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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

**FROM SAFEGUARDS TO MISUSE: A CRITICAL
REVIEW OF DOMESTIC VIOLENCE PROVISIONS
WITH SPECIAL REFERENCE TO SECTION 498A IPC,
1860 (SECTION 85 BNS 2023)**

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Abstract

This article explores the domestic violence laws in India, specifically Section 498A of the Indian Penal Code (IPC) 1860 and Section 85 of the BNS 2023. These laws aim to protect women from abuse and cruelty in marital relationships, but they have been criticized for potential misuse as harassment instruments. The article highlights the challenges of broad legal definitions and procedural gaps, which allow frivolous or false complaints. It emphasizes the need to balance gender-sensitive protections for genuine victims with robust safeguards against misuse. Despite judicial efforts and procedural reforms in BNS 2023, persistent issues remain, including inconsistent implementation and lack of comprehensive data on false allegations. The review calls for urgent legislative and administrative reforms to improve fairness, protect all parties' rights, and restore public confidence in domestic violence laws as justice mechanisms.

Keywords: Domestic Violence, Section 498A, Section 85 BNS, Gender Neutrality

Introduction

In 2005, India's lawmakers enacted the Protection of Women from Domestic Violence Act, aiming to help victims of domestic violence. The Act was inspired by Article 15 (2) of India's Constitution, which allows the state to establish specific measures for women and children to achieve equality. Feminists argue that the law has historically been patriarchal, and women have not always been treated fairly. The Act modernized the existing legislation, but women still face challenges such as limited access to courts and knowledge of the law. The Act establishes the position of Protection Officer and acknowledges the importance of Service Providers. The government is mandated to provide legal representation, medical care, and safe havens for women in need. Section 3 of the Act defines "Domestic Violence" for the first time in Indian law, drawing from international legal sources like the UN Declaration on Violence Against Women and a Model Code.ⁱ

Domestic abuse is a significant violation of human rights, and countries have passed legislation to combat it. In 2006, India implemented the Protection of Women from Domestic Violence Act 2005, which covers various crimes, including "domestic violence." This act protects women from physical, sexual, verbal, emotional, and financial abuse or threats, and does not necessarily include physical aggression. The act is based on Articles 14, 15, and 21 of the constitution, ensuring equal rights for women and men. Women who have suffered injustice in their domestic relationship can file a complaint with the relevant judicial magistrate alleging cruelty from their spouse, regardless of whether they live with their spouse. However, the Madras High Court Bench noted that the Act has deficiencies that make it easy for women to abuse its provisions and for males to fear unfair convictions. The Act also allows women to file a complaint with the relevant judicial magistrate if their spouse has treated them with cruelty that meets the criteria set forth in section 3. Justice S. Vaidyanathan, while dismissing a writ petition, remarked, "*The obvious weakness in this statute is that it lends itself to such easy exploitation that women would find it hard to resist the desire to teach a lesson to their male relatives and will file frivolous and fraudulent petitions.*" When a legislation has the unintended consequence of making good people afraid, you know it's up to no good. If even a person who has done nothing wrong is afraid of breaking the law, it is certain to spread dread throughout males. Cases filed by women under the Domestic Violence Act have grown more regular in recent years. Because of this, there must be a legislation that does not discriminate based on a person's gender in order to adequately protect those who are victims of domestic violence.ⁱⁱ The Indian Supreme Court has ruled that Section 498A of the Indian Penal Code,

which deals with women being cruelly treated by their husbands or families, is a form of abuse that has been labeled "legal terrorism." The court ruled that the petitioner filed the writ petition to seek revenge on her father-in-law and force him to resolve two criminal charges stemming from their family conflict. The court noted that the petitioner had filed a lawsuit against her husband and in-laws, who had filed a countersuit against her and her parents. The court fined the petitioner Rs.5,000 after finding she had no legal standing to request the promotion of her father-in-law.ⁱⁱⁱ

