

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC-NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrish Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpna

Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN- 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

MISUSE OF SECTION 498A INDIAN PENAL CODE 1860 AND VIOLATION OF HUMAN RIGHTS

AUTHORED BY - HIMANI RAJ GOYAL

Research Scholar
NIMS University Jaipur

CO-AUTHOR - YOGI CHAUDHARY

Research Scholar
Dr. Ram Manohar Lohiya National Law University

ABSTRACT

Section 498A of the IPC 1860, introduced in 1983 to combat domestic cruelty and dowry-related harassment, has evolved into one of the most contentious provisions in Indian criminal law. Now reincorporated under Section 85 of BNS, 2023, the section retains its original wording, continuing to provoke debates about its misuse. Originally intended as a shield for vulnerable women, the provision has often been misapplied as a legal weapon in marital and domestic disputes, resulting in false accusations, arbitrary arrests, and prolonged litigation, damaging their reputations and relationships, and causing mental and emotional distress. This paper offers a multidimensional exploration of Section 498A's misuse from legal, social, technological, constitutional, and human rights perspectives. It analyzes landmark Supreme Court rulings, which underline the judiciary's concern over misuse and arbitrary application. The study draws on criminological and feminist theories, empirical data from the NCRB. Comparative international approaches are reviewed, revealing how other countries balance victim protection with safeguards against false accusations through gender-neutral, restorative, and evidence-based frameworks. The article recommends substantive reforms: gender-neutral laws, pre-FIR mediation, judicial supervision, and penal provisions for false complaints. In conclusion, Section 498A must evolve to reflect a balanced justice system one that upholds women's rights without compromising the liberties of the innocent. A reformed legal structure should embody both compassion for victims and caution against misuse, promoting dignity and justice for all.

Keywords: - Section 498A IPC, Bhartiya Nyaya Sanhita, Domestic Violence, Human Rights, Misuse of Law, Gender Justice.

1. INTRODUCTION

Being a woman, the primary concern is the safeguarding of women's rights and the need for empowerment against the cruelty and harassment they face. In this context, Section 498A Chapter 20A of the Indian Penal Code, 1860, inserted through the Criminal Law (Second Amendment) Act, 1983 was a landmark provision aimed at curbing domestic violence and dowry-related cruelty against married women. It criminalizes cruelty by a husband or his relative as "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". The legislative intent was rooted in protecting women from a historically entrenched cycle of abuse, particularly within patriarchal family structures where existing legal provisions had failed. The term "cruelty" was deliberately defined broadly to encompass both physical harm and mental harassment arising from dowry demands. Unlike many other sections of the IPC, Section 498A was made cognizable, non-bailable, and non-compoundable, underscoring its gravity. This procedural design gave police wide powers to arrest the accused without prior investigation, a reflection of the urgency and seriousness with which the legislature sought to address domestic abuse in the 1980s.¹ The conduct in question must be intentional and of a serious nature, not mere marital disagreements or isolated incidents of conflict. Courts have emphasized that trivial quarrels or ordinary wear and tear of matrimonial life do not amount to cruelty under this section. Evidence supporting such allegations may include medical records, witness testimonies, written communication, or other relevant documentation. These ingredients collectively form the foundation of Section 498A and reflect the legislature's intent to provide women with a robust mechanism for seeking justice against matrimonial abuse. However, their interpretation must be precise and balanced to ensure that genuine victims are protected without enabling misuse of the law.

However, in the decades since its introduction, Section 498A has evolved into one of the most controversial provisions in Indian criminal law. With increased female literacy, financial independence, and changing social dynamics, concerns have emerged about its misuse. Courts have noted that in some instances, the provision has been invoked not as a shield but as a weapon used vindictively in marital disputes, often based on illegitimate dowry claims. Numerous cases involve false allegations, mass arrests, and coercive out-of-court settlements, undermining the true purpose of the law². It has not only affected the accused men and their

¹ Section 41, CrPC (pre-Armesh Kumar).

