



## WEAPONIZATION OF PROTECTIVE LAWS: THE DARK SIDE OF THE DV ACT AND SECTION 498A

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### ABSTRACT

*This paper critically examines the misuse of marriage and divorce laws by women, highlighting the challenges posed by gender-specific legislation such as the Protection of Women from Domestic Violence Act, 2005, and Section 498A of the Indian Penal Code. While these laws were enacted to protect women from domestic abuse and cruelty, their broad and often ambiguous provisions have led to instances of misuse, where false allegations are filed to harass or gain undue advantage over husbands and their families. Additionally, it delves into the intersection of these laws with divorce proceedings, examining how allegations of cruelty are sometimes used to secure divorce decrees and financial benefits like maintenance and alimony.*

**Keywords:** Misuse of Domestic Violence Act, Section 498A IPC, False Allegations and Divorce, Maintenance and Alimony Abuse, Legal Reform and Gender Neutrality.

### PRE-EXISTING LEGAL FRAMEWORK

The legal framework in India has evolved significantly to address the pressing issue of domestic violence and cruelty faced by women in domestic relationships. Legislation such as the Protection of Women from Domestic Violence Act, 2005 (DV Act)<sup>1</sup> and Section 498A of the Indian Penal Code (IPC)<sup>2</sup> were enacted to provide safeguards for women against physical, mental, and emotional abuse. These laws aim to ensure justice for women subjected to oppressive domestic environments and societal norms.

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<sup>1</sup> Protection of Women from Domestic Violence Act 2005.

<sup>2</sup> Indian Penal Code 1860, s.498A.

However, in their implementation, certain inherent biases and ambiguities have emerged, resulting in the unintended misuse of these provisions. Critics argue that these laws, while essential for protecting women, often exclude or marginalise men who may also face abuse in domestic relationships. The gendered nature of these laws and their expansive definitions have occasionally been weaponised, allowing for frivolous allegations that tarnish the reputation and mental well-being of innocent individuals, particularly husbands and their families.

**Protection of Women from Domestic Violence Act, 2005:** One such misused legislation is the Protection of Women from Domestic Violence Act, 2005 (the ‘DV Act’), passed to protect women from acts of physical and mental abuse by their partners and in-laws. However, the DV Act is highly gendered, as only women are included within the ambit of “aggrieved person” under Section 2(a) of the aforesaid act.<sup>3</sup> On the contrary, “any adult male person who is, or has been, in a domestic relationship with the aggrieved person” falls under the scope of “respondent” under Section 2(q).<sup>4</sup> By doing so, the DV Act presumes that only women can be considered as victims of domestic violence. Making such a presumption is wholly unjust and inequitable towards men, given that “there have been many instances where women insult, humiliate, ridicule, mentally and physically, men they are in a domestic relationship with”.<sup>5</sup>

In addition, the Punjab and Haryana High Court in *Bawinder Verma v Richa Sharma* observed that the DV Act “suffers from inherent flaws” which tempt women to misuse such provisions by making false allegations against their husbands.<sup>6</sup> Therefore, excluding men from the scope of the DV Act allows women to take undue advantage of a legislation enacted for their benefit, by circumventing its provisions, through targeting innocent men for their gain.

Such weaponisation is exacerbated through the broad definition of “domestic violence” provided under Section 3(a), which encompasses “physical, sexual, verbal and emotional abuse and economic abuse”<sup>7</sup> within its scope, thereby bringing a wide ambit of acts, as sufficient to attract an offence under Section 3 of the DV Act. Such a broad nature of the DV Act can be further witnessed through Explanation I(iii) of Section 3, which includes “insults, ridicule, humiliation, name-calling”, within the ambit of “verbal and emotional abuse”.<sup>8</sup> However, the

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<sup>3</sup> Protection of Women from Domestic Violence Act 2005, s.2(a).