Number of cases ended as final report False as per NCRB Data 2021^{iv}

<i>Year</i>	<i>Total Cases for Investigation</i>	<i>No. of Cases Ended as Final Report False</i>	<i>Percentage (%) of Cases Ended as Final Report False</i>
2016	497482	24620	4.95
2017	529917	22716	4.29
2018	554936	24716	4.45
2019	591155	32497	5.48
2020	573049	26449	4.62
2021	631052	32345	5.13

The following table shows some major crime heads and percentage of cases that ended as false as per the final report:^v

<i>Crime Head</i>	<i>Total Case for Investigation</i>	<i>Cases ended as Final Report False as per NCRB Report</i>	<i>Percentage</i>
Cruelty by Husband or his relatives	195393	7076	3.62
Rape	44785	4340	9.69
Attempt to commit rape	4990	760	15.23

Assault on Women with intent to Outrage her Modesty	115091	6821	5.93
Insult to the Modest of Women	14124	449	3.17
Dowry Prohibition Act	22714	356	1.57
Domestic Violence Act	870	11	1.26
Total Crime against Women	650033	36715	5.65

Courts' Perspectives on the Widespread Abuse of Domestic Violence Laws

The petitioners attempted to influence the police in their probe, despite an order from the Metropolitan Magistrate. They are respondents, not defendants, and a criminal petition to quash proceedings is unenforceable due to the Act's objectives. The divorce was finalized on March 12, 2007, and the first and second petitioners continued to harass, abuse, and cheat after the Memorandum of Understanding was signed. The Act is retroactive, and the case involves a sequence of occurrences where the petitioners' actions amount to domestic abuse without question of limits. The second respondent requested the interim stay and criminal charge to be revoked. In addition, the court sense of widespread abuse has been given voice in instances that pertain to the Domestic Violence Act, such as *“Loha v. The District Educational Officer.”*^{vi}

Concerns have been expressed by a number of courts over the possibility of women abusing the Act in order to terrorise their husbands, their families, and even distant relatives.^{vii} to *“vent their personal vendetta and stake a claim in the properties belonging to the husband and the in-laws”*.^{viii} In the context of Section 498A, the Supreme Court of India has held *“the threat of misuse to be insufficient to affect the constitutionality of the provision. However, the perception of rampant abuse has influenced decisions regarding the procedure to be followed while implementing the same, especially during the arrest.”*

Hence, in *Arnesh Kumar v. State of Bihar*,^{ix} *“In cases of arrest for crimes punishable by less than or equal to seven years in prison, the Supreme Court established procedures to follow. The guidelines were written with Section 498A in mind, and the court exclusively considered the abuse of this statute in its analysis. The court ruled those police complaints involving “matrimonial disputes/family conflicts” warranted a “preliminary inquiry” because of concerns about systemic abuse. The goal of these probes is to determine whether or not a crime with criminal penalties applicable was committed based on the facts provided in the First*

Information Report. For this reason, the Supreme Court has effectively established a framework for the police to sort through Section 498A allegations based on their own assessments of whether or not an offence has been committed.

The judicial weakening of Section 498A's implementation mechanism has therefore had a significant impact on the notion of extensive abuse. It is possible that the merits-based adjudication in Section 498A and DV Act cases has been impacted by judges' reluctance to accept the prosecution's or petitioner's position due to this underlying fear. *Loha v. The District Educational Officer*^x is an example of this trend in action, when it was determined that even without any further proof, it was possible to infer from the petitioner's affidavit that she had improperly utilised the DV Act against her father-in-law. The frequent expression of this worry in judicial judgements has pushed police to justify their passivity over Section 498A arrests. Complaints under Section 498A should only be made as a last resort, after all previous efforts at resolution have failed. Some incidences of abuse have been used as justification for this course of action.^{xi}