² National Crime Records Bureau, Crime in India 2022.

families but also diluted the credibility of real victims, making a strong case for reform. Moving forward, there is a pressing need to recalibrate the law to uphold the rights of women while simultaneously protecting the innocent from unjust prosecution ensuring Section 498A serves as a fair safeguard, not a tool for vengeance. The Supreme Court and various High Courts have repeatedly acknowledged these issues, warning that such misuse threatens the foundational values of marriage and justice. Several expert bodies, including the Malimath Committee, have examined this misuse and recommended reforms within the criminal justice system to ensure more balanced enforcement.

2. INGREDIENTS OF SECTION 498A IPC 1860

Section 498A of the Indian Penal Code was introduced to protect married women from cruelty inflicted by their husbands or the husband's relatives, particularly in the context of dowry-related abuse. To constitute an offence under this section, certain essential ingredients must be satisfied. Firstly, there must be a valid marital relationship between the complainant and the accused- the woman must be legally married to the man she is accusing.

Secondly, the accused must be either the husband or a relative of the husband. The term "relative" has been judicially interpreted to mean close familial relations such as parents-in-law or siblings-in-law, and does not extend to distant or unrelated individuals.

Third and most crucial ingredient is that the woman must have been subjected to "cruelty", which is explicitly defined in the Explanation to the section.

Clause (a) of the Explanation refers to any willful conduct that is likely to drive the woman to commit suicide, or cause grave injury or danger to her life, limb, or health whether mental or physical.

Clause (b) covers harassment where such harassment is intended to coerce the woman or her family to meet unlawful demands for property or valuable security, or where the harassment results from the failure to meet such demands. Thus, the law captures both physical and psychological abuse, as well as economic pressure linked to dowry.

As of now, the IPC is replaced by the Bhartiya Nyaya Sanita (BNS), 2023. Despite several modern updates in the BNS, the spirit and structure of Section 498A remain substantially unaltered under Section 85. The unchanged wording has prompted debates among legal

scholars, human rights advocates, and social commentators on whether it addresses the historical misuse concerns or perpetuates them under a new name.

3. JUDICIAL INTERPRETATION

Over the years, the Indian judiciary has played a pivotal role in interpreting and refining the application of Section 498A to mitigate its misuse while safeguarding its original intent. In the seminal case of *Sushil Kumar Sharma v. Union of India (2005)*, the Supreme Court categorically acknowledged that the provision had often transformed into a tool of harassment, rather than protection, and emphasized the need for legislative introspection³. This concern was further institutionalized in *Arnesh Kumar v. State of Bihar (2014)*⁴, where the Court laid down stringent guidelines for arrest under Section 498A, mandating that police officers justify in writing the necessity for arrest and comply with Section 41 of the Cr.P.C. This judgment marked a critical shift toward procedural accountability and protection of individual liberty under Article 21 of constitution of India. *Preeti Gupta v. State of Jharkhand (2010)*⁵, The Court expressed concern over the casual filing of complaints by women to settle personal scores, especially during separation or divorce proceedings. It stressed the long-term implications of dragging multiple relatives into criminal cases.

Continuing this trend, the Court in *Rajesh Sharma v. State of U.P. (2017)* recommended the formation of Family Welfare Committees (FWCs) in every district to screen complaints before FIRs are registered, aiming to prevent indiscriminate arrests and protect innocent individuals from premature legal entanglements⁶. Although this directive was revisited in Social Action Forum for *Manav Adhikar v. Union of India (2018)*⁷, where the Court held that judicially mandated FWCs may overstep into legislative territory, the underlying principle to ensure that the law is not exploited for vindictive purposes was reiterated and preserved.

