Chapter 1- Introduction
Chapter Overview

This chapter is introductory in nature and reveals the conceptual context of the study. To begin with, the problem pertaining to matrimonial violence in the Indian context has been stated and linked with barriers in accessing justice mechanisms. While stating the problem, attention has been paid to recent developments in the area of work. Apart from the introduction, this chapter also discusses the methodology of research and review of literature. Sources of data and the nature of it as well as the method in which the entire research was conducted have been captured in this chapter. Further, research gaps based on earlier research findings have been identified and the methods through which such gaps may be plugged have been discussed.
1.1 Statement of Problem

1.1.1 Women as Victims of Matrimonial Violence: the Maze of Oblivion, Myth and Reality

Marriages are forms of intimate partner relationships and in India they occupy a position of sanctity in the social life of people. Although considered to be sacrosanct and private, marriages have been predominantly qualified by unequal power relationships. Feminists from various disciplines have identified a plethora of factors that may have contributed to the development of such inequality. Traditional practices in connection with marriage and stereotypical social expectations from married women reflect, and often add to the unequal nature of marital relationships. While the reasons advanced range from patriarchal social structures to prejudiced mindsets as well as economic dependence of women, the fact remains that women have suffered lasting damage because of the violence meted out to them.

Therefore, violence against women in matrimonial homes eventually became a matter of serious concern in India and in the 1980s the need to criminalise such violence was strongly felt. Perhaps frequent reports of deaths of women caused by ‘burning in the kitchen’, catalysed law-making in this direction. Finally in 1983,
section 498-A was inserted in the Indian Penal Code with the objective of protecting women from harassment by the husband or his relatives in their matrimonial homes. The section penalised matrimonial cruelty of a grave nature and provided an explanation to the term. A definition was not provided perhaps with the understanding that cruelty is a contextual concept.

The social philosophy, interpretation and procedural implementation of section 498-A has gone through several phases, ever since its enactment. While at a point of time, immediate arrests were made by the police upon receiving a complaint of matrimonial cruelty, such powers have been phenomenally curbed by the Supreme Court through its decisions. Men’s organisations have conducted several anti-498A campaigns and generated, what Flavia Agnes very rightly calls, ‘adverse propaganda’ against the section. Law Commission Reports and the Supreme Court of India, taking cognizance of such propaganda, have severely criticised the ‘abuse’ of this section and consequently limited its scope of operation. The effect of the current position is that cases under section 498 A must be referred to Family Welfare Committees, much like civil cases involving matters of family law.

Over the years, there has been a lot of literature stating generally that section 498-A is grossly and frequently abused by women, thereby putting innocent husbands and their family members in trouble. Concomitantly, there have also been claims that the social need for section 498-A no longer exists as Indian women are educated and liberated in most quarters. Statistics have been relied upon to state that the number
of convictions in these cases is miniscule and the high number of acquittals is proof of the fact that the section is grossly abused and has therefore, ceased to accomplish its purpose. Emphasis on such factors, without verification of the genuineness of victims’ complaints has played a significant role in strengthening projections of abuse of section 498-A.

1.1.2 Victimisation, Discrimination and the many faces of Violence in Marriages

The Code of Criminal Procedure defines victim as a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression also includes the person’s guardian or legal heir.\(^1\) Victimisation as a process is painful, especially when the victim receives injuries in the privacy of her family. At the same time, it is also important to appreciate that violence, as a phenomenon is contextual and varies from one situation to another. Manifestations of violence in the family are varied and injuries need not always be physical. Under section 498-A, two primary forms of violence have been recognised: physical and mental cruelty.

While physical cruelty is one that puts the woman’s physical health, life or limb at grave risk, mental cruelty refers to such conduct of the accused which may not necessarily have physical consequences on the victim but would definitely affect the

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\(^1\) The Code of Criminal Procedure (Amendment Act) 2008, s 2
mental health of the victim. Such consequences on the victim’s mental state, if grave, would qualify as matrimonial cruelty within the definition of section 498-A.

