
JUDICIAL SAFEGUARDS AGAINST THE MISUSE OF DOMESTIC VIOLENCE LAWS IN INDIA

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ABSTRACT

Violence is the key issue of the world that has an effect on the human rights of women, including their mental health. We saw a surge in domestic violence incidents during lockdown. Domestic violence, mostly committed inside the four walls of the house frequently goes unreported to authorities. Mostly, in cases of domestic violence, victims are women and the perpetrators are men. Numerous conventions like the *Convention on the Elimination of All Forms of Discrimination against Women in 1979* and the *Universal Declaration of Human Rights in 1948*, have been accepted by nations, including India, to avert women from any form of violence. Though the Indian Constitution of 1950 and the legislature have introduced several legislations and shield the women. But courts and legal experts have gradually pointed out that these protective laws are recurrently being misused in current times. Though domestic violence laws are passed to strengthen protection of victim, their enforcement has upstretched worries relating to misapplication and procedural imbalance. This research paper examines the objectives of domestic violence legislation, constitutional rights envisaged under the Indian Constitution, legal frameworks at national and international arenas, foul play with legal frameworks and explores judicial interpretation regarding the protection of women and misuse of laws by them, succeeded by recommendations and a conclusion.

Keywords: Domestic violence laws, misuse, violence, human rights, victims, perpetrators.

1. INTRODUCTION

Domestic violence, also known as ‘*domestic abuse*’ or ‘*intimate partner violence*’, is one of the significant kinds of violence. It reflects a form of conduct in a relationship that is to hold control and to exercise power over an intimate partner. It also includes physical, economic, domestic and sexual abuse. Violence related to dowry and domestic cruelty are serious legal and social challenges in India. Before the 1980s, such types of abuse were regarded as private family matters, the outcome of which was limited legal interference and victims were not protected adequately.¹ With the growth of feminist advocacy and public concern, in 1983, section 498A of the Indian Penal Code, 1860, was introduced, which is now section 85 and section 86.² This provision makes cruelty by a husband or relatives toward a married woman a punishable offence, especially when it is related to the unlawful demand of dowry.³ This section holds a central position in the legal framework of India while addressing the problem of domestic violence.

Besides its protective role, the above section becomes a debatable point regarding arbitrary arrests, accusations of misuse and procedural lapses.⁴ Observations by the judiciary, academic study and doctrinal methodology have made it clear that the provision may be invoked strategically during matrimonial nitpicks in certain cases rather than exclusively for dealing with genuine instances of cruelty.⁵ Moreover, it has been mentioned by the *National Family Health Survey-5 (NFHS-5)* that numerous domestic violence cases are often left under-reported, with only a small segment of cases knocking on the door of the legal system, stressing the critical role of law in shielding aggrieved women.⁶ Section 85 of the *Bhartiya Nyaya Sanhita, 2023*, also raises criticism regarding implementation of mechanisms and procedural safeguards against misuse, particularly in light of observations made by the Supreme Court.⁷

¹ Srinivasan L. and P. G. Sunanda Bhagavathy, “Misuse of Domestic Violence Legislation in India: A Doctrinal Analysis of Section 498A IPC and Section 84 of the *Bharatiya Nyaya Sanhita*” 16 *IJDDT* 537 (2026).

² The *Bhartiya Nyaya Sanhita, 2023* (Act 45 of 2023), ss. 85, 86.

³ Ratanlal and Dhirajlal, *The Indian Penal Code* 850-930 (LexisNexis, Gurugram, 36th ed., 2022).

⁴ S. N. Jain, “Misuse of Section 498-A IPC: A critical analysis” 5 *J. Indian L. & Soc’y* 123–145 (2014).

⁵ M. Kishwar, *Zealous Reformers, Deadly Laws: Battling Stereotypes* 1-419 (SAGE Publications India Pvt. Ltd., New Delhi, 1st ed., 2008).

⁶ Vishnu, “Judicial Safeguards Against Misuse of Laws: Balancing Section 498-A with Women’s Protection in India,” Vishnu IAS (August 12, 2025), <https://vishnuias.com/judicial-safeguards-against-misuse-of-laws/>. (Last Visited 10 July 2026)

⁷ *Arnesh Kumar v. State of Bihar*, AIR 2014 SC 2756.