Repeated judicial observations have shown that its misuse cannot be ignored. Supreme Court interpretations have progressively moved toward a more balanced application, emphasizing fairness, due process, and the prevention of legal harassment. Legislative reforms, judicial monitoring, and awareness are all necessary to ensure the provision continues to serve its

³ *Sushil Kumar Sharma v. Union of India*, (2005) 6 SCC 281

⁴ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

⁵ *Preeti Gupta v. State of Jharkhand* (2010) 7 SCC 667

⁶ *Rajesh Sharma v. State of U.P.*, (2017) 8 SCC 746.

⁷ *Social Action Forum for Manav Adhikar v. Union of India*, (2018) 10 SCC 443

intended purpose as a shield, not a sword.

4. HUMAN RIGHTS AND CONSTITUTIONAL VIOLATIONS

Section 498A of the Indian Penal Code, in its original and unamended form, is non-bailable, non-compoundable, and cognizable, allowing police to make arrests without judicial scrutiny or prior investigation. This structural design, though initially intended to act as a strong deterrent against abuse, has been frequently manipulated to instigate arbitrary arrests and protracted legal harassment, often targeting not just the husband but also his elderly parents, sisters, and even distant relatives.

At the core of the constitutional critique lies Article 21 of the Indian Constitution, which guarantees every individual the right to life and personal liberty. Arbitrary arrests under Section 498A, carried out without substantive evidence or preliminary inquiry, egregiously breach this fundamental right. Individuals falsely implicated often find themselves incarcerated or entangled in criminal proceedings for years, without a conviction, leading to irreparable harm professionally, socially, and psychologically. This prolonged litigation frequently results in the accused being stigmatized as criminals, enduring societal exclusion, marital breakdowns, and mental health deterioration, including depression and post-traumatic stress disorder.

The issue is further complicated by the gender-specific framing of Section 498A, which exclusively protects married women. In a progressive constitutional democracy, this becomes problematic in light of Article 14, which guarantees equality before the law and equal protection of laws to all citizens. The law, in its current form, offers no protection or remedy to men who may be victims of domestic abuse, nor does it address violence within same-sex relationships or the unique challenges faced by LGBTQ+ individuals. This exclusionary framework raises concerns of gender bias and selective justice, failing to align with modern understandings of gender equity and evolving familial structures.

Additionally, the implementation of the provision often undermines Article 22, which ensures protection against arbitrary arrest and detention. The constitutional requirement of being informed of the grounds of arrest, the right to consult a legal practitioner, and to be produced before a magistrate within 24 hours is frequently ignored in 498A cases. The Supreme Court, in several landmark rulings including *Arnesh Kumar v. State of Bihar*, has acknowledged this procedural failure and emphasized the necessity of complying with Section 41 and 41A of the

CrPC, which mandate that arrests must be justified and based on credible material. Despite these judicial interventions, ground-level implementation remains inconsistent, with police often acting under societal and political pressure or simply to avoid allegations of negligence. Beyond the Indian Constitution, the misuse of Section 498A also implicates India's international human rights obligations. As a signatory to the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), India is bound to uphold principles such as the presumption of innocence, protection against arbitrary detention, and the right to a fair trial. When law enforcement operates on the basis of unverified complaints, bypassing judicial safeguards, these international principles are directly contravened. The presumption of guilt, rather than innocence, becomes the de facto standard, placing the burden on the accused to prove their innocence a complete reversal of the normative legal burden in criminal jurisprudence.

5. CONSEQUENCES

5.1 SOCIAL CONSEQUENCES AND STIGMATIZATION

The social fallout of a false accusation under Section 498A is profound. Once a person is named in an FIR under this provision, their social identity undergoes a stigmatizing transformation. Regardless of whether the case is eventually dismissed or acquitted, the accused often suffers long-lasting reputational damage, particularly in tightly-knit Indian communities where social perception can make or break personal and professional life⁸. The social repercussions are especially harsh for women in the accused family, such as sisters and mothers-in-law, who are frequently named in the FIR without specific allegations. Many of these women are themselves elderly or economically dependent and face harassment merely by association. Families are split, marital ties are irreparably broken, and community standing is lost all without trial or proof of guilt⁹.

