

From Protective Safeguards to Litigation Abuse: A Socio-Legal Analysis of Women-Centric Laws in India and the Quest for Gender-Neutral Justice

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Abstract- This research explores the evolution of protective legislation for women in India, specifically focusing on Section 498A (Cruelty), the Protection of Women from Domestic Violence Act (PWDVA), and Rape laws. While these statutes were enacted to rectify historical and systemic gender-based violence, a rising trend of "legal terrorism" or malicious litigation has triggered a national debate. The study evaluates judicial responses to the misuse of these laws and analyzes whether the newly implemented Bharatiya Nyaya Sanhita (BNS), 2023 successfully addresses the need for a gender-neutral framework or further reinforces gender binaries.

The Constitutional Mandate of Article 15(3)

Article 15(3) of the Indian Constitution is the foundational "charter for affirmative action" for women and children. It functions as a vital exception to the general prohibition of discrimination, empowering the State to make "special provisions" to address historical and societal disadvantages.

While Article 15(1) forbids the State from discriminating against any citizen on grounds only of religion, race, caste, sex, or place of birth, Article 15(3) explicitly clarifies that nothing in the article shall prevent the State from making special provisions for women and children.

Purpose: It acknowledges that women have been socially and economically handicapped for centuries. The provision aims to provide a "level playing field" and achieve substantive equality—where equality of results is as important as equality of opportunity.

Scope of "Special Provisions": These are not limited to beneficial legislation but can include:

Reservations: Seats in local bodies (Panchayats), educational institutions, and public transport.

Welfare Laws: Acts like the Maternity Benefit Act or the Vishaka Guidelines (protection against sexual harassment).

Institutional Support: Creation of separate hostels, schools, or the National Commission for Women

The Spirit of "Affirmative Action"

In the Indian context, affirmative action (often termed "protective discrimination") is seen not as a violation of equality, but as a necessary tool to achieve it.

Correcting Historical Injustice: The spirit lies in correcting systemic wrongs. For women, this means overcoming "suitability" and "vulnerability" stereotypes to ensure they can thrive in all spheres of life.

Harmonious Reading: The judiciary has interpreted Article 15(3) alongside Article 14 (Equality before Law) to mean that "reasonable classification" is essential. Treating unequals as equals is considered a form of inequality itself.

Evolution beyond Sex: While 15(3) focuses on gender and age, the spirit of affirmative action expanded through subsequent amendments:

Landmark Judicial Interpretations

Yusuf Abdul Aziz v. State of Bombay (1954): The Supreme Court upheld laws that treated women differently (e.g., in adultery cases) because Article 15(3) is a "special provision" that overrides the general non-discrimination clause.

Govt. of A.P. v. P.B. Vijaykumar (1995): The Court ruled that Article 15(3) is wide enough to cover reservations for women in jobs, as it promotes the equalisation of their status.

Vishaka v. State of Rajasthan (1997): Used Article 15(3) to formulate guidelines against sexual harassment, proving that "special provisions" include the right to a safe working environment.

The legislative landscape for women's protection in India has evolved from a focus on matrimonial home safety to professional security, anchored in the constitutional spirit of Article 15(3). These laws collectively represent the State's response to systemic gender-based violence and harassment.

1. Section 498A of the Indian Penal Code (IPC)

Introduced in 1983, this section was a direct response to the alarming rise in "bride burning" and matrimonial cruelty.

The Mandate: It criminalises cruelty by a husband or his relatives against a married woman.

Definition of Cruelty:

Wilful Conduct: Actions likely to drive a woman to suicide or cause grave physical/mental injury.

Coercion: Harassment aimed at forcing the woman or her family to meet unlawful demands for property (dowry).

Nature of Offence: It is cognizable (arrest without warrant), non-bailable, and non-compoundable (cannot be settled out of court), designed to serve as a strong deterrent.

Judicial View: While a "shield" for many, the Supreme Court has recently cautioned against its "misuse" as a weapon in matrimonial disputes, mandating preliminary inquiries before immediate arrests in certain cases.

2. The Dowry Prohibition Act, 1961

This Act was the first major post-independence legislative effort to eradicate the social evil of dowry.

Core Prohibition: It bans the giving, taking, or demanding of dowry.

Key Features:

Penalty: Minimum 5 years imprisonment and a fine of ₹15,000 or the dowry value for taking/giving dowry.

Demand Penalty: Demanding dowry carries a minimum 6-month prison term.

Burden of Proof: Uniquely, the burden of proof lies on the accused to show they did not take or demand dowry.

Evolution: Amendments in 1984 and 1986 strengthened the Act by making offences non-bailable and requiring a mandatory list of wedding presents to differentiate them from dowry.

3. The POSH Act, 2013

Formally known as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, this law shifted the focus to women's safety in the public/professional sphere.