However, proving victimisation and gravity of violence in marriages is a complex phenomenon because such violence is perpetrated against women in a form that is not always treated as aggressive by society. Further, social conditioning has resulted in the creation of stereotypes in terms of expected role of the victim and standards of appropriate behaviour that she must fit into. There is acute under-estimation and even non-recognition of the impact of physical or mental injuries on women while concomitantly, there also exists condonation inspired by stereotypes of accepted behaviour on the part of accused, even though such behaviour qualifies as injurious. For example, verbally abusing a woman or her parents and loved ones is often discounted as ordinary wear and tear of family life, which is legitimised on account of its regularity as a feature of many Indian marriages. Similarly, in some social segments, for example slum areas, alcoholism and consequent abuse of women is normalised. Likewise, sexual abuse of women or even their rape, although rightfully within the ambit of section 498-A are often treated as incapable of being criminalised under the section -by lawyers, courts and common people alike, on the ground that marriage by itself is a blanket immunity from committing sexual offences against the wife.

Victims of matrimonial violence approaching the criminal justice mechanism under section 498-A come with a wide range of complaints- of being beaten, brutally raped,
grievously hurt, emotionally abused, attempted suicides and many more. The gravity of their harassment demands prompt response from all institutional stakeholders, especially actors in the criminal justice mechanism. Records of NCRB and studies conducted by NFHS reveal that the problem of violence against women in marriages is deep. For instance, NCRB records of 2016 reveal that cruelty by husbands against their wives stands out as the topmost crime in India. NFHS studies also reveal that a large number of women are raped or sexually abused by their husbands.

There is substantial data to support the contention that women are grossly abused in Indian matrimonial homes and marriages are a common platform for perpetrating such abuse. Ironically, however, the number of acquittals is significantly huge in cases of 498-A. Very few studies have been done in India to look into the causes of such acquittals but a common factor cited by courts is the lack of evidence. Courts have also struggled to interpret what does or does not amount to matrimonial cruelty in various contexts and situations.

1.1.3 Access to Justice: Police as the first point of Contact

Based on contentions made in the preceding paragraphs, it is analysed that barriers faced by women at the entry points of the criminal justice mechanism may have played a significant role in their inability to produce sufficient evidence. Apart from

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that, these barriers may also have a very significant role to play in the massive under-reporting of cases under section 498-A. Therefore, the research has been oriented to explore the competence of these mechanisms in dealing with complaints of matrimonial cruelty.

Since Women’s and Children’s Desks (referred as Women’s Desks hereinafter) have been set up at all police stations with the sole purpose of facilitating access to justice for women (and children) victimised by brutal crimes by being their first point of contact in the criminal justice mechanism, assessing their performance was thought to be apt for the purpose of locating their impact on cases registered under section 498-A.

The research was executed in two districts of Odisha, which incidentally have the first and third highest rates of literacy in the state.

1.2 Objectives of the Research

a. Examine factors which influence female victims of matrimonial violence irrespective of their socio-economic or educational status in getting their grievances redressed through the existing criminal justice mechanism

b. Analyse the method and manner in which the police respond to cases of matrimonial violence
c. Analyse the factors that trigger specific responses of the police in cases of matrimonial violence

d. Examine the efficacy of special structural and functional arrangements made for women at police stations in dealing with matrimonial violence and explore scope and need for improvement, if any

e. Assess the combined effect of judicial pronouncements and police responses on the credibility of victims of matrimonial violence

1.3 Scope and Limitations

The research is subject to the following limitations:

a) The study is confined to responses of identified stakeholders in cases relating to section 498-A of the Indian Penal Code.

b) The qualitative assessment is confined to Women’s Desks at selected police stations as well as 2 Women’s Police stations in the districts of Cuttack and Khurda in Odisha.

c) Participant observations, FGDs and interviews of judicial officers, CSOs and victims have been used only for the purpose of deciphering projections with
respect to victims of 498-A and contrast/compare them with police behaviour wherever relevant.

d) The study is subject to limitations of permissions obtained from various stakeholders as well as ethical and logistical considerations.

e) Some doctrinal analysis has been integrated in the research to complement the qualitative assessment and enable detailed analysis based on earlier research findings and existing theories.

f) Any form of quantitative assessment is beyond the scope of the current study.

g) The scope of the research is confined to study the challenges faced by women at the entry points of the criminal justice mechanism.