Examination of the Factors Contributing to This Preconception in the Courts

The court's opinion that Section 498A and the DV Act are widely abused is based on insufficient evidence. Statistics from the National Crime Records Bureau show that only 10% of Section 498A cases between 2005 and 2009 were motivated by an error of law or fact, and only 6.5% of complaints were deemed unfounded throughout investigations.^{xii} For this reason, "men's rights activists" have petitioned the government for further in-depth research. Although there is no hard evidence to back up the courts' fears of widespread misuse, the judgements that voice those fears have principally relied on three factors:

- The potential for abuse due to the clauses claimed broad language;
- Evidence of specific instances of abuse;
- A substantial proportion of Section 498A cases end in acquittal.

Section 498A and DV Act are subject to a third reason, which is often used in rulings. This analysis focuses on the systemic obstacles women face when seeking justice and submitting complaints under these laws. Despite previous research, no conclusions have been drawn on whether widespread abuse is to blame. It's crucial to recognize that even after complaints are made, obtaining Section 498A convictions can be challenging.^{xiii}

The Existence of Individual Cases of Misuse

It is argued that because of their purported broad reach, the laws are susceptible to abuse by the courts. Due to these provisions' potential for abuse by women, the Madras High Court decided that the DV Act might be used by them to "teach a lesson" to their husbands and other family members. Although courts have struggled to establish "safer conclusions" on Section 498A, the Supreme Court has indicated worries over over-breathing by noting that police officers are effectively empowered to determine the parameters of "cruelty" or "harassment." In circumstances when broad generalisations about widespread usage are made without giving any precise facts, the presence of isolated incidents of (alleged) misuse may have impacted the judicial approach. In both Section 498A and the DV Act, such generalisations have been found. Section 498A is often misused, even by the Malimath Committee, which did not provide any numbers.^{xiv}

High Rates of Wrongful conviction in Section 498A Cases

The high acquittal rates in instances using Section 498A have been referenced in judgments as indicative of its widespread abuse in the Section 498A context. According to the National Crime Records Bureau, just 15% of domestic abuse cases in 2012 resulted in convictions, as the Supreme Court noted in *Arnesh Kumar v. State of Bihar*.^{xv} Courts have thought that acquittal is mostly a consequence of the frivolity of the allegations because of their interpretation of this data. Acquittal rates are high because of numerous variables, not because of this one component alone. For domestic abuse victims to get justice and achieve convictions under Section 498A, there are a number of lapses in execution on the side of numerous parties in the criminal justice system.^{xvi} Insufficient training for police officers and judges in domestic violence has hindered prosecutions and convictions. This lack of training leads to conventional views about domestic abuse, marriage, and gender roles dominating both police and courts. Domestic violence is often blamed on the challenges of new marriages, rather than patriarchal societal norms.^{xvii} Domestic abuse is often seen as a private issue, but complaints can be denied due to corruption and disregard by authorities, leading to disordered investigations and high acquittal rates in Section 498A cases. Lower courts are reluctant to condemn individuals accused of domestic abuse, and the Supreme Court and lower courts view domestic violence as a temporary issue, favoring continuation of marriage.

In *Preeti Gupta v. State of Jharkhand*,^{xviii} the Supreme Court urged attorneys not to take on

"frivolous" matters to preserve "the social fibre, peace, and tranquilly of the community." Domestic abuse is often seen as a private issue within the family, making it difficult to enforce Section 498A convictions. The Supreme Court believes reconciliation is best for civil crimes, leading to acquittals. Courts often demand proof of dowry harassment, despite acknowledging physical and mental abuse as a unique form of cruelty. The stigma attached to domestic abuse has slowed its implementation, and courts are reluctant to enforce domestic violence prohibitions despite sufficient proof.^{xix} Section 498A, a domestic violence law, faces challenges due to its implementation and patriarchal views. Courts often reject claims of dying due to a woman's unfit mental state, and witnesses are often hostile. This makes it difficult to demonstrate key facts, and high acquittal percentages in domestic violence cases do not necessarily indicate widespread abuse of the law. Therefore, relying on these statistics to draw inferences about widespread misuse is incorrect.