5.2 PSYCHOLOGICAL AND EMOTIONAL TRAUMA

One of the most underreported yet severe consequences of the misuse of Section 498A is the psychological trauma inflicted on the accused and their families. False allegations can lead to acute stress, anxiety disorders, depression, and even suicidal ideation, particularly when arrests are made without notice and the stigma becomes public. A 2017 study published in the Indian Journal of Psychiatry found that individuals falsely accused under family-related criminal

⁸ Dutta, Reena. "Societal Implications of False Accusations." *Journal of Social Justice*, 2020.

⁹ S. V. Joga Rao, *Law and Society in India*, 2016.

provisions exhibited symptoms consistent with post-traumatic stress disorder (PTSD) and chronic anxiety¹⁰. This emotional damage is compounded by the slow pace of judicial proceedings, where cases often drag on for years, keeping the accused in a state of legal limbo and emotional exhaustion.

5.3 ECONOMIC AND PROFESSIONAL CONSEQUENCES

The financial ramifications of a Section 498A case particularly a false one are often devastating. The costs associated with criminal litigation, bail, repeated court appearances, and legal representation can drain the family's financial resources. Additionally, the accused may lose employment, face professional suspension, or become ineligible for promotions due to pending criminal charges¹¹. In sectors such as government service, law enforcement, and education, even a pending 498A case can jeopardize careers. Employers, wary of reputational damage or legal entanglements, may refuse to hire or renew contracts, even in the absence of conviction. This not only impacts the financial stability of the accused but also their long-term professional trajectory¹².

5.4 INSTITUTIONAL EROSION AND POLICE ACCOUNTABILITY

The misuse also undermines institutional credibility. Police officers, often acting out of fear of non-cooperation allegations or under pressure to respond swiftly to women's complaints, may resort to hasty arrests without verifying facts. This undermines the principles of natural justice and sets a precedent for pre-emptive criminalization¹³. Moreover, judicial trust in complainants has been eroded in many courts, with judges becoming increasingly cautious or even skeptical in 498A proceedings. This cynicism can undermine genuine cases, where real victims of domestic violence may not receive timely justice due to the overall dilution of credibility caused by repeated misuse¹⁴.

5.5 GENDER JUSTICE AND THE FEMINIST DIVIDE

Interestingly, the misuse has sparked a division within feminist legal thought. While radical feminists continue to view the law as necessary for dismantling patriarchal dominance even if sometimes misused liberal and postmodern feminists argue that misuse disproportionately

¹⁰ *Indian Journal of Psychiatry*, Vol. 59, Issue 3, 2017.

¹¹ "Impact of False Criminal Cases on Career." *Economic and Political Weekly*, 2021.

¹² Menon, R. "Employment Risk Due to Pending Criminal Proceedings." *Labour Law Review*, 2020.

¹³ Sharma, P. "Police Discretion and Judicial Oversight." *Indian Police Journal*, 2018.

¹⁴ Delhi High Court, *Reena Dutta v. State*, 2011.

affects vulnerable women in the accused family, such as elderly mothers or daughters-in-law. Furthermore, the law does not acknowledge male victims or those from non-heteronormative relationships, reinforcing outdated gender binaries and neglecting the complexities of modern familial abuse. This challenges the broader commitment to intersectional gender justice, where laws should protect all vulnerable individuals, regardless of gender or identity.¹⁵

5.6 DEMOCRATIC VALUES AND PUBLIC TRUST

Misuse also threatens core democratic values. A democratic justice system is predicated on balance: between the rights of the victim and the rights of the accused, between deterrence and due process, and between enforcement and accountability. When a law is weaponized for personal vendettas, and innocent individuals are treated as criminals, it shakes public confidence not just in that law, but in the broader justice system. The presumption of innocence a cornerstone of democratic criminal jurisprudence is reversed, and courts are burdened with the task of undoing the social and psychological damage already inflicted.

