

**Process Integrity in Criminal Justice**  
**System**

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Submitted by :

**Samip Mohan**

**National Law University, Bhopal**

Mentored by:

**Shri Jyotiswaroop Pandey**

**Director General of Police (Retd.),  
Govt. Of Chhattisgarh**

## PREFACE

Rakshak Foundation is a non-profit organization and headquartered in Santa Clara, California. It researches different public policy issues and creates awareness about them. Rakshak Foundation's initiative to help strengthen the foundations of our society and bolster the confidence of a common man in the system by creating awareness about the issues affecting him is worth appreciating.

I am Samip Mohan, final year student from National Law Institute University, Bhopal. I have been working on the project 'Process Integrity in Criminal Justice System' as part of my internship at Rakshak Foundation in IIT Delhi. The main reason for interning at Rakshak Foundation is that I understand that while one is acquainted with various laws at Law School, the real application of law is learnt only through learning the ground realities and research and this internship being research oriented is helpful for my future and to research under the guidance of experienced mentors will help me acquire more knowledge and skills apart from that I get to interact with other students coming from various parts of the country and various academic backgrounds and to acquire knowledge of their field and experience also share my knowledge which I have acquired through internships and volunteering at various places like National Human Rights Commission, Deendayal Research Institute, Supreme Court of India and various other NGOs . Also the guest lectures on various issues relating to public policy and others has been a good platform for me to learn.

## Acknowledgements

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## Table of Contents

<b>PREFACE .....</b>	<b>II</b>
<b>ACKNOWLEDGEMENTS .....</b>	<b>III</b>
<b>LIST OF FIGURES AND TABLES .....</b>	<b>V</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>VI</b>
<b>1. INTRODUCTION .....</b>	<b>1</b>
1.1 INTRODUCTION TO CRIMINAL JUSTICE SYSTEM IN INDIA .....	1
1.2 HISTORY OF CRIMINAL JUSTICE SYSTEM IN INDIA .....	2
1.3 MAIN PROBLEMS, THEIR SCOPE AND IMPACT ON THE SOCIETY .....	2
1.3.1 <i>False Arrest and Detention and non-adherence to established procedures</i> .....	2
1.3.2 <i>Misuse of Domestic Violence Act and Anti-Dowry Laws</i> .....	4
1.4 GOALS AND OBJECTIVES .....	6
<b>2. METHODOLOGY .....</b>	<b>6</b>
2.1 LITERATURE SEARCH .....	6
2.2 MEETINGS AND INTERVIEWS .....	8
<b>3. CURRENT NGO AND GOVERNMENT EFFORTS.....</b>	<b>10</b>
3.1 NGO WORK ON THE ISSUE OF FALSE ARREST .....	10
3.1.1 <i>Case Study:</i> .....	10
3.2 GOVERNMENT MEASURES FOR FALSE ARREST.....	15
3.3 NGO WORKING ON THE MISUSE OF DOWRY LAWS IN INDIA .....	17
3.4 <i>Government measures on Misuse of Dowry Laws</i> .....	18
<b>4. RESULTS AND DISCUSSIONS .....</b>	<b>22</b>
4.1 FINDINGS FROM THE LITERATURE .....	22
4.2 GAP ANALYSIS.....	25
<b>5. RECOMMENDATIONS, SCOPE AND STRATEGY FOR IMPLEMENTATION .....</b>	<b>26</b>
5.1 RECOMMENDATION & SCOPE.....	26
5.2 FLOWCHART (STRATEGY) FOR IMPLEMENTATION 5.2.1 RECOMMENDATIONS FOR RIGHTS OF ARRESTED PERSON AND PREVENTION OF TORTURE.....	26
5.2.2 <i>Recommendations for Cases relating to Misuse of Dowry Laws</i> .....	28
<b>6. CONCLUSION .....</b>	<b>29</b>
<b>7. REFERENCES .....</b>	<b>30</b>
<b>APPENDIX A (MEETINGS AND INTERVIEWS).....</b>	<b>31</b>

## List of Figures and Tables

**Figure 1:** Cops beating up a common man during a protest

**Figure 2:** Marked man Harak Chandra Chakma, who was arrested and tortured by the police for taking part in a tribal celebration in Tripura, ended up in hospital for 10 days.

**Figure 3:** Article in The Tribune 12<sup>th</sup> December, 2006, shows the way media trial is prevalent in India

**Figure 4:** Flowchart for Recommendation#1 (Amendment to Torture Bill, 2010 in accordance with the provisions of Convention against Torture and the Ratification of the same by the parliament)

**Figure 5:** Flowchart for Recommendation#2 (An obligation on states parties to set up, designate or maintain one or several national visiting mechanisms, which can conduct more regular and independent visits.)

**Figure 6:** Flowchart for Recommendation#3 (Change the nature of offence from non-bailable and non-compoundable to bailable and compoundable)

**Figure 7:** Flowchart for Recommendation#4 (Punishment for those who have filed the complaint maliciously.)

### List of Tables:

**Table1:** Death of Persons in Police Custody (Of Persons Remanded to Police Custody by Court)

**Table2:** Death of Persons in Police Custody (Of Persons Not Remanded to Police Custody by Court)

## Executive Summary

This report deals with the history of Criminal Justice System in India and its comparison with the present scenario and how the antiquated law and poor implementation of existing laws have led to widespread misuse of various laws by the state machinery especially police personnel (False Arrest, Encounters etc.) as well as common person like in cases where there is Misuse of Dowry Laws. This report tries to identify the loopholes in the existing laws which are used by people to circumvent the law. There has been rampant circumvention of procedural laws and violation of Rights of the arrested person because of non-adherence to established procedures. Hence, this report takes into consideration the rampant non-adherence to established procedure and the manner in which it leads to misuse of law. The report tries to substantiate the same by taking two major issues; false arrest, false detention and Misuse of Dowry Laws. There had been instances where the proper procedure is not followed by police officers especially in cases of False Arrest and the report studies certain cases where the police officers have falsely implicated Muslim youth after an act of terrorism or on false pretexts and these accused persons are subsequently acquitted by the court for lack of evidence. Police personnel have been torturing poor and uneducated people and these people are subjected to custodial torture which often results in death. This report shall deal with such cases of custodial torture and lapses in procedure that the police officers are bound to follow. Supreme Court has in the case of D. K. Basu v. Union of India laid down certain guidelines or procedural safeguards to ensure that the accused is not subjected to unnecessary and unwanted violence on part of the police officers.

A part of the report also emphasises on Misuse of Dowry Laws by wife and her relatives. Women have been subjected to Domestic Violence and Dowry related violence and therefore to safeguard the rights of women, Domestic Violence Act, 2005 and Dowry Prohibition Act, 1961 were enacted. However, the act has become a tool for the wife and her relatives to blackmail the husband and his family for money and various other reasons as will be discussed in the project. There had been cases where the parents of the husband have to make trips to the court in their old age for years only to be finally acquitted by the court and often it is just the fault of the husband and his parents are also named in the FIR and they have to bear the cost for no fault of theirs. Also, the Indian social and legal systems take for granted that most of the cruelty is done by the Husband and his family to the wife, but there are no provisions for crime against husband and his family members. The most number of cases of marital disputes are filed under the Dowry Prohibition Act in India.

The lawyers and the Parliament are trying to prove every marital dispute as a case of Dowry harassment by husband and his family by enacting laws like Sec. 498A and 406 IPC which are highly prejudicial to the rights of husbands and presumes a person charged under this section as guilty until proven innocent which is exactly opposite of the established principle of Adversarial System that is followed in the country. The report also takes into consideration the guidelines of Delhi High Court in cases relating to S.498A as to procedure that is to be followed and police officers should not act according to their whims and fancies. The report tries to identify loopholes in the law and recommendations as to what can be done to safeguard the rights of innocent people and the manner in which the existing laws can be amended so that there is more integrity in following the procedure established by law. The report other than amendments to the law also recommends certain administrative changes that can be brought like training and sensitization of police personnel, creating awareness among the masses etc so that the problem of implementation of law does not arise and the idea of a freedom is not only 'guaranteed' but felt and realized.