1.4 Research Questions

a) What are the various responses of the police when victims approach them with complaints of section 498-A?

b) What are the factors that influence such responses?
c) Do Women’s Desks provide special support to victims of matrimonial cruelty under section 498-A? If so, what is the extent of such special support?

d) What are the structural and functional mechanisms within which these Desks operate while dealing with complaints of section 498-A?

e) What is the impact of police responses on perceptions of section 498 A?

1.5 Hypothesis

For the purpose of this research, the use of hypothesis has been avoided as the study is based on qualitative assessment and unlike in quantitative research, pre-existing suppositions may have interfered with the neutrality of the current research.

Since the present qualitative study required sharp skills of observation and guided conversations, the researcher abstained from using hypotheses and focused on studying individuals in their natural surroundings. All inquiries were in the nature of collating experiences, subjective impressions and fact-finding.
1.6 Chapterisation

The entire research has been divided into 6 Chapters. They are as follows:

Chapter 1 *introduces* readers to the subject of the thesis. It also lays down the Research Methodology and Review of Literature in detail.

Chapter 2 has been titled “*Theoretical Foundations and Socio-legal Constructions of Matrimonial Violence.*” This chapter discusses various theories that explain the prevalence of violence in marriages and contextualises them in the Indian scenario. Socio-legal constructions of matrimonial violence from the perspective of various scholars that lead to creation of stereotypical perceptions and projections of matrimonial violence, which are ultimately reflected in legal mechanisms, have also been discussed in this chapter.

Chapter 3 titled “*Indian Legal Framework and Judicial Interpretations of Matrimonial Cruelty*” discusses matrimonial violence purely in the Indian context and specifically, in the form of Matrimonial Cruelty defined in section 498-A of the Indian Penal Code. Leading judgments of the Supreme Court and selected judgments of certain High Courts have been discussed in this segment to analyse interpretation of the term “matrimonial cruelty”. Judicial trends in connection with section 498-A have been traced with the objective of laying the initial foundation for the research.
Chapter 4 is titled “Female Victims of Matrimonial Cruelty and Barriers in Accessing Justice.” Based on the analysis made in the previous chapters, this chapter makes an effort to discuss the barriers generally faced by female victims of matrimonial cruelty while accessing the Criminal Justice Mechanism. The objective of this chapter is to explore and connect barriers at the points of access with the ultimate consequences, public perceptions and projections in cases of 498-A.

Chapter 5 of the thesis is titled “Operation of Women’s Desks in the State of Odisha: An Assessment.” In this chapter, the specific findings in connection with Women’s Desks have been put forth in detail. The chapter also chalks out exact details of the tools used and spells out the reasons for and manner in which these tools have been used throughout the research. Details of findings and narratives have been presented in an organised manner under various headings and information obtained from field visits has been distributed under categories based on common themes.

Chapter 6 of the thesis titled “Analysis of Research Findings, Suggestions and Conclusion” deals with a structured analysis of the findings made in the study. Patterns are drawn by comparing and contrasting case studies with each other, aligning them with the outcome of interviews, FGDs, participant observations, etc. conducted to assess other stakeholders like victims, judicial officers and members of Civil Society Organisations (CSOs). Deviations in emerging patterns are then studied and probable explanations provided in the study. Finally, recommendations are proposed based on the study and the thesis concludes on the note that by improving
the performance of Women’s Desks, current position of victims approaching the police with complaints of matrimonial cruelty may be improved.

1.7 Review of Literature

It must be stated at the outset that while there is abundant literature exploring the theory of violence and access to justice, the availability of literature is minimal in the area of section 498-A. Absolutely no substantial research exists on the performance of Women’s Desks in the Indian context although some amount of research can be located in areas of women’s interaction with the police, lawyers and courts. For the purpose of the current research, extensive literature was surveyed and reviewed by referring to books, research articles, working papers, journals, websites/ online portals, documents and Law Commission Reports.

