

## Analyzing Domestic Violence Laws for Married Women Under Bhartiya Nyaya Sanhita, 2023: Legal Reforms and Gaps

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### **ABSTRACT:**

Domestic violence remains a persistent problem in India, despite significant legal reforms. The Bhartiya Nyaya Sanhita (BNS), 2023, aims to address various forms of violence, including domestic abuse, with a renewed focus on the protection of women's rights. This paper addresses the domestic violence provisions under the BNS and their impact on married women. It analyses the reforms, gaps, and the practical challenges in implementing these laws, focusing on a comprehensive legal, social and policy-based review. The research also evaluates judicial interpretations and compares the BNS with previous law i.e., Indian Penal Code, 1860. It explores whether the BNS introduces substantial reforms in terms of recognition, prosecution, and penalties for domestic violence, and evaluates the effectiveness of these changes in protecting married women from different kinds of abuse. Domestic violence not only involves physical and emotional abuse but also includes economic, sexual and other kinds of abuse which undermines women's autonomy in decisions regarding finance, education. While global frameworks such as United Nations' CEDAW and national laws like Protection of Women from Domestic Violence Act (PWDVA), 2005 aims to address these issues, there remain significant gaps in explicitly recognizing and protecting reproductive rights within the context of domestic violence. The study calls for identifying opportunities for improving the protection of married women and a more comprehensive legal approach ensuring better protection and autonomy for women in vulnerable situations. The BNS must be complemented by efforts to address the challenges to truly protect married women from domestic violence.

**KEY WORDS:** Domestic violence, Bhartiya Nyaya Sanhita (BNS) 2023, Indian Penal Code 1860, Protection of Women from Domestic Violence Act (PWDVA) 2005, Abuse.

### **INTRODUCTION:**

Domestic violence in India is a critical and long- standing issue, particularly against married women. Despite legal interventions, domestic violence remains rampant. India has seen a progressive series of legal frameworks aiming to combat domestic violence, from the section 498A of Indian Penal Code, and the Protection of Women from Domestic violence Act, 2005 (PWDVA) to section 85 and 86 of the Bhartiya Nyaya Sanhita, 2023 (BNS). BNS reflects the most recent legislative attempt to address these issues, incorporating key reforms aimed at providing stronger legal recourse for women. However, gaps persist, particularly in the enforcement of laws and their practical application.

This research paper is primarily based on-

- a. What legal reforms does the BNS, 2023 introduce with respect to domestic violence against married women, especially through sections 85 and 86;
- b. How does the BNS compare with section 498A of the IPC and the Protection of Women from Domestic Violence Act (PWDVA), 2005, in terms of offering protection and legal recourse to married women?
- c. What gaps and challenges persist in the legal framework for the BNS, and how can these be addressed to improve protection of married women?

### **HISTORICAL BACKGROUND AND EVOLUTION OF DOMESTIC VIOLENCE LAWS IN INDIA:**

Section 498A, introduced in 1983, was a landmark provision aimed at addressing cruelty by husbands and in-laws. It made domestic violence a criminal offence, focusing on physical and mental cruelty including harassment related to dowry. The

term “cruelty” under 498A of IPC<sup>1</sup> was defined as any wilful conduct likely to drive a woman to suicide or cause grave injury, as well as, harassment for dowry. Although section 498A has been effective in providing legal recourse, it has faced criticism, particularly due to allegations of misuse with false accusations resulting in legal harassment of husbands and their families. Because of this reason, even the women who are actually facing the violence by their in-laws and husbands also suffer. “When it came to women's empowerment, the Indian system needed some time to rejuvenate. The Criminal Law (Amendment) 1983 and the addition of section 498A to the IPC were the results of the feminist movement's 1970s campaigning. This law made it illegal for a husband or any member of his family to treat a wife in a cruel or abusive manner. The offense was punishable by up to three years in prison and a fine. Here, cruelty encompassed both physical and mental abuse. A new clause, section 304B, was added in 1986 and made dowry death illegal. Although these two laws were initially seen as victories, it soon became apparent that they were diverting attention away from the daily violence that women face for reasons unrelated to dowries. However, because only married women could apply for relief from this, a sizable portion of the population, including single women, elderly women, widows, and children, lacked the means to protect themselves from these issues. Because of the way the definition was framed, it was challenging to include issues like sexual violence, economic violence, or even threats of violence.”<sup>2</sup>

