



BALANCING JUSTICE: A CRITICAL EVALUATION OF SECTION 85 AND 86 OF THE BHARATIYA NYAYA SANHITA 2023

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ABSTRACT

This article delves into the contentious issue of misuse of sections 85 and 86 of Bharatiya Nyaya Sanhita, 2023, which criminalise cruelty against a married woman by her husband or a relative of her husband. It seeks to explore the issues and repercussions associated with the misuse of this legal provision, particularly when employed for personal advantage or retaliatory motives. Section 498-A of the Indian Penal Code, 1860 (now sections 85 and 86 of BNS 2023) was introduced in 1983 to protect married women against cruelty, but the provision has been widely criticised for its rampant misuse, which results in false cases and the arrest of innocent individuals. The misuse of this section and its consequences have been examined by exploring real-life cases, statistics of the Ministry of Home Affairs, and numerous judgments of the Hon'ble Supreme Court and High Court, along with a comprehensive review of relevant legal literature and articles. The court should start imposing penalties, and stringent actions must be taken against the individual for making false accusations. Speedy trial is advisable so that innocent victims entrapped under section 498-A get prompt redressal, and there should be proper investigation, and the Court should prioritise evidence-based decision making rather than relying solely on allegations. The conclusion of the paper recognises the crucial role of sections 85 and 86 in bringing attention to the issue of cruelty and providing legal recourse for victims, but the concern surrounding their misuse and potential for injustice cannot be ignored.

Keywords: Indian Penal Code, Bharatiya Nyaya Sanhita 2023, Cruelty, Misuse, Protection of Women.

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INTRODUCTION

Marriage, particularly in a country like India that is enveloped in traditions, is considered to be a sacred bond, which is intended to provide love, support, and companionship. However, in some unfortunate cases, such a meaningful relationship can get strained when a marital dispute arises, leading to conflict that ultimately severs this bond. Therefore, to protect vulnerable married women from cruelty and harassment, Section 498A of the Indian Penal Code was enacted with good intentions. In 1980, the number of dowry deaths¹ hit the Indian conscience, and a strong movement by women's rights activists pushed the government to enact stringent laws to tackle dowry and domestic violence. As a result, an amendment was made to the Indian Penal Code in 1983, introducing Section 498A, which criminalises acts of cruelty and harassment inflicted upon a married woman by her husband or his relatives. The primary aim of this provision is to offer a protective shield to married women who have suffered from cruelty and harassment within the institution of marriage. When the law was enacted, it was done with a very specific purpose, as many dowry deaths were happening, and demands were made by in-laws and subjection of women to cruelty and harassment in case of failure to meet the demands. Section 498A of the Indian Penal Code, which is now Sections 85 and 86 of Bharatiya Nyaya Sanhita, 2023, criminalises cruelty against married women.

The idea behind the inclusion of this provision is to address dowry-related offences and provide legal recourse for victims of domestic violence, especially in India, where such violent acts are quite common, even among educated people. Over the years, this section has been effective in providing legal remedies to the victims of harassment and cruelty by their husbands or a relative of the husband of such victims. This provision acted as a deterrent and was successful in tackling cruelty against women. This section was incorporated to shield the women from ill treatment and torture. But in the present situation, the legalisation has become an evil in society. Instead of a shield, the particular section is now used with malafide intention by women as an armour to threaten and harass men for personal gratification and benefits. Consequently, it can be said that Section 498A is often misused by some women as a tool to exploit the legal provision for personal benefit. While recognising the seriousness of genuine domestic violence cases and the necessity for legal safeguards, it is equally crucial to address the growing concern of false accusation, exaggerated claims and their detrimental effects on innocent individuals and their families. Striking a balance between safeguarding victims and

¹ Dowry Prohibition Act 1961, s2

preventing the misuse of sections 85 and 86 of Bharatiya Nyaya Sanhita is crucial to uphold the principle of justice, fairness and gender equality. The study aims to understand whether sections 85 and 86 of the Bharatiya Nyaya Sanhita are misused by women.