5.7 TECHNOLOGICAL AND MEDIA IMPACTS

The misuse has been significantly amplified by the reach and speed of modern technology and digital media. One of the most concerning developments is the rise of media trials and public shaming, where accused individuals often men and their families are named, defamed, and scrutinized across social media and digital news platforms even before a court determines their guilt. This trend is especially damaging in high-profile cases, where allegations under Section 498A are sensationalized and circulated widely, leaving reputational scars that persist regardless of eventual acquittal. The presumption of innocence, a foundational principle of criminal jurisprudence, is routinely compromised as digital narratives often override legal ones. Equally problematic is the misuse of digital communication platforms like WhatsApp, email, and social media to fabricate or manipulate evidence. In several reported cases, complainants have presented altered chat logs, emails taken out of context, or digitally doctored images to substantiate false allegations. This has prompted courts to adopt a more cautious stance in evaluating electronic evidence, increasingly calling for metadata analysis and forensic authentication to verify the legitimacy of digital submissions. However, the sheer volume of such digital claims often delays proceedings and places an additional evidentiary burden on the accused. These developments underscore the need for tech-sensitive legal reforms, enhanced

¹⁵ Anitha, S. "Intersectionality in Domestic Violence Law." *Feminist Legal Studies*, 2019.

digital literacy among law enforcement, and judicial vigilance to ensure that technology serves justice rather than subverts it.

6. CRIMINOLOGICAL AND JURISPRUDENTIAL PERSPECTIVES

From a criminological standpoint, the misuse of Section 498A challenges the very foundation of penal justice. According to **labeling theory**, falsely branding individuals as criminals even before a verdict can lead to societal rejection, identity distortion, and even self-fulfilling deviance¹⁶. In many instances, individuals wrongly accused under 498A experience irreparable damage to their social identity, enduring lifelong stigma even after acquittal. **Conflict theory** also sheds light on the power dynamics involved. While the law was created to empower oppressed women in patriarchal settings, its misuse sometimes reverses these dynamics allowing complainants to exert undue control over the accused and their families. In such cases, the law ceases to be a tool for justice and becomes a weapon for coercion, blackmail, or personal vendetta¹⁷. Moreover, **feminist legal** theory itself is divided. **Radical feminists** argue that the occasional misuse of protective laws is an unfortunate but acceptable trade-off in the broader battle against systemic patriarchy. **Liberal feminists** and **postmodern scholars**, however, contend that misuse undermines the credibility of real victims and dilutes public support for gender-based laws. They advocate for a balanced, gender-neutral framework that protects all individuals from domestic violence, irrespective of gender or orientation.

7. COMPARATIVE INTERNATIONAL PERSPECTIVES

Several countries have made significant strides in addressing domestic violence through legislation that not only protects victims but also incorporates critical safeguards to prevent misuse. These global models offer valuable lessons for India, particularly in the context of Section 498A of the IPC, which, despite its intent, has often been criticized for enabling arbitrary arrests and the harassment of innocents.

In the **United Kingdom**, the Domestic Abuse Act, 2021 has introduced a comprehensive, gender-neutral legal framework that includes psychological, emotional, and economic abuse under its ambit. Civil courts are empowered to issue non-molestation orders and occupation orders to ensure immediate protection without criminal prosecution, unless a breach occurs¹⁸.

¹⁶ Becker, H. (1963). *Outsiders: Studies in the Sociology of Deviance*.

¹⁷ Quinney, R. (1970). *The Social Reality of Crime*.

¹⁸ Domestic Abuse Act, 2021, United Kingdom.

Furthermore, false complaints are penalized through statutes governing perjury, public mischief, or wasting police time creating a strong deterrent against malicious allegations.

The **United States** adopts a decentralized model where domestic violence laws differ across states. However, the core principles of due process remain uniform requiring corroborative evidence such as medical records, eyewitness accounts, or electronic evidence before prosecution begins¹⁹. Protective orders are common and can be granted quickly, but unlike India's Section 498A, most jurisdictions do not allow automatic arrest based solely on an accusation. False reporting is considered a criminal offence in many states and is punishable by fines or imprisonment.