#### Key Findings:

1. There are existing laws on the issue but the real problem lies in implementation of those laws, if the police officers and any other law enforcement agency for that matter starts investigating in accordance with the laid out rules and laws, cases of custodial torture and deaths are less likely to occur.
2. Even after so many years of signing the Convention on Torture, Indian government is yet to ratify the same and also the proposed bill on Torture is not in terms with the Convention.
3. In all the cases of Torture, Custodial Death, False Imprisonment etc. The agencies have failed to follow the established procedure and that has been the major reason why these cases are on a rise.
4. There is a lack of proper mechanism to punish the erring officials and the system colludes to protect such wrong-doers which goes a long way in promoting the wrong they have been doing and this impunity leads to increase in number of such cases.
5. In cases of Misuse of Sec.498A, it has been found that High Court and Apex Court have laid down certain procedures to be followed by police officers before a lodging a complaint under this provision, and if such procedure is duly followed, the misuse is less likely to occur.

# 1. Introduction

## 1.1 Introduction to Criminal Justice System in India

***"Never doubt that a small group of thoughtful committed citizens can change the world - indeed it is the only thing that ever does" -Margaret Meade***

Violent and organized crimes have become rampant these days. Since, the chances of convictions are low; crime has become a profitable business. Life has become unsafe and people live in constant fear. Law and order situation has deteriorated and the citizens have lost confidence in the Criminal Justice System. The ultimate aim of criminal law is protection of the weak against the strong, law abiding against lawless, peaceful against the violent.<sup>1</sup> In order to protect the rights of the citizens, the State prescribes the rules of conduct, sanctions for their violation, machinery to enforce sanctions and procedure to protect that machinery. It is the primary function of the government to protect the basic rights to life and property.. Liberty cannot exist without protection of the basic rights of the citizens by the Government.

The desire for quick, fair and affordable justice is universal. Protection of life and liberty has been given a pre-eminent position in our Constitution by enacting Article 21 as a fundamental right. Any deprivation or breach of this valuable right is not permissible unless the procedure prescribed by law for that purpose is just, fair and reasonable. The ground reality, however, is that this precious fundamental right is turning out to be a mere pipe dream to many millions to whom justice is delayed, distorted or denied more than its delivery in accordance with the ideals enshrined in the Constitution.

The entire existence of the orderly society depends upon sound and efficient functioning of the Criminal Justice System. Nowhere have the broad objectives of the Criminal Justice System been codified, though these can be inferred from different statutes, including the Constitution and judicial pronouncements. The primary responsibility of the State is to maintain law and order so that citizens can enjoy peace and security. Life and personal liberty being very precious rights, their protection is guaranteed to the citizens as a fundamental right under Article 21 of our Constitution.

Many times deprivation of right to property leads to invasion of personal liberty. The State discharges the obligation to protect life, liberty and property of the citizens by taking suitable preventive and punitive measures which also serve the object of preventing private retribution so essential for maintenance of peace and law and order in the society. Substantive penal laws are enacted prescribing punishment for the invasion of the rights. Substantive penal laws can be effective only when the procedural laws for enforcing them are efficient.

This in essence is the function of the criminal justice system. The system followed in India for dispensation of criminal justice is the adversarial system of common law inherited from the British Colonial Rulers. The judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable The State discharges the obligation to protect life, liberty and property of the citizen by taking suitable preventive and punitive measures which also serve the object of

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<sup>1</sup> [http://mha.nic.in/pdfs/criminal\\_justice\\_system.pdf](http://mha.nic.in/pdfs/criminal_justice_system.pdf)

preventing private retribution so essential for maintenance of peace and law and order in the society.

## 1.2 History of Criminal Justice System in India

- Ancient India: Purana and Smritis were the source of Law-- King had no independent authority but derived its power from Dharma.
- Maurya Dynasty: Somewhere around 4<sup>th</sup> Century B.C.-- Rigorous penal system which also included mutilation and death penalty.
- Dharmashastra by Manu in 2<sup>nd</sup> Century A.D. which was taken by early British colonial administrators to be the law of the land for Hindus in India.
- Judicial Hierarchy was formed during Gupta Dynasty. The king presided over the highest court of appeal and he was assisted by various judges, ministers and priests etc, their presence dependent on the nature of the case.
- Series of Muslim invasion during the Middle ages and finally Mughals settled in India and enforced the Mohammedan Criminal Law.
- First Law Commission was formed by Britishers and they came out with Indian Penal Code, 1860 and thereafter Criminal Procedure Code, 1861. However, 1861 law has been repealed by Code of Criminal Procedure, 1973. These acts alongwith certain provisions of Indian Evidence Act forms the Criminal Justice Legislation in India.

## 1.3 Main Problems, their scope and impact on the society

- **False Arrest and Detention and Non-Adherence to established Procedure**
- **Misuse of Dowry Laws and Domestic Violence Act**

**1.3.1 False Arrest and Detention and non- adherence to established procedures:** Four under trials die in police custody every day in India — a disturbing number for one of the oldest judicial systems in the world. Between 2001 and 2010 the National Human Rights Commission (NHRC) registered 14,231 custodial deaths. And this is just the tip of the iceberg, as custodial torture not leading to death seldom makes news. Nonetheless, once the police dismiss the death as a suicide, result of sudden medical complication or self-inflicted injuries, justice eludes the deceased's relatives as the entire system works to shield the torturers.

Even the Supreme Court, despite showing concern about the Human Rights issue every now and then, has failed to undermine or reduce the incidents of torture.

Although it issued a set of guidelines in 1996 for the police to follow in all cases of arrest or detention as a measure to prevent custodial violence, these guidelines have had no deterrent effect on investigating agencies.<sup>2</sup>

A widespread belief that torture scoops crucial information has undermined bids to build popular campaigns against torture. Three anti-terror laws since 1987 virtually sanctified torture by accepting confessions made in police custody as evidence against suspects, which the Indian Evidence Act of 1860 does not allow. Because the laws were abused, the government was forced to abandon two of them. A third, the Maharashtra Control of Organised Crime Act, is still in operation but with a much reduced conviction rate because of gross misuse. Indeed, in the last over a decade, courts have freed a large number of people accused of terrorism because, among other reasons, the confessions were obtained through torture. A notable example was the acquittal by the Supreme Court of three of the four who had been convicted by a lower court for the December 2001 attack on Parliament.<sup>3</sup>

*“The result is also a serious security risk, for this nature of targeting is bound to cause widespread disbelief in mechanisms of justice and add to a feeling of alienation. Every time an innocent person is framed, the real culprits do not just get away but also get emboldened.”* In short, use of torture defeats the purpose of justice, not enhances it.



Figure 1- Cops beating up a common man during a protest

Source: <http://tehelka.com/state-sanctioned-violation/>

<sup>2</sup> D.K. Basu v. State of West Bengal [AIR 1997 SC 610]

<sup>3</sup> <http://www.tehelka.com/torture-has-only-negative-dividends/>



**Figure 2: Marked man** Harak Chandra Chakma, who was arrested and tortured by the police for taking part in a tribal celebration in Tripura, ended up in hospital for 10 days.

Source: <http://tehelka.com/the-hell-of-living-souls-2/>

### **1.3.2 Misuse of Domestic Violence Act and Anti-Dowry Laws:**

Section 498A was inserted in Indian Penal Code in 1983 to protect married Indian women from cruelty, including dowry harassment. The offence under this section is cognizable, non-bail able, non-compoundable with provision to lodge a complaint against the husband or any relative of the husband of the women. The section reads as hereunder:

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

Section 498A has been misused by a particular section of the society. Although, the legislative intent behind having this legislation was to protect and safeguard the interest of married women. The population that has been abused includes children, old and aged people and often pregnant women are wrongly implicated under this law. There is an urgent need to address this issue, the law makers were justified in enacting such a law but the ramifications of this law are far more abusive than they would have ever thought:

(a) This law has been rampantly misused by people with wrong intentions, as this law is prejudiced towards the husband the wives are usually misusing the law to their advantage and there have been instances where the same person uses this law in their repeat marriages;

(b) This law has been a tool used by certain families to extract money from bridegroom's family in order to further their 'get rich quick scheme'.

(c) The law is also used as a tool to alienate the husband from his parents and siblings so as to have direct influence over his finances and in a way directly influence his social life;

(d) In certain cases the bride's family do not disclose certain information such as her mental health, educational qualification etc. before the marriage so as to forge the alliance. Hence, when the truth is unearthed this provision of law Section 498A is invoked in order to harass the husband's family;

(e) This law being an exception in Criminal Law presumes the accused as guilty until proven innocent. And there from begins the saga of unending trials, tribulations and destruction for an Innocent man and his family.

Misuse of Section 498A of IPC has been condemned by leading authorities;

(a) The Supreme Court of India in *Sushil Kumar Sharma vs. U.O.1 (2005)* said that any misuse of this provision of law amounts to unleashing Legal Terrorism. It acknowledged that there are growing instances of women filing false charge.