<sup>4</sup> Protection of Women from Domestic Violence Act 2005, s 2(q).

<sup>5</sup> Atif, Syed, ‘THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005: A CRITICAL ANALYSIS’, LexKhoj Volume I, Issue IV.

<sup>6</sup> *Bawinder Verma v Richa Sharma*, 2018 SCC OnLine P&H 2969.

<sup>7</sup> Protection of Women from Domestic Violence Act 2005, s 3(a).

<sup>8</sup> Protection of Women from Domestic Violence Act 2005, s 3, Explanation I(iii)(a).

DV Act fails to recognise that mere marital quarrels may fall under the broad ambit of Explanation I(iii), thereby making the Act highly ambiguous and unclear.<sup>9</sup> Such an expansive definition makes it easier for a wife to maliciously file false allegations of domestic violence against her partner over frivolous affairs, as was the case in *Durga Das Panigrahi v Sweta Mishra*, wherein the Orissa High Court dismissed a complaint filed by a wife, alleging domestic violence against her husband under the DV Act, on the ground that her husband was ‘not spending quality time with her’, and that she was ‘being ill-treated by her husband and in-laws’.<sup>10</sup> Such a case depicts how frivolous allegations filed by the wife serve as a personal vendetta against the husband and his family.

In addition, Section 23(2) of the DV Act also has the potential to be abused by women, as it allows for the passing of ex parte orders, in case the aggrieved party proves that the respondent has committed or is likely to commit acts of domestic violence.<sup>11</sup> Such a provision denies the husband a reasonable opportunity to be heard, thus contravening the natural justice principle of ‘audi alteram partem’. In addition, allowing ex parte orders to be passed by the courts is highly arbitrary, as courts may arbitrarily pass orders in favour of the wife without considering the facts and circumstances of the case at hand.

**Section 498A:** In addition to a case under the DV Act, a wife may also file a criminal complaint against the husband under Section 498A of the IPC, in case the husband or his relatives “subjects such women to cruelty”.<sup>12</sup> However, similar to the DV Act, Section 498A is also heavily misused, with women falsely alleging cruelty to exact “revenge on their husbands, to extract money from their husbands, or to make their in-laws suffer”.<sup>13</sup> Such malicious allegations not only ostracise the reputation of the husband in society, but also drag the husband and his in-laws into frivolous litigation, thereby causing immense mental agony and turmoil, especially to the in-laws who are dragged into criminal cases whilst elderly.<sup>14</sup>

Such misuse of Section 498A is enumerated in *Anju v Govt. of NCT of Delhi*, wherein the Delhi High Court dismissed allegations of physical cruelty against her husband and in-laws,

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<sup>9</sup> Kumar, et al, ‘A CRITICAL ANALYSIS OF DOMESTIC VIOLENCE LAW IN INDIA’, Journal on Contemporary Issues of Law, Volume 4 Issue 2.

<sup>10</sup> *Durga Das Panigrahi v Sweta Mishra*, (2023) 247 AIC 398.

<sup>11</sup> Protection of Women from Domestic Violence Act 2005, s.23(2).

<sup>12</sup> Indian Penal Code 1860, s.498A.

<sup>13</sup> Gupta, Purnima, “MISUSE OF WOMEN-CENTRIC LAWS IN INDIA: AN ANALYSIS”, Indian Journal of Law and Legal Research Volume 5, Issue 5.

<sup>14</sup> Singhal, Taru, The Double-Edged Sword: Uncovering the Misuse of Section 498A IPC by Women in Marital Disputes (April 10, 2024).

finding such allegations to be omnibus, as the wife failed to mention specific instances of acts of cruelty, with regards to the ‘date, place and time’, they occurred.<sup>15</sup> The Anju case depicts how some women misuse provisions intended to safeguard their interests by placing frivolous allegations against their partner, fuelling their mental agony and torture.