Misuse of Section 85 of the BNS 2023 Against Men: A Critical Analysis of Persistent Legal Challenges Despite IPC Amendments

The substitution of Section 498A of the Indian Penal Code (IPC) with Section 85 of the BNS, 2023 (BNS 2023) aimed to modernize and codify the law relating to cruelty against married women by husbands and their relatives. Despite the legislative update, which preserved the essence of the original provision, the persistent misuse of this law against men continues unabated. Section 85 BNS 2023, akin to its predecessor under IPC, criminalizes the husband or his relative's infliction of cruelty on a woman, prescribing imprisonment of up to three years and a fine. The explanatory clause under Section 86 lays down the definition of cruelty, covering both physical and mental harm, including harassment with a view to coercing unlawful property demands. While these efforts reflect a legal continuity designed to protect women within marriage from abuse, they fall short of resolving the long-standing issues of overreach, frivolous complaints, and wrongful arrests that have encumbered this law for decades.

Judicial pronouncements have frequently underlined the propensity of the law to be misused as a weapon of harassment rather than justice. The Supreme Court in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 emphasized the need for strict adherence to procedural safeguards before arresting accused persons under Section 498A IPC (now Section 85 BNS), urging police officers to avoid custodial arrests without proper scrutiny of the complaint. The Court

recognized how indiscriminate arrests and the police's failure to conduct preliminary inquiries lead to "legal terrorism" against men and their families. Despite such guidance, reports suggest continued arrests without adequate verification, resulting in traumatic and prolonged legal battles for the accused.

The transition to BNS 2023 has failed to bring substantive change to the misuse patterns. A major concern remains the law's broad and vague definition of cruelty, susceptible to exaggerated allegations and strategic filings during marital discord. Courts have noted that the language of cruelty—encompassing mental torment and coercion for dowry or property—can be interpreted expansively, ensnaring many innocent men and relatives who have little to no role in the alleged harassment. The Supreme Court in *Dara Lakshmi Narayana v. State of Telangana*, (2024) quashed criminal proceedings where complaints were vague and lacked specific, credible evidence, highlighting judicial wariness regarding misuse. Yet, the judiciary's caution has not translated into definitive legislative reforms to deter frivolous complaints or penalize false accusations, leaving men vulnerable to the law's misuse.

Section 85 BNS 2023, which allows police to arrest accused without sufficient investigation, continues to be misused, causing pendency, emotional distress, and social stigma for men and their families. The absence of official data quantifying false or malicious complaints under Section 85 also contributes to the lack of accurate data. The misuse also exacerbates social and psychological repercussions for men, leading to tragic outcomes like suicides. Civil rights activism and men's advocacy groups demand legislative recalibration, including stricter complaint screening, deterrent penalties, and case disposal mechanisms. However, political and social sensitivities surrounding women's protection continue to hinder legislative inertia. The broad definition of cruelty, non-bailable nature of the offense, and inconsistent enforcement of protective procedural guidelines continue to victimize men through false or exaggerated allegations. A balanced approach is needed to protect women from genuine cruelty while safeguarding men's rights from wrongful prosecution.

Judicial Analysis

1. *Dara Lakshmi Narayana v. State of Telangana (2024)*^{xx} The Supreme Court quashed criminal proceedings against a husband and his family due to vague, generalized allegations of cruelty that lacked specific evidence. The Court warned against the

indiscriminate use of Section 498A/BNS 85 to target entire families and stressed the need to differentiate between genuine and frivolous complaints. It emphasized that the law should not be used for personal vendettas or as a tool of harassment. This judgment highlights judicial caution but also exposes the vulnerability of men subjected to vague and sweeping accusations, often without preliminary inquiry.