(b) The World Health Organization (WHO), in its Report of India clearly cited Section 498A as one of the major reasons for growing Elder Abuse in India.

(c) The Law Commission in its 154th Report, the Malimath Committee Report (on Reforms of Criminal Justice System, 2003) and the 111<sup>th</sup> Report of the Parliamentary Standing Committee on Home Affairs, have all acknowledged that Section 498A is being widely misused;

(d) Delhi High Court has laid down certain guidelines as to procedure that is to be followed in a case relating to S.498A

**There is no remedy/provision in this law:**

(a) For punishment to people who misuse and abuse this law;

(b) For people who are proved innocent after being falsely implicated under this law;

(c) For the indelible stigma that falsely accused people are forced to live with for the rest of their lives;

(d) For the immense financial, social and personal loss borne by the falsely accused;

(e) For resurrecting the lives of falsely accused and maligned people;

(f) For punishment to guilty and corrupt law enforcement agencies who connive and collude with complainants to harass and torture and falsely accused;<sup>4</sup>

### **1.4 Goals and Objectives**

1. Study about origins of criminal justice legislations.

2. Find out the causes of misuse of laws recently incorporated e.g. Misuse of Domestic violence Act. Why the legislature was inapt in approving a balanced legislations.

3. Take an example- 'Arrest of a person'. Trace the laws which will be applicable on him till the court hearing actually starts. The following is just to provide direction, add more points to it.

- When the first arrest is made, are the statutory provisions of disclosing nature of charge, information to the kin, permission to consult an advocate, and maximum 24 hours detention, being complied with?
- What kind of evidence was put before the magistrate when the accused appears before him? Is it admissible in law, for example, a confession before police officer?
- If the arrested person was remanded to police custody, what was the reason given by the court? Was the arrested person allowed to contest this decision?
- Was any other accomplice named in the confession before police?
- If any other arrest was made in the case, all the above details may be obtained.

4. Make a final report on proposed changes in the due law process in rule book so as to conform with prevalent law practices.

## **2. Methodology**

### **2.1 Literature Search**

Research of this report has been doctrinal and various journals and articles from Internet and government reports have been referred to for the purpose of this project.

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<sup>4</sup> [www.petitiononline.com/pet498A/petition.html](http://www.petitiononline.com/pet498A/petition.html)

Following articles and journals were referred to:

- **Framed, Damned, Acquitted : Dossiers of a very special cell- A report by Jamia Teachers' Solidarity Association**  
*A compilation of cases relating to non compliance of procedural laws by police personnel and subsequent acquittal of the accused persons. All of them being arrested on false pretexts and concocted evidences.*
- **The Origins of Due Process in India: The Role of Borrowing in Personal Liberty and Preventive Detention Cases, Manoj Mate—Berkeley Journal of International Law.**  
*The article deals with the concept of due process which is a principle followed in USA and slightly different from 'procedure established by law' which is followed in India and the manner in which the concept of due process has been internalized in the Indian Legal System by Supreme Court through Judicial Activism, the most important being Maneka Gandhi v. Union of India (1978).*
- **<http://tehelka.com/the-hell-of-living-souls/>**  
*An article that deals extensively with the cases of custodial violence and rampant non-adherence to DK Basu Guidelines. Second thing that must be noted is that most of the victims are poor and non-influential people and are easy victims of police atrocities.*
- **Petition praying for amendments in Section 498A of IPC by Anupama Singh in association with Rakshak Foundation.**  
*A petition was filed with regard to misuse of dowry laws in the country and suggested amendments in the law so as to avoid circumvention of existing laws.*
- **Committee on reforms of Criminal Justice System**  
*Malimath committee was established to suggest reforms on Criminal Justice System and the report concentrated on various issues like loopholes in Investigation, Inquiry and Investigation in cases of offences against women.*
- **Consultation Paper on Law relating to Arrest by Law Commission of India**  
*This paper helped me to understand the current scenario of arrests made in India and misuse and non-adherence to the procedure established. Also, the paper has added certain statistics with respect to number of crimes in different states and an analysis of these crimes.*
- **The Silent Cry of Men, Sarita Kumari and Debashree Singh, Second International Conference of the South Asian Society of Criminology and Victimology, January 11-13,2013, Kanyakumari, Tamil Nadu**

*This compilation of papers and specifically this article has helped me in understanding the less known fact about victimization of men and the manner in which laws are framed which are prejudicial to men and easy for women to misuse and exploit men.*

- **Are the Indian Police a Law unto themselves? K. S. Subramanian; Social Watch India Perspective, Volume III**

*The report concentrates on problems that is faced by the Indian Police and suggested various reforms in raising the standard of policing specially those belonging to lower rung of the ladder.*

## 2.2 Meetings and Interviews

<b>Date</b>	<b>Name</b>	<b>Designation</b>	<b>Institution</b>	<b>Topic of Discussion</b>
<b>3<sup>rd</sup> June</b>	<b>Ms. Manisha Sethi</b>	<b>President</b>	<b>Jamia Teachers' Solidarity Association</b>	<b>False Arrest and encounter of Muslim youth</b>
<b>20<sup>th</sup> June</b>	<b>Mr. Sanjay Sharma</b>	<b>SHO</b>	<b>Civil Lines Police Station</b>	<b>Different Types of Registers that are maintained at police station and its importance in avoiding cases of false arrest and custodial</b>

				<b>torture</b>
<b>24<sup>th</sup> June</b>	<b>Shri Ravi Shankar Tyagi</b>	<b>ASI</b>	<b>Saket Police Station</b>	<b>Discussed about cases of Misuse of S. 498A</b>

### 3. Current NGO and Government Efforts

#### 3.1 NGO Work on the Issue of False Arrest

**Jamia Teachers' Solidarity Association** (originally Jamia Teachers' Solidarity Group) is a collective of university teachers, formed in the aftermath of the Batla House 'encounter' in 2008. Though initially focusing on the demand for a judicial probe into the Batla House 'encounter', JTSA has emerged as an important voice arguing for rule of law, and against illegal detentions, encounter killings, and communal witch hunts by anti terror agencies. JTSA conducts fact-findings, investigations, publishes reports, engages in legal aid work as well as collaborates with a range of civil society groups on issues of democracy, justice and civil rights.

JTSA conducted a research and fact finding and came up with the compilation of 16 cases where innocent people were arrested by police and tortured without following the due process and were subsequently acquitted by court on lack of evidence. It also takes into consideration how the media concocts the story and instead of finding out the truth behind the entire issue tend to portray them as criminals even before the court has given its final verdict.

##### 3.1.1 Case Study:

#### **State Versus Gulzar Ahmed Ganai and Md. Amin Hajam**

FIR No.: 95/06

Police Station: Special Cell

Under Sections: 121/121A/122/123/120B IPC; 4 & 5 Explosive Substances Act 1908 besides the Unlawful Activities (Prevention) Act 2004.

Sessions Case No.: 13/2007

Date of Judgement: 13<sup>th</sup> November 2009

Judge: Dharmesh Sharma, Additional Sessions Judge II, North Delhi

#### **The Prosecution's Story:**

##### **September 2006:**

Secret information was received that one Md. Akmal, code named Abu Tahir, resident of Pakistan and District Commander of banned militant organization LeT operating in Pa& an area of Jammu & Kashmir, was sending his associates from Jammu & Kashmir to Delhi and other parts of India in order to collect arms, ammunitions and explosives as well as funds through *hawala* channels for terrorist activities. A team was constituted by ACP Sanjeev Kumar Yadav and Inspector Mohan Chand Sharma. Sources were deployed to get credible information and technical surveillance was also mounted. During such surveillance, it was revealed that one Mustafa had been sent by Abu Tahir to Delhi to indulge in terrorist activities. His hideout was somewhere in Mahipalpur, Delhi.

##### **10 December 2006 (evening):**

Concrete secret information was received that Mustafa along with his associate would arrive from Dhaulakuan by bus, at Mahipalpur and would proceed to their hideout. The secret information was also to the effect that Mustafa and his associate would be in possession of a huge cache of explosives material and funds that were collected for terrorist activities through *hawala* channels. This was recorded in the Daily Diary and a team of officers of the Special Cell was constituted.

**7.00 pm onwards:**

Equipping themselves with arms and ammunition, bullet proof jackets and kit, the team departed from the office of the Special Cell in three private cars and three two-wheelers and reached Mahipalpur crossing at about 7.45 pm. An attempt was made to include members of the public as witnesses but no one came forward to assist the police. Therefore without wasting any time as per the briefing given by Inspector Mohan Chand Sharma, the members of the team were deployed in and around the place.