UNDERSTANDING SECTIONS 85 AND 86 OF BHARATIYA NYAYA

Sanhita 2023: Sections 85 and 86 of Bharatiya Nyaya Sanhita 2023 deal with the cruelty subjected to a woman by her husband or by a family member of the husband. With the enactment of Bharatiya Nyaya Sanhita, 2023, the statutory safeguards dealing with cruelty against women, earlier encapsulated under section 498A of the IPC, have been codified and integrated into sections 85 and 86 of BNS, 2023.

Section 85:² Any act of cruelty committed against a woman by her husband or any of his relatives is punishable under this section. Section 85 states that if any such individual is found guilty of subjecting the woman to cruelty, they shall be punished with imprisonment for a term which may extend to three years and shall also be liable to a fine.

Classification – Cognizable, non-bailable, Magistrate of first class.

Section 86:³ Cruelty is defined in Section 86 of BNS, 2023, 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”
- (b) Any act of harassment directed towards a woman, intending to compel her or any person related to her to fulfil any unlawful demands for any property or valuable security. This also includes instances where such harassment results from the inability or refusal by her (woman) or any person related to her to meet such demand.

The term cruelty includes both mental and physical cruelty. As per this provision, cruelty refers to any act, whether mental or physical, that could drive a woman to commit suicide or inflict serious harm or danger to her life or a form of cruelty where the woman is harassed to coerce her or her family members to meet any illegal demand for any property or any valuable security. Therefore, it can be said that the provision defines cruelty as any such act that abets a woman

² Bharatiya Nyaya Sanhita 2023, s85

³ Bharatiya Nyaya Sanhita 2023, s86

to harm herself or put her life in danger, it also includes acts intended to compel or force a woman, or her relatives, into giving away valuable assets or property.

Cruelty may not always be in the form of direct assault on the body of women; rather, it may also be in verbal form. According to section 118 of BSA,⁴ 2023, if it is established that a woman was subjected to cruelty or harassment about a demand for dowry soon before her death, a presumption shall arise that the person who has harassed or subjected her to cruelty is accountable for her death.

Nature of offence under sections 85 and 86 of BNS,2023: Cognizable – which means a case in which a police officer may arrest the accused without an arrest warrant. Non-Bailable: which means bail can be granted only by the court. Non-compoundable: which means the case, once registered, cannot be compromised or withdrawn.

POSITIVE IMPACT OF SECTIONS 85 AND 86

The existence of section 498A has contributed to social change by challenging traditional norms and practices. It has played a part in dismantling the social acceptance of dowry and violence against women, promoting gender equality and respect within marital relationships. This section provides a mechanism for women suffering from cruelty within their marital homes to seek justice, which is critical in a society where domestic issues are often considered private. It empowers women to stand up against abuse and seek justice. The existence of such a law acts as a deterrent against potential abusers. Knowing the legal consequences, many would think twice before committing acts of cruelty. Various organisations, NGOs, and helpline services have been created to provide counselling, legal aid, and shelter to those in need. These support systems, coupled with the legal provisions of sections 85 and 86, offer a comprehensive approach to addressing the issues faced by married women.

MISUSE AND CONSEQUENCES OF SECTION 85 AND 86

The recent spine-chilling case of the suicide of 34 year 34-year-old techie in Bangalore has ignited widespread concern about the potential misuse of section 498A of the Indian Penal Code, now incorporated under sections 85 and 86 of the Bharatiya Nyaya Sanhita 2023. Initially, introduced to protect women from marital cruelty and abuse, this provision has raised alarm due to its growing exploitation. Critics argue that it is increasingly being used as a tool

⁴ Bharatiya Sakshya Adhiniyam 2023, s118

to demand unjust alimony or monetary settlements, rather than serving its intended purpose of safeguarding women from domestic violence. This article critically examines the application of sections 85 and 86 of the BNS 2023, addressing concerns about their misuse. Recent judicial pronouncements have underscored a concerning trend where provisions, originally designed to shield women from harm, are now being weaponised, often to the detriment of husbands and their families. The Supreme Court highlighted the improper use of these provisions, cautioning against their manipulation and calling for reform to prevent such exploitation. The arrangement is proposed to be utilised as a shield and not a professional killer's weapon. The Delhi High Court has recently said that the courts have observed the rising "tendency of implicating the husband and his family in matrimonial litigation in several cases."

