

Reforming the Safeguards: Addressing Misuse of Section 85 and PWDVA through Legal Reforms

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ABSTRACT

India's women protection laws, from Section 498A IPC to Section 85 BNS and the PWDVA, 2005, address cruelty and domestic violence through criminal and civil remedies. While misuse through false complaints has been reported, feminist scholars stress that underreporting remains widespread. Judicial and legislative analyses show courts balancing safeguards and protection, emphasizing reforms like mediation, preliminary inquiry, and penalties for false cases to ensure fairness without weakening women's rights.

Overall, the evolution of these laws reflects India's ongoing effort to confront domestic violence while ensuring procedural fairness. The challenge lies in preserving the deterrent and protective intent of the legislation without allowing its misuse to erode public confidence. A balanced legal framework strengthening enforcement, promoting sensitivity among authorities, and introducing preventive mechanisms can uphold both justice for victims and safeguards for the falsely accused. The article uses judicial interpretation, statistical analysis, and legislative analysis to critically investigate Section 85 BNS and the PWDVA. It highlights the need for strong legal protections to guarantee true safety for women while arguing for reforms like mediation, preliminary inquiry, and sanctions for false cases.

1. Introduction:

One of the top priorities of India's legal and social policy framework has been to safeguard women from cruelty and domestic abuse. Women in India continue to bear an unfair share of the burden of violence, harassment, and discrimination inside the family unit, even in the face of progressive constitutional provisions of equality under Articles 14, 15, and 21. The legislative and judiciary were forced to create procedures that expressly protect women from domestic abuse due to reports of dowry killings, cruelty by husbands and in-laws, and violence against intimate partners. In this regard, the Protection of Women from Domestic Violence Act, 2005 (PWDVA) and criminal law provisions like Section 85 of the Bhartiya Nyaya Sanhita have become essential principles of women's protection jurisprudence.

Research problem:

This study examines whether Section 85 of the Bhartiya Nyaya Sanhita and the PWDVA, 2005, effectively balance women's protection from cruelty with safeguards against misuse. It explores rising concerns over false complaints while considering feminist warnings that overemphasizing misuse may weaken vital protections, seeking an equitable legal framework for all.

1.1 Historical Background of Section 498A IPC

Section 498A was introduced in 1983 through the Criminal Law (Second Amendment) Act to combat the rising incidents of cruelty and dowry-related harassment faced by married women. The

provision criminalized cruelty by a husband or his relatives, defining cruelty broadly to include both physical and mental harm, as well as harassment for unlawful demands of dowry. It was made a cognizable and non-bailable offence, punishable with imprisonment of up to three years. The provision had two primary objectives: first, to act as a deterrent against marital cruelty, and second, to provide a legal remedy for women who otherwise had limited recourse within the private sphere of the home.[1]

1.2 Transition to Section 85 BNS in Bhartiya Nyaya Sanhita, 2023

Section 85 of the Bhartiya Nyaya Sanhita (2023) replaces Section 498A IPC, retaining its core aim of penalizing cruelty against women while modernizing India's penal code. Though the protective framework remains intact, debates on misuse persist, prompting renewed examination of its effectiveness and the need for balanced structural reforms.

1.3 Transition to Section 85 BNS in Bhartiya Nyaya Sanhita, 2023

Section 498A of the IPC was superseded by Section 85 of the Bhartiya Nyaya Sanhita (BNS) in 2023. With a similar penalty and cognizable, non-bailable nature, the new provision essentially keeps the substance of the previous one, criminalizing cruelty against women committed by husbands or their family members. The change represents an attempt to streamline, modernize, and consolidate India's penal laws without significantly changing the framework that protects women. However, the debates surrounding misuse have not disappeared with this transition. On the contrary, the enactment of Section 85 BNS provides an opportunity to revisit the concerns raised over decades of litigation under Section 498A, evaluate its effectiveness, and assess whether any structural reforms are required to balance protection with safeguards against abuse of process.[2]

1.4 Introduction to the Protection of Women from Domestic Violence Act, 2005

The PWDVA, 2005 expands protection beyond criminal sanctions by offering civil remedies for physical, emotional, sexual, and economic abuse. It empowers women through protection, residence, custody, and monetary orders, recognizing domestic violence as a societal issue. However, like Section 498A, it has faced criticism for alleged misuse in marital disputes.