**9.15 pm:**

Two persons alighted from a bus on route number 729 (Mori Gate to Kapas Hera) bearing registration no. DL 1PB 0249 at Mahipalpur bus stand on National Highway No. 8. These two persons were identified by the secret informer as the alleged terrorists. As the duo started to walk towards Mahipalpur crossing, they were over-powered by the Special Cell team. One of the accused was identified as Gulzar Ahmed Ganai @ Mustafa; the second as Md.Amin Hajam.

**Recoveries:**

From Gulzar's/Mustafa's bag were recovered two plastic lunch boxes: one, pink-coloured box contained 8 slabs of yellow coloured oil based explosive and from the other tiffin box of yellow colour, 7 slabs of yellow coloured oil based explosive were recovered. The 15 slabs were weighed and found to be of 1.5 kg. Md. Amin Hajam's shoulder bag contained two silver coloured non-electric detonators wrapped in co& on which were placed inside white coloured socks; 12 wads of Rs.500 each, containing hundred currency notes totaling Rs. 6 lakhs. The prosecution's case is that the *rukka* was prepared by SI Vinay Tyagi.

**How the Case Fell Apart:**

**The Date of the Arrests:** It was revealed in the court that the two Accused were not arrested on 10 December 2006 (the date claimed by the prosecution), but almost two weeks prior to that, i.e. on 27<sup>th</sup> November 2006. The Defense claimed that Gulzar Ahmed Ganai (a student of BA IInd year in J &K) and Md. Amin Hajam (Junior Assistant in the Revenue Department, Government of J & K) had come to Delhi on 23 November 2006 for an excursion. They were arrested the following day – 27 November – and thereafter kept in the unlawful detention, beaten, tortured and then falsely implicated in this case. Two solid pieces of evidence were produced in the court to substantiate this:

- **Eyewitness:** One Md. Iqbal testified that he was arrested by the Special Cell on 27 November 2006 and while he was in custody, he met both Md. Amim Hajam and Gulzar Ahmad in the police custody on 28th November and thereafter for the next four or five days.
- **No Bus Service on the date of arrest:** The prosecution case was further punctured when Sonu Dahiya - the conductor on the bus in which the two accused purportedly travelled from Mori Gate to Kapashera on the night of 10 December – deposed that the last trip from Mori Gate to Kapashera was not carried out on the said date. His oral testimony was corroborated by the ticket chart/way bill, which had been handed over to the IO and was produced in the court. Perusal of the same explicitly showed that columns indicating sale of tickets in the last trip (starting 7.45 pm from Mori Gate) had not been filled up.
- **The Place of the Arrest remained Doubtful:** None of the members of the police party presented as prosecution witnesses could describe the place of occurrence in a convincing manner – despite their claims that they remained at the spot for more than seven hours. None of the witnesses were able to render any vivid description of the property in front of which the accused persons were arrested and the alleged proceedings and the documentation work conducted. In the photograph, taken at the site, depicting the accused persons along with alleged recovery of articles signing on a pavement, no background or landmark is visible which could have fortified the police assertion that the photographs of the accused with the seized articles were actually taken from the place of occurrence. There were 14 members in the team and not even one member of the team is shown or depicted in any of the photographs. Last but not the least, the photographs were taken from a digital camera and the least the prosecution could have done was to produce the memory chip / card to bring some authenticity to their case...“It is not clear if there were other photographs also taken and the possibility of tampering with the photographs, given the fact that computers are capable of doing so many mind boggling things, cannot be ruled out.”

#### **Faulty Paperwork:**

In the CFSL Form, the IO, ACP Sanjeev Yadav filled out that the explosives were recovered from the accused Md. Amin Hajam (whereas the charge sheet says they were recovered from Gulzar Ahmed) and two non-electric detonators marked are filled out as having been seized from Gulzar Ahmad Ganai (whereas the charge sheet says that they were recovered from Md.Amin Hajam) Neither ACP Sanjeev Yadav nor SI Vinay Tyagi who made out the ruqqa cared to explain this glaring mistake.

#### **Police Diary:**

The Court exercised its discretion and asked for the police diary, under Section 172 CrPC. Every police officer making an investigation, the Court noted, is obliged to record his proceedings seeing forth the time at which the information reached him, the time at which he began and closed his investigation, the place or laces visited by him and a statement of the circumstances ascertained through his investigation.

Perusing the police diary “for 10th and 11th December 2006”, the Court observed that “there is no mention that the accused person had arrived at Mahipalpur Chowk travelling in bus route no. 729 bearing no. DL 1PB 0249. This issue was never a trivial one, certainly not as per the police witnesses.” Further, “It is also astonishing to note that though there is a mention that Inspector Mohan Chand Sharma briefed the IO ACP Sanjeev Kumar Yadav about the recovery of explosives, non electric detonators as well as Rs. 6 lakhs from the accused persons, there is no clear indication in the police diary as to what was recovered from which accused persons.”

**Court's Remarks:**

Commenting on the casual investigation, the Court asked: “So I wonder was it human mistake or something else. The moot point is: were the mistakes pointed out above bonafide or mistakes committed while attempting to cook up the entire story? These are the doubts which the prosecution fails to explain. It doesn't need divine eyes to see that when there are two views possible, the one favoring the accused should be adopted.”



Gulzar (left) and Mohd Amin, members of the Lashkar-e-Toiba, who were arrested by the Delhi Police Special Cell, are presented in front of the media in New Delhi on Monday. — Tribune photo by Rajeev Tyagi

<http://www.tribuneindia.com/2006/20061212/main7.htm>

## “Two Lashkar men held with RDX”

*The Hindu*, 12 December 2006

NEW DELHI: Two alleged conduits of banned terrorist outfit Lashkar-e-Taiba (LeT), including a junior assistant with the Revenue Department in Jammu and Kashmir, have been arrested by the Special Cell of the Delhi police at Mahipalpur here. The police claim to have recovered 1.5 kg of RDX, Rs. 6 lakh in hawala money and

detonators from them.

A team led by Inspector Mohan Chand Sharma received a tip-off recently that Mohammad Akmal, a resident of Pakistan and LeT district commander of Pattan in the Valley, had been sending people to Delhi to collect money sent through illegal *hawala*

See also the report in *Tribune*, 12 December 2006, which does away with the pretense of balanced reporting and says “Let Men Arrested” and constantly refers to terrorists without the mandatory alleged etc.

Figure 3: Article in The Tribune 12<sup>th</sup> December, 2006, shows the way media trial is prevalent in India

### 3.2 Government Measures for False Arrest

Government of India hasn't come up with any of the amendments as recommended by Malimath Committee Report but the Constitution of India and Code of Criminal Procedure lays down certain procedural safeguards for arrested persons. However, on the contrary the state has time to time come up with legislations which are in contradiction with these rights like TADA, POTA, UAPA, MCOCA etc. Although TADA and POTA are repealed by intervention of various NGOs and civil society groups but the government amended UAPA and incorporated the provisions of POTA in UAPA. These draconian laws have circumvented the Rights provided for in the various criminal law legislations and policemen and other state machineries have used it to their advantage and harassed and tortured various innocent and poor people mostly Muslim youth. Hence, there has been widespread discontent among the people regarding widespread misuse of these laws. Supreme Court has time to time reiterated the need for amendment in Criminal Law and directed the police officers to follow the established procedure, but we often come across cases of torture and inhuman treatment in jails and India has also been widely criticized on International stage as well for not ratifying the Convention on Torture.

- **Constitutional Provisions:**

1. Article 20 : Protection in respect of Conviction for Offence
2. Article 21 : Protection of Life and Personal Liberty
3. Article 22 : Protection against arrest and detention in certain cases

- **Code of Criminal Procedure**

1. Right to a copy of police report and other documents (S. 207)
2. Right to be discharged when no sufficient ground. (S. 227)
3. Right to present his evidence. [S. 243 (1)]
4. Right to be defended. (S.303 & Article 22)
5. Right to cross-examine the witness. (S. 311)
6. Right to legal aid at state's expenses in certain cases.

- **D. K. Basu Guidelines by Supreme Court decided in the case of D.K. Basu v. State of West Bengal**

The Supreme Court, in the case of D. K. Base v. State of West Bengal (AIR 1997 SC 610) has laid down certain guidelines which read as follows:

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
2. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
3. A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The “Inspection Memo” must be signed both by the arrestee and the police officer making the arrest and its copy provided to the arrestee.
8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.
9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Ilaqa Magistrate for his record.