Origin: It codified the 1997 Vishaka Guidelines issued by the Supreme Court following the Bhanwari Devi case.

The "Workplace" Ambit: Broadly defined to include offices, hospitals, sports institutes, and even "extended workplaces" like official trips or transport provided by the employer and detailed redressal mechanisms.

The Necessity Argument: Statistics on domestic violence and the "Shadow Pandemic" that justify stringent laws.

The necessity for stringent laws like Section 498A (IPC) and the Protection of Women from Domestic Violence Act is underscored by a persistent high volume of reported cases and the alarming surge witnessed during the COVID-19 pandemic, often termed the "Shadow Pandemic."

1, The "Shadow Pandemic" in India

The term, coined by UN Women, refers to the global spike in domestic violence (DV) during COVID-19 lockdowns, where women were trapped indoors with their abusers.

Doubling of Complaints: The National Commission for Women (NCW) recorded a two-fold increase in gender-based violence complaints during the first lockdown phase in 2020.

Reporting vs. Reality: While NCW received 587 complaints between 23 March and 16 April 2020 (a ~45% increase), many grassroots organisations believe this was just the "tip of the iceberg" due to the "gender digital divide"—only 38% of Indian women own a mobile phone, making it nearly impossible for many to call for help while under constant surveillance.

Triggers of Violence: Key pandemic-induced stressors included financial instability, unemployment, and alcohol withdrawal symptoms in perpetrators due to the closure of liquor shops.

2. National Statistics and Trends (2022–2024)

Recent data confirms that domestic violence remains the single largest category of crime against women in India.

NCRB 2023 Data: India recorded nearly 4.5 lakh (450,000) crimes against women in 2023.

Cruelty by Husband/Relatives: This category (Section 498A) consistently accounts for the largest share of these crimes, with over 1.33 lakh cases reported in 2023 alone.

NFHS-5 Insights: The National Family Health Survey (2019-21) revealed that nearly one-third (32%) of ever-married women have experienced physical, sexual, or emotional violence by their husbands.

3. Justification for Stringent Laws

Statistical evidence of systemic barriers and health impacts provides the "necessity argument" for protective legislation:

The Silence Factor: Approximately 77% of women stay silent about domestic violence episodes, never seeking help from police or doctors.

Severe Health Consequences: Victims are significantly more likely to suffer from chronic conditions such as anaemia, hypertension, and respiratory problems compared to non-victims.

Social Normalisation: NFHS-5 data shows that 45% of women and 44% of men still believe a husband is justified in beating his wife under certain circumstances, necessitating laws that explicitly criminalise and de-normalise such behaviour.

Underreporting Gaps: While official figures are high, surveys like NFHS-5 show a much higher "hidden prevalence" (34% in rural areas vs. 27% in urban areas), indicating that current laws are essential to provide a formal channel for justice when informal community support fails.

The Genesis of Protection & Constitutional Mandate: Article 15(3) and the spirit of "Affirmative action in Indian constitution

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Evolution beyond Sex: While 15(3) focuses on gender and age, the spirit of affirmative action expanded through subsequent amendments:

Article 15(4) & (5): Special provisions for SCs, STs, and OBCs.

Article 15(6): 10% reservation for Economically Weaker Sections (EWS), moving the spirit of protection beyond just caste or sex to include economic vulnerability.

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"The Legislative Response: A deep dive into Section 498A (IPC), The Dowry Prohibition Act (1961), and the POSH Act (2013)

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Redressal Mechanism:

Internal Committee (IC): Mandatory for any organization with 10 or more employees.

Local Committee (LC): Set up at the district level for the unorganized sector or small firms.

Compliance: Employers must conduct regular sensitization workshops and file annual reports. Failure to comply can lead to a ₹50,000 fine or cancellation of business licenses.

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The Phenomenon of Misuse of Matrimonial Discord as a Weapon: Analysing the "Package of Cases" (498A + Domestic Violence + Maintenance + Child Custody).

While the laws discussed are vital shields for victims, the Indian judiciary has increasingly flagged a trend where matrimonial discord is litigated through a "Package of Cases." This refers to the simultaneous filing of multiple civil and criminal actions to exert maximum legal and financial pressure on the husband and his extended family.

The Components of the "Package"

A standard "package" typically involves four distinct legal prongs filed in rapid succession:

Section 498A (IPC/BNS): The criminal prong. It is often used to seek the immediate arrest of the husband and his relatives (including elderly parents or siblings living abroad) to leverage a quick settlement.

Protection of Women from Domestic Violence Act (PWDVA): The "relief" prong. This civil law allows

for residence orders (right to stay in the matrimonial home), protection orders, and emergency monetary relief.

