is being trained to screen women for domestic violence. The initiative started with a small study that looked into the ways domestic violence appears or does not appear in the records of the hospital as well as into whether the staff has found that women faced domestic violence during the routine check up that they did. Before the study the hospital staff was emphatic that they have not come across much of domestic violence among their patients. But the study revealed data that is similar to that of Surinder Jaswal's. This was then used in the training workshops with the staff on violence against women. Their response has been good. While initially Dilaasa staff received the women who faced violence, as the time went by the staff began to screen them as a part of their routine check up and only those who needed some intervention began to be sent to Dilaasa. Padma pointed out that the purpose of Dilaasa was to make screening for domestic violence a part of the everyday activity of the hospital, in a sense, to make Dilaasa's presence gradually redundant. She concluded on an optimistic note that it would be possible to achieve this in a year or two.

Suneetha, Mary Alfonso, V.Geetha and others participated in the discussion. Points raised were: whether one could speak of domestic violence as an issue in the health care sector in an a-historical and de-contextual manner, considering the history of health care personnel's complicity in the population policies as well as the overworked and de-sensitized manner in which they usually treat women? Another issue that came up for discussion was that of international funding and agendas that seem to play a crucial role in deciding the course of activism on domestic violence.

The next presentation was by Vasudha on the functioning of the police stations regarding domestic violence. She started by placing the work in the context of the existing debates within the women's movement on domestic violence laws. She noted that twenty years have passed after amendment of Section 498 including the crime of cruelty towards women in marriage during which many studies have pointed out that the conviction rates under this section are quite low. On the other hand, there was a growing realization

that securing the rights of women who face violence is not possible without accessing the personal laws, i.e., civil laws. The continuing difficulties that women face in the police station and the criminal courts have made some people to think of an alternative to this section to secure women's rights in situations of violence. The domestic violence bill prepared by Lawyers Collective in fact sought to situate women in a space between criminal and civil law. It is in the background of these debates that women's interactions with the institution of police stations need to be located. She noted that if one looks at the number of registered cases at police station, they continue to be low. But, it is the process that occurs between women's approaching the police station and the registration that needs to be examined carefully. As other studies have also noted, most women do not come with the expectation of registering the case against the in-laws and quite a few of those who register also compromise at various levels: at the police station, at the lawyer, during the proceedings of the court, even at the moment when judgement is about to come out. These compromises seem to have led to a situation where the police stations now maintain two registers: cognisable and non-cognisable, though the latter category is not legally valid. As such, one cannot deduce that it is on the persuasion of the police that women do not register the case or go for compromises. However, for those who are intent upon pursuing a criminal case, there still are formidable obstacles. Middle class, educated women seem to get a better deal than others. But it has been difficult to observe the working of caste at the police station, for lack of data and for lack of access into networks that negotiate issues of dalit and bc women.

Mary John, Iliah, Shyamala, Lakshmi, Sujatha and others participated in the discussion. The focus was on two issues: on methodology and the way caste has figured in the presentation. The methodology of the study does not seem to be clear to many, as to how the conclusions are reached and based on what sort of evidence. Others felt that the issues of caste does not seem to have been adequately addressed in her presentation.

The next presentation was by K.Sajaya who spoke on the issue of domestic violence in Telugu literature in the recent years. She took ten short stories written by writers from varied social background- backward caste, dalit, male, dominant caste feminist and progressive writers and examined the ways in which domestic violence was dealt with in their stories. While the stories by dalit writers and male writers explicitly described the violence the others did not. Sajaya made her presentation in Telugu and K.Lalita translated.

Srivats, K.Lalita and others participated in the discussion. The discussion that took place focused on the notion of violence that Sajaya adopted for the selection of the short stories and their analysis.

The afternoon session on 'Movements' was presided over by Veena Shatrugna from Anveshi, who works at National Institute of Nutrition. There were three speakers, K.Lalita from Anveshi, Hyderabad, Ajita from Calicut, Kerala and U.Vindhya from Andhra University, Visakhapatnam.