10. A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous police board.<sup>5</sup>

### **3.3 NGO working on the Misuse of Dowry Laws in India**

498A.org is organizations that has done a great amount of research on this particular topic and have been instrumental in curbing the menace that this provision has caused or to phrase it more appropriately, using the loopholes under the Section 498A has caused.

IPC 498A was enacted and added to the Indian Penal Code to protect and safeguard the rights of innocent women who have been harassed at their in- laws house. However, it has been a sorry state of affairs when it comes to procedure that is followed while handling these cases and even more saddening is the fact that women themselves are the perpetrators in such cases and misusing the law.

498A.org has been constantly fighting for the cause and have been instrumental in putting forward the case of those who have been victimized by the system and this particular provision. Secondly, it is not only against the women who misuse this law but also against any person who connives or helps her in misusing this particular law. Some of the problems faced by those wrongly implicated are and the problems that are addressed by the organization are:

- 1) Abuse of old, sick people, women and small kids has been the biggest menace because the law under this Sec 498A provides for arrest and detention of the relatives of the husband.
- 2) Counsellors from NGOs forcing men to disown parents and live according to wishes of their wives and in-laws.
- 3) Large number of NRIs fall prey to such women who use this provision to extract as much as they can.
- 4) Organization is against Draconian laws which are abused by dishonest daughter-in-law to victimise innocent mothers and unmarried sisters.
- 5) Organization is against those daughter-in-laws who mentally and physically harass old and sick in- laws.

### **How is one at risk and why it is dangerous for the society?**

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<sup>5</sup> D.K. Basu v. State of West Bengal (1997)

- A wife/daughter-in-law whose demands are not met can make a written false complaint of dowry harassment to a nearby police station.
- The husband, his old parents and relatives are immediately arrested without sufficient investigation and put behind bars on non-bailable terms.
- Even if the complaint is false, *you shall be presumed guilty until you prove that you are innocent.*<sup>6</sup>

498a can only be invoked by wife/daughter-in-law or her relative. Most cases where Sec 498A is invoked turn out to be false (as repeatedly accepted by High Courts and Supreme Court in India) as they are mere blackmail attempts by the wife (or her close relatives) when faced with a strained marriage. In most cases 498a complaint is followed by the demand of huge amount of money (extortion) to settle the case out of the court. This section is non-bailable (you have to appear in court and get bail from the judge), non-compoundable (complaint can't be withdrawn) and cognizable (register and investigate the complaint, although in practice most of the time arrest happens before investigation).

### 3.4 Government measures on Misuse of Dowry Laws

The Government have inserted various provisions in the Indian Penal Code for Protection of rights of women. However, these provisions are widely misused and government has time and again reiterated that courts are there to protect the spirit of legislation; hence there is no need to amend the existing law. However, increasing cases of misuse of this law has led the court to invent certain additional procedure that is to be followed in case of a complaint filed under Dowry Prohibition Law.

In **Balbir Singh v. State of Punjab**<sup>7</sup>, the court observed, *“Though the amendments introduced in the penal code are with the laudable object of eradicating the evil of Dowry, such provisions cannot be allowed to be misused by the parents and the relatives of a psychopath wife who may have chosen to end her life for reason which may be many other than cruelty. The glaring reality cannot be ignored that the ugly trend of false implications in view to harass and blackmail an innocent spouse and his relatives, i.e. fast emerging.”*

In **Jasbir Kaur v/s State of Haryana**<sup>8</sup>: the Punjab & Haryana high Court rightly observed that:

*an estranged wife will go to any extent to rope in as many relatives of the husband as possible in a desperate effort to salvage whatever remains on an estranged marriage.*

In **Kamaraj vs. State of Punjab**<sup>9</sup>, the Hon'ble Apex Court observed: *“for the fault of the husband the in-laws or other relatives cannot in all cases be held*

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<sup>6</sup> [www.498a.org](http://www.498a.org)

<sup>7</sup> 1987 (1) CRIMES - 76

<sup>8</sup> (1990)2 Rec Cri R 243

<sup>9</sup> 2000 CriLJ 2993

*to be involved. The acts attributed to such persons have to be proved beyond reasonable doubt and they cannot be held responsible by mere conjectures and implications. The tendency to rope in relatives of the husband as accused has to be curbed”*

Karnataka High Court, in the case of **State V. Srikanth**<sup>10</sup> observed :  
*“Roping in of the whole of the family including brothers and sisters-in-law has to be depreciated unless there is a specific material against these persons; it is down right on the part of the police to include the whole of the family as accused”*

Delhi high Court, in **Savitri Devi vs. Ramesh Chand**<sup>11</sup>, categorically stated  
*“These provisions were though made with good intentions but the implementation has left a very bad taste and the move has been counter-productive. There is a growing tendency amongst the women which is further perpetuated by their parents and relatives to rope in each and every relative including minors and even school going kids nearer or distant relatives and in some cases against every person of the family of the husband whether living away or in other town or abroad and married, unmarried sisters, sisters-in-law, unmarried brothers, married uncles and in some cases grandparents or as many as 10 o 15 or even more relatives of the husband.”*

In **Chandra Bhan v. State**<sup>12</sup>, Justice Kailash Gambhir of Delhi High Court laid ddown guidelines to be followed in cases of arrests relating to Dowry Laws.

#### 1. Social workers/NGO

There is no iota of doubt that most of the complaints are filed in the heat of the moment over trifling fights and ego clashes. It is also a matter of common knowledge that in their tussle and ongoing hostility the hapless children are the worst victims. Before a wife moves to file a complaint with the Women Cell, a lot of persuasion and conciliation is required. The Delhi Legal Service Authority, National Commission for Women, NGOs and social workers working for upliftment of women should set up a desk in crime against women cell to provide them with conciliation services, so that before the State machinery is set in motion, the matter is amicably settled at that very stage. But, if ultimately even after efforts put by the social workers reconciliation seems not possible then the matter should be undertaken by the police officials of Crime against Women cell and there also, serious efforts should be made to settle the matter amicably.

#### 2. Police Authorities:

(a) Pursuant to directions given by the Apex Court, the Commissioner of Police, Delhi vide Standing Order No. 330/2007 had already issued guidelines for arrest in the dowry cases registered under Sections 498-A/406 IPC and the said guidelines should be followed by the Delhi Police strictly and scrupulously.

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<sup>10</sup> 2002 CriLJ 3605

<sup>11</sup> 2003 CriLJ 2759

<sup>12</sup> <http://www.indiankanoon.org/doc/110498/>

- (i) No case under Section 498-A/406 IPC should be registered without the prior approval of DCP.
- (ii) Arrest of main accused should be made only after thorough investigation has been conducted and with the prior approval of the ACP/DCP.
- (iii) Arrest of the collateral accused such as father-in-law, mother-in-law, brother-in-law or sister-in-law etc should only be made after prior approval of DCP on file.
- (b) Police should also depute a well trained and a well behaved staff in all the crime against women cells especially the lady officers, all well equipped with the abilities of perseverance, persuasion, patience and forbearance.
- (c) FIR in such cases should not be registered in a routine manner.
- (d) The endeavour of the Police should be to scrutinize complaints very carefully and then register FIR.
- (e) The FIR should be registered only against those persons against whom there are strong allegations of causing any kind of physical or mental cruelty as well as breach of trust.
- (f) All possible efforts should be made, before recommending registration of any FIR, for reconciliation and in case it is found that there is no possibility of settlement, then necessary steps in the first instance be taken to ensure return of stridhan and dowry articles etc. by the accused party to the complainant.

### 3. Lawyers:

Lawyers also have a great responsibility in this regard.

- (a) While drafting pleadings/complaints, the lawyers should not unnecessarily suggest incorporation of wild allegations, or in character assassination of any of the parties or their family members whatever the case may be.
- (b) Lawyers are also to endeavour to bring about amicable settlement between the parties as they are expected to discharge sacred duty as social engineers in such cases instead of making them target for monetary considerations by multiplying their cases.

### 4. Courts:

Subordinate courts, be it trying civil or criminal cases concerning bail, maintenance, custody, divorce or other related matters shall in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties.

- a) The first endeavour should be for possible reunion and restitution of the parties and as a last endeavour to bring about peaceful separation.
- b) If possible extra time should be devoted to such matters to restore peace in the lives of rival parties be it by re-uniting them or even in case of their parting ways.
- c) Conciliatory proceedings by the court should preferably be held in camera to avoid embarrassment.
- d) Wherever, the courts are overburdened with the work, necessary assistance of Mediation and Conciliation cells should be sought.