Justice Amit Mahajan observed on February 7 while quashing a First Information Report lodged at Delhi cantonment police station in 2017, which alleged that a woman was being asked for dowry, and harassed by her former husband and his family. Justice Mahajan took into account that the FIR was lodged more than three years after the couple started living separately and filed for divorce. The court also considers that sweeping allegations have been made without any specifics. The decree for divorce was granted in 2019. These provisions were thought to be made with good intentions, but implementation has left a very bad taste, and the move has been counterproductive. There is a growing trend among women and even by their parents to involve every relative of the husband, including minors, school-going children, distant relatives, and even the family members living abroad, to hold them liable for cruelty. Once a complaint is lodged under sections 85 and 86 of BNS whether they are vague, unspecific, exaggerated allegations or there is no evidence of any physical or mental harm or injury inflicted upon women, it comes as an easy tool in the hands of police and agencies like crime against women cell to bound them with the threat of arrest making them run here and there and force to hide at their friends and relatives house till they get anticipatory bail as the offence have been made cognizable and non bailable. Thousands of such complaints and cases are pending and are being lodged day in and day out.

The object of sections 85 and 86 is to prevent the dowry menace. Nonetheless, as appropriately submitted by the petitioner, numerous instances have surfaced wherein complaints appear to lack bona fides and have been initiated with ulterior motives. In such scenarios, even if the accused is eventually acquitted, it does not always compensate for the ignominy suffered or disgrace experienced during or before the trial. Sometimes, adverse media coverage adds to the

misery. Therefore, the pertinent issue arises as to what remedial mechanism may be instituted to prevent the misuse of a provision enacted with bona fide legislative intent, particularly when such a provision, although constitutionally valid and intra vires, is susceptible to exploitation by unscrupulous individuals seeking to settle personal scores or to cause harassment.

In the last one and a half decades, 2.3 million people have been arrested under this law alone, higher than any other section of BNS except petty crimes like theft and hurt. Some facts from the NCRB⁵ 2016 data on crime. Examining the statistics related to Section 498A helps to better understand the prevailing issues and patterns linked to the law.

Conviction Rate: The conviction rate for sections 85 and 86 cases remains low. In 2018, the conviction rate was only 13% significantly lower than the conviction rate for other IPC⁶ crimes. The low conviction rate raises concerns about the effectiveness of the law in securing justice for victims and the potential for false or weak cases.

False Cases: While data on false cases is limited, some reports suggest that a significant proportion of cases filed under sections 85 and 86 are closed by the police due to being false or lacking evidence. For instance, in 2020, 14.4% of 111,549 cases registered under sections 85 and 86 were closed by the police for not finding merit in the case.

Several socio-cultural factors contribute to the misuse of sections 85 and 86. The existence of dowry practice, gender dynamics, societal expectations and family pressures can influence the filing of false cases. In some cases, sections 85 and 86 may be used as a means of revenge or as a tool to gain an advantage in divorce or custody battles. These factors, coupled with societal bias and presumption, can exacerbate the misuse of the provision. False accusations under sections 85 and 86 can deeply impact both the accused and their families, leading to serious consequences. It can lead to immediate social ostracisation, damaged reputation and strained relationships. Due to these untruthful claims, the accused may face societal stigma and be subjected to public humiliation, even before any legal proceeding or investigation has taken place, which can tarnish their professional and personal lives, causing long-lasting psychological stress and impacting their overall well-being. Furthermore, for innocent individuals wrongly accused under this provision, the legal consequences can be daunting. They may face arrests, imprisonment and lengthy legal battles only to prove their innocence.

