

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper is partially shown, and a black leather watch with a silver dial is resting on the desk. A large, semi-transparent white rectangular area is centered over the notebook, containing the journal's title and ISSN information.

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# **A STUDY ON THE EFFECTIVENESS OF LEGAL AND JUDICIAL RESPONSES TO DOMESTIC VIOLENCE IN INDIA**

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## **ABSTRACT**

Domestic violence and dowry deaths represent two of the most persistent violations of women's rights in contemporary India. Despite the enactment of a comprehensive legislative framework encompassing the Protection of Women from Domestic Violence Act, 2005 (PWDVA), the Dowry Prohibition Act, 1961, and Sections 304B and 498A of the Indian Penal Code, 1860 (now restructured under the Bharatiya Nyaya Sanhita, 2023) a significant and troubling gap persists between statutory intent and practical implementation. This article critically examines the architecture of India's legal response to domestic violence and dowry-related crimes, traces the evolution of judicial interpretation through landmark Supreme Court and High Court decisions, and evaluates the procedural and institutional mechanisms available to victims. Drawing on legislative analysis, case-law review, and empirical data from the National Crime Records Bureau and the National Family Health Survey, the article identifies systemic barriers including underreporting, social stigma, evidentiary difficulties, and inadequate enforcement infrastructure that undermine the effectiveness of these protective laws. The article concludes with targeted reform recommendations aimed at bridging the gap between law on paper and justice in practice.

**Keywords:** Domestic violence, dowry death, PWDVA 2005, Section 498A, Section 304B, BNS 2023, judicial interpretation, gender justice, India.

## **I. INTRODUCTION**

Domestic violence is not a private matter confined within household walls. It is a grave violation of constitutional rights, a social pathology rooted in patriarchy, and a challenge that tests the moral seriousness of any legal order. In India, the problem is compounded by the institution of dowry a practice that, though prohibited by law since 1961, continues to claim hundreds of women's lives annually. According to National Crime Records Bureau data, thousands of dowry death cases are registered every year, and the rate of conviction remains alarmingly low, suggesting a systemic failure that no single statute can resolve.<sup>1</sup>

The constitutional foundation is unambiguous. Article 14 guarantees equality before the law; Article 15(3) empowers the State to enact special protective legislation for women; and Article 21, as expansively interpreted by the Supreme Court, encompasses the right to live with dignity, free from violence and coercion. Yet constitutional promises have collided with socio-cultural realities in which marital relationships are sacralised, women's economic dependency is structural, and community pressure routinely overrides legal entitlements.

This article proceeds in five parts. Part II maps the statutory framework governing domestic violence and dowry death. Part III analyses the evolution of judicial interpretation through landmark decisions. Part IV examines procedural mechanisms and the practical challenges of enforcement. Part V identifies systemic gaps and evaluates the effectiveness of existing remedies. Part VI advances specific reform proposals. The overarching argument is that India possesses a legally sophisticated framework, but its transformative potential is gravely constrained by implementation deficits, attitudinal barriers, and institutional insufficiencies.<sup>2</sup>

## **II. THE STATUTORY FRAMEWORK: ARCHITECTURE AND SCOPE**

### **A. Constitutional Foundations**

The Indian Constitution provides the normative bedrock for legislative intervention against domestic violence and dowry crimes. While the Constitution does not explicitly name domestic violence, Articles 14 (equal protection), 15(1) (non-discrimination on grounds of sex), 15(3) (special protective provisions for women), and 21 (right to life and dignity) collectively mandate State action. The Directive Principles Notably Articles 39(a), 39A, and 46 further

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<sup>1</sup>2. National Crime Records Bureau, Crime in India 2022 (Ministry of Home Affairs, Government of India, 2023).

<sup>2</sup>8. United Nations, Declaration on the Elimination of Violence against Women, UN Doc. A/RES/48/104 (1993); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, Art. 5.

direct the State to ensure equitable access to justice and to protect socially and economically vulnerable sections, furnishing constitutional legitimacy to the legislative measures examined below.