Apart from above directions it would not be out of place to ask parties also to themselves adopt a conciliatory approach without intervention of any outside agency and unless there are very compelling reasons, steps for launching

prosecution against any spouse or his/her in-laws be not initiated just in a huff, anger, desperation or frustration.<sup>13</sup>

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<sup>13</sup> <http://www.indiankanoon.org/doc/110498/>

## 4. Results and Discussions

### 4.1 Findings from the literature

The literature shows that there is widespread misuse of laws relating to preventive detention and dowry laws and people have become unscrupulous in the wake of greed and consumerism. Moreover, the police officers who have the duty to safeguard the rights of the citizen are themselves violating the rights of the common citizen and to their help there are Criminal Law provisions that give them wide powers which are often misused. It is true in today's world where there are so much of crimes including organized crimes, terror activities etc and there is a need for police officials to have certain powers so as to combat the problem in hand. But on the contrary, they have been rampantly using this as a means to extract money from innocent citizens or to show their 'bravery'. Most of the cases of preventive detention and false arrest and 'encounters' come just after any terrorist attack. The Police officers instead of catching hold of the real culprit, incriminate innocent youth and mostly Muslim youth and poor people. There are direct consequences of such an act on the society and one should not consider it as merely as a human rights violation of the victim and his family. In the Indian context we can see three consequences of this trend on the society:

(1) **The "Get-Away" Consequence:** This is the most obvious and the most worrisome consequence. With every false arrest, the real perpetrators (Whether Hindus or Muslims) are the most relieved lot since they not only get more time to flee, they also become more determined to carry out their next vicious missions. In this there is also an element of police (Local,ATS,CBI etc) corruption involved. The falsely-accused are more likely to budge to the demands of bribes than the real terrorists. There have been many instances of this in recent times with the typical "*warna terrorism mein phansa denge*" extortion threats. Poor are the worst sufferers here but that is not a problem for the police since they can always 'deserve' official bounties like promotions in case of a non-paying terror-(falsely)accused.

(2) **The Radicalization & Alienation Consequence:** In India, across castes & classes, judiciary is being generally acknowledged as the most just, non-partisan & humane institution. With the false implications which ensue intimidation, custodial torture, etc, a sizeable percentage of Muslim youth are either radicalized or are becoming sceptical to the entire system of justice. This of course is a good news for the real terrorists who are always looking for 'new talent' to join them. To them this is an ideal argument for "India is against Muslims". The other part of this point is the sections of Muslims who start to live in a veiled fear or caution, something which calls into question the very essence of living in a free & fair society.

(3) **The Sapping of Social energies:** This point is related to above mentioned consequence of alienation, but its effects are found amongst the Hindu extremists as well. An atmosphere is created where extremist groups of both sides blame that there is an attempt to gradually obliterate their religious cultures. Thus 'social energies' which need to be spent in the holistic development of society are being

spent, on one hand, in futile enterprises like setting up Astrology Universities, and on the other, on *Madrassa*. The Clash-of-the-Civilization argument being the best sellable argument of extremists groups across the world, an intensely self-righteous attempt is made by their Indian counterparts to justify their agendas & actions which are deepening the rifts of social cohesion & harmony.

		Deaths Reported	Autopsy Conducted	Magisterial Enquiry Ordered/ Conducted	Judicial Enquiry Ordered/ Conducted	Cases Rega. In Connection With Deaths	rouce-men Charge Sheeted	roucemen Convicted
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
<b>STATES:</b>								
1	ANDHRA PRADESH	11	11	5	5	10	0	0
2	ARUNACHAL PRADESH	1	1	1	0	1	0	0
3	ASSAM	0	0	0	0	0	0	0
4	BIHAR	1	1	0	1	1	0	0
5	CHHATTISGARH	1	1	0	1	1	0	0
6	GOA	1	1	1	0	0	0	0
7	GUJARAT	1	1	1	0	0	0	0
8	HARYANA	0	0	0	0	0	0	0
9	HIMACHAL PRADESH	2	2	0	1	2	0	0
10	JAMMU & KASHMIR	1	1	1	0	1	1	0
11	JHARKHAND	1	1	0	0	1	0	0
12	KARNATAKA	0	0	0	0	0	0	0
13	KERALA	0	0	0	0	0	0	0
14	MADHYA PRADESH	4	4	3	1	0	0	0
15	MAHARASHTRA	3	3	2	0	1	0	0
16	MANIPUR	0	0	0	0	0	0	0
17	MEGHALAYA	0	0	0	0	0	0	0
18	MIZORAM	0	0	0	0	0	0	0
19	NAGALAND	0	0	0	0	0	0	0
20	ODISHA	0	0	0	0	0	0	0
21	PUNJAB	0	0	0	0	0	0	0
22	RAJASTHAN	1	1	1	0	1	4	0
23	SIKKIM	0	0	0	0	0	0	0
24	TAMIL NADU	0	0	0	0	0	0	0
25	TRIPURA	0	0	0	0	0	0	0
26	UTTAR PRADESH	0	0	0	0	0	0	0
27	UTTARAKHAND	1	1	0	1	1	0	0
28	WEST BENGAL	0	0	0	0	0	0	0
	<b>TOTAL (STATES)</b>	<b>29</b>	<b>29</b>	<b>15</b>	<b>10</b>	<b>20</b>	<b>5</b>	<b>0</b>

**Table1 :DEATH OF PERSONS IN POLICE CUSTODY (OF PERSONS REMANDED TO POLICE CUSTODY BY COURT)**

**Deaths In Police Custody / Lockup During 2011  
(Of Persons Not Remanded To Police Custody By Court)**

Sl. No.	State/UT	Number Of						Policemen Convicted
		Death Reported	Autopsy Conducted	Magisterial Enquiry Ordered/ Conducted	Judicial Enquiry Ordered/ Conducted	Cases Regd. In Connection With Deaths	Policemen Charge-Sheeted	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
<b>STATES:</b>								
1	ANDHRA PRADESH	6	6	3	3	6	0	0
2	ARUNACHAL PRADESH	0	0	0	0	0	0	0
3	ASSAM	0	0	0	0	0	0	0
4	BIHAR	0	0	0	0	0	0	0
5	CHHATTISGARH	0	0	0	0	0	0	0
6	GOA	1	1	0	0	1	0	0
7	GUJARAT	7	7	0	6	0	0	0
8	HARYANA	0	0	0	0	0	0	0
9	HIMACHAL PRADESH	0	0	0	0	0	0	0
10	JAMMU & KASHMIR	0	0	0	0	0	0	0
11	JHARKHAND	0	0	0	0	0	0	0
12	KARNATAKA	0	0	0	0	0	0	0
13	KERALA	0	0	0	0	0	0	0
14	MADHYA PRADESH	4	3	2	2	1	0	0
15	MAHARASHTRA	32	32	3	2	4	0	0
16	MANIPUR	0	0	0	0	0	0	0
17	MEGHALAYA	0	0	0	0	0	0	0
18	MIZORAM	1	1	0	1	1	0	0
19	NAGALAND	0	0	0	0	0	0	0
20	ODISHA	1	1	0	0	1	0	0
21	PUNJAB	5	5	5	0	2	3	0
22	RAJASTHAN	1	1	1	1	1	0	0
23	SIKKIM	0	0	0	0	0	0	0
24	TAMIL NADU	6	6	0	6	6	0	0
25	TRIPURA	0	0	0	0	0	0	0
26	UTTAR PRADESH	9	9	8	1	9	6	0
27	UTTARAKHAND	0	0	0	0	0	0	0
28	WEST BENGAL	1	1	1	0	0	0	0
	<b>TOTAL (STATES)</b>	<b>74</b>	<b>73</b>	<b>23</b>	<b>22</b>	<b>32</b>	<b>9</b>	<b>0</b>

**Table2 :DEATH OF PERSONS IN POLICE CUSTODY (OF PERSONS NOT REMANDED TO POLICE CUSTODY BY COURT)**

On comparison of Table 1 and Table2, while there are total 29 deaths reported in custody in cases where the person is remanded to police custody by court there are 74 deaths reported in cases where the custody is not remanded by courts with Maharashtra that tops the list with 32 deaths which is even more than the entire country as compared to deaths in Table1 which is not surprising considering the fact that Maharashtra Control of Organized Crime Act has given wide range of powers to police officials which they have been frequently misusing

