Human Rights, Gender Equality and Social Justice: Reconsidering the Rights of Husbands in Matrimonial Disputes in India

Abstract

Indian matrimonial law developed, for good historical reason, around the protection of wives from cruelty, dowry harassment and desertion in a society where women entered marriage with markedly less bargaining power, less property, and less access to the courts than their husbands. That history remains true and remains relevant. But law that is calibrated to a historical asymmetry does not automatically stay calibrated as social conditions shift, and a growing body of judicial commentary, law commission analysis and empirical data now suggests that certain provisions designed to protect wives operate, in practice, without corresponding safeguards against their misuse, while other provisions continue to assume a husband's exclusive capacity to pay and a wife's exclusive need to receive, an assumption that no longer holds uniformly across India's diversifying marriages. This paper undertakes a balanced re-examination of the rights, or the absence of rights, available to husbands in matrimonial disputes in India, situating that examination within the constitutional guarantee of equality and India's human rights commitments rather than within an adversarial framing that treats gender equality as a zero-sum contest between spouses. It traces the statutory architecture governing cruelty, maintenance, domestic violence and child custody; it examines the judiciary's own gradual acknowledgment, through decisions such as Arnesh Kumar and the Social Action Forum for Manav Adhikar line of cases, that safeguards against arbitrary arrest and prosecution serve the interests of due process rather than undermining the interests of genuine victims; and it considers comparative approaches from jurisdictions that have moved toward gender-neutral drafting of domestic violence and custody law. The paper concludes that reconsidering husbands' rights need not come at the expense of protections that remain genuinely necessary for wives, and it proposes reforms aimed at procedural fairness, gender-neutral remedies where the underlying harm is not sex-specific, and better data collection to guide future legislative calibration.

Keywords: Matrimonial Disputes; Gender Equality; Section 498A; Domestic Violence Act; Maintenance; Child Custody; Human Rights

I. Introduction

To ask whether husbands have rights worth reconsidering in Indian matrimonial law is, for some readers, to ask a question that answers itself in the negative before it is even fully posed: in a country where dowry deaths, domestic violence and marital desertion of wives remain documented and serious problems, any suggestion that the law might be insufficiently attentive to husbands can sound like an attempt to roll back protections that took decades of feminist advocacy to secure. That reaction is understandable, and this paper does not share the premise, sometimes voiced in more polemical commentary, that women's protective legislation in India is primarily a vehicle for its own abuse. The overwhelming majority of complaints under India's matrimonial protective statutes reflect genuine grievances, and any reform proposal that treats the exception as though it were the rule risks doing exactly the kind of injustice it purports to correct.

At the same time, a legal system committed to equality before the law under Article 14 of the Constitution cannot structure its inquiry only in one direction. If a statute's design permits misuse without meaningful safeguards, or if a statute assumes facts about capacity and dependency that no longer hold uniformly, that is a legitimate subject of legal scholarship regardless of which spouse the statute happens to protect. The Supreme Court itself has, on several occasions discussed below, acknowledged that provisions intended to protect wives from cruelty had, in practice, also become vehicles for what it termed the *over-implication* of husbands and their extended families, and it has fashioned procedural safeguards in response[1]. A paper that examines only the wife's side of the ledger, or only the husband's, in matrimonial law is incomplete either way; this paper attempts, instead, to hold both sides in view and to ask where the current statutory and judicial architecture has achieved a defensible balance and where it has not.

The paper is organised as follows. Part II sets out the constitutional and human rights framework within which any claim to gender-neutral treatment in matrimonial law must be assessed, noting both the guarantee of formal equality under Article 14 and the constitutionally sanctioned space for protective discrimination in favour of women under Article 15(3). Part III

[1] *See Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, 276 (India); *Preeti Gupta v. State of Jharkhand*, (2010) 7 SCC 667, paras. 32–35 (India) (cautioning that general and omnibus allegations against relatives in matrimonial complaints require careful scrutiny).

surveys the principal statutory provisions governing matrimonial disputes — cruelty under Section 498A of the Indian Penal Code, protection under the Protection of Women from Domestic Violence Act, 2005, maintenance under Section 125 of the Code of Criminal Procedure and personal laws, and child custody — with attention to which of these are drafted in gender-neutral terms and which are not. Part IV traces the judiciary's evolving response to concerns about misuse of cruelty provisions. Part V identifies specific areas in which husbands' entitlements remain underdeveloped relative to those of wives. Part VI considers comparative material. Part VII sets out the principal counter-arguments that caution against overcorrection, in keeping with the paper's aim of balance rather than advocacy for one side. Part VIII offers recommendations, and Part IX concludes.

It is also worth being explicit, at the outset, about what this paper is not attempting to do. It is not an argument that Section 498A should be repealed, that the Domestic Violence Act's protective focus on women should be abandoned, or that the underlying social reality of dowry-related violence has ceased to justify differentiated legal treatment; each of these positions is advanced periodically in more polemical public commentary, and each, in this paper's assessment, understates the continuing and well-documented prevalence of violence directed at wives. Nor is it an argument, from the opposite direction, that concerns about the misuse of matrimonial statutes are themselves manufactured or exaggerated, a position that understates the due-process concerns the Supreme Court has itself identified across more than one line of authority. The paper's more modest and, it hopes, more defensible claim is that specific, identifiable gaps exist in the statutory and remedial architecture available to husbands, that these gaps are traceable to assumptions that have not been revisited since the relevant provisions were first enacted, and that closing them is achievable without weakening the protections that remain necessary for wives.