To begin with, it must be admitted that the concept of Violence is very relevant and crucial to the identity of a victim in Criminal Law. The degree and extent of violence, its shape and manifestations are dependent on the platform on which such violence is perpetrated and affects the gravity of injury suffered by a victim, thereby also affecting his/her vulnerability in the criminal justice mechanism. (Pollak, 2004). The extent of vulnerability and nature of violence perpetrated, therefore, shape the identity of the victim by shaping simultaneously hidden biases, prejudices and projections. Research shows that the family can be a convenient space for perpetration of violence as it is shielded by privacy in several legal systems,
especially the ones in Asia (Amirthalingam, 2003). In such societies, privacy of the family also explains impunity of perpetrators of violence by the husband or members of his family against the wife and ultimately even legal systems condone the occurrence of such violence against women in marriages (Krumholz, 1976). Feminists argue that perpetration of violence against women in marriages can be traced back to the social conditioning of men that resulted in them treating their women as their chattels, equivalent to cattle or livestock (Du Bois, 1998). In the early years, several theories were advanced to portray victims of matrimonial cruelty as active participants in the perpetration of violence against them as they either enjoyed such violence or provoked the accused to become violent (Casey, 2010). Such theories were rejected by feminists who argued that violence was the consequence of unequal power dynamics between men and women in marital relationships (Mc Kinnon, 1989). Crenshaw (1989) added multiple dimensions to the problem of violence against women when she coined the word intersectionality and the same can be found to be very relevant while understanding violence in marriages and its complexities in families of higher or lower economic strata, castes, communities, geographies in the Indian context.

Liability of states to ensure that their institutional agencies engage effectively in handling situations of matrimonial violence and the principle of due diligence laid down by International Commissions are recent global trends in the area of State responses to situations of matrimonial violence (Spieler, 2011).
Ironically, although women face several challenges as victims of violent marriages, the responses of the criminal justice system are not adequate to meet their needs. In India, the legal framework that criminalises matrimonial cruelty under section 498-A has been confronting massive challenges on the ground that the section is abused by women to harass their husbands (Jaising, 2005). According to her the legal system condones the dead and condemns the living victims, thereby meting out injustice on both the fronts.

Agnes (2015) argues that adverse propaganda by men’s organisations and reports of Law Commissions along with judgments of the Supreme Court have played a significant role in completely diluting the rigor of section 498-A. She also argues that these factors have played a vital role in projecting the victim as incredulous and vicious, thereby resulting in re-victimisation by established criminal justice mechanism. Along the same lines, research reveals the projection of a victim of matrimonial cruelty as a ‘legal Frankenstein’ and ‘monstrous woman’ in judicial narratives (Lodhia, 2009).

Such projections of victims have been a vital factor in eliminating chances of accessing justice and conversely, barriers in access to justice have also played a significant role in creating them.

Access to Justice has been stated by Cappelletti (1976) to be beyond the mere right to access mechanisms of formal litigation. Francioni (2007) argues in his book that
access to justice is not just any right; rather it is an elemental human right. Along the same lines, Rhode (2004) highlights that victims face several barriers in accessing justice and these may range from financial or economic barriers to social barriers. These findings were found to apply significantly in the context of women victimised by matrimonial cruelty by other researchers.

Russell (1990) conducted a research that revealed the trials and tribulations of victims in criminal trials in the United States of America. Further research in this area corroborated the findings of Russell even fourteen years later (Sack 2004). The fact remains that victims of matrimonial violence all over the world are subject to judicial bias and prejudices and no amount of violence is sufficient to turn the tables in favour of the victim unless she suffers mortal injuries and is able to prove so in court (Keith, 1992).

In the Indian context, research resonated with similar findings. In her article Nigam (2016) reveals her findings about the challenges faced by victims in Mahila/Women’s Courts and she highlights sexual abuse, negative stereotyping and physical threats to victims even inside the premises of courts. She also sheds light on the sexual harassment of such victims by their lawyers and the uncomfortable remarks passed by them as well as judges in courtrooms, discounting the pain of violence while simultaneously showing humiliation and disbelief.
The impact of negative stereotyping of victims of matrimonial cruelty, often combined with the charming and relatively stable disposition of the victim adversely affects the prosecution in such cases and Epstein (2002) explains that various medical factors like PTSD or at the basic level, inability to come to terms with the pressures of a broken marriage may lend an unstable, aggressive or confused disposition to the victim.