Section 125 CrPC (now BNSS): The maintenance prong. A petition for monthly financial support for the wife and children, often filed even if the wife is qualified to work, leading to disputes over "earning capacity."

Guardianship/Habeas Corpus: The custody prong. Petitions regarding child custody are often used as bargaining chips in alimony negotiations.

Why it is Termed a "Weapon"

The Supreme Court of India, in cases like *Arnesh Kumar v. State of Bihar* (2014) and *Preeti Gupta v. State of Jharkhand* (2010), has noted several characteristics of misuse:

Over-Implication: Naming distant relatives who have little to no daily interaction with the couple to "settle scores."

Exaggerated Allegations: Converting "normal wear and tear" of a marriage into horrific stories of cruelty to ensure the case meets the threshold of Section 498A.

Legal Extortion: Using the threat of arrest and long-drawn-out litigation to demand astronomical sums in one-time settlements (Alimony).

Judicial Safeguards & Counter-Measures

To prevent these laws from becoming "Legal Terrorism" (a term used by the SC in *Sushil Kumar Sharma v. Union of India*), the following safeguards now apply:

No Automatic Arrests: Under the *Arnesh Kumar* guidelines, police cannot arrest accused persons under 498A (where the punishment is less than 7 years) without a specific written justification.

The "Rajnesh v. Neha" (2020) Ruling: To stop multiple overlapping maintenance claims, the SC mandated that both parties must file an Affidavit of Assets and Liabilities, and any previous maintenance orders must be disclosed to the court.

Family Welfare Committees: Some states experimented with committees to screen 498A

complaints before FIRs were filed, though the SC later modified this to ensure police still perform their duty in genuine cases.

The Impact of Misuse

Dilution of Genuine Cases: High rates of acquittal in 498A cases (often due to lack of evidence in "packaged" filings) create a false narrative that the law is unnecessary, hurting actual victims of dowry violence.

Judicial Clog: Family courts are overwhelmed with multiple litigations for a single m

International Perspectives: How the UK, USA, and Canada transitioned to gender-neutral definitions of sexual assault.

In India, the legal framework for protection against domestic and sexual abuse remains largely gender-specific, creating a "legal vacuum" for men and the LGBTQIA+ community. While international jurisdictions have transitioned to gender-neutral definitions, India's recent legislative overhaul has faced criticism for reinforcing binary gender roles.

1. The Legal Vacuum for Men

Despite rising reports of male victimization, Indian law primarily recognizes women as victims of domestic and matrimonial crimes.

Domestic Violence: The Protection of Women from Domestic Violence Act (PWDVA), 2005, only recognizes women as "aggrieved persons". Men cannot file for protection orders, residence rights, or maintenance under this Act.

Sexual Assault: Under the Bharatiya Nyaya Sanhita (BNS), 2023 (which replaced the IPC in July 2024), Section 63 defines rape as an act committed by a man against a woman. This leaves adult men without a legal provision to file "rape" charges.

Alternative Remedies: Men must rely on general criminal sections like Section 115 BNS (voluntarily causing hurt) or Section 351 BNS (criminal intimidation), which carry significantly lighter penalties than rape or domestic cruelty provisions.

2. Transgender and Non-Binary Rights

The LGBTQIA+ community often falls through the cracks of gender-binary legislation, facing "legal invisibility".

Exclusion from Protections: Laws like Section 498A (marital cruelty) and the POSH Act are phrased for "women," effectively excluding trans-men and non-binary individuals who do not identify as women.

Transgender Persons (Protection of Rights) Act, 2019: While it criminalizes "sexual abuse" against transgender persons, the penalty is a maximum of 2 years—vastly lower than the 10 years to life imprisonment for rape against cisgender women.

2026 Amendment Concerns: Recent legislative changes in 2026 have sparked major protests for removing the right to self-identification and narrowing the definition of "transgender" to specific socio-cultural groups (like Hijra/Kinner), potentially stripping thousands of non-binary and trans individuals of legal standing.

3. International Transition to Gender Neutrality

Unlike India, several Western nations have restructured their laws to focus on the nature of the act and lack of consent rather than the gender of the parties.

Country Key Legislation Approach to Gender Neutrality

United Kingdom Sexual Offences Act 2003 Defines rape as penile penetration of another person (male or female) without consent.

Canada Criminal Code (Section 271) Uses the term "Sexual Assault," which is entirely gender-neutral for both perpetrators and victims.

USA Violence Against Women Act (VAWA) Though named for women, amendments ensure funding and protection are available to all victims, including men and LGBTQIA+ individuals.

Comparison of Penalties in India (2026)

The current disparity in punishment highlights the "hierarchical" nature of protection:

Rape (woman victim): Minimum 10 years to Life Imprisonment.

Sexual Abuse (Trans victim): 6 months to 2 years Imprisonment.