Source: <http://ncrb.nic.in/CD-CII2011/Statistics2011.pdf>

## 4.2 Gap analysis

The Code of Criminal Procedure, 1973 and Indian Penal code along with various other legislations clothe the police officials with wide range of powers and discretion which is also necessary to combat the growing rate of crime in the country but the police officials because of insensitivity and greed tend to misuse them and harass the common citizen of the country which is obviously not the job they have been assigned. One must keep in mind that unless the court gives its verdict every arrested person is innocent and not guilty however in cases of preventive detention, the person arrested is not only ill treated by the police officers, there is media trial that starts portraying the arrested person as guilty even before the court's verdict is out and in many cases these persons are often acquitted, some of these cases I have mentioned in the project. Similarly, we have Domestic Violence Act and Dowry Prohibition Act which are meant to protect the rights of the women and have been very helpful in cases of harassment by Husband or his relatives. But, this law is prejudicial to the male members of the society since it is a non-bail able and non-compoundable offence. Also, the court has a tendency to believe that the women is right and the trial is conducted with a mindset of 'guilty until proven innocent' principle which is exactly opposite of established principle. Hence, to have a law that protects the Rights of Arrested Person is necessary for a progressive society and to provide the state machinery with powers to combat increasing rate of crime is all well justified but at the same time the government must understand that the powers and privileges are likely to be misused by Human Beings and to bridge the gap and to avoid misuse of that power, there must be sanctions and certain other measures which deters them from misusing these laws. Hence, to make police officers comply with the established procedure, it is necessary that the court and the government come out with a mechanism to punish guilty officers and also sensitize them towards the society and nation. Hence, in cases of misuse of Dowry laws, there must be sanctions for those women whose case prima facie appears to be frivolous. Since, it not only affects the husband or his family but also the society. The old parents of the husband are also implicated in the case and they spend the last days of their life either in prison or courts. Also, people tend to commit suicide because of lengthy court proceedings or harassment by wife and her relatives for compensation and alimony which ultimately leaves him jobless and bankrupt. The detailed recommendation to these problems will be discussed in the next part of the project.

## 5. Recommendations, Scope and Strategy for Implementation

### 5.1 Recommendation & Scope

1. Amendment to Torture Bill, 2010 in accordance with the provisions of Convention against Torture and the Ratification of the same by the parliament.
2. An obligation on states parties to set up, designate or maintain one or several national visiting mechanisms, which can conduct more regular and independent visits.
3. Change the nature of offence from non-bailable and non-compoundable to bailable and compoundable.
4. Punishment for those who have filed the complaint maliciously.

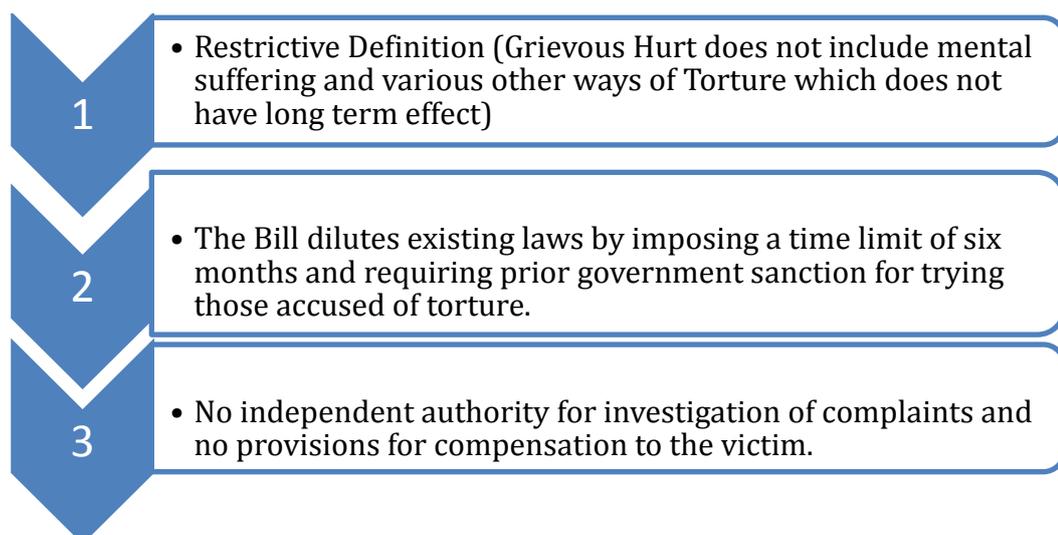
### 5.2 Flowchart (Strategy) for implementation

#### 5.2.1 Recommendations for Rights of arrested person and Prevention of Torture

**Recommendation:** Amendment to Torture Bill, 2010 in accordance with the provisions of Convention against Torture and the Ratification of the same by the parliament.

**Scope:** Torture Bill to be amended and ratified

**Flowchart (Figure 4):**



**Recommendation:** An obligation on states parties to set up, designate or maintain one or several national visiting mechanisms, which can conduct more regular and independent visits..

**Scope:** An independent body of such a nature can go a long way in reducing the cases of custodial torture, since; there will always be a fear of inspection among the police officials.

**Flowchart (Figure 5):**

Characteristics of such a team shall be:

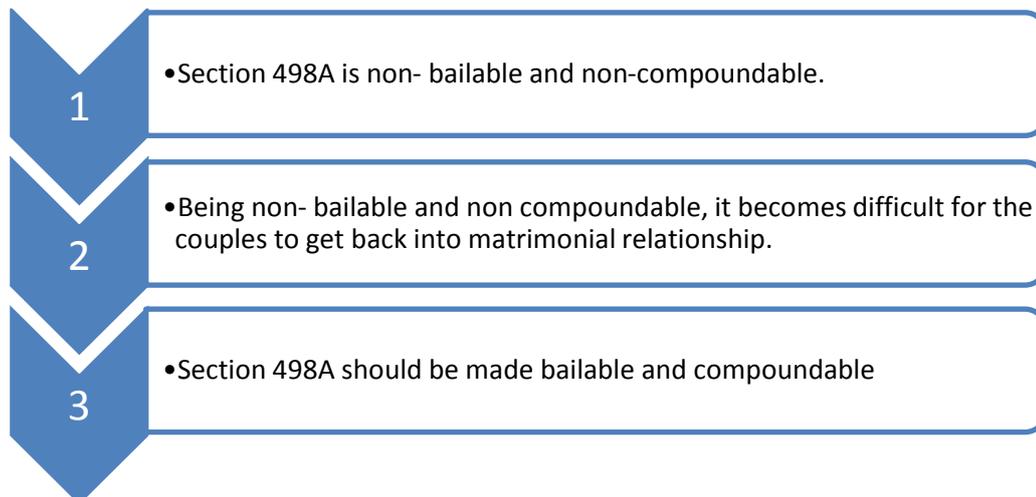
<ul style="list-style-type: none"> <li>• <u>Independent</u> The visiting body should demonstrate its independence and impartiality, distinct from the staff and administration of the place of detention. It must make it clear that its only concern is to ensure that detention conditions are humane and that detainees are treated justly.</li> </ul>
<ul style="list-style-type: none"> <li>• <u>Expert</u> Those involved in conducting inspections should have specific knowledge and expertise regarding the particular kind of place of detention that which they are involved in inspecting.</li> </ul>
<ul style="list-style-type: none"> <li>• <u>Direct and personal contact with detainees</u> The visiting body should strive to establish direct contact with detainees during visits. Detainees who have not requested an interview with the monitoring body should be chosen at random and interviewed as part of a regular visit. Detainees should also have a right to register complaints, both within and outside of the detention facility.</li> </ul>
<ul style="list-style-type: none"> <li>• <u>Confidential</u> The visiting body should be able to communicate with detainees out of sight and hearing of the staff of the place of detention.</li> </ul>
<ul style="list-style-type: none"> <li>• <u>Regular</u> Weekly visits to prisons and other places of detention are most effective. Monthly visits may be an acceptable alternative. Visiting bodies should be provided with adequate time and resources to make visits with a regularity sufficient to ensure effectiveness.</li> </ul>
<ul style="list-style-type: none"> <li>• <u>Regular reports</u> The visiting body should make regular reports of their visits available to relevant national institutions.</li> </ul>