### **B. The Dowry Prohibition Act, 1961**

The Dowry Prohibition Act, 1961 (DPA) was India's first legislative response to the dowry menace. Section 3 prohibits the giving or taking of dowry, directly or indirectly, while Section 4 criminalises the demand for dowry with a mandatory minimum imprisonment of five years and a fine of not less than ₹15,000. Section 8 renders all DPA offences cognizable, enabling police to initiate investigation without a magistrate's order.<sup>3</sup>

Despite its foundational significance, the DPA has historically suffered from definitional ambiguities, weak enforcement, and a near-total absence of prosecutorial will. Courts have noted that the distinction between voluntary gifts and dowry is frequently blurred in practice, and conviction rates under the DPA remain negligible. The statute's failure to deter the practice catalysed successive legislative interventions through the Indian Penal Code and, ultimately, the enactment of the PWDVA.

### **C. Criminal Law: Sections 304B, 498A, and 306 IPC / BNS 2023**

The legislative response to escalating bride-burning and dowry-related suicides produced two landmark IPC amendments. Section 498A (introduced in 1983) criminalises cruelty by a husband or his relatives against a married woman defined to include wilful conduct likely to drive the woman to suicide and harassment connected to unlawful dowry demands. The offence is cognizable and non-bailable, carrying imprisonment of up to three years and a fine.

Section 304B (inserted in 1986) creates the discrete offence of "dowry death": the unnatural death of a woman within seven years of marriage in circumstances showing dowry-related cruelty or harassment occurring "soon before her death." The presumption of guilt under Section 113B of the Indian Evidence Act (now Section 118 of the Bharatiya Sakshya Adhinyam, 2023) significantly reduces the prosecution's evidentiary burden once the foundational facts are established. The minimum sentence is seven years' rigorous imprisonment, extendable to life. Section 306 IPC (abetment of suicide) is frequently invoked alongside Section 498A where sustained domestic abuse leads to the victim's self-harm.<sup>4</sup>

The Bharatiya Nyaya Sanhita, 2023 (BNS), which replaced the IPC with effect from 1 July

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<sup>3</sup>1. The Dowry Prohibition Act, 1961, No. 28 of 1961, India Code; Bharatiya Nyaya Sanhita, 2023, s. 80 (corresponding to Indian Penal Code, 1860, s. 304B).

2024, restructures these provisions under Sections 80 (dowry death), 85 (cruelty by husband (or) relatives), 86 (cruelty - civil variant), and 103 (murder in dowry cases), preserving substantive continuity while modernising procedural architecture through the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

#### **D. The Protection of Women from Domestic Violence Act, 2005**

The PWDVA marks the most significant paradigm shift in India's response to domestic violence: from a purely punitive criminal-law model to a victim-centric civil remedies framework. For the first time, domestic violence was defined comprehensively to include physical, sexual, verbal, emotional, and economic abuse. Crucially, the Act's protection extends beyond formal marriages to women in live-in relationships resembling matrimonial cohabitation, as well as to widows, divorced women, and female relatives.<sup>5</sup>

The remedial architecture of the PWDVA is multi-layered. Protection orders restrain the respondent from committing or abetting acts of violence. Residence orders secure the woman's right to continue occupying the shared household. Monetary relief covers medical expenses, loss of earnings, and maintenance. Custody orders provide interim arrangements for children. The Act operationalises these remedies through a network of Protection Officers, Service Providers (NGOs), and Magistrate courts, envisaging rapid, non-adversarial relief.

Complementary statutes including the Dowry Prohibition Act, 1961, the Prohibition of Child Marriage Act, 2006, and the Protection of Children from Sexual Offences Act, 2012 situate the PWDVA within a broader gender-protective legal ecosystem.

### **III. JUDICIAL INTERPRETATION AND LANDMARK DECISIONS**

#### **A. Expanding the Scope of the PWDVA**

The judiciary has been the primary engine for expanding the protective reach of domestic violence law beyond its textual limits. In *Satish Chander Ahuja v. Sneha Ahuja*, the Supreme Court overruled its earlier restrictive holding in *S.R. Batra v. Taruna Batra* (2007), which had limited the shared household to property owned or rented by the husband. The Court held that Section 2(s) of the PWDVA, using both means and includes, must be interpreted purposively to encompass any property in which the aggrieved woman has resided in a domestic relationship with some degree of permanency even where the property is owned by in-laws. This judgment dramatically expanded housing rights for women, ensuring that they cannot be

rendered homeless by disputes over property ownership.<sup>6</sup>

In *Hiral P. Harsora v. Kusum Narottamdas Harsora*, the Court struck down the words "adult male" from the definition of "respondent" in Section 2(q), holding the restriction to be discriminatory and inconsistent with the statute's protective objective. This landmark ruling recognised that domestic violence is frequently perpetrated by female relatives mothers-in-law and sisters-in-law in particular and that confining liability to male adults created a gender-discriminatory lacuna incongruent with the Act's purpose.<sup>7</sup>