The growing incidence of domestic violence and the irrational recourse to the misuse of Section 498-A also justified the need for a civil remedy that is sought with a quick pace. This remedy was designed more to protect women who were victims of domestic violence than to break up the families. It was appreciated that such a law was necessary not only for the prevention of gender violence, but also for the prevention of abuse of the law itself. Purposefully deprived of this legal instrument, in this country the mass of the population had to put up with the increasing evidence of international concerns about domestic violence as a form of human right abuse that at the Protection of Women from Domestic Violence Act which was enacted in 2005. This Act also for the first time made an attempt towards treating domestic violence as a stand alone human rights violation with no nexus linking it to any offenses under the Indian Penal Code and rather contained a civil approach towards it. The Act recognizes that it is reasonable to bear in mind the fact that it is very difficult to prove domestic violence as a criminal offense through the high standard of proof when it happens in the most private life of a person.<sup>3</sup>

#### **LEGAL REFORMS FOR DOMESTIC VIOLENCE UNDER BHARTIYA NYAYA SANHITA, 2023**

The shift from section 498A of the Indian Penal Code, 1860 to sections 85 and 86 of Bhartiya Nyaya Sanhita, 2023 marks a substantial development in India's legal structure, especially in terms of safeguarding women from domestic violence and harassment.

“As pointed out by the Supreme Court, the provision for cruelty under BNS is identical to that of 498A under IPC. Section 85 of the Bhartiya Nyaya Sanhita, 2024 provides punishment for husband and his relatives subjecting the wife with cruelty. On the other hand, Section 86 of the same defines cruelty for the purpose of Section 85”.<sup>4</sup>

Given below is the legal provision for cruelty under 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.”<sup>5</sup>*

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<sup>1</sup> Indian Penal Code, 1860, 498A

<sup>2</sup> Juscorpus, HISTORY OF DOMESTIC VIOLENCE LAWS IN INDIA, (September 27, 2024) HISTORY OF DOMESTIC VIOLENCE LAWS IN INDIA - Jus Corpus

<sup>3</sup> Tahira Karanjawala & Shivani Chugh, THE LEGAL BATTLE AGAINST DOMESTIC VIOLENCE IN INDIA : EVOLUTION AND ANALYSIS, International Journal of Law, Policy and the Family 23, (2009), 289–308, doi:10.1093/lawfam/ebp006, Advance Access Publication 6 August 2009

<sup>4</sup> IPC 498A vs Cruelty under BNS - Anything changed?, Online Legal Query, (Sept 28, 2024) IPC 498A vs Cruelty under BNS | Online Legal Query.

<sup>5</sup> Bhartiya Nyaya Sanhita, 2023, Section 85

*"86. Cruelty defined. For the purposes of section 85, "cruelty" means— (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or 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."*<sup>6</sup>

Although there are provisions to prevent cruelty against the married women, there is also a need of making laws which actually serves the purpose of curbing the statistics of domestic violence against married women. The sections 85 and 86 are not a new addition to the laws for domestic violence against married women, it is just the same as mentioned in section 498A of IPC. Only difference is that the explanation mentioned in section 498A of IPC is inserted as a new section in BNS as section 86.

### **SECTION 498A OF THE INDIAN PENAL CODE, 1860 AND THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT (PWDVA), 2005**

Section 498A of the Indian Penal Code (IPC), enacted in 1983, is an offence relating to cruelty committed against a woman by her husband or his relatives. It represents state intrusion against domestic violence and dowry torture – the two greatest scourges of society at the time in India.

#### **Key Features:**

1. **Definition of Cruelty:** The term "cruelty" under Section 498A includes:
  - A. Any conduct that is likely to drive a woman to suicide.
  - B. Behavior that causes grave physical or mental injury.
  - C. Harassment related to dowry demands.
2. **Punitive Nature:** Section 498A is a criminal offence. Whoever is proved guilty of cruelty can be punished with:
  - A. Imprisonment of up to three years.
  - B. Fines, as determined by the court.
3. **Non-compoundable:** Non-compoundable under Section 498A means that the complaint cannot be withdrawn or settled out of court.
4. **Cognizable and non-bailable:** Since cognizable and non-bailable, police can arrest the offender immediately and proceed with trial even without the complainant depositing money in court. He will await trial in jail. That is how serious this offence is.<sup>7</sup>

#### **Criticism:**

Since then, it has also been frequently accused of being misused, as a means of criminalising husbands or their families in marital discord instead of genuine cruelty.

In the *Rajesh Sharma v. State of UP*<sup>8</sup>, the Supreme Court of India went so far as to formulate guidelines to prevent misuse, and also to envisage a more nuanced application of the law.