2. ***Achin Gupta v. State of Haryana (2024)***^{xxi} The Court condemned the mechanical application of Section 498A and its BNS counterpart, emphasizing the necessity of a preliminary investigation before arresting accused persons. It pointed out that trivial or day-to-day matrimonial disputes should not be misconstrued as cruelty. The ruling criticized the use of the law to pressurize husbands into submission, outlining how misuse leads to unnecessary arrests and prolonged harassment, thus eroding men's rights to fair treatment and due process.
3. ***Ratandeep Singh Ahuja v. Harpreet Kaur***^{xxii} In this case, the High Court granted divorce to a husband after his wife made false and malicious accusations of cruelty. The Court recognized the act of filing fabricated criminal complaints as a form of cruelty under the Domestic Violence Act itself. This underscore growing judicial acknowledgment that misuse of protective laws can constitute cruelty against men, eroding their dignity and rights.
4. **Delhi High Court Judgment on Men's Right to Protection (2025)**^{xxiii} Justice Swarana Kanta Sharma ruled that men are equally entitled to protection from cruelty and violence under the law, rejecting the plea of leniency based on gender in a case where a wife inflicted severe physical harm on her husband. The Court condemned societal stereotypes that deny the reality of male victimhood and called for a gender-neutral approach in legal proceedings involving domestic violence. This judgment addresses both misuse and the broader issue of men's socially diminished rights to protection and justice.
5. ***Rajesh Sharma v. State of U.P.***^{xxiv} Although preceding the BNS enactment, this landmark judgment established guidelines to curb the misuse of Section 498A by laying down procedural safeguards like prior approval from a higher authority before arrest and discouraging arrests based on mere allegations. It acknowledged the severe consequences of false accusations on men and their families and balanced the need for protection of genuine victims with safeguards against harassment. Its continued relevance highlights how fundamental legal protections for men remain insufficiently implemented.

Conclusion

Domestic violence laws in India, notably Section 498A IPC and its reincarnation as Section 85 BNS 2023, embody a vital legal framework designed to shield women from abuse in domestic and matrimonial contexts. Legislators and courts have sought to cement protections rooted in constitutional mandates for equality and personal security, recognizing the grievous harms domestic violence inflicts on individuals and families. These laws have rightly empowered victims to come forward and seek redress, incorporating extensive definitions of cruelty and coercion to encompass diverse forms of abuse. Yet, the laudable intent of these statutes has been complicated by their susceptibility to misuse, which continues to raise profound legal and social concerns. Judicial pronouncements over recent years reveal a consistent pattern of caution against the weaponization of these laws, where vague or exaggerated allegations have been used to exert pressure, settle personal scores, or harass men and their families. The characterization of such misuse as “legal terrorism” reflects how procedural lacunae—such as the non-bailable, cognizable nature of offenses and insufficient preliminary inquiry—have sometimes led to wrongful arrests and protracted legal battles, inflicting psychological and reputational damage on the accused. Despite the modernization efforts encapsulated in the BNS 2023, which retained the core provisions of Section 498A while introducing procedural refinements like preliminary inquiries and efforts at reconciliation, many challenges endure. Courts have stressed the need for gender-neutral application of domestic violence laws, ensuring that men too are recognized as potential victims entitled to protection and fair treatment. However, inconsistencies in law enforcement, a lack of comprehensive official data on misuse, and political sensitivities around women’s protection hinder substantive legislative reforms that might deter frivolous complaints and penalize false allegations. The balance between protecting victims and preventing misuse of domestic violence laws requires urgent systemic reforms. These include clear guidelines for complaint verification, enhanced police and judiciary training, gender-neutral adjudication frameworks, and stronger penalties for deliberate abuse. Without these measures, the statutes risk undermining justice, eroding public trust, and perpetuating victimization and stigma. Safeguarding against domestic violence requires vigilant implementation and continual refinement to ensure equity, prevent exploitation, and protect human dignity. Achieving an enduring resolution involves harmonizing victims' rights and accused rights against wrongful prosecution.

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