The Court's decision in *Indra Sarma v. V.K.V. Sarma* extended legal protection to women in non-marital domestic arrangements by laying down five criteria to determine whether a live-in relationship qualifies as one in the nature of marriage. This pragmatic approach acknowledged modern relationship structures and ensured that women in non-traditional domestic arrangements were not excluded from the statute's protection.

## **B. Judicial Interpretation of Dowry Offences**

The interpretation of dowry offences has been shaped by a series of authoritative decisions from the Supreme Court. In *State of Punjab v. Iqbal Singh*, the Court clarified that the phrase soon before her death in Section 304B does not require temporal immediacy: what matters is a proximate and live link between the harassment and the death. This flexible interpretation prevents accused persons from escaping liability merely because the most recent incident of cruelty preceded death by several days or weeks.<sup>8</sup>

In *Kans Raj v. State of Punjab*, the Court balanced victim protection with procedural fairness, holding that while entire families should not be perfunctorily roped in to Section 498A complaints, credible evidence of participation by individual relatives justifies their prosecution. *Baijnath v. State of Madhya Pradesh* reaffirmed that the presumption under Section 113B of the Evidence Act is mandatory and rebuttable once the prosecution establishes cruelty and death within seven years of marriage, the burden shifts conclusively to the accused.<sup>9</sup>

Tamil Nadu courts have also contributed meaningfully to this jurisprudence. In *Sangeetha v. A.K. Krishnamurthy* (Tamil Nadu High Court, 2009) the court issued both a residence order and a protection order to prevent eviction and further violence reinforcing that residence rights are sacrosanct irrespective of property ownership. In *Meenakshi v. State of Tamil Nadu* (Tamil Nadu High Court, 2012) a combined custody-and-compensation order was issued, signalling

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<sup>6</sup>3. Protection of Women from Domestic Violence Act, 2005, No. 43 of 2005, ss. 2(a), 3, 12, 18–22.

<sup>8</sup>4. Satish Chander Ahuja v. Sneha Ahuja, (2021) 15 SCC 253; Hiral P. Harsora v. Kusum Narottamdas Harsora, (2016) 10 SCC 165.

the court's commitment to protecting children in domestic violence scenarios and holding perpetrators financially accountable for physical and psychological harm.

### **C. Balancing Protection and Misuse Concerns**

The Supreme Court in *Arnesh Kumar v. State of Bihar* issued guidelines to prevent mechanical arrests under Section 498A, requiring police to apply their minds before effecting arrest. This decision reflected the Court's sensitivity to cases where legal provisions were allegedly weaponised as tools of harassment in matrimonial disputes. However, the Court was at pains to emphasise that these guidelines were not intended to dilute the law's protective content a clarification that subsequent decisions have consistently maintained.<sup>10</sup>

## **IV. PROCEDURE, ENFORCEMENT, AND INSTITUTIONAL GAPS**

### **A. Procedural Architecture**

The PWDVA establishes a three-tier institutional structure: Protection Officers, who receive complaints and prepare Domestic Incident Reports; Service Providers (accredited NGOs), which provide emergency shelter, counselling, and legal aid; and Magistrate courts, which adjudicate applications and grant orders. Under the BNSS, 2023, Section 176 mandates a magisterial inquest and post-mortem in all cases of unnatural death of a married woman within seven years of marriage, while Section 184 enables magistrates to record dying declarations often the most critical evidence in dowry death prosecutions.