II. The Constitutional and Human Rights Framework

A. Formal Equality and Permissible Protective Discrimination

Article 14 of the Constitution guarantees to every person equality before the law and the equal protection of the laws, a guarantee that on its face applies to husbands and wives alike[2]. Article 15(1) prohibits the State from discriminating against any citizen on grounds only of sex, but

[2]INDIA CONST. art. 14.

Article 15(3) carves out an express exception, providing that nothing in Article 15 prevents the State from making special provision for women and children[3]. The Supreme Court has repeatedly upheld protective legislation directed specifically at women under this exception, reasoning that women in Indian society have historically occupied a position of social and economic disadvantage that formally identical treatment would not remedy, and that Article 15(3) exists precisely to permit the State to correct that disadvantage through differentiated rather than uniform rules[4]. This constitutional architecture is important background to the entire discussion that follows: gender-differentiated matrimonial legislation directed at protecting wives is not, without more, constitutionally suspect, and any argument for reconsidering husbands' rights must proceed by showing either that a particular provision's differentiation no longer serves the substantive equality purpose Article 15(3) was designed to advance, or that the provision lacks procedural safeguards adequate to prevent its misuse, rather than by treating gender-differentiated protection as inherently discriminatory.

B. Substantive Equality and the Limits of Formal Symmetry

It follows from this that the relevant constitutional question is not whether a matrimonial statute treats husbands and wives identically, but whether its differentiation continues to track a real and continuing disadvantage. The Supreme Court's jurisprudence on substantive equality, developed most fully outside the matrimonial context but applicable to it, holds that Article 14 does not demand identical treatment of persons who are not similarly situated, and that reasonable classification consistent with the object sought to be achieved is permissible[5]. Applying this test honestly to matrimonial law requires an empirical, not merely rhetorical, assessment of whether the disadvantage a given provision was designed to address remains present in the same form, for the same population, that the provision assumes. Where it does — as, this paper argues, remains substantially true of dowry-related harassment and domestic

[3]INDIA CONST. art. 15(1), (3).

[4]*See Government of Andhra Pradesh v. P.B. Vijayakumar*, (1995) 4 SCC 520, 527–28 (India) (upholding special provisions for women in public employment under Article 15(3) of the Constitution); *Yusuf Abdul Aziz v. State of Bombay*, AIR 1954 SC 321, 322–23 (India) (upholding the former Section 497 of the Indian Penal Code against an Article 14 and Article 15 challenge, including the application of Article 15(3) to the exemption of women from prosecution as abettors of adultery).

[5]*See State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75, 79 (India) (establishing the reasonable classification test under Article 14, including the requirement of a rational relationship between the classification and the legislative object); *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, 144–45 (India) (reaffirming the requirements of intelligible differentia and rational nexus under Article 14 while emphasising the substantive content of equality).

violence directed at wives — differentiated protection remains constitutionally and normatively justified. Where the assumption of universal male capacity and female dependency has weakened — as this paper argues is increasingly true in the context of maintenance obligations among economically independent, often better-earning, wives — the classification becomes harder to defend on the same terms.

C. International Human Rights Instruments

India's international human rights commitments reinforce rather than resolve this tension. The Convention on the Elimination of All Forms of Discrimination against Women, which India ratified in 1993, obliges States parties to take measures to eliminate discrimination against women in matters relating to marriage and family relations, and it has been the principal international instrument informing Indian matrimonial reform, including the Domestic Violence Act, 2005[6]. No comparable instrument exists specifically directed at the human rights of husbands as such, which is unsurprising given the historical origins of international human rights law in redressing a documented pattern of discrimination against women rather than a symmetrical pattern against men. This asymmetry in the international instruments is not, however, a reason to ignore asymmetries that may exist in domestic legal remedies available to husbands; the International Covenant on Civil and Political Rights guarantees equality before the law and due process to all persons without qualification by sex[7], and a husband subjected to arrest, prosecution or the loss of a child's custody is entitled to the same due-process guarantees under that instrument as any other person, irrespective of the absence of a sex-specific human rights convention addressed to men.

D. Dignity as a Unifying Constitutional Value

A further strand of the Court's jurisprudence, developed primarily in cases concerning privacy and personal autonomy rather than matrimonial law specifically, has identified human dignity as a value underlying the fundamental rights chapter as a whole, applicable to every individual without qualification by sex[8]. This dignity-based reading of Article 21 offers a useful, if

[6]Convention on the Elimination of All Forms of Discrimination against Women arts. 1, 16, Dec. 18, 1979, 1249 U.N.T.S. 13 (ratified by India on 9 July 1993, subject to certain declarations).

[7]International Covenant on Civil and Political Rights arts. 14, 26, Dec. 16, 1966, 999 U.N.T.S. 171 "(acceded to by India on 10 April 1979)".

[8]*See K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1, 260–61 (India) (recognising the right to privacy as intrinsic to the right to life and personal liberty under Article 21 of the Constitution and affirming its close connection with individual autonomy and human dignity).

underused, doctrinal resource for the arguments developed later in this paper: a husband subjected to prolonged, ultimately unsubstantiated criminal prosecution, or denied any civil remedy for genuine domestic abuse purely because of his sