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Misuse of Section 85 BNS, 2023: Judicial Response and Procedural Safeguards in India

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Misuse of Section 85 BNS, 2023: Judicial Response and Procedural Safeguards in India

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Abstract

The promulgation of Section 85 of the Bharatiya Nyaya Sanhita 2023, as a replacement for Section 498A of the Indian Penal Code is indicative of the legislative intent to provide protection to married women against any form of cruelty and dowry harassment. Although section 85 is a much needed law which provides a safety valve against domestic violence, instances of misuse of such a provision and fabrication of cases by married women have been rampant in India in recent times. This paper attempts to examine the issue of misuse of Section 85 BNS and analyzes how the judiciary has approached this problem through several landmark judgements passed by the Supreme Court and the High Courts. The paper also examines the adverse impact of arbitrary arrests and lengthy criminal proceedings upon individuals and their families. Using a doctrinal and analytical methodology, the study highlights the need to strike a balance between protection of women's dignity and the rights of the accused under the Constitution.

Keywords: *Section 85 BNS, Matrimonial Cruelty, Dowry Harassment, Misuse of Law, False Matrimonial Allegations, Judicial Safeguards, Domestic Violence, Criminal Justice System, Women Protection Laws, Section 498A IPC*

Introduction

Marriage has traditionally been regarded as a sacred institution in Indian society, founded upon mutual trust, respect, companionship, and familial harmony. However, the persistence of domestic violence, cruelty, and dowry-related harassment within matrimonial relationships has remained a serious socio-legal concern for decades. In response to the increasing incidents of harassment and abuse faced by married women, the Indian legislature introduced stringent legal mechanisms aimed at protecting women from cruelty inflicted by husbands and their

relatives. One of the most significant legal provisions in this regard was Section 498A of the Indian Penal Code, 1860, which has now been substantially retained under Section 85 of the Bharatiya Nyaya Sanhita, 2023. The provision criminalises cruelty against a married woman and seeks to provide legal protection against physical, mental, and dowry-related abuse.¹ The enactment of Section 85 BNS reflects the continuing legislative commitment of the State towards safeguarding women's dignity and ensuring protection against matrimonial cruelty. The provision was introduced with the objective of combating dowry harassment, domestic abuse, and coercive conduct that often remained concealed within the private sphere of marriage. Over the years, such laws have played a significant role in recognising domestic violence as a public wrong rather than a purely personal or family matter. At the same time, the implementation of these laws has generated considerable debate concerning allegations of misuse, false implication, and procedural abuse.

Evolution from Section 498A IPC to Section 85 BNS

Modernizing and strengthening India's legal system is the goal of the Bharatiya Nyaya Sanhita (BNS). Sections 85 and 86 of the BNS are noteworthy because they mirror the language of Section 498A of the Indian Penal Code (IPC), which deals with the problem of in-law or husband-in-law abuse to married women. Consistent safeguards for women's rights are guaranteed by this replication.² What follows is a synopsis of these parts, a comparison of them, and an analysis of their implications.

Section 498A of the Indian Penal Code (IPC)

Section 498A was enacted in the IPC in 1983 to safeguard married women against cruelty perpetrated by their husbands or the relatives of the husband.

Text of Section 498A IPC:

"498A. Husband or relative of husband of a woman subjecting her to cruelty. — Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine³."

¹ Jain, Ms. Samiha. "Dowry Laws in Contemporary India: Judicial Concerns, Misuse Allegations, And the Quest for Balanced Enforcement."

² Das, Arunava, and Monami Nandi. "Gender Justice and Legal Reforms: Addressing Domestic Violence Against Men and the Misuse of Section 498A IPC/BNS S. 85 in India."

³ Indian Penal Code, 1860, § 498A.

Explanation:

For the purposes of this section, "cruelty" means:

- (a) *“Any willful conduct which is of such a nature as to cause grave injury or danger to life, limb, or health (whether mental or physical) of the woman; or*
- (b) *Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security, or is on account of failure by her or any person related to her to meet such demand.”*

Sections 85 and 86 of the Bharatiya Nyaya Sanhita (BNS)⁴

Sections 85 and 86 of the BNS reflect the stipulations of Section 498A IPC, guaranteeing that the safeguards against cruelty and harassment persist within the updated framework.

Section 85 of the BNS:

"85. Husband or relative of husband of a woman subjecting her to cruelty. — Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.⁵"

Explanation:

For the purposes of this section, "cruelty" means:

- (a) *“Any willful conduct which is likely to cause grave injury or danger to life, limb, or health (whether mental or physical) of the woman;*
- (b) *Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security, or is on account of failure by her or any person related to her to meet such demand.”*

Section 86 of the BNS:

This section further clarifies the nature of harassment and cruelty, providing comprehensive coverage and ensuring clarity in its application⁶.

Comparison and Explanation

- *Verbatim Reproduction*

⁴ Bharatiya Nyaya Sanhita, 2023, §§ 85, 86.

⁵ Bharatiya Nyaya Sanhita, 2023, s. 85.

⁶ Bharatiya Nyaya Sanhita, 2023, s. 86.

Sections 85 and 86 of the BNS mirror Section 498A of the IPC precisely. This replication is essential for upholding the continuity of protections for women, ensuring that the law remains intact and undiluted.

- **Legal Continuity**

By incorporating Section 498A IPC into the BNS, the legislature guarantees that current judicial interpretations, precedents, and enforcement mechanisms associated with Section 498A continue to hold significance. This smooth transition is essential for the uniform enforcement of regulations.

- **Scope and Coverage**

Both Section 498A IPC and Sections 85 and 86 of the BNS⁷ cover:

- *“Willful conduct likely to drive a woman to commit suicide.*
- *Conduct causing grave injury or danger to the life, limb, or health of the woman.*
- *Harassment intended to coerce the woman or her relatives to meet unlawful demands for property or valuable security.”⁸*

Penalties

The sanctions outlined in both provisions are the same, prescribing a term of imprisonment for a maximum of three years along with a monetary penalty. This consistency guarantees that the enforcement of regulations maintains its formidable impact.

Significance of the Replication

- **Protection of Women’s Rights**

The replication highlights the legislature’s dedication to safeguarding women against domestic violence and harassment. By incorporating these provisions in the BNS, the statute reinforces its position against cruelty towards married women.⁹

- **Judicial and Legal Clarity**

Preserving the consistency of language and provisions allows for courts, law enforcement agencies, and legal professionals to apply and interpret the law in a uniform manner. This clarity is crucial for the proper execution of justice.

- **Policy Continuity:**

The exact replication indicates that the aims associated with Section 498A IPC—addressing cruelty and safeguarding women—continue to be pertinent and essential.

⁷ LawRato, 'Sections 85 and 86 of the Bharatiya Nyaya Sanhita (BNS) Versus Section 498A of the Indian Penal Code (IPC)', *LawRato*, 21 September 2024 last visited on 16 April 2025.

⁸ Mahapatra, Dhananjay. "498A Getting Replicated in BNS Without Shield for Hubby Worries Supreme Court." *The Times of India*, last visited on 7 December 2024.

⁹ Diksha Kumari, 'Analysis of Section 85 & 86 of BNS Related to Protection of Married Women from Cruelty', *Nyaya Nishtha*, last visited on 11 December 2024.

The maintenance of this policy is crucial for tackling persistent societal challenges associated with domestic violence.

Legislative Intent Behind Matrimonial Cruelty Laws

The enactment of matrimonial cruelty laws in India was primarily driven by the urgent need to address the increasing incidents of domestic violence, dowry harassment, and cruelty against married women within the institution of marriage. Historically, matrimonial abuse was often treated as a private family matter, with limited legal intervention and minimal protection available to women facing physical, emotional, or economic violence in their marital homes. Deep-rooted patriarchal structures, societal expectations, economic dependency, and the prevalence of dowry practices contributed significantly to the vulnerability of women within matrimonial relationships. Recognising the gravity of these issues, the legislature introduced stringent penal provisions to deter cruelty and provide legal remedies to aggrieved women.¹⁰

One of the earliest and most significant legislative responses to matrimonial cruelty was the insertion of Section 498A into the Indian Penal Code, 1860, through the Criminal Law (Second Amendment) Act, 1983. The provision criminalised cruelty by a husband or his relatives towards a married woman, particularly in cases connected with unlawful dowry demands or conduct likely to drive the woman to suicide or cause grave physical or mental injury. With the enactment of the Bharatiya Nyaya Sanhita, 2023, the substance of Section 498A IPC has largely been retained under Section 85 BNS, thereby reflecting legislative continuity in protecting women from matrimonial abuse.

The legislative intent behind these provisions was not merely punitive in nature but also protective and reformative. The law sought to acknowledge domestic violence and dowry-related cruelty as serious social evils requiring criminal sanction. Prior to the enactment of such provisions, many women endured prolonged abuse due to social stigma, fear of familial breakdown, financial dependence, and the absence of effective legal recourse. By criminalising matrimonial cruelty, the legislature intended to empower women, deter abusive conduct, and ensure that violence within the domestic sphere did not remain invisible or unaddressed.¹¹

¹⁰ Kaur, Ramanpreet, and Bhawna Arora. "Misuse of Matrimonial Laws: An Analytical View." *Issue 3 Int'l JL Mgmt. & Human.* 7 (2024): 1032.

¹¹ Nayar, Sarrah. "He Said, She Said: Analysing Cruelty as a Ground for Matrimonial Relief." *Issue 5 Int'l JL Mgmt. & Human.* 6 (2023): 2357.

Simultaneously, the Dowry Prohibition Act, 1961 was enacted to eradicate the deeply entrenched practice of dowry, which had become one of the leading causes of harassment, cruelty, and dowry deaths in India. Despite legislative prohibition, dowry practices continued to persist in various forms across socio-economic classes, often resulting in physical abuse, emotional torture, coercion, and even suicides of married women. The legislative framework surrounding matrimonial cruelty laws therefore evolved with the broader objective of combating gender-based violence and promoting substantive equality within marriage.¹²

The Statement of Objects and Reasons behind Section 498A IPC reflected legislative concern regarding the alarming rise in cases involving cruelty by husbands and relatives of husbands. The legislature recognised that existing legal remedies were inadequate to address the nature and severity of matrimonial abuse, particularly where cruelty was linked with dowry demands. Consequently, the provision was made cognizable and non-bailable to ensure prompt intervention and effective deterrence against offenders. The retention of similar provisions under Section 85 BNS demonstrates that the State continues to consider matrimonial cruelty a serious offence affecting the dignity, safety, and autonomy of women.

However, while the legislative purpose behind matrimonial cruelty laws was undoubtedly to protect vulnerable women and curb dowry-related violence, over time concerns regarding misuse and procedural abuse also emerged. Courts and legal scholars have observed that the broad wording of “cruelty” and the stringent procedural nature of the provision occasionally resulted in false implication, arbitrary arrests, and harassment of the accused and their family members. Scholars such as Jayana Kothari have argued that the vague definition of cruelty grants wide discretion to investigating authorities and courts in interpreting the scope of the offence.¹³

Despite the misuse debate, the legislative intent behind Section 85 BNS and related matrimonial laws cannot be viewed solely through the lens of abuse of process. These laws continue to play a crucial role in addressing genuine cases of domestic violence and dowry harassment, particularly in a society where patriarchal norms and gender-based discrimination remain deeply embedded. Therefore, the true legislative objective lies in maintaining a delicate balance between ensuring effective protection for genuine victims and preventing the misuse of criminal law

¹² Chitale, Gauri Nitin, Nagesh Sawant, and Ramaratan Dhumal. "Concept Of Cruelty In Matrimonial Relationship Under Muslim Law-Analysis Through the Eyes of the Supreme Court of India." *Lex Localis* 23.S4 (2025): 2762-2767.

¹³ Unnithan, Maya, and Jayna Kothari. "The Undue Importance of Marriage in India's Current Surrogacy Legislation: Why Single Women Cannot Aspire to Motherhood." *Amicus Curiae* 6 (2024): 324.

as a tool of harassment or personal vendetta. The challenge before the legal system is not the existence of such protective laws, but their fair, balanced, and evidence-based implementation in a manner that upholds both gender justice and constitutional safeguards.

Judicial Recognition of Misuse

Over the years, Indian courts have repeatedly acknowledged that although matrimonial cruelty laws were enacted with the noble objective of protecting women from harassment and abuse, there have been instances where such provisions have been misused through false or exaggerated allegations. Judicial recognition of misuse has emerged primarily in response to increasing complaints regarding arbitrary arrests, mechanical registration of FIRs, implication of distant relatives, and prolonged criminal proceedings arising out of matrimonial disputes. The judiciary has therefore attempted to strike a balance between safeguarding genuine victims of domestic violence and preventing the abuse of criminal law for personal vendetta, coercion, or harassment.

One of the earliest judicial acknowledgements of misuse came in *Sushil Kumar Sharma v. Union of India*¹⁴, where the Supreme Court observed that although Section 498A was introduced as a shield to protect women from cruelty, it could also become a weapon in the hands of disgruntled complainants. The Court cautioned that misuse of the provision by itself could not justify declaring the law unconstitutional, but recognised that frivolous complaints and malicious prosecutions posed serious concerns for the criminal justice system. The judgment marked an important judicial acknowledgment that misuse allegations were not entirely unfounded.

A significant development in this regard occurred in *Preeti Gupta v. State of Jharkhand*¹⁵, where the Supreme Court expressed concern over the growing tendency to implicate the husband's entire family in matrimonial disputes without adequate evidence. The Court observed that exaggerated versions of incidents were often reflected in complaints under Section 498A IPC, leading to unnecessary suffering for innocent relatives. It further emphasized the need for careful scrutiny by investigating authorities and warned against mechanical prosecution in matrimonial cases. The judgment highlighted how criminal proceedings arising from false allegations could irreparably damage family relationships and social reputation.

¹⁴ *Sushil Kumar Sharma v. Union of India*, (2005) 6 SCC 281.

¹⁵ *Preeti Gupta v. State of Jharkhand*, (2010) 7 SCC 667.

The most influential judicial intervention concerning misuse of matrimonial cruelty laws came in *Arnesh Kumar v. State of Bihar*¹⁶. In this landmark decision, the Supreme Court strongly criticised the routine and automatic arrests being made in cases registered under Section 498A IPC. The Court observed that arrests were often carried out without proper investigation or satisfaction regarding the necessity of detention, thereby violating personal liberty guaranteed under Article 21 of the Constitution. Recognising the increasing misuse of arrest powers, the Court issued detailed guidelines mandating compliance with Section 41 of the Code of Criminal Procedure before effecting arrests. Police officers were directed to justify the necessity of arrest, and magistrates were instructed to scrutinise detention requests carefully before authorising custody. This judgment significantly transformed the procedural handling of matrimonial cruelty cases and introduced important safeguards against arbitrary arrests.

Subsequently, in *Rajesh Sharma v. State of U.P.*¹⁷, the Supreme Court once again recognised the growing misuse of matrimonial cruelty provisions and noted that many complaints were filed in the heat of personal conflict rather than genuine criminal conduct. To prevent unnecessary arrests and harassment, the Court proposed the establishment of Family Welfare Committees to scrutinise complaints before coercive action could be taken. The judgment reflected judicial concern regarding the criminalisation of matrimonial discord and the social consequences of false implication. However, certain directions issued in *Rajesh Sharma* were later modified in *Social Action Forum for Manav Adhikar v. Union of India*¹⁸, where the Supreme Court clarified that courts could not create extra-statutory mechanisms that effectively diluted the operation of criminal law. Nevertheless, the Court maintained that safeguards against misuse remained necessary within the framework of existing procedural law.

The judicial approach towards Section 85 BNS and its predecessor Section 498A IPC demonstrates an evolving attempt to balance two competing concerns—effective legal protection for women facing genuine cruelty and prevention of wrongful prosecution arising from false or exaggerated allegations. Through landmark judgments and procedural safeguards, the judiciary has sought to preserve the legitimacy of matrimonial cruelty laws while ensuring that criminal law is not converted into an instrument of oppression or abuse.

¹⁶ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

¹⁷ *Rajesh Sharma v. State of U.P.*, (2017) 8 SCC 746.

¹⁸ *Social Action Forum for Manav Adhikar v. Union of India*, (2018) 10 SCC 443.

Impact of False Matrimonial Litigation

Matrimonial cruelty laws such as Section 85 of the Bharatiya Nyaya Sanhita, 2023 and the Dowry Prohibition Act, 1961 were enacted with the objective of protecting women from genuine acts of cruelty, harassment, and dowry-related violence. However, allegations regarding the misuse of these provisions through false or exaggerated complaints have generated significant legal and social concerns in recent years. False matrimonial litigation not only affects the accused individuals and their families but also impacts the credibility of protective legislation and the broader administration of criminal justice. The consequences of such litigation extend beyond legal proceedings and often result in severe emotional, financial, social, and psychological repercussions.¹⁹

One of the most immediate consequences of false matrimonial litigation is the arbitrary arrest and criminal prosecution of the accused and their relatives. Since matrimonial cruelty provisions are cognizable and non-bailable in nature, complaints frequently lead to immediate police intervention and detention. In many cases, entire families—including elderly parents, married sisters, and distant relatives—have been implicated without specific allegations or substantial evidence. Such arrests often result in humiliation, social stigma, loss of employment, reputational damage, and emotional trauma. The Supreme Court in *Arnesh Kumar v. State of Bihar*²⁰ acknowledged that routine arrests in matrimonial disputes had become a major source of abuse and emphasised the need for procedural safeguards to protect personal liberty.

False matrimonial allegations also have a devastating psychological impact on individuals and families. The accused often face prolonged mental stress, anxiety, depression, and social isolation due to the stigma associated with criminal allegations involving dowry harassment or cruelty against women. Matrimonial disputes, once transformed into criminal litigation, frequently lead to irretrievable breakdown of marital relationships and strained family dynamics. Children caught in such disputes may suffer emotional instability, parental alienation, and long-term psychological distress. The adversarial nature of criminal proceedings further intensifies hostility between families, reducing the possibility of reconciliation or amicable settlement.²¹

¹⁹ Kapoor, Sahil. "Beyond Courtrooms: A Comparative Study of Mediation and Litigation in Matrimonial Dispute Resolution." *International Journal of Dispute Resolution* 1.4 (2025): 1-74.

²⁰ Supra Note 16.

²¹ Ahmad, Shoyaib. "Irretrievable Breakdown of Marriage in India: Legal Challenges, Judicial Reforms, and Societal Perspectives." (2025).

In addition to emotional consequences, false matrimonial litigation imposes substantial financial burdens on the accused. Legal proceedings under Section 85 BNS often continue for several years, requiring repeated court appearances, legal representation, anticipatory bail applications, and extensive litigation expenses. Individuals facing criminal prosecution may also experience suspension from employment, career stagnation, or professional setbacks due to pending criminal cases. In certain instances, allegations under matrimonial cruelty laws have allegedly been used as tools for coercion, extortion, or pressure during divorce and maintenance proceedings.²²

The misuse of matrimonial cruelty laws also affects the criminal justice system itself. False or frivolous complaints contribute to the unnecessary burden on police authorities, courts, and prosecutorial machinery, diverting attention from genuine cases requiring urgent intervention. Mechanical registration of FIRs and indiscriminate prosecution may undermine public confidence in the fairness and neutrality of the legal system. Furthermore, increasing narratives surrounding misuse risk creating societal scepticism towards genuine victims of domestic violence and dowry harassment, thereby weakening the effectiveness of women-centric protective legislation.²³

Despite these concerns, it is important to recognise that the existence of false cases does not diminish the seriousness of genuine incidents of domestic violence and dowry-related cruelty faced by women in India. Courts have repeatedly cautioned against using the misuse narrative to dilute the protective purpose of matrimonial cruelty laws.

The impact of false matrimonial litigation demonstrates the complex intersection between gender justice, criminal law, and constitutional rights. While protective legislation remains necessary to combat domestic violence and dowry harassment, misuse of such provisions can result in grave injustice, social disruption, and loss of public confidence in the legal system. Consequently, there is an urgent need for effective procedural safeguards, responsible investigation, and judicial vigilance to ensure that matrimonial cruelty laws fulfil their intended purpose without becoming instruments of oppression or abuse.

²² Gupta, Parishisht. "A Legal Study of Matrimonial Remedies with Special Reference to Status of Husband under Hindu Law in India." *Supremo Amicus* 38 (2025): lvii.

²³ Singhal, Taru. "The Double-Edged Sword: Uncovering the Misuse of Section 498A IPC by Women in Marital Disputes." *Available at SSRN 4790189* (2024).

Conclusion and Suggestions

The enactment of Section 85 of the Bharatiya Nyaya Sanhita, 2023 reflects the continuing commitment of the Indian legal system towards protecting married women from cruelty, harassment, and dowry-related abuse. Matrimonial cruelty laws were introduced as essential safeguards against domestic violence occurring within the private sphere of marriage, where women have historically faced social oppression, economic dependency, and systemic discrimination. These legal provisions have played a significant role in recognising domestic abuse as a serious public concern requiring criminal sanction and state intervention.

At the same time, the increasing judicial recognition of false or exaggerated matrimonial allegations has generated an important debate concerning the misuse of such laws. Various judicial pronouncements, particularly in *Arnesh Kumar v. State of Bihar*, *Preeti Gupta v. State of Jharkhand*, and *Rajesh Sharma v. State of U.P.*, have highlighted concerns regarding arbitrary arrests, implication of innocent relatives, vague allegations, and procedural abuse. Such misuse not only affects the accused individuals and their families through emotional, financial, and social hardship, but also undermines public confidence in protective legislation and burdens the criminal justice system with prolonged litigation.

However, the existence of misuse cannot be used to dilute the seriousness of genuine cases of domestic violence and dowry harassment. The reality of cruelty against women in matrimonial relationships continues to persist in many parts of Indian society, making legal protection both necessary and indispensable. Therefore, the challenge before the legal system lies in maintaining a careful balance between ensuring justice for genuine victims and safeguarding innocent individuals from wrongful prosecution. The objective should not be to weaken matrimonial cruelty laws, but to ensure their fair, balanced, and evidence-based implementation.

In light of the issues examined in this study, several reforms may be considered to strengthen procedural fairness while preserving the protective intent of the legislation. Firstly, strict compliance with the safeguards laid down in *Arnesh Kumar v. State of Bihar* should be ensured in all cases involving matrimonial cruelty allegations. Arrests should only be made after proper preliminary investigation and satisfaction regarding their necessity. Secondly, investigating authorities dealing with matrimonial disputes should receive specialised training to handle such cases with greater sensitivity, neutrality, and professionalism.

Further, courts should continue exercising careful scrutiny in cases involving omnibus allegations against multiple family members without specific evidence. Legislative reforms may also be considered to introduce clearer standards regarding investigation procedures and evidentiary requirements in matrimonial cruelty cases. In appropriate cases, mediation and counselling mechanisms may help resolve matrimonial disputes at an early stage and reduce unnecessary criminalisation of personal conflicts. Additionally, deliberate false complaints and malicious prosecution should attract appropriate legal consequences in order to discourage abuse of process and preserve the credibility of women-centric laws.

In conclusion, Section 85 BNS and related matrimonial cruelty laws remain crucial instruments for the protection of women against domestic violence and dowry-related abuse. Nevertheless, the effectiveness and legitimacy of such laws ultimately depend upon their responsible implementation and balanced judicial application. A fair legal framework must simultaneously protect genuine victims, uphold constitutional rights, and prevent the criminal justice system from being misused as a tool of harassment. Only through balanced reforms, procedural safeguards, and evidence-based adjudication can the true objective of gender justice be achieved in a manner consistent with the principles of fairness, dignity, and rule of law.

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