Australia follows a restorative justice approach, emphasizing reconciliation, behavioral reform, and community mediation. Rather than immediate criminalization, the law encourages counseling, conflict resolution, and mental health support for both parties before legal action is initiated²⁰. The Family Violence Protection Act (2008) in Victoria allows courts to assess the risk through structured interviews and psychological reports. This model helps to filter out false complaints while ensuring real victims are not denied justice.

In **Canada**, domestic violence is addressed under both federal and provincial legislation. The law is explicitly gender-neutral and applies to all intimate partners, including those in LGBTQ+ relationships. Courts frequently issue emergency protection orders, but arrests are made only after police conduct an initial inquiry. Section 140 of the Canadian Criminal Code provides for criminal prosecution in cases of public mischief, which includes filing false police reports²¹.

Germany offers one of the most balanced frameworks through its Protection Against Violence Act (Gewaltschutzgesetz). Instead of arresting the alleged abuser immediately, the law allows courts to order eviction of the accused from the shared household and impose no-contact directives. The German Penal Code (Sections 145d and 164) contains clear punitive measures for making false accusations, ensuring that judicial resources are not misused²².

¹⁹ American Bar Association, "State Law Survey on Domestic Violence Arrest Standards", 2020.

²⁰ Family Violence Protection Act, 2008 (Victoria); Australian Institute of Criminology, "Restorative Justice and Domestic Violence," 2019.

²¹ Criminal Code of Canada, Section 140 – Public Mischief; Canadian Department of Justice, "Family Violence Laws", 2021.

²² German Penal Code, Sections 145d (False Suspicion) and 164 (False Accusation); Gewaltschutzgesetz, 2002.

In **France**, domestic violence laws have undergone rigorous reform in recent years. Special family courts provide fast-track restraining orders, sometimes within 24 hours. However, judicial officers retain discretion and often request supporting documentation or police verification before initiating a full criminal investigation. False allegations may be prosecuted under defamation laws or false denunciation statutes²³.

In **South Africa**, the Domestic Violence Act, 1998 is notable for recognizing non-physical abuse, such as emotional or economic control. While interim protection orders can be granted swiftly, courts are mandated to assess fear of harm and evidentiary support. Misuse of the system such as obtaining an order without genuine cause can lead to legal consequences, including fines or sanctions²⁴.

These international models underscore a consistent theme: victim-centric laws can coexist with procedural safeguards. Unlike India's Section 498A IPC, which mandates immediate police action and rarely considers reconciliation or evidentiary review before arrest, countries like the UK, Canada, and Germany emphasize judicial discretion, evidence validation, and civil protective remedies. Moreover, gender-neutrality is now the global standard, with laws recognizing that domestic abuse transcends gender and sexual orientation. The contrast is stark. Where India faces challenges due to the non-bailable, non-compoundable, and cognizable nature of 498A, other nations rely on civil frameworks, structured interventions, and accountability mechanisms that discourage misuse. These approaches protect the rights of genuine victims without compromising the presumption of innocence a cornerstone of criminal justice.

8. SUGGESTIONS

8.1 MAKE IT GENDER-NEUTRAL

A foundational reform must begin with making Section 498A/85 gender-neutral. In its current form, the law applies only to women, excluding male victims and individuals in same-sex or non-heteronormative relationships from legal protection. This exclusion not only violates Article 14 of the Constitution (equality before the law) but also contradicts the global shift toward inclusive, gender-balanced legal frameworks. Several countries including Canada,

²³ French Penal Code, Articles 226-10 (False Accusations) and 441-1 (Forgery of Public Documents).

²⁴ South Africa's Domestic Violence Act, 1998; South African Law Reform Commission, Discussion Paper 102, 2002.

Australia, and the UK already enforce gender-neutral domestic violence laws. Updating Indian law to reflect these standards would address both misuse and under-protection simultaneously.