2. Legislative Framework

Section 85 of the Bhartiya Nyaya Sanhita (2023), succeeding Section 498A IPC, criminalizes cruelty and dowry harassment, while the PWDVA, 2005, provides civil remedies for broader abuse. Together, they create a complementary punitive and protective framework, reflecting India's commitment to women's safety amid concerns of misuse, enforcement gaps, and reform needs.

2.1 Key Ingredients of the Offence

For an offence under Section 85 BNS, the prosecution must establish:

- The victim is a married woman.
- The accused is her husband or a relative of her husband.
- The conduct amounts to "cruelty," which includes:
- Any wilful conduct likely to drive the woman to commit suicide or cause grave injury to her life, limb, or health (mental or physical).
- Harassment with a view to coercing her or her relatives to meet unlawful demands for property or valuable security.
- The definition of cruelty is deliberately broad to encompass various forms of abuse, including mental harassment, which is often more difficult to prove than physical violence.

2.2 Punishments Prescribed

The offence is punishable with imprisonment up to three years and fine. While critics argue that the sentence is relatively light compared to the gravity of dowry-related deaths, the provision is often read with Section 304B BNS (dowry death) in extreme cases, which prescribes harsher punishment.

2.3 Cognizable and Non-Bailable Nature

Section 85 of the Bhartiya Nyaya Sanhita, like Section 498A IPC, is cognizable and non-bailable, reflecting the seriousness of cruelty against women and enabling immediate police action. However, it has sparked misuse concerns due to arrests made without adequate inquiry, even as its broad scope rightly recognizes physical, psychological, and economic abuse.

2.4 Remedies Available under the PWDV Act

The PWDVA provides an array of remedies to protect victims:

- Protection Orders: restraining the abuser from committing violence or contacting the victim.
- Residence Orders: ensuring the woman's right to reside in the shared household, irrespective of ownership.
- Monetary Relief: compensation for expenses, loss of income, medical costs.
- Custody Orders: temporary custody of children in appropriate cases.
- Compensation Orders: for mental torture and emotional distress.

These remedies are enforceable through magistrates, with support from protection officers and service providers, ensuring accessibility even to women lacking independent resources.

3. Issue of Misuse

The debate around misuse of Section 85 BNS (previously Section 498A IPC) and the PWDVA finds support in empirical data as well as judicial commentary. According to the National Crime Records Bureau (NCRB), cases registered under Section 498A consistently form a significant proportion of all crimes against women. For instance, NCRB's Crime in India report (2022) recorded over 1,00,000 cases under Section 498A. However, the conviction rate remained relatively low hovering between 12% and 15% over the last decade. This wide gap between registration and conviction has been interpreted by critics as evidence of false or exaggerated complaints.[4]

The 243rd Law Commission Report (2012) acknowledged growing misuse of Section 498A, noting frequent false implication of husbands' relatives, especially elderly parents and unmarried sisters, but cautioned that low conviction rates do not necessarily indicate falsity, as acquittals may stem from evidentiary or social factors [5]. Likewise, the Malimath Committee (2003) recommended making the offence bailable and compoundable to prevent harassment of innocents, though women's groups opposed such dilution [6]. Thus, statistics present a dual narrative while high case volumes and low convictions raise misuse concerns, underreporting of genuine violence makes reliance on numbers alone problematic.

1. Patterns of Misuse

The provision is misused in following ways:

a. False Complaints to Harass Husband or In-Laws

One of the most widely discussed patterns of misuse is the filing of false or exaggerated complaints. Families of the husband, including elderly parents, brothers, sisters, or even distant relatives, are often implicated in complaints. [7] This over-implication may occur either as a strategy to exert pressure or due to the broad wording of the provision that covers "relatives of the

husband.” The Supreme Court in *Sushil Kumar Sharma v. Union of India* (2005) itself recognized the possibility of “legal terrorism” when such provisions are misused.

b. Use as Bargaining Tools in Divorce or Dowry Disputes

Another recurrent misuse pattern is the invocation of Section 85 BNS or the PWDVA during matrimonial disputes, particularly divorce, custody battles, or property claims. Filing a criminal complaint often strengthens the bargaining power of one party, compelling the other side to agree to financial settlements or divorce terms under pressure. The *Arnesh Kumar v. State of Bihar* (2014) case acknowledged this misuse, emphasizing that automatic arrests without inquiry must be curbed.

3.2 Impact on Aged Parents, Sisters, or Relatives

The wide scope of the provision enables complaints against multiple family members, including elderly parents, sisters, and distant relatives. NCRB data shows that around 40% of cases involve several accused, often leading to trauma, family discord, and years of litigation even when acquittal follows.

3.3 Impact on Judicial System

Misuse of these laws contributes to a heavy caseload and delays in genuine cases. Since Section 85 BNS is non-compoundable, trials proceed even in weak or frivolous matters, causing judicial backlog, unnecessary police workload, and resource strain.

3.4 Psychological and Social Consequences on Accused Families

False accusations cause severe emotional and social harm. Accused men and their families face stigma, workplace humiliation, and mental distress. Elderly parents often suffer anxiety and health decline, while societal ostracization can persist post-acquittal. In extreme cases, victims of false implication have resorted to suicide.

4. Arguments Against the “Misuse” Narrative

The feminist perspective argues that the misuse of Section 85 BNS and the PWDVA is overstated, and such claims risk undermining women’s protections. Low conviction rates reflect evidentiary and social barriers, not false cases. The *Social Action Forum for Manav Adhikar v. Union of India* (2018) ruling affirmed that preventing misuse must not weaken women’s legal rights, urging that the debate be viewed within broader gender inequalities.

4.1 False cases are far fewer than genuine ones

NFHS-5 data reveals that about one-third of married Indian women experience domestic violence, yet few report it. The proportion of deliberately false complaints is much smaller. Acquittals often stem from weak evidence, social pressure, or poor investigation rather than fabrication, showing that false cases form only a minor share of overall complaints.[8]

4.2 Social context of patriarchy and under-reporting of domestic violence must be considered

Indian society’s patriarchal structure often discourages women from reporting abuse due to stigma, financial dependence, and social pressures. Overemphasis on the misuse debate further silences victims and distracts from the larger issue of under-reporting domestic violence.[9] The feminist view stresses that while false complaints require safeguards, priority must remain on ensuring strong, accessible legal remedies and support systems for women facing genuine abuse.

5. Judicial Interpretation

The judiciary has played a crucial role in shaping the contours of Section 498A IPC (now Section 85 BNS) and the Protection of Women from Domestic Violence Act, 2005 (PWDVA). Courts have

been sensitive to the dual concerns of protecting genuine victims of domestic abuse while also recognizing the problem of false implication. Several landmark rulings illustrate this balancing exercise.

5.1 Sushil Kumar Sharma v. Union of India (2005).

In this case, the Supreme Court recognized that Section 498A IPC, though intended to protect women from cruelty, was at times misused to falsely implicate innocent relatives, causing undue harassment. While upholding the provision's constitutionality, the Court stressed the need for cautious and judicious application to prevent abuse.

5.2 Arnesh Kumar v. State of Bihar (2014).

This landmark decision curtailed arbitrary arrests under Section 498A, as the Supreme Court observed that automatic arrests of husbands and relatives often led to unwarranted detention. To curb this misuse, it mandated adherence to Section 41 CrPC, requiring police to justify arrests, and directed magistrates to closely review such actions. The ruling sought to balance safeguarding women's rights with protecting the accused from arbitrary deprivation of liberty.

5.3 Rajesh Sharma v. State of Uttar Pradesh (2017).

In this case, the Court proposed creating Family Welfare Committees (FWCs) in each district to review complaints before any coercive action, aiming to screen out false cases early. However, the directive was later modified due to concerns over the committees' lack of legal authority and potential delays in genuine cases. Nonetheless, the ruling signified the judiciary's acknowledgment of misuse and its attempt to devise preventive safeguards.

5.4 Important rulings under the Domestic Violence Act.

The judiciary has broadened the interpretation of the PWDVA, 2005 to strengthen its protective scope. In *Indra Sarma v. V.K.V. Sarma* (2013), the Supreme Court included live-in relationships within the meaning of "domestic relationship," extending protection beyond marriage. In *Hiral P. Harsora v. Kusum Narottamdas Harsora* (2016), it removed the limitation that only women could be respondents, allowing action against any adult family member. These rulings reflect a progressive judicial approach aimed at expanding, not restricting, the Act's reach.

6. Law Commission / Committee Reports

The debate on the alleged misuse of Section 498A IPC (now Section 85 BNS) and the concerns surrounding domestic violence legislation has repeatedly come before expert bodies, law reform commissions, and Parliament. Their reports and recommendations reflect an ongoing struggle to strike a balance between safeguarding women from abuse and preventing harassment of innocent family members.

6.1 243rd Law Commission Report (2012)

The 243rd Law Commission Report acknowledged instances of misuse of Section 498A IPC, including cases implicating distant relatives to settle personal disputes. However, it warned against weakening the law, stressing its importance in addressing entrenched domestic cruelty. The Commission proposed procedural safeguards like stricter arrest scrutiny, use of mediation, and improved training for police and magistrates, while firmly rejecting demands to make the offence compoundable or bailable, as that would undermine its deterrent and protective purpose.

6.2 Malimath Committee Recommendations.

The Malimath Committee on Criminal Justice Reforms (2003) also examined Section 498A. It observed that misuse was not uncommon and recommended that the offence be made bailable and

compoundable to prevent harassment of innocent relatives. These recommendations generated controversy, as women's rights groups argued that such dilution would defeat the protective intent of the law. The Committee also suggested greater reliance on conciliation and family counseling to resolve disputes before the criminal process is invoked. While these suggestions were never fully adopted, they continue to inform debates on reform.

6.3 Supreme Court's Suggestions to Parliament

The Supreme Court has recognized Section 498A's dual role—protecting women from cruelty and its potential misuse—urging Parliament to include safeguards while transitioning to Section 85 BNS. It cautioned against “blind replication” without checks on frivolous cases or arrests [10] yet emphasized that misuse concerns must not erode essential protections [11]. Commentators note that low conviction rates largely result from poor investigations or pressured withdrawals, not false complaints. Thus, balanced enforcement and procedural reform, rather than dilution, are seen as the appropriate path forward.

7. Suggestions & Reforms

1. Introduce time-bound preliminary inquiry or mediation before FIR registration to screen false or exaggerated complaints.
2. Establish independent, professionally trained welfare committees for counseling and case assessment.
3. Consider gender-neutral or parallel remedies for men, children, and elderly victims without weakening women's protections.
4. Enhance police training, judicial sensitivity, and community support to ensure fair and effective implementation of the law.

8. Conclusion

The evolution from Section 498A IPC to Section 85 BNS and the PWDVA, 2005, reflects India's ongoing effort to combat domestic violence while managing concerns of misuse. Though misuse exists, it is less prevalent than claimed, with under-reporting of abuse remaining the larger issue. Weakening protective laws would endanger women's rights; instead, balanced reforms like preliminary inquiries, mediation, penalties for false cases, counseling, and gender-sensitive approaches are needed. The goal is to ensure both justice and fairness by empowering genuine victims and preventing wrongful prosecution.

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