It is also argued that a culture of victim-blaming which is widely prevalent in courts across the world leads to the creation of biases of the same nature as in cases of victims of rape or sexual offences (Fields, 1996). She also argues that such victims are treated as ‘erring wives’ who must have played a significant role in provoking violent responses from their husbands.

An analysis of existing research revealed significant gaps in research, the most important of them being a pronounced absence of any study on the manner in which special institutional structures created for women function and how they affect the prosecution of such cases. Further, very little Indian scholarship exists on the problems faced by victims of matrimonial cruelty under section 498-A and in recent times, the need to plug gaps in this area has been felt strongly.

It was also revealed that apart from biases and prejudices, various aspects of the adversarial mechanism may also pose special barriers for victims of matrimonial cruelty as they suffer violence in private spheres, making it difficult for them to
produce evidence of such violence. In this context the role of the police as the first point of contact and their absolute apathy in registering complaints of victims has been highlighted by Agnes (2015).

Based on the above theoretical framework and research findings, the current research had to be designed to reveal appropriate findings through qualitative methods. The significance of research tools like observation, narratives, interviews in a qualitative research have been highlighted by Creswell (2014) and the same were used for the purpose of this study. Creswell’s insights into analysis of data were also useful in drawing patterns and inter-linking data. Apart from that, while analysing the findings of this study, Bryman’s (2009) methods were followed to appropriately use participant observations, narratives and interviews to reveal findings that plug existing research gaps.

1.8 Research Method

The current research makes use of a qualitative approach to assess the functioning of Women’s Desks in the state of Odisha. In course of the research, 12 Police stations were visited by the researcher in two districts of Odisha, i.e. Cuttack and Khurda. 7 Women’s Desks were selected in Khurda and 3 in Cuttack. Along with them two Mahila/Women’s Police Stations were also visited. The purpose was to compare and contrast the functioning of Women’s Desks vis-à-vis Women’s Police Stations. There are a total of six Women’s Police Stations in the state of Odisha, out of which, two were studied for the purpose of this research. The qualitative assessment was
undertaken by making visits to police stations in which the selected Women’s Desks were located as well the Women’s Police Stations. In order to compare the results of the assessment, judicial officers, victims and members of civil society organisations were also studied only to serve a limited purpose of verifying the responses of police personnel.

However, to build the foundations on which such study may be undertaken, the research also makes use of a fair amount of doctrinal exposition and analysis. The purpose of such doctrinal analysis is to analyse theoretical constructs of violence, access to justice, judicial pronouncements deliberating on the concept and other available literature and align them with research findings. The doctrinal analysis is also used to establish complex inter-linkages with the findings of the qualitative assessment.

As mentioned, the study was conducted in the urban areas located in the districts of Cuttack and Khurda. The 12 police stations visited for the research were selected by a method of Purposive Sampling and the selection was subject to permissions from the Police departments in Cuttack and Khurda. A total of 19 police personnel were interviewed in detail in course of the research. It was ensured that the interviews were conducted at police stations during regular working hours and visits were never announced to ensure that police personnel were studied in course of their regular duties. In course of visits, field notes were taken, interviews conducted and
narratives recorded in writing. Victims were observed while interacting with the police personnel.

Judicial Officers, victims and members of Civil Society Organisations who were assessed in course of the study were also selected by a method of purposive sampling.

1.9 Ethical Considerations

In course of the research, efforts were made to retain the confidence of interviewees and they were assured of anonymity. In the present thesis, every attempt has been made to conceal identities of interviewees and names of interviewees have been revealed only when they have explicitly and unequivocally consented to it. Sensitive information has been shared only to the extent required for the purpose of the analysis. While conducting interviews of victims, special care was taken to ensure that their sensitivities were not hurt and discomfort was not caused in the process.

1.10 Mode of Citation

The author has followed the OSCOLA (Oxford Standard for the Citation of Legal Authorities) method of citation throughout the thesis.