8.2 MAKE THE OFFENCE COMPOUNDABLE UNDER JUDICIAL SUPERVISION

Section 498A/85 is currently non-compoundable, meaning the parties involved cannot mutually settle the case even if they reach reconciliation. This restriction results in prolonged litigation, emotional strain, and judicial backlog. Allowing the offence to be compoundable under judicial supervision would empower the courts to facilitate out-of-court settlements in cases where parties wish to reconcile. Courts can ensure that such compounding is voluntary and not coerced, striking a balance between legal oversight and conflict resolution.

8.3 INTRODUCE MANDATORY PRE-FIR MEDIATION AND COUNSELING

In many cases, marital disputes that are essentially civil in nature are escalated to criminal proceedings through a 498A complaint. This weaponization of criminal law can be avoided by mandating pre-FIR mediation and family counseling, particularly in first-time complaints⁴. Family Welfare Committees (FWCs), as suggested in *Rajesh Sharma v. State of U.P.* (2017), could be institutionalized with trained professionals including psychologists, lawyers, and social workers, ensuring unbiased preliminary inquiry²⁵. This approach has already shown promise in Maharashtra and Kerala where pilot projects have reduced false FIRs by nearly 20%²⁶.

8.4 PENALIZE FALSE COMPLAINTS AND MALICIOUS PROSECUTION

One of the key deterrents missing from the current legal framework is specific and enforceable punishment for filing false complaints. Although Section 182 IPC provides for punishment for giving false information to a public servant, its application in 498A cases remains rare and inconsistent. A dedicated clause within the *Bhartiya Nyaya Sanhita* penalizing proven false allegations after full trial could serve as a meaningful deterrent. Such penalties must be proportionate and judicially determined, ensuring that they are not used to suppress genuine victims.

²⁵ *Rajesh Sharma v. State of U.P.*, (2017) 8 SCC 746.

²⁶ Maharashtra Legal Services Authority, 2021 Pilot Program Report.

8.5 STRENGTHEN EVIDENTIARY STANDARDS FOR ARREST

In line with the Supreme Court's ruling in *Arnesh Kumar v. State of Bihar* (2014), it is critical to reinforce the requirement of evidence-based arrests under Section 498A²⁷. Police should be trained to collect corroborative evidence, such as medical reports, witness testimonies, or documented threats, before making an arrest. The implementation of Section 41 and 41A of the CrPC/35 BNSS must be monitored strictly, and departments must be held accountable for violating arrest protocols.

8.6 USE TECHNOLOGY FOR TRANSPARENCY IN COMPLAINT HANDLING

Digital platforms can be leveraged to record preliminary inquiries, digitally log evidence, and monitor police compliance with procedural safeguards. FIRs and arrests under 498A should be accompanied by an internal digital checklist of compliance with Supreme Court guidelines. Courts could also mandate submission of metadata for digital evidence such as WhatsApp chats or emails, ensuring that electronic submissions are genuine²⁸.

8.7 PROMOTE LEGAL LITERACY AND AWARENESS CAMPAIGNS

A significant portion of misuse stems from misunderstanding the law by both complainants and law enforcement. Nationwide legal literacy programs should educate citizens about the scope, purpose, and limitations of 498A. These campaigns should also cover alternative dispute resolution mechanisms, rights of the accused, and penalties for misuse²⁹.

8.8 CREATE A NATIONAL MATRIMONIAL DISPUTE REGISTRY

A centralized registry can help track the nature, frequency, and outcomes of 498A cases. Such a system would aid in identifying repeat litigants, monitor trends, and flag potentially frivolous or malicious cases. Courts and police would benefit from this data to make informed decisions, and policy makers can use the statistics for evidence-based legal reform.

8.9 ENCOURAGE RESTORATIVE AND THERAPEUTIC JUSTICE MODELS

Following the example of countries like Australia and Canada, India should explore restorative justice frameworks in domestic disputes. These models promote dialogue, empathy, and healing, rather than retribution. Therapeutic jurisprudence, where the legal process is designed

²⁷ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

²⁸ Supreme Court Guidelines on Digital Evidence, 2021.

