

## THE "MISUSE" NARRATIVE VS. SUBSTANTIVE JUSTICE: DECONSTRUCTING SECTION 498A

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### ABSTRACT

*This research paper investigates the prevailing tension between the legislative intent of Section 498A of the Indian Penal Code 1860 (now Sections 85 and 86 of the Bharatiya Nyaya Sanhita 2023) and the judicial discourse surrounding its purported misuse. Introduced as a response to the alarming rise in dowry-related violence in the 1980s, Section 498A provided a critical legal framework for criminalizing domestic cruelty. However, over the decades, a narrative has emerged bolstered by landmark Supreme Court judgments that characterizes the law as a tool for 'legal terrorism' and personal vendetta. This paper deconstructs this narrative through a doctrinal analysis of case law, statistical trends from the National Crime Records Bureau (NCRB), and sociological data from the National Family Health Survey (NFHS-5). It argues that the low conviction rates often cited as proof of misuse are more accurately understood as a failure of the justice delivery system, stemming from police-mediated settlements, hostile witnesses, and patriarchal societal pressures. Furthermore, the paper analyses the procedural shifts introduced by the Bharatiya Nagarik Suraksha Sanhita 2023, particularly the codification of preliminary inquiries and the institutionalization of cooling-off periods. The research concludes that while safeguards against arbitrary arrest are necessary, the current judicial and legislative trajectory risks trivializing domestic violence and undermining the substantive justice that the law was designed to provide.*

Keywords: Section 498A, Domestic Violence, Misuse Narrative, Bharatiya Nyaya Sanhita (BNS), Substantive Justice.

### I. INTRODUCTION

The legal landscape governing marital relations in India has undergone a profound transformation since the early 1980s, driven primarily by the persistent challenge of domestic violence and dowry-related deaths. At the heart of this transformation lies Section 498A of the Indian Penal Code, 1860 (IPC), a provision that for the first time recognized cruelty within the matrimonial home as a

distinct criminal offense.<sup>937</sup> Prior to its enactment, violence against wives was often obscured under general penal categories which failed to capture the systemic nature of domestic abuse.<sup>938</sup> The introduction of Section 498A was hailed as a significant victory for the women's movement, providing a legal shield

<sup>937</sup> The Indian Penal Code 1860, s. 498A.

<sup>938</sup> Flavia Agnes, "Domestic Violence Statistics and Section 498A" 2015 *JSTOR*.

against the ‘menace’ of dowry demands and physical or mental torture.<sup>939</sup>

However, the history of Section 498A is also a history of institutional resistance. Almost immediately after its inception, the law became the subject of intense debate regarding its potential for misuse.<sup>940</sup> Critics argued that the cognizable and non-bailable nature of the offense allowed for arbitrary arrests and the harassment of innocent family members, leading to the collapse of marriages that might otherwise have been reconciled.<sup>941</sup> This apprehension eventually crystallized into a judicial doctrine that views Section 498A with deep suspicion, frequently labeling it as an ‘assassins’ weapon’ rather than a shield.<sup>942</sup>

The central research problem of this paper is the contradiction between the widespread prevalence of domestic violence, as evidenced by public health surveys, and the legal narrative that characterizes Section 498A as a predominantly misused provision. While the National Family Health Survey (NFHS-5) indicates that nearly one-third of married women in India experience some form of domestic violence, the judicial discourse focuses heavily on the low conviction rates and the ‘misuse’ of the law by a small minority of urban, affluent litigants.<sup>943</sup> This paper seeks to deconstruct this ‘misuse’ narrative by examining the structural barriers that prevent victims from obtaining justice and by analyzing the implications of the new criminal laws the Bharatiya Nyaya Sanhita 2023 (BNS) and the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS) on the future of matrimonial jurisprudence in India.<sup>944</sup>

The thesis of this research is that the discourse of ‘misuse’ serves as a systemic barrier to substantive justice. By over-emphasizing the

risks of false cases and prioritizing the ‘sanctity’ of the marital home over the safety of the individual, the Indian legal system has created procedural hurdles that often force victims into compromising their safety in exchange for a precarious reconciliation.<sup>945</sup> The paper argues for a re-calibration of the law that balances the rights of the accused with a nuanced understanding of the sociological realities of gender-based violence.

## II. ANALYSIS AND DISCUSSION: THE STATUS QUO OF THE LAW

The legal framework for addressing marital cruelty in India is founded on the recognition that the marital relationship entails a unique set of vulnerabilities. Section 498A IPC was introduced by the Criminal Law (Second Amendment) Act 1983 to address this.<sup>946</sup> It penalizes a husband or his relative for subjecting a woman to ‘cruelty,’ punishable with up to three years of imprisonment and a fine.<sup>947</sup> The explanation to the section defines cruelty in two broad terms: conduct likely to drive a woman to suicide or cause grave injury to her life or health, and harassment aimed at coercing her to meet unlawful demands for property.<sup>948</sup>

Legislative Milestone	Key Feature	Impact
<b>1983 Amendment (Section 498A)</b>	Criminalization of marital cruelty	Provided a direct penal remedy for domestic abuse
<b>Section 113A Evidence Act</b>	Presumption of abetment of suicide	Shifted evidentiary burden in cases of early marital death
<b>2005 DV Act</b>	Civil protection against	Complementary civil remedy for protection

<sup>939</sup> The Criminal Law (Second Amendment) Act 1983, Statement of Objects and Reasons.

<sup>940</sup> *Sushil Kumar Sharma v. Union of India*, (2005) 6 SCC 281.

<sup>941</sup> Tushita Verma, "The Rising Duplicity of Section 498A" 2022 *IJLMH* 655.

<sup>942</sup> *Armesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

<sup>943</sup> National Family Health Survey (NFHS-5) 2019-21, Ministry of Health and Family Welfare.

<sup>944</sup> The Bharatiya Nyaya Sanhita 2023, s. 85.

<sup>945</sup> Shalu Nigam, "Is Domestic Violence a Lesser Crime? Countering the Backlash against Section 498A IPC" 2017 *ResearchGate*.

<sup>946</sup> *Ibid*.

<sup>947</sup> The Indian Penal Code 1860, s. 498A.

<sup>948</sup> *Ibid*.

	domestic violence	and maintenance
<b>2023 BNS (Sections 85, 86)</b>	Retention of 498A principles	Structural renumbering with defined cruelty in s 86

The transition to the *Bharatiya Nyaya Sanhita 2023* has maintained this core structure. Section 85 BNS corresponds to the penal provision, while Section 86 BNS provides a standalone definition of cruelty.<sup>949</sup> The definitions remain substantially identical to the IPC era, focusing on both physical/mental harm and dowry-related harassment.<sup>950</sup> However, the procedural nature of these offenses remains contentious. They are classified as cognizable, non-bailable, and non-compoundable.<sup>951</sup>

### III. THE PROBLEM: THE 'MISUSE' NARRATIVE AND JUDICIAL BACKLASH

The central problem in Section 498A jurisprudence is the perception of the law as an instrument of harassment against men and their families.<sup>952</sup> This narrative gained judicial legitimacy in *Sushil Kumar Sharma v. Union of India*, where the Supreme Court observed that the provision could be used to unleash 'legal terrorism'.<sup>953</sup> The Court expressed concern that the mere lodging of an FIR leads to the immediate arrest of the husband and his relatives, regardless of the veracity of the claims.<sup>954</sup>

This judicial anxiety culminated in *Arnesh Kumar v. State of Bihar*, where the Court lamented the 'dubious place of pride' that Section 498A had occupied as a weapon of disgruntled wives.<sup>955</sup> The Court mandated that police must not arrest individuals automatically under Section 498A; instead, they must follow the guidelines laid down in Section 41 of the CrPC, recording the reasons for the necessity of

<sup>949</sup> The Bharatiya Nyaya Sanhita 2023, s. 86.  
<sup>950</sup> *Live Law*, "Section 85 BNS and Section 498A IPC: A Comparison" (August 10, 2025).  
<sup>951</sup> *Sarab Mathew v. Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62.  
<sup>952</sup> *Preeti Gupta v. State of Jharkhand*, (2010) 7 SCC 667.  
<sup>953</sup> *Sushil Kumar Sharma v. Union of India*, (2005) 6 SCC 281.  
<sup>954</sup> *Ibid.*  
<sup>955</sup> *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

arrest in a checklist to be scrutinized by a Magistrate.<sup>956</sup>

Case Law	Key Judicial Phrase	Legal Outcome
<i>Sushil Kumar Sharma</i> (2005)	'Legal Terrorism'	Upheld constitutionality but urged legislative caution
<i>Preeti Gupta</i> (2010)	'Exaggerated versions'	Noted over-implication of distant relatives
<i>Arnesh Kumar</i> (2014)	'Weapon rather than shield'	Mandatory guidelines against automatic arrest
<i>Rajesh Sharma</i> (2017)	'Most complaints not bona fide'	Directed creation of Family Welfare Committees

### IV. DECONSTRUCTING THE STATISTICS: NCRB VS. NFHS

The most potent argument for the 'misuse' of Section 498A is the statistical profile of the offense. According to NCRB data, Section 498A consistently accounts for the highest volume of crimes against women in India.<sup>957</sup> However, the conviction rates are significantly lower than those for other IPC crimes.<sup>958</sup>

Year	Cases Registered (498A)	Conviction Rate (498A)	Avg Conviction Rate (IPC)
2012	1,06,527	15.0%	38.5%
2013	1,18,866	16.0%	40.2%
2022	1,39,636*	~21.0%**	42.0%
*Extrapolated from 31.4% of 4,45,256 total crimes against			

<sup>956</sup> *Ibid.*  
<sup>957</sup> National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs, 2023).  
<sup>958</sup> *Ibid.*

women. **Varies by state.			
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The judicial interpretation of these figures as proof of widespread false reporting is challenged by the National Family Health Survey (NFHS-5, 2019-21).<sup>959</sup> NFHS-5 reveals that 32% of ever-married women in India have experienced physical, sexual, or emotional violence by their husbands.<sup>960</sup> Despite this, only 6.1% of these women sought help from the police.<sup>961</sup> This indicates a massive gap between the prevalence of violence and the reporting of it.

### V. ANALYSIS OF THE BNS AND BNSS 2023 REFORMS

The replacement of the IPC and CrPC with the BNS and BNSS has codified several of the judicial trends observed over the last decade. Section 85 and 86 of the BNS retain the essence of marital cruelty but separate the offense from its definition for clarity.<sup>962</sup> However, the most significant changes are in the *Bharatiya Nagarik Suraksha Sanhita 2023* (BNSS).

#### Section 173(3) BNSS: The Preliminary Inquiry

Under Section 173(3) of the BNSS, for offenses punishable with three to seven years of imprisonment (which includes Section 85 BNS), a police officer can conduct a preliminary inquiry for 14 days before registering an FIR.<sup>963</sup> This is a statutory departure from the *Lalita Kumari* mandate of mandatory FIR registration for cognizable offenses.<sup>964</sup>

#### Institutionalized Cooling-Off Periods

Recent High Court rulings, such as *Mukesh Bansal v. State of UP*, have mandated a two-month cooling-off period for Section 85 BNS cases.<sup>965</sup> During this time, the case is referred to a mediation cell or Family Welfare Committee, and the police are restricted from taking

punitive action.<sup>966</sup> This represents a formal shift from a 'crime control' model to a 'conciliation' model for domestic violence.<sup>967</sup> This approach was further reinforced by the Supreme Court in *Shivangi Bansal v. Sahib Bansal*, where the court mediated a settlement while emphasizing procedural safeguards.<sup>968</sup>

Feature	Code of Criminal Procedure 1973	Bharatiya Nagarik Suraksha Sanhita 2023
<b>FIR Registration</b>	Mandatory if cognizable offense disclosed	Optional preliminary inquiry for 14 days (s.173(3))
<b>Power of Arrest</b>	Governed by Section 41 and <i>Arnesh Kumar</i>	Codified necessity of arrest and scrutiny
<b>Electronic FIR</b>	Permissible via judicial interpretation	Explicitly codified (s.173(1))
<b>Settlement</b>	Non-compoundable (s. 320 CrPC)	Still non-compoundable, but mediation encouraged

### VI. CONCLUSION AND RECOMMENDATIONS

The tension between the narrative of 'misuse' and the pursuit of substantive justice for victims of marital cruelty reflects a broader struggle within the Indian legal system. On one hand, the state has a duty to protect women from systemic domestic violence, a challenge that remains as pervasive today as it was in 1983. On the other hand, the judiciary is increasingly wary of the law's potential to infringe upon individual liberty through arbitrary arrest and over-implication.

This research concludes that the 'misuse' narrative, while grounded in some instances of

<sup>959</sup> SPRF, "Crimes Against Women in India: Trends, Challenges, and Policy Responses" (October 13, 2025).

<sup>960</sup> National Family Health Survey (NFHS-5) 2019-21.

<sup>961</sup> *Ibid.*

<sup>962</sup> The Bharatiya Nyaya Sanhita 2023, ss. 85-86.

<sup>963</sup> The Bharatiya Nagarik Suraksha Sanhita 2023, s. 173(3).

<sup>964</sup> *Lalita Kumari v. Govt. of U.P.*, (2014) 2 SCC 1.

<sup>965</sup> *Mukesh Bansal v. State of U.P.*, 2025 Allahabad High Court (Unreported).

<sup>966</sup> *Ibid.*

<sup>967</sup> *Rajesh Sharma v. State of U.P.*, (2017) 14 SCC 359.

<sup>968</sup> *Shivangi Bansal v. Sahib Bansal*, (2025) SCC OnLine SC 735.

genuine abuse, has been disproportionately expanded to justify a dilution of the law's protective mechanisms. The low conviction rates used to support this narrative are largely a result of structural failures police apathy, the lack of support systems for victims, and the procedural friction of a non-compoundable offense in a culture that prioritizes family reconciliation.

#### Recommendations for Legal Reform:

1. **Compoundability with Safeguards:**

Parliament should consider making Section 85 BNS a compoundable offense, subject to the permission of the court and a thorough verification by a protection officer to ensure the victim is not being coerced into a settlement. This would allow for legal closure of genuine settlements without inflating 'false case' statistics.

2. **Specialized Investigation Units:**

Matrimonial disputes should be investigated by specialized units trained in gender-sensitive investigation techniques to distinguish between frivolous claims and genuine cruelty at the threshold of the preliminary inquiry.

3. **Strict Adherence to Section 173(3) BNSS:**

The preliminary inquiry must be strictly limited to 14 days and should not be used as a 'mini-trial' to verify veracity, but only to check for the presence of a *prima facie* case.

4. **Integration of Civil and Criminal Remedies:**

The criminal proceedings under Section 85 BNS should be integrated with the civil protections of the DV Act 2005. A woman should not have to choose between a criminal trial and her economic survival.

5. **Focus on Substance Over Form:** The judiciary must move away from the rhetoric of 'legal terrorism' and focus on the substantive reality that domestic violence is an underreported crime.

Acquittals due to compromises should not be equated with false allegations.

By addressing the systemic barriers that turn victims into hostile witnesses, the Indian legal system can move toward a model that protects both the innocent from wrongful

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