### **INTERLINKING OF WOMEN-CENTRIC LAWS WITH DIVORCE LAWS**

Oftentimes, complaints filed under the DV Act or Section 498A are used to allege cruelty upon the husband, which, if proved, can be used as a ground for divorce under various marriage and divorce legislations. Such instances include Section 13(1)(ia) of the Hindu Marriage Act, 1955, ( ‘HMA’) which provides a ground for divorce, in case one of the parties, “has after the solemnisation of the marriage, treated the petitioner with cruelty”.<sup>16</sup> In addition, the Special Marriage Act, 1954 ( ‘SMA’) under Section 27(d)(iv) penalises the respondent, in case they treat the petitioner with cruelty.<sup>17</sup> Proving a case of DV or Section 498A serves evidentiary purposes by ensuring that the decree of divorce is passed in the wife’s favour, ensuring she receives higher maintenance and alimony from the husband.

Such misuse of DV or Section 498A to allege cruelty as a ground for divorce, has been well elaborated in *Savitri Pandey v Prem Chand Pandey*, where in the apex court held the allegations of cruelty filed by the wife in her divorce petition to be baseless, wherein she alleged cruelty against her husband, on the pre-text that he demanded expensive gifts and money, and that he tortured the wife.<sup>18</sup> In addition, the wife further alleged desertion under Section 13(b) of the HMA,<sup>19</sup> against the husband, however the court further held that there was no evidence led to prove that the wife was forced to live separately, and that the husband intended animus deserendi, therefore, the wife had left the company of her husband off her own accord, and hence was taking advantage of her wrong under Section 23(1) HMA,<sup>20</sup> thereby disentitling her to a decree of divorce, on the ground of desertion. The *Savitri Pandey* case<sup>21</sup> depicts how wives often file frivolous litigation against their husbands to receive a favourable decree of divorce, thereby mentally harassing and torturing the husbands.

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<sup>15</sup> *Anju v Govt of NCT of Delhi*, 2019 SCC OnLine DEL 6865.

<sup>16</sup> Hindu Marriage Act 1955, s.13(1)(ia).

<sup>17</sup> Special Marriage Act, 1954 s.27d(iv).

<sup>18</sup> *Savitri Pandey v Prem Chand Pandey*, (2002) 2 SCC 73.

<sup>19</sup> Hindu Marriage Act 1955, s.13(ib).

<sup>20</sup> Hindu Marriage Act 1955, s.23(1).

<sup>21</sup> *Supra* Note 18.

At this juncture, it also remains crucial to consider the rule upheld by the apex court in *Naveen Kohli v Neetu Kohli*,<sup>22</sup> in which the husband filed a divorce petition, under Section 13(i) and 13(ia) of the HMA, alleging adultery<sup>23</sup> and cruelty against the wife,<sup>24</sup> after he found the wife in an uncompromising position with another man. The wife, in response to the above, filed a series of criminal complaints under the Indian Penal Code, as well as complaints to the Company Law Board. In addition, the wife further filed a complaint under Section 24 HMA alleging maintenance. The court held the wife's refusal to a mutual consent divorce, as well as her decision to maliciously file serious allegations against her husband, to be considered as acts of extreme mental cruelty against the husband, intended to inflict extreme mental torture and agony upon the husband, and thereby noted the marital bond between the parties to be beyond repair, and thereby passed the decree for dissolution of marriage, on the ground that the marriage has irretrievably broken.<sup>25</sup>

The *Naveen Kohli* case<sup>26</sup> serves as a stark reminder of the importance of ensuring the sanctity of the social institution of marriage, thereby highlighting the necessity for degendering personal laws, to ensure that such women don't misuse such laws, for their gain and vendetta.