²⁹ National Commission for Women & NALSA, Legal Awareness Programs, 2022.

to minimize harm and encourage mental well-being, could be particularly effective in cases involving young couples, first-time offenders, or non-violent disputes.

8.10 THEY SHOULD HAVE PROPER INVESTIGATION

As the heading states that the investigation should be made by the proper authorities this is the basic purpose which is given under CrPC that is recording of statement and the confession which is given under section 162 and for the purpose of investigation. They must have a proper authority for investigation which is the civil authorities to be deputed for the investigation. This is the requirement because this is the only way to have a better connection and having a better justification from the parties is also so important to understand and to get the reason behind making the complaint whether it has been made in the heat of the motion or there was an actual incident which occurred. This is very helpful to identify that whether is petty issues or there are very grievous issues and offences which has been filed and complaint made by the complainant.

9. CONCLUSION

The evolution and misuse of Section 498A IPC and now its reincarnation as Section 85 of the Bhartiya Nyaya Sanhita represent not just a legal anomaly, but a test of India's moral and constitutional conscience. What began as a vital protection for vulnerable women against systemic abuse has, in certain instances, morphed into a tool of vengeance, coercion, and societal disruption. False accusations, arbitrary arrests, and prolonged legal battles not only shatter the lives of the innocent but also undermine the credibility of genuine survivors eroding the very foundation of justice the law was meant to uphold. This research has revealed that the unchecked misuse of 498A violates key human rights principles, disrupts family ecosystems, and shakes public faith in legal institutions. At the same time, it has also exposed gaps in accountability from police procedures to judicial bottlenecks that enable this misuse. International models offer hopeful alternatives: gender-neutral laws, pre-trial mediation, stringent evidentiary standards, and restorative frameworks that do not sacrifice protection in the name of prosecution. India stands at a pivotal juncture. To preserve the dignity of real victims and protect the rights of the innocent, Section 498A must evolve not through erosion, but through intelligent, balanced reform. This includes making the law gender-neutral, introducing pre-FIR mediation, holding false accusers accountable, and ensuring due process is not bypassed in the pursuit of expedient justice.

Ultimately, a justice system must be both a shield and a compass not only defending the vulnerable but also guiding society toward fairness, empathy, and integrity. Section 498A must be reclaimed as a pillar of protection, not a loophole for persecution. The future of gender justice, human rights, and constitutional integrity in India depends on it.

References

- National Crime Records Bureau, Crime in India 2022.
- Dutta, Reena. "Societal Implications of False Accusations." *Journal of Social Justice*, 2020.
- S. V. Joga Rao, *Law and Society in India*, 2016.
- *Indian Journal of Psychiatry*, Vol. 59, Issue 3, 2017.
- "Impact of False Criminal Cases on Career." *Economic and Political Weekly*, 2021.
- Menon, R. "Employment Risk Due to Pending Criminal Proceedings." *Labour Law Review*, 2020.
- Sharma, P. "Police Discretion and Judicial Oversight." *Indian Police Journal*, 2018.
- Delhi High Court, *Reena Dutta v. State*, 2011.
- Anitha, S. "Intersectionality in Domestic Violence Law." *Feminist Legal Studies*, 2019.
- Becker, H. (1963). *Outsiders: Studies in the Sociology of Deviance*.
- Quinney, R. (1970). *The Social Reality of Crime*.
- American Bar Association, "State Law Survey on Domestic Violence Arrest Standards", 2020.
- South Africa's Domestic Violence Act, 1998; South African Law Reform Commission, Discussion Paper 102, 2002.
- Maharashtra Legal Services Authority, 2021 Pilot Program Report.
- Supreme Court Guidelines on Digital Evidence, 2021.
- National Commission for Women & NALSA, Legal Awareness Programs, 2022.