Victims may initiate proceedings through multiple channels: directly before the Magistrate under Section 12 PWDVA, through a Protection Officer, or via Service Providers. Emergency protection orders may be obtained ex parte under Section 23. Criminal complaints under Sections 304B and 498A IPC (now BNS equivalents) proceed through the standard cognizable-offence pathway, with mandatory FIR registration under Section 173 BNSS.<sup>11</sup>

### **B. Enforcement Deficits**

Despite this carefully constructed procedural architecture, enforcement remains deeply compromised. Several interlocking failures have been identified in empirical research and judicial comment. First, police reluctance to register complaints particularly where domestic violence is treated as a private marital matter systematically diverts victims away from formal

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<sup>105.</sup> *Kans Raj v. State of Punjab*, AIR 2000 SC 2324; *Satvir Singh v. State of Punjab*, (2001) 8 SCC 633; *State of Punjab v. Iqbal Singh*, (1991) 3 SCC 1.

legal recourse. Second, inadequate gender-sensitivity training results in insensitive and often re-traumatising police interactions. Third, the shortage of Protection Officers especially in rural districts creates critical bottlenecks in the reporting and investigation chain.<sup>12</sup>

Fourth, judicial delays are severe. Lengthy trials, frequent adjournments, and overburdened courts mean that victims often wait years for final orders, during which time protection orders may lapse or be violated without consequence. Low conviction rates in Section 304B cases attributable partly to the evidentiary challenge of establishing that cruelty occurred soon before death reduce deterrence and fuel a perception of impunity. Fifth, weak compliance-monitoring mechanisms mean that even when orders are granted, enforcement against non-compliant respondents is unreliable.<sup>13</sup>

## **V. SYSTEMIC CHALLENGES AND CRITICAL APPRAISAL**

### **A. Underreporting and Structural Barriers**

Underreporting is perhaps the most debilitating challenge confronting the legal framework. NFHS-5 data reveals that a substantial proportion of women who have experienced spousal violence have never sought help from police, courts, or even family members. The reasons are multi-dimensional: social stigma, economic dependency, fear of retaliation, concern for children, family pressure, and widespread ignorance of legal rights. The sacralisation of marriage in Indian society renders reporting spousal abuse tantamount to a social transgression, and women face simultaneous pressure from natal and marital families to maintain silence.<sup>14</sup>

In rural and semi-urban contexts, informal dispute-resolution mechanisms panchayat mediations, elder-family negotiations, religious arbitrations often pre-empt formal legal recourse, and the settlements reached in these fora rarely ensure victims' safety or legal entitlements. The absence of robust legal aid outreach in Tier-2 and Tier-3 cities compounds these barriers, leaving vast segments of the population functionally excluded from the protective regime that Parliament has constructed.

### **B. The Misuse Debate and Its Implications**

One of the most contested issues in the domestic violence law discourse concerns the alleged misuse of Section 498A IPC. Critics contend that the provision has been deployed as a vehicle for harassment, implicating entire families including elderly parents and distant relatives in

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<sup>12</sup>12. *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273; *Wazir Chand v. State of Haryana*, (1989) 1 SCC 244.

<sup>14</sup>9. Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing, 1982); Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 1999).

matrimonial disputes of a personal character. Courts have acknowledged isolated instances of misuse, and the Arnesh Kumar guidelines were partly calibrated in response to this concern.<sup>15</sup> However, the empirical case for widespread misuse is far weaker than public discourse suggests. Low conviction rates frequently cited as evidence of false cases are better explained by evidentiary inadequacies, hostile witnesses, out-of-court settlements, and procedural delays than by a systemic pattern of fabricated complaints. The Law Commission of India, in its 243rd Report (2012), cautioned against diluting Section 498A on the basis of misuse narratives, noting that the genuine incidence of cruelty and dowry harassment vastly exceeds the relatively rare cases of abuse. Every law is susceptible to misuse; the appropriate response is improved procedural safeguards, not the dismantling of protective provisions.

### **C. Evidentiary and Definitional Difficulties**

The evidentiary architecture of dowry death prosecutions presents distinctive challenges. Establishing that harassment occurred soon before death demands proof of a temporal and causal nexus that is rarely evidenced by documentary records. Witnesses predominantly family members are frequently hostile or compromised. Dying declarations, though legally admissible and often pivotal, are contested on grounds of capacity, voluntariness, and authenticity. The high threshold for conviction under Section 304B notwithstanding the statutory presumption has allowed many accused to secure acquittals on technical grounds.