2. PURPOSES OF DOMESTIC VIOLENCE PROTECTION LEGISLATIONS

- a) To provide safety and protection and maintain the dignity of women who are facing abuse in their domestic relationships.
- b) The intention is not to book the offenders without examination or to be used as a weapon for harassment, but the courts have to consistently maintain this balance.

3. RESEARCH METHODOLOGY

The doctrinal methodology is followed in this research study with the deep examination of authoritative legal materials. It is found suitable to examine the interpretation and evolution of statutory laws and their application in criminal justice administration.⁸ In this study, statutory texts are the primary source supported by judgements of the Apex Court and the High Courts dealing with procedures of arrest, evidentiary standards and safeguards against misuse. Secondary sources consist of peer-reviewed articles from journals, legal textbooks and policy-oriented studies that examine the objectives, enforcement and consequences of domestic violence legislation in India. Combined study of both primary and secondary sources is done to trace the trend of interpretation, assess challenges of enforcement and explore the tension between protection of the victim and fairness to the offender. By mixing statutory analysis with scholarly and judicial perspectives, the research study aims to contribute to the criminal justice system by introducing gender-sensitive legislation along with procedural and constitutional limits.

4. CONSTITUTIONAL RIGHTS UNDER THE INDIAN CONSTITUTION

There are innumerable rights enshrined under the Indian Constitution safeguarding women from any kind of exploitation or discrimination at any stage of life, putting the responsibility on the state government. Such rights are listed as follows: -

Article 14	It mentions the right to equality and equal protection of laws.
Article 15(1)	No discrimination shall be made by the state on the ground of sex against any citizen of India.

⁸ K. D. Gaur, *Indian Penal Code: A Commentary*, 1-30 (Universal Law Publishing, New Delhi, 6th ed., 2021).

Article 15(3)	Any special provision favoring women can be legislated by the state, which means affirmative discrimination is allowed in favor of women.
Article 16 (2)	The citizens shall not be discriminated against on the ground of sex in respect of office or employment under the state.
Article 23(1)	There is a prohibition on forced labor and trafficking of human beings.
Article 39(a)	The state is under a responsibility that women and men must get satisfactory means of livelihood on an equal basis.
Article 39(d)	The state must ensure equal pay for equal work for both women and men.
Article 39(e)	It is the responsibility of the state that there should be no abuse of the health and strength of women workers and they are not to be forced by economic necessity to enter avocations that are not suitable to their capability.
Article 42	A provision can be made by the state for safeguarding just and humane environs of work and maternity relief.
Article 46	Educational and economic interests of the weaker sections of society must be promoted by the state with special care and also to safeguard them from communal injustice and all other exploitations.
Article 47	The standard of living and the level of nutrition of its people must be uplifted by the state.
Article 51A(e)	Every citizen of India is under an obligation to abandon practices that are disparaging to women's dignity.
Article 243D (3) to Article 243D(4)	In every Panchayat, one-third of the aggregate number of seats that are to be filled by direct election and one-third of the aggregate number of offices of chairpersons at each level should be reserved for women.
Article 243T(3) to Article 243T(4)	In every municipality, one-third of the total number of seats that are to be filled by direct election and the offices of chairpersons should be reserved for women in a manner provided by the state legislature.

Articles 325 and 326	The elections should be conducted on an adult suffrage basis that is, every person who is a citizen of India and who is not less than eighteen years of age, irrespective of status, gender, etc., is entitled to be a voter either to the House of the People or to the Legislative Assembly of the states.
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5. LEGAL FRAMEWORK

Certain legislation has been enacted by the parliament for the protection of women in the national and international arenas as mentioned below: -

5.1 AT NATIONAL LEVEL

The legislature has enacted the *Protection of Women from Domestic Violence Act, 2005* for women's protection from any kind of domestic abuse, inclusive of verbal, physical, emotional, economic, or sexual abuse.⁹ It ensures the right of women to live in their matrimonial home. The Act laid down special provisions which provide protection for a woman to reside in a home free from violence. It is a progressive piece of legislation whose only motive is safeguarding the woman, regardless of the relationship whichever she bonds with the accused. A complaint may be filed by aggrieved women before the Magistrate of the First class under this Act and they can seek a protection order, maintenance order, residence order, or compensation order.¹⁰

Section 498A,¹¹ the erstwhile section 85,¹² is a law that defends women from their spouses and from the family members of husbands who are cruel. If a woman is harassed for dowry by her husband or relatives of her husband, it will be considered a crime. In spite of that, marital rape has not been regarded as a crime in our country.