Assault (Male victim): Typically treated as "Grievous Hurt," punishable by up to 7 years.

The BNS Era (2023-2025) BNS Section 85 & 86 vs. IPC 498A: Has anything changed in substance? Missed Opportunities.

The transition from the Indian Penal Code (IPC) to the Bharatiya Nyaya Sanhita (BNS), effective from July 1, 2024, marks a structural reorganisation rather than a substantive overhaul of matrimonial cruelty laws. While the labels have changed, the core legal mechanics remain largely identical.

BNS Section 85 & 86 vs. IPC 498A: The Structural Split

The primary change is the bifurcation of the original Section 498A into two distinct sections to improve statutory clarity.

BNS Section 85 (The Offence): This section acts as the operative part, prescribing the punishment for a husband or his relatives who subject a woman to cruelty.

BNS Section 86 (The Definition): This section explicitly defines "cruelty," effectively moving the "Explanation" clause of the old IPC 498A into its own independent section.

Substance Check: The definition of cruelty—covering conduct likely to drive a woman to suicide, cause

grave injury, or harassment for unlawful property demands—is a verbatim reproduction of the IPC era. The punishment also remains unchanged: imprisonment for up to three years and a fine.

Missed Opportunities: The Persistence of the Binary

Critics and legal experts have highlighted several "missed opportunities" where the BNS failed to evolve despite decades of judicial feedback and social shifts:

Maintaining Gender Specificity: Despite calls for gender neutrality to protect men and LGBTQIA+ individuals facing domestic abuse, Section 85 remains strictly applicable only to "husband or relative of husband" against a "woman".

No New Safeguards against Misuse: While the judiciary has frequently flagged the "package of cases" phenomenon, the BNS did not incorporate statutory checks (like mandatory preliminary inquiries) into the text itself, leaving such protections dependent on judicial guidelines like Armesh Kumar.

Procedural Continuity: The offence remains cognizable and non-bailable, preserving the high-pressure environment that often leads to strategic litigation in matrimonial disputes.

Limited Scope of "Domestic Relationship": While some early interpretations suggested BNS might expand to all domestic relationships, Section 85 continues to focus specifically on the marital bond, missing an opportunity to provide a criminal remedy for abuse in live-in relationships similar to the civil PWDV Act.

Feature	IPC Section 498A	BNS Sections 85 & 86
Structure	Single section with Explanation	Bifurcated into two sections
Definition of Cruelty	Included as "Explanation"	Detailed in Section 86
Punishment	Up to 3 years + Fine	Up to 3 years + Fine
Gender Neutrality	Male/Trans victims excluded	Male/Trans victims still excluded
Arrest Safeguards (BNSS)	Judicial (Armesh Kumar)	Judicial (Armesh Kumar/Section 35

The BNS era represents "old wine in a new bottle"—ensuring that decades of legal precedents and judicial interpretations under Section 498A remain fully applicable to new cases filed after July 2024.

The evolution of India's protective laws reflects a shifting paradigm from protectionist welfare to a complex struggle for gender-neutral justice. While the constitutional mandate of Article 15(3) successfully provided a "shield" for women against historical disadvantage, the modern legal landscape faces two primary challenges: institutional misuse and the exclusion of non-binary identities.

Summary Analysis of the Legal Shift

Substance vs. Form in BNS (2024): The transition from the IPC to the Bharatiya Nyaya Sanhita (BNS) is largely viewed as a structural reorganisation rather than a transformative reform. By retaining gender-specific definitions for rape (Section 63) and matrimonial cruelty (Section 85), the legislature missed a key opportunity to align with the Supreme Court's "rights-based" approach, which views individuals as autonomous subjects regardless of gender.

The "Weaponisation" Paradox: Laws like Section 498A (now BNS 85) remain essential for genuine victims, but their "package of cases" application has led the judiciary to label their misuse as "legal terrorism". This misuse not only harms innocent families but also delegitimises the struggles of actual survivors.

The Legal Vacuum: Despite the NALSA (2014) and Puttaswamy (2017) judgments affirming identity and privacy as fundamental rights, a significant vacuum persists for adult male and LGBTQIA+ victims of sexual and domestic abuse. The 2026 Transgender Persons Amendment further complicates this by shifting toward medicalised certification, potentially undermining bodily autonomy.

Global Alignment: While countries like the UK, USA, and Canada have transitioned to act-based, gender-neutral definitions of assault, India maintains a binary framework, primarily due to concerns that neutrality might dilute the protections currently afforded to women in a still-patriarchal society.

Final Outlook

The quest for a truly egalitarian system requires moving beyond "legislative renumbering". Future reforms must balance the protection of women from systemic violence with procedural fairness for the accused and legal recognition for all victims, irrespective of their gender identity.

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V. Suggested Secondary Reading

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