⁵ National Crime Bureau Records

⁶ Indian Penal Code

The financial burden of legal fees and the emotional toll of navigating the legal system can be overwhelming. Even if ultimately acquitted, the scars left by the legal process and the impact on their life may be long-lasting. We can understand the widespread misuse of this section through an analysis of various case laws. In a historic judgment, the Hon'ble Supreme Court stressed the significance of safeguarding innocent people from arbitrary arrest while acknowledging the possibility of abuse of section 498A. To prevent needless harassment of the accused, the court ruled that the police must perform a thorough investigation before making an arrest.⁷

The misuse of Section 498A and 406 IPC has reached a point where it undermines the very core of marriage and negatively affects societal well-being. After witnessing the impact of these laws over many years, it is now essential to reassess them, as countless marriages have broken down due to their misuse. What else is it if not a social catastrophe?⁸ It is a widely acknowledged reality that many complaints under section 498A are often made impulsively and in response to minor disputes, without adequate reflection. A significant portion of these allegations is not genuine and is sometimes motivated by personal vendettas. In conclusion, the court expressed that there is a pressing need for legislative review of the entire provision. The overwhelming number of such cases has not only burdened the judiciary but also contributed to considerable societal discord, undermining public peace and social harmony.⁹

The mere fact that a legal provision is valid and within constitutional limits does not authorise individuals to misuse it for personal revenge or to cause unnecessary harassment. Investigating bodies and the judiciary are expected to act as impartial overseers, not as aggressive pursuers.¹⁰ Their responsibility is to ensure that no innocent person is subjected to undue hardship based on baseless, malicious or unfounded accusations.

In the landmark judgement of *Satender Kumar Antil v Central Bureau of Investigation*,¹¹ the Supreme Court introduced a set of procedural safeguards aimed at ensuring fairness in cases where the alleged offences are punishable with imprisonment of less than seven years. The directives stipulated that law enforcement authorities must provide a written justification before effecting an arrest. Furthermore, proper notice is required before summoning an individual for

⁷ *Arnesh kumar v. State of Bihar* (2014) 8 SCC 273

⁸ *Savitri Devi v. Rameshchand* 2003 CRILJ 275

⁹ *Preeti Gupta & Anr v. State of Jharkhand* (2010) AIR SC 3363

¹⁰ *Sushil Kumar v. Union of India* (2005) 6 SCC 281

¹¹ (2022) 10 SCC 51

interrogation. The court also mandated that bail should be granted automatically if the accused had not been arrested during investigations. Notably court urged a more considerate approach in cases involving women and vulnerable individuals. Additionally, it called for expeditious handling of bail applications, setting a deadline of two weeks for regular bail and six weeks for anticipatory bail.

243rd LAW COMMISSION'S REPORT: ABUSE OF SECTION 498A

The report addresses the dual challenge of preserving the deterrent purpose of section 498A of the IPC, meant to curb cruelty against married women, while mitigating its alleged misuse. The law commission has emphasised the need for a balanced reform of section 498A IPC, acknowledging instances of misuse while upholding its importance in addressing genuine cases of cruelty against women. It has been observed by the judiciary and parliamentary bodies that although misuse exists, it cannot form the sole basis for diluting or abolishing the provision. The emphasis lies in maintaining the deterrent value of the law while instituting safeguards to prevent its abuse.

Awareness campaigns, particularly in rural regions, are deemed crucial and should involve legal services authorities, NGOs and academic institutions. Early reconciliation mechanism, through trained counsellors and trusted community members-must be institutionalised, excluding police officers from such process. A uniform approach to FIR registration under section 498A is required, as High Courts vary in their directives. Until the Supreme Court resolves the issue, police are advised to follow regional High Court rulings. The commission advocates for making the offence compoundable with judicial oversight and a three-month cooling-off period. While the non-bailable status of the accused is retained, arrest procedures must strictly adhere to sections 41 and 41A,¹² discouraging arbitrary detentions. Police officials must also be sensitised and monitored for compliance.

Additionally, the report recommends the inclusion of a new subsection in section 41 CrPC to reinforce protection against unnecessary arrests. Compensation under section 358¹³ should be increased to Rs. 15,000 to reflect current socio-economic realities. Women's police stations and crimes against women must be strengthened in terms of infrastructure and staffing. Adequate shelter homes for distressed women should be made available as a welfare measure.

¹² Code of Criminal Procedure 1973, s 41 and 41A

¹³ Code of Criminal Procedure 1973, s358

In cases involving non-resident Indians (NRIs), the report advises against automatic passport impounding. Instead, the use of high-value bonds or sureties is recommended. Lastly, the speedy trial and disposal of section 498A cases must be treated as a judicial priority to ensure justice for all parties involved.

MITIGATING MISUSE: SUGGESTIONS

Courts need to exercise caution and carefully examine the evidence in section 85 and 86 cases to ensure that the law is not misused for personal vendettas or harassment. Holding the individual accountable for filing false cases can act as a deterrent and discourage the misuse of the law. Sections 217, 236, and 238 of BNS provide provisions for the punishment of false cases, but they are rarely invoked. In India, the trial of criminal cases, especially of a serious nature, continues for eight to ten years, if not more, depending on the gravity of the crime. But a speedy trial is advisable so that the innocent victims entrapped under sections 85 and 86 get prompt redressal. Therefore, it is of utmost importance that, besides being effective, the judiciary must try to expedite the process of trial of section 85 and 86 cases. A speedy trial of these cases would guarantee justice for the innocents who are concerned in falsely charged.

There should be a proper investigation, and the court should prioritise evidence-based decision-making rather than relying solely on allegations. Ensuring thorough police investigation and adherence to the guidelines for the arrest, such as those laid down in the Arnesh Kumar case, can help prevent wrongful arrests and protect the rights of the accused. One of the key recommendations is to make sections 85 and 86 compoundable, because, due to their non-compoundable nature, if a woman realises that she has done wrong with family or her husband after the filing of the FIR, then she cannot withdraw that FIR or make out-of-court settlements. This provision (sections 85 and 86) should be made bailable, as it has a significant impact on the lives of innocent individuals, old parents, sisters and school-going children. Due to its non-bailable nature, they have to remain in custody for weeks without any fault of their fault. The word husband /wife should be replaced by either spouse. The provision laid down under this section needs an immediate amendment, and it should be one of the major concerns of lawmakers in recent times.

CONCLUSION

Sections 85 and 86 of the BNS represent a critical juncture in the ongoing effort to combat domestic violence against women in India. These provisions have indeed played a pivotal role

in spreading awareness and offering legal recourse to genuine victims. However, it is equally vital to acknowledge rising concerns over the potential misuse of these laws. A thoughtful and balanced legal framework is the need of the hour- one that protects victims without enabling the law to be weaponised for personal vendettas or false accusations. A well-balanced approach is essential –one that ensures justice for the victims while also protecting the rights of those who may be falsely accused. The present scenarios demand a more nuanced and gender-neutral approach. While protecting women from real instances of cruelty is critical, there must also be a mechanism to safeguard innocent individuals, irrespective of gender, from wrongful allegations and misuse of legal provisions. Justice cannot be one-sided. It should not be a man versus women debate, but it has to be in the sense of gender gender-neutral debate, as there are no laws to protect a man from marital abuse. Therefore, the system must also account for the rights of men, especially in the context where marital abuse against them lacks adequate legal recognition. It is important that laws do not evolve into tools of harassment but instead serve their core purpose: delivering justice, preventing abuse and ensuring fairness for all parties involved. The objective should not be to repel such sections but to reform them in a way that discourages misuse, punishes intentional cruelty regardless of gender, and upholds the dignity of the law. Ultimately, for section 498A to retain its relevance and legitimacy, it must act as a shield for genuine victims and a sword against false perpetrators, without becoming an instrument of injustice. The law should be modified; repealing it is not a solution; it should be made gender neutral, and cruelty by either spouse should be punishable. This ultimately promotes fairness, justice, and the well-being of all parties concerned.