5.2 AT INTERNATIONAL LEVEL

In 1983, domestic violence was recognized by the United States of America (U.S.A.) as the vilest issue amongst spouses. It disturbs the mental health and the rights of the feminine section of society. The Congress had passed the *Violence Against Women Act (VAMA)* in 1994, under

⁹ The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005).

¹⁰ Prabhjot Kaur, "Role of judiciary in the context of domestic violence with special Reference to Covid- period" 3(1), *IJCCSL* 25-30 (2023).

¹¹ The Indian Penal Code, 1860 (Act 45 of 1860), s. 498A.

¹² *Supra* note 2 at 2.

which domestic violence is considered a national crime. Restitution orders can be passed by the court to pay for the losses of the victim. The cost has to be paid by the accused for psychological or medical care, physical therapy, transportation, temporary housing, fees of attorney, childcare expenses, expenses incurred in obtaining civil protection order, loss in income of the victim and other sufferings by the victim.

Moreover, Parliament passed the *Domestic Violence, Crime and Victims Act (DVCVA)*, 2004 in the United Kingdom (U.K.), giving aid and legal protection to the sufferers of domestic violence. Lately, the *Domestic Abuse Act, 2021* was passed for the protection of the rights of victims of domestic violence. Domestic abuse is inclusive of threatening or violent behavior, sexual or physical abuse, coercive or controlling behavior, psychological or economic abuse, etc.

The legislature has passed the *Crimes (Domestic and Personal Violence) Act, 2007* in Australia, which ensures the safety and protection of all people who are sufferers of domestic violence, combats domestic abuse crime and follows the canons of the Convention on the Elimination of All Forms of Discrimination against Women.

6. FOUL PLAY WITH LEGAL FRAMEWORK

In 2025, the *Protection of Women from Domestic Violence Act (PWDVA) of 2005* is the most widely litigated and misused marital law in India. Nevertheless, the Act came into light as liberal welfare legislation. Now all the courts in India are coming across malicious, exaggerated and false complaints of cases related to domestic violence. Misapplication of law can be seen by bogus and fabricated allegations of cruelty, ambiguously claiming rights of shared household, self-crafted incidents with absence of medical evidence, prosecuting aged parents, distant relatives and sisters indiscriminately. These kinds of complaints are only filed to grab money, for pressurizing their spouse and in-laws, gaining leverage in divorce proceedings, claiming pendente-lite maintenance and for seeking protection and residence orders. Attention has been drawn by scholars towards repeated allegations of misuse in the enforcement of section 498A,¹³ erstwhile 85 of the *Bhartiya Nyaya Sanhita, 2023*. It is due to strategically invoking provisions during marital disputes, the implication of elderly parents and distant relations of the husband on a routine basis and the psychological, reputational and social

¹³ *Supra* note 11 at 5.

consequences faced by the accused and their families.¹⁴ The offence is cognizable and non-bailable, it creates an apprehension that permits arrest at an early stage of investigation before fact-finding has taken place comprehensively.¹⁵

From the standpoint of the criminal justice system, such kinds of allegations lead to wider normative questions relating to over criminalization, proportionality and fairness in procedure. The broader scope of section 498A enshrined under the Indian Penal Code, 1860, the erstwhile section 85 of the Bhartiya Nyaya Sanhita, 2023, coupled with its strict procedural features, sometimes places pressure on foundational principles such as the presumption of innocence and the need for necessity in the use of coercive state power in certain cases.¹⁶ Furthermore, the wider use of criminal processes in marital nitpicks has been related to escalated burdens on courts and investigative agencies, leading to delays and resource limits within the justice system.¹⁷ From this viewpoint, the confrontation lies not in weakening the substantive offence but in refining enforcement practices and procedural safeguards to attain a more just and proportionate application of domestic violence legislation.