Definitional ambiguities further complicate enforcement. The distinction between dowry (as defined under the DPA) and customary wedding gifts is blurred in practice, with defendants routinely characterising coercive demands as voluntary traditions. The scope of cruelty under Section 498A/BNS s. 85 — though interpreted expansively by courts to include mental cruelty — remains heavily fact-dependent, making prediction and proof difficult.

## **VI. REFORM RECOMMENDATIONS**

The foregoing analysis identifies a structural gap between legislative intent and realised justice. Closing this gap demands reforms at multiple levels.<sup>16</sup>

First, fast-track special courts for domestic violence and dowry death cases should be established in every district, with time-bound mandates (a six-month outer limit for trial

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<sup>157</sup>. National Family Health Survey (NFHS-5), Ministry of Health and Family Welfare, Government of India (2019–21).

<sup>166</sup>. Law Commission of India, 243rd Report on Section 498A of the Indian Penal Code (August 2012).

completion) and judges trained in trauma-informed adjudication. Speedy justice is not merely an efficiency concern for victims living in abusive environments or dependent on interim orders, delay is itself a form of injustice.

Second, forensic and investigative protocols must be standardised. All suspected dowry death cases should trigger mandatory multi-disciplinary investigation teams comprising police, forensic scientists, and social workers. Dying declarations should be recorded by a First-Class Magistrate wherever practicable, and audio-visual recording should be made mandatory to ensure authenticity. Post-mortem procedures should be governed by standardised national protocols.

Third, the Protection Officer cadre must be professionalised and adequately resourced. Current staffing levels are grossly inadequate relative to the volume of cases, particularly in rural districts. Protection Officers should receive specialised training in gender-based violence, trauma-informed interviewing, and multi-agency coordination. Their performance should be subject to independent audit, and failure to perform statutory duties should attract disciplinary consequences.

Fourth, legal awareness campaigns must be scaled urgently. Awareness of rights under the PWDVA and the dowry death provisions is a precondition for effective enforcement. These campaigns must be linguistically and culturally calibrated for diverse regional contexts, delivered through community radio, schools, Self-Help Groups, and Panchayati Raj institutions.

Fifth, rehabilitation and economic empowerment must accompany legal protection. The practical utility of a residence order or monetary relief is limited if the woman has no income, no shelter alternative, and no employment prospects. The State must invest in vocational training, transitional housing, child-care support, and sustained legal aid for survivors who choose to exit abusive relationships.

Finally, police accountability mechanisms must be strengthened. Non-registration of domestic violence FIRs and insensitive case handling must attract concrete institutional consequences. Gender-sensitivity training should be mandatory, not discretionary, and regular assessments based on survivor feedback should be built into police performance frameworks.

## **VII. CONCLUSION**

India has assembled an impressive legal arsenal to combat domestic violence and dowry deaths. The PWDVA, the criminal provisions of the IPC/ BNS, the DPA, and the evidentiary presumptions of the BSA constitute, taken together, one of the more comprehensive legislative frameworks in Asia for addressing gender-based domestic violence. The judiciary has largely discharged its interpretive responsibilities with courage and creativity, progressively expanding the protective scope of these laws through landmark decisions that have clarified ambiguities, plugged lacunae, and resisted attempts to dilute the law.<sup>17</sup>

And yet, millions of women continue to endure domestic violence in silence. The gap between law and lived experience remains vast, and the causes of that gap are not primarily legal but structural: patriarchal norms, economic dependency, institutional indifference, and a culture of impunity that official statistics do not fully reveal. Legal reform is necessary but not sufficient. Institutional reform in the police, the courts, the Protection Officer machinery, and the broader social welfare apparatus is equally imperative. Equally important is a transformation in social attitudes towards gender equality, marriage, and women's economic autonomy.

The effectiveness of domestic violence law ultimately depends not on the sophistication of its text but on the seriousness with which it is enforced. India's legal framework provides the tools; what remains is the political will and institutional commitment to use them. Until the law's promise becomes a lived reality for every woman in every home, the task remains unfinished.

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<sup>17</sup>10. World Health Organization, *Violence Against Women: Intimate Partner and Sexual Violence Against Women* (WHO, 2013); Sudipa Basu, "Dowry Death and Dowry System in India: Critical Analysis" (2021) *International Journal of Law Management & Humanities*.

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