Rajesh Sharma and Sneha Sharma were married on November 28, 2012, and Sneha's father provided a dowry to the best of his ability. However, Rajesh and his family were dissatisfied with the amount and began mistreating Sneha. She faced daily abuse and exploitation at the hands of her husband. Eventually, after her pregnancy was terminated, Rajesh left her at her parental home. Sneha then filed a case against Rajesh under Section 498A (cruelty) and Section 323 (causing hurt) of the Indian Penal Code (IPC). The Session Court found Rajesh Sharma guilty under Section 498A. Later, Sneha filed additional complaints, implicating her parents-in-law as well as her brother- and sister-in-law. The Session Judge of Jaunpur accepted these petitions on July 3, 2014. In response, Rajesh Sharma challenged the summoning order by approaching the High Court. Though the matter was referred to a mediation center, no resolution was reached. The High Court ultimately

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<sup>6</sup> Bhartiya Nyaya Sanhita, 2023, Section 86

<sup>7</sup> Kakoli Nath, Section 498-A IPC: Law against Cruelty towards Women (23 Nov, 2023), Sept. 28, 2024, 498A IPC: Law against Cruelty towards Women (finology.in)

<sup>8</sup> *Rajesh Sharma & Ors. v. State of Uttar Pradesh & Anr.*, (2017) 10 SCC 472.

found no grounds to support the petition and dismissed it. The central issue in this case was the growing trend of implicating the entire family of the accused in such matters. The petition stated that Sneha had voluntarily left her marital home, and that her father-in-law was a retired government employee, her mother-in-law a housewife, and her sister- and brother-in-law were unmarried government employees who had no involvement or interest in dowry demands. Following the rejection of the petition in the High Court, Rajesh Sharma moved to the Supreme Court. The Supreme Court's ruling in *Rajesh Sharma v. State of Uttar Pradesh* introduced guidelines to prevent the misuse of Section 498A. The judgment was met with criticism from various feminist NGOs and women's rights activists. The key issue in this case was whether the accused's family members should also be held liable, and how to protect innocent individuals from being wrongfully implicated. While granting leave to the appellant was not in question, the reasoning behind the judgment was seen as flawed to some extent.<sup>9</sup>

The offender is the person within the domestic environment of the victim such as family members and relatives. "Domestic violence" commonly refers to circumstances where the attacker and the victim have a close cohabiting relationship. Other kinds of domestic violence are elder abuse, child abuse, honor-based violence including honor killings and female genital mutilation among others abuse from intimate partners.

Several initiatives have been taken in the 21st century to address the social issues of domestic violence. Nowadays, governments are also emerging proactive to eradicate this evil from society, and the media, politicians, and advocacy groups contributed immensely towards raising awareness about domestic violence as one of the significant social evils.

Under the Protection of Women from Domestic Violence Act, 2005 (Act), domestic violence in India is defined under Section 3. Section 3 states that any act, omission, or conduct by one spouse directed against the other spouse in a domestic relationship which harms, hurts, or endangers the physical or mental well-being or safety of that person or related persons has been considered as domestic violence. It also includes any act of harm or vexation or injury that may be inflicted upon the aggrieved person or any member of his family to coerce the aggrieved person to comply with any unlawful demand for any service or any benefit or to obtain any other such advantage.<sup>10</sup>

#### Key Characteristics of the Act:

1. **Broad Definition of Domestic Violence:** In fact, the Act defines domestic violence in a very wide-ranging sense. It covers not only physical abuse but also emotional or psychological abuse, sexual abuse, verbal and economic abuse. This, therefore, makes it one of the most sensitive gender laws targeting protection of women against any form of maltreatment at home.
2. **Coverage of Relationships:** Thus, this Act does not relate directly to married women only but also to live-in relationship women and family relationship where women are at the risk of getting violence. It guards mothers, daughters, sisters, and other female relatives under domestic settings.
3. **Right to Live in Shared Household:** The PWDVA allows the woman to claim a right to residence in the shared household, even without any legal claim or ownership over the property. According to the Act, women cannot be evicted from their homes.<sup>11</sup>
4. **Protection Orders:** The courts can provide protection orders so that the offender would not approach the scene of violence again and even hound the victim at any place, his or her work place or residence.
5. **Monetary Relief and Compensation:** The Act accorded monetary relief to the victim, offering compensation for medical expenses, loss of earnings, and damage caused to property. It also ascertained the extent of damages for emotional distress caused by abuse.
6. **The court may also order the temporary custody of children to the aggrieved woman, along with a restraining order against visiting or contacting the children by the abuser.**

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<sup>9</sup> Vaibhav Pasi, *Rajesh Sharma v State of UP – Case analysis on Dowry Death and Section 498A of the Indian Penal Code* (Jan 10, 2018), Sept. 28, 2024, *Rajesh Sharma v State of UP - Case analysis on Dowry Death and 498A* (iPLEaders.in).