7. JUDGMENT BY COURTS

In 2009, the High Court of Gujarat stated in its judgement *Jaydip Singh Prabhat Singh Jhala v. State of Gujarat and Ors.*¹⁸ that provisions of the Protection of Women from Domestic Violence Act do not restrain the initiation of proceedings against female respondents. This view is confirmed by the Hon'ble Supreme Court in the current decision in which it deleted the words 'respondent male' used in the Act. It also mentions that the nature of reliefs in the Act is civil as referred by the High Court of Gujarat but with a criminal redressal mechanism.¹⁹

The Honorable Supreme Court in *S.R. Batra v. Smt. Taruna Batra*²⁰ held that the right of residence could be claimed by a wife in a shared household. It means the house that belongs to the husband, or is taken on rent by husband, or a joint family property where the husband is a member of that joint family. The Honorable Apex Court in *Vimlaben Ajitbhai Patel v.*

¹⁴ *Supra* note 3 at 2.

¹⁵ *Supra* note 1 at 1.

¹⁶ *Supra* note 10.

¹⁷ R. K. Singh, "Section 498-A IPC: A Study of Its Misuse and Judicial Response" 12(3) *J. Law & Soc. Sci.* 201–215 (2019).

¹⁸ 2010 Cri. L. J. 2462.

¹⁹ *Supra* note 8 at 5.

²⁰ 2007 (3) SCC 169.

*Vatslaben Ashokbhai Patel and Ors.*²¹ said that it is the personal duty of the husband to maintain his wife.

In *V.D. Bhanot vs. Savita Bhanot*,²² it was observed by the High Court of Delhi that the wife having a shared household before the enforcement of the Domestic Violence Act is also entitled to seek protection under the Act. The Honorable Supreme Court dealt with live-in-relationships in *Indra Sarma v. V.K.V. Sarma*²³ and issued certain guidelines for testing under which circumstances a live-in relationship would come within the ambit of the expression “relationship in the nature of marriage.”

a) **Period of a relationship:** Section 2(f) listed under the Domestic Violence (DV) Act, 2005 uses the phrase “at any point of time” that means a reasonable period of time for continuing and maintaining a relationship, which may differ from case to case.

b) **Sharing of household:** The expression “shared household” has already been defined under Section 2(s) of the DV Act, which means a household where the person who is aggrieved is living or has lived at any stage of life in a domestic relationship with the respondent party.

c) **Sharing of resources and financial set-up:** It means support provided to each other or any one of them on financial grounds by sharing of bank accounts, attaining immovable properties in the joint names of parties or only in the name of women, long-standing investments in business, etc., might be some of the factors considered by courts.

d) **Domestic arrangements:** Like entrusting the responsibility to the woman alone to run the household or to do household chores such as cooking meals, maintaining, cleaning the house, etc., which is a depiction of a ‘relationship in the nature of marriage.’

e) **Sexual Relationship:** That relationship which is not just for seeking pleasure but for intimate and emotional relationships, for bearing children, for giving emotional support and companionship, etc.

f) **Offshoots:** Having a child is a strong depiction of a ‘relationship in the nature of marriage.’

²¹ (2008) 4 SCC 649.

²² AIR 2012 SC 965.

²³ AIR 2014 SC 309.

Sharing the responsibility for the procreation of children is also one of the indications.

g) **Socialization publicly:** Holding out in public and socializing among friends, relatives and others as if they were a couple is a strong foundation to hold that relationship, which is in the nature of marriage.

h) Intention and the conduct of couples as to relationships and their roles and responsibility: these factors primarily determine the nature of their relationship.

In *Arnesh Kumar v. State of Bihar*,²⁴ the top court curtailed the practice of automatic and routine arrests under section 498A of the Indian Penal Code, now section 85 of the Bhartiya Nyaya Sanhita. The procedural safeguards must be strictly followed, which are listed under procedural law, including the need for reasonable satisfaction regarding the requirement of arrest. This decision underlined the importance of proportionality and due process in the implementation of domestic violence legislation.

In *Krishna Bhattacharjee v. Sarathi Choudhury and Another*,²⁵ it was stated by the Supreme Court that there are some obligations or principles that are to be followed by the courts while deciding the case of domestic violence.