### **MAINTENANCE- A DOUBLE-EDGED SWORD**

Following the passing of the decree of divorce, the wife can usually approach the court and claim maintenance and permanent alimony from her husband, as a means to sustain her livelihood, as well as her children, in case she is unable to sustain herself. The wife can claim maintenance through Section 125(1) of the Code of Criminal Procedure ( 'CRPC'), in case the husband neglects or refuses to pay maintenance to the wife, and in such a case, the court may "order such person to make a monthly allowance for the maintenance of his wife, child or mother".<sup>27</sup> In addition to Section 125 CRPC, the wife can also claim permanent alimony and maintenance through Section 37 of the SMA,<sup>28</sup> as well as Section 25 of the HMA,<sup>29</sup> along with Section 18(1) of the Hindu Adoption and Maintenance Act, 1956.<sup>30</sup>

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<sup>22</sup> *Naveen Kohli v Neetu Kohli*, (2006) 4 SCC 558.

<sup>23</sup> Hindu Marriage Act 1955, s.13(i).

<sup>24</sup> Hindu Marriage Act, 1955, s.13(ia).

<sup>25</sup> Saigal, Suchita, and Uttara Gharpure. "Naveen Kohli v. Neelu Kohli, (2006) 4 S.C.C. 558." *Student Bar Review* 18, no. 2 (2006): 113–24. <http://www.jstor.org/stable/44306659>.

<sup>26</sup> *Supra* Note 22

<sup>27</sup> Code of Criminal Procedure 1973, s.125(1).

<sup>28</sup> Special Marriage Act 1954, s.37.

<sup>29</sup> Hindu Marriage Act 1955, s.25.

<sup>30</sup> Hindu Adoptions and Maintenance Act 1956, s.18(1).

The obligation of paying permanent alimony and maintenance, is highly arbitrary, as courts rarely pay heed to the financial condition of the husband, whilst awarding alimony, owing to the adage of ‘beg, borrow, steal’, as held by the Punjab and Haryana High Court in *Rajesh v Sunita and Ors*, which held that it is the sacrosanct duty of the husband to financially support his wife and children, and thus requires the husband to provide for his partner through any means necessary, whilst completely neglecting the financial and employment status of the husband.<sup>31</sup> Such an adage of ‘beg, borrow, steal’ causes extreme mental pressure and agony upon the husband, to ensure that he can pay maintenance to his wife, for the husband to avoid facing legal repercussions.

The decision of the aforesaid court is contrary to the principle upheld in *Rajnesh v Neha*, where in the apex court held that the quantum of maintenance to be awarded to the wife must be made upon considering the financial capacity of the husband, as well as the financial status and educational qualifications of the wife, by requiring both the wife and husband to file income affidavits regarding the same.<sup>32</sup> In that respect, it is also necessary to consider the decision of the Delhi High Court in *Sanjay Bhardwaj v State & Anr*, where the court denied the wife maintenance on the ground that the husband was recently unemployed, and that the wife had a well-paying job<sup>33</sup> and noted that the adage of “beg, borrow, steal” is inapplicable when both the wife and husband are capable of sustaining themselves.

Therefore, the aforesaid decisions depict how women misuse maintenance laws, which is further propagated by the courts, to extract more money during divorce proceedings, thereby causing significant financial strain on the husband.

## CONCLUSION

In conclusion, the gendered nature of women-centric laws in India, particularly the Domestic Violence Act 2005 and Section 498A of the Indian Penal Code, has created room for misuse by some women. This misuse often leads to false allegations of cruelty and domestic violence during divorce proceedings, resulting in unjustly higher maintenance and alimony claims. Courts rarely account for the financial condition of the husband, adding undue pressure and

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<sup>31</sup> *Rajesh v Sunita and Ors*, (2018) 4 RCR (Cri) 980.

<sup>32</sup> *Rajnesh v. Neha*, (2021) 2 SCC 324.

<sup>33</sup> *Sanjay Bhardwaj v State and Anr*, (2010) 118 DRJ 385 (Del).

distress on men. This calls for reforms to make these laws more balanced and equitable, ensuring fairness for both genders in legal proceedings.