## 5.2.2 Recommendations for Cases relating to Misuse of Dowry Laws

1) **Recommendation:** Change the nature of offence under Section 498A IPC

**Scope:** Offence under section 498A should be made bailable and compoundable.

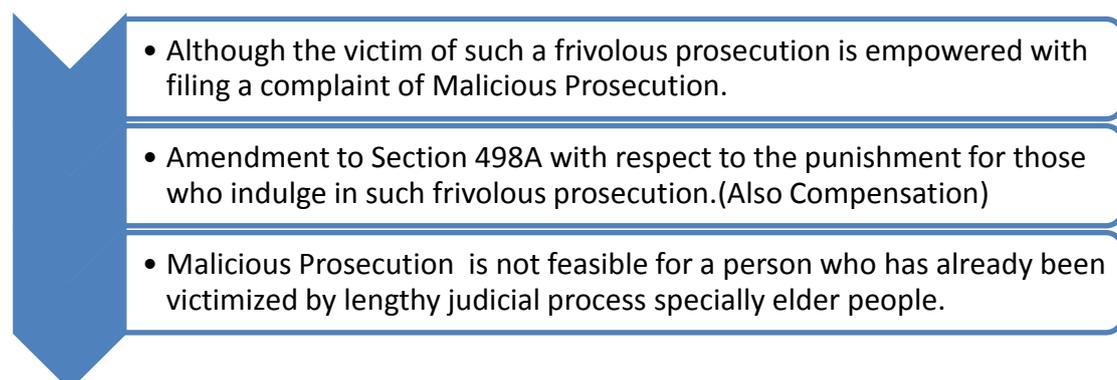
**Flowchart (Figure 6):**



2) **Recommendation:** Punishment for those who have filed the complaint maliciously.

**Scope:** If it prima facie appears to the court during the proceedings that the complainant filed the complaint under S.498A maliciously, she should be punished accordingly and the other party must be entitled to compensation.

**Flowchart (Figure 7):**



## 6. Conclusion

The country is undergoing a very sad phase when it comes to protection of Human Rights and things become worse when the people who have been bestowed with the duty of protecting the people are the main perpetrators of the violation. Custodial Deaths, Fake Encounters, Torture etc makes headlines everyday and also a huge chunk of such cases go unreported either because media is not active in certain parts of the country or the victims are not empowered enough to take their case to higher authorities and in certain cases both. 'Power corrupts and absolute power corrupts absolutely', the police officers who have been given certain powers to maintain law and order and carry on investigations to punish the guilty and help the criminal justice administration in the country end up misusing these powers and every now and then poor and innocent people are victimized. Things become even worse when people belonging to a particular religion are made the target; it directly affects the unity and integrity of the nation (the foundation on which a diverse nation like ours depends on). Most of the cases of violations by public authorities especially police officer comes due to two reasons, i.e. Non-adherence of established procedure and misuse of the powers given to them. When the laws of the nation are laid down a great emphasis is given upon to the fact that in no way the laws are misused and the procedure that has been laid down must be duly followed. However, in most of the cases people tend to misuse these laws and every now and then either the law has to be amended or the court has to use the power of judicial activism and interpret the law in a way that it cannot be misused. In the cases of Custodial Deaths, Fake Encounters & Torture, the police officers do not follow the established procedure and the result is gross violation of Human Rights. If the established procedure is correctly followed, there would have been no violation of Human Rights whatsoever. Similarly, in cases of Dowry Laws, especially S. 498A of Indian Penal Code, the provision was added by way of amendment to cater to the needs of women who have been oppressed after marriage for the demand of dowry. However, some women end up misusing the law with the connivance of lawyers and police officers to harass their in-laws for reasons mentioned in the report. Hence, certain amendments are needed every now and then in the existing laws to prevent misuse of laws and the proper adherence to law can be achieved only if there is some punishment that follows for non-adherence which shall create some deterrence and we can look forward to the kind of society that are forefathers dreamt of.

***Peace can only last where human rights are respected, where the people are fed, and where individuals and nations are free.***

***-Dalai Lama.***

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## Appendix A (Meetings and Interviews)

#1

**Name: Shri Jyotiswaroop Pandey**

**Date: May 17<sup>th</sup>, 2013**

**Time: 2.15 PM**

**Duration of Discussion: 15 minutes**

**Discussion:**

Discussion about the topic and the roadmap that has to be followed. Also, discussed about the Criminal Procedure that is to be followed during investigation and the reason why the procedure is not followed and how it has led to large scale Human Rights violation.

#2

**Name: Miss Manisha Sethi**

**Date: 3<sup>rd</sup> June, 2013**

**Time: 12.30pm- 12.55pm**

**Duration of Discussion: 25 minutes (Personal Interview)**

**Discussion:**

**Discussion about cases of false encounters and false arrest of Muslim youth and also victimization of innocent youth. The organization JTSA (Jamia Teachers' Solidarity Association) has been working on the issue and has compiled a document in which many of the Muslim youth who were arrested on false pretexts were subsequently released and acquitted by the trial court for either want of evidence or lack of evidence against them.**

#3

**Name: Shri Sanjay Sharma**

**Date: June 20<sup>th</sup>, 2013**

**Time: 10.30am - 3.30 pm (At the police station)**

**Duration of Discussion: 25 minutes (Personal Interview)**

**Discussion:**

Learnt about various Registers that are kept for documentation and contains records of every proceedings of the police. There are around 25 registers that are kept at every Police Station with each register having its own importance. These registers are maintained in order to keep a record of everything case that is registered and also to keep a record of number of crimes registered and also a list of repeat offenders and in certain cities, the names of people coming from outside and living on rent in the area of a particular police station. Also the importance of daily diary was discussed that Daily Diary contains the record of every police

officer irrespective of his rank as to the time he leaves or enters the police station duly attested by him. This part is relevant to my project as proper adherence to entries in daily diary can never lead to false arrests. The Daily Diary is being maintained in two parts. In part A (DD-A) reports regarding apprehension of breach of peace, gist of non-cognizable reports ,gist of FIR, section of law etc., shall be recorded when a case is registered. Apart from this all important matters including persons arrested, persons in custody, deposit of case property seized by IOs, dispatch of case property from PS, receipt of summons- and warrants, checking of properties lying in Malkhana, reports regarding cash kept in Malkhana or excess expenditure etc. shall be entered. The IOs on their arrival after investigation & enquiries in various cases reports to the desk, shall make a mention in the Daily Diary about the action taken by them on such investigation reports. In part B (DD-B) routine entries like arrival & departure of policemen, dispatch of patrolling staff, posting of pickets, arrival & departure of policemen sent for process service duties or who are sent to summon persons u/s 160 Cr. PC for purpose of investigation will also be mentioned. The daily diary is kept at the entrance of the police station itself and is carbon copied and monthly record is sent to senior official as well as the magistrate. Hence, if record are properly maintained even then there are cases of custodial torture and death of innocent persons.

#4

**Name: Shri Ravi Shankar Tyagi**

**Date: June 24<sup>th</sup>, 2013**

**Time: 11am - 1pm (At the police station)**

**Duration of Discussion: 2 Hours**

**Discussion:**

Learnt about a Delhi High Court Judgment relating to S.498A and also importance of conciliation and mediation in cases relating to matrimonial disputes. Delhi has a pretty high rate of crimes registered under S. 498A and Delhi High Court has laid down certain guidelines which has to be followed by the police officer investigating the case. Moreover, it has also emphasized upon conciliation of the case then and there itself before the court proceedings are set into motion and also asked the investigation officer to cross check from the relatives whether the allegation holds ground or not.

Also, he told that lawyers lure women and her relatives to file a case under this particular section because it becomes a regular source of income for them and they also collude with the police officers to make the life of the accused miserable. NCRB report shows that there is very low rate of conviction when it comes to S.498A. Also he explained how there is a section in the society that wants this law to be repealed and told that to repeal the law is not the manner in which this

menace can be solved instead this law has been a power in the hands of those women who are actually tortured in their matrimonial home.

# RAKSHAK FOUNDATION

**Rakshak Foundation** is a 501(c)(3) non-profit organization headquartered in Santa Clara, California. It partners with Rakshak Foundation NGO, New Delhi, India. It researches different public policy issues and creates awareness about them. Rakshak Foundation sponsors Seminars on public policy matters, sponsors activities to involve the youth in social issues including volunteerism and supports programs to help the needy. Rakshak's Summer Internship Program is aimed at providing an opportunity to highly motivated college students to work on complex real life social/national problems under the mentorship of experts and policy makers.

2784 Homestead Rd, #235  
Santa Clara, California - 95051  
United States of America

Tel: +1 (408) 329-1492  
Email: [secretary@rakshakfoundation.org](mailto:secretary@rakshakfoundation.org)

[www.rakshakfoundation.org](http://www.rakshakfoundation.org)