In *Hiralal P. Harsora v. Kusum Narottamdas Harsora*,²⁶ the Honorable Apex Court dealt with the question regarding the constitutional validity of Section 2(q) of the DV Act and held that the word “adult male” is creating a befuddlement. Therefore, the court expunged the words adult male in said section. Since these words do not square with Article 14 provided under the Indian Constitution. Consequently, the proviso to Section 2(q) being rendered useless also stands deleted, which was provided only to carve out an exception to a situation where a respondent does not be an adult male. The court also stated that a microscopic difference between males and females, adult and non-adult, keeping in mind the objective sought to be achieved by the 2005 Act, is neither real nor substantial nor does it have any rational relation to the objective of the legislation. Hence, the court noted that the opposite party, who is the respondent, may be of any gender.

²⁴ AIR 2014 SC 2756.

²⁵ 2015 AIR SCW 6386.

²⁶ (2016) 10 SCC 165.

Afterward, in *Rajesh Sharma v. State of Uttar Pradesh*,²⁷ it was recommended by the court to establish Family Welfare Committees for conducting preliminary scrutiny of complaints before initiating coercive measures, showing judicial concern over the application of the law mechanically.²⁸

In *Satish Chander Ahuja v. Sneha Ahuja*,²⁹ it was held by the Honorable Supreme Court that the progress of any society counts on its ability to protect the rights of women. However, the pending proceedings under the DV Act or any interim or final order passed under said Act under section 19 regarding residence rights is not an embargo for initiating or continuing any civil proceedings.

The judgement of the Supreme Court in *Shivangi Bansal vs. Sahib Bansal*³⁰ has sparked discussion by endorsing a two-month ‘cooling-off’ period prior to arrests under section 85 of the Bhartiya Nyaya Sanhita, the erstwhile section 498-A of the Indian Penal Code, raising worries about its effect on criminal justice system and gender justice protocols.³¹

The Honorable Apex Court in *Shaurabh Kumar Tripathi v. Vidhi Rawal*³² observed that the initiation of proceedings under the Domestic Violence (DV) Act are civil in nature with quasi-criminal elements that are made for rapid victim-centric remedies such as maintenance, residence and protection orders, whereas non-compliance of these orders results into criminal liabilities under section 31 of the Act. Combining civil relief with criminal deterrence for implementation, the motto is on redress and immediate welfare using civil procedures but permitting punitive action in case of violations, making them different from purely criminal cases.

8. CONCLUSION AND SUGGESTIONS

Domestic violence has escalated rapidly. It is the severest kind of harassment faced by women in our society. Not to raise our voice or to take any stand against it can do long-lasting damage to our society. The studies reveal that in domestic violence incidents, majorly, women are the

²⁷ 2018 (10) SCC 472.

²⁸ *Supra* note 11 at 6.

²⁹ AIR ONLINE 2020 SC 784.

³⁰ 2025 INSC 883.

³¹ *Supra* note 5 at 2.

³² 2025 INSC 734.

victims. Nevertheless, men may also be affected parties. The following are some of the recommendations proposed: -

- **Stopping arrest arbitrarily:** Legal safeguards such as the two-month cooling-off period, which was made obligatory by the top court in the Shivangi Bansal case, with a purpose to restraint the perceived misuse of the provision, where bogus allegations sometimes implicate entire families. The guidelines stated in the Arnesh Kumar case required police to justify arrests, though the Shivangi Bansal case stretched this to compulsory mediation.
- **Endorsing of mediation:** The setting up of family welfare committees by the Supreme Court highlights methods of alternative dispute resolution (ADR) for amicably resolving the disputes.
- **Safeguarding Constitutional rights:** Protections sustain the right of Article 21 and prevent arbitrary detention.
- **Judicial Precedents:** The concern of the court about misuse continues to shape jurisprudence.
- **Necessity for practical data:** Judicial modifications must be grounded on evidence, as the Law Commission has recommended.
- **Balance between judicial and legislative roles:** The principle of separation of powers must be appreciated along with parliamentary transformations.
- **Follow global practices:** Lessons from the Domestic Abuse Act, 2021 of the United Kingdom and the Violence Against Women Act of the United States of America can inform policy.

Hence, domestic violence is such an issue that may occur anywhere and with anyone at any point of time, irrespective of religion, race, creed, or caste. If domestic violence were not treated effectively, then no woman would be safe. Being responsible citizens of India, we ought to join our hands to protect everybody from domestic violence.

“Where women are respected, divinity nurtures them;

But where they are disrespected, all action leaves beyond repair.”

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