Lalita's presentation was on Stree Shakti Sanghatatana focusing on the nature of activism, the kind of dilemmas and the internal dynamics of the group. The group was a coming together of students, activists and academics who felt the need for feminist activism in the post emergency period. It started in 1978. Many in the group had worked together in the students organizations such as POW, for Bhargava Commission enquiry into encounter deaths, had run Feminist study circle before coming together as Stree Shakti. It was to be run as a non-funded organization without any branches as well as without hierarchy. The activities themselves were not pre-determined. The first major campaign was against the export of vegetables in Hyderabad that culminated in a march that attracted large crowds. Another issue in which the group was mainly involved was against rape – the case of Rameeza Bee, which included participating in demonstrations, attending the court case, writing on this issue. Another campaign was that of looking into the condition of working women's hostels after which many hostels had to reframe their rules. A campaign that had a major impact was that against injectible contraceptives – when the group, on a tip off, went to a primary health care centre in Patancheru where the contraceptive was getting administered on poor women without informing of the consequences and breaking the camp. Later, a public interest litigation was filed against these contraceptives. Dowry deaths remained a focus of activity through out. But it was never articulated as domestic violence. In fact, violence was never seen as physical. A street play was enacted that depicted the ways in which women's body and actions were determined by institutions ranging from family

to state. When Dowry deaths investigation committee was formed, a few members were eager that the group should be a part of it and a few others did not agree to. But the contention between everyday activism and campaign, mass-mobilization and selective intervention as well as that between serious writing and activism was continuously present within the group. However, being a close-knit group depending on strong bonds of friendship between the members, some strains were difficult to take. When one of the members was killed in a kitchen accident due to marital discord and abuse, it nearly took a toll on the members. Lalita concluded on a note that suggested that small groups disintegrate when the friendships among the members end.

Ajitha's presentation focused on the emergence and survival of Anweshi, Calicut of which she was the founder member. She started by describing the enormous enthusiasm that accompanied her entry into women's movement during the Calicut conference. The left parties in Kerala however made all efforts to dampen the spirit of the conference: some of the active women had to withdraw due to the pressure from the party and the media almost did not give any coverage to the event. It was the activists from Tamilnadu and other states who made the conference possible. The post-conference phase was a period of withdrawal for her. She was left with no support group within her state. However, it was then the distressed women started approaching her for help which made her think of starting a counselling and legal support centre for women such as Anweshi. They have handled scores of cases of women facing abuse in the family. Sometimes they had to face the wrath of the marital and natal families. The police were usually uncooperative. She noted that it was in this atmosphere that the section 498A turned out to be useful for them. It was the application of this section that made the marital families come to the negotiating table. But Anweshi had always faced financial constraints. In the last few years they had worked with UNIFEM on legal advocacy that made their survival possible. As the project has now come to end, they again are faced with problems of survival.

Vindhya's presentation titled 'Human rights movement and domestic violence: an uneven terrain' attempted to capture some defining moments in the engagement of the human rights movement with the issue of domestic violence with particular reference to Andhra Pradesh. In grappling with the rights dimension of domestic violence, the movement has had to traverse an uneven terrain covering the public/private dichotomy, the response of the criminal justice system, the prioritisation of consciousness-raising over individual case-work and the polarization between scholarship and advocacy. She started by speaking about their initial attempts at documenting the response of the judiciary to domestic violence as an activist of Andhra Pradesh Civil Liberties Committee. APCLC had till then focused most of its attention on the state violence against naxalites and deaths in police custody. Activism around dowry was centred on protests and getting the cases registered in the police station. But this move towards re-search was subjected to severe scrutiny. Vindhya and others who undertook this research were themselves shocked at the apathy and anti-women attitudes that they found in the judicial pronouncements over dowry deaths. Dowry violence was explained as arising from bad capitalist system in the country. But within the organization, when this violence was articulated as a matter of women's human rights that needs to be put on par with state violence, the comparison was met with severe disapproval. A major impediment in accepting this understanding was the public/private dichotomy within which the notion of human rights developed and got entrenched. Within the civil liberties organization it was so entrenched that for many men in the organization there did not seem any contradiction between exercising authority at home and actively working against rights violations by the state.

The discussion that followed these three presentations was intense and passionate. Flavia Agnes, V.Geetha, Mary John and many others participated in the discussion. The issues were: what are the reasons for the break up of women's groups; how do we begin to speak about them without being uncivil to each other or without framing them as issues of loyalty and betrayal.

Vasudha ended the conference by presenting a vote of thanks to the participants and speakers.