<sup>10</sup> Abanti Bose, *The Protection of Women from Domestic Violence Act, 2005* (March 29, 2022), Sept. 28, 2024, *The Protection of Women from Domestic Violence Act, 2005 - iPLEaders*

<sup>11</sup> [byjus.com/free-ias-prep/protection-of-women-from-domestic-violence-act-2005/](https://byjus.com/free-ias-prep/protection-of-women-from-domestic-violence-act-2005/)

7. The government also appoints protection officers to help victims of domestic violence. They help in filing complaints, acquaint the victim with his legal rights, and arrange for any needed medical attention and shelter.
8. Speedy Justice: The Act requires the cases under PWDVA to be disposed of expeditiously so that the normal delay accompanying judicial processes is not allowed to prolong itself.<sup>12</sup>

Importance:

PWDVA is the first legislation in India where it has characterized a violation of human rights in the name of domestic violence. The Act, instead of meting out criminal punishment, does provide relief to the victims through civil remedies, thereby avoiding break-up in many cases where reconciliation could still be possible. The Act, mainly, focuses on protection and rehabilitation of the victim rather than mere punishment of the perpetrator.

Conclusion:

The Protection of Women from Domestic Violence Act, 2005 is the first comprehensive law in India that provides a protection framework for women against domestic violence. This piece of legislation emphasizes the protection of the safety and well-being of the victims, offering them various kinds of legal, social, and financial support.<sup>13</sup>

**GAPS IN LEGAL REFORM**

Although the BNS, 2023, has indeed its strengths, there are also certain gaps to limit the effectiveness of its measures against domestic violence.

1. Lack of Preventive and Supportive Measures: While the BNS is more cautious than the PWDVA in its improvement on punitive aspects of domestic violence laws, it has hardly provided any adequate focus on preventive measures and support systems. Comparing the two, while the PWDVA offers immediate relief by way of protection orders, as well as shelters and counseling facilities, the BNS is more concerned with criminal sanctions and does not even complement these regulations with support services for the victims. In that way, the practicability of these legislations may be very limited in real-world situations.
2. Vagueness in conceptual definitions of psychological and emotional abuse: Though BNS broadens the concept of cruelty to include emotional and mental maltreatments, it fails to lucidly elaborate on what constitutes the former. Such ambiguity may often result in courts interpreting them in different manners which would apply the law asymmetrically at times. Psychological and emotive abuse are inherently subjective factors which become hard to prove in court of law which might reduce the protection they offer.
3. Implementation Issues: The implementation of the provisions of the BNS is likely to throw up enormous challenges, just like previous laws. Most law enforcement agencies are ill-equipped and do not have the capacity to handle domestic violence cases seriously and effectively. That aside, it is certain that the long delays in the legal system will translate to delayed justice for the victims, thus killing the main point of the deterrent effect of the law.

**CONCLUSION AND RECOMMENDATIONS:**

The Bharatiya Nyaya Sanhita, 2023 has failed to take a good step forward in the fight for domestic violence against married women. Section 85 and 86 does not contain reformatory changes including a wider definition of cruelty and stricter punishments of repeat offenders, and harassment for or in connection with dowry. There are many loopholes still left open, especially for preventive measures, support systems, and clear definitions of non-physical abuse. In order to make BNS more effective in operations, the following are proposed recommendations:

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<sup>12</sup> Indrashish Majumder, The Protection of Women from Domestic Violence Act, 2005 (April 3, 2024), Sept. 28, 2024, The Protection of Women from Domestic Violence Act, 2005 (lawctopus.com)

<sup>13</sup> Abanti Bose, The Protection of Women from Domestic Violence Act, 2005 (March 29, 2022), Sept. 28, 2024, The Protection of Women from Domestic Violence Act, 2005 - iPleaders

1. Defining Terms: The BNS should formulate finer definitions of psychological and emotional abuse in order to avoid an inconsistent application of the law.
2. Support Services: Supporting the provisions of the law is support services-including shelters, counselling, and financial assistance-to help victims in getting out of the abusive relationships to rebuild their lives.
3. Training the Law Enforcement and Judiciary: Embedding the specialized training within law enforcement and judicial officials dealing with cases of domestic violence.
4. Increased awareness and access initiatives: Increase public awareness about legal protections of the BNS especially at the grassroots level among women in the rural areas.

This would fill up the lapses of the service and, thereby, transform BNS into a more effective tool in solving the domestic violence problem and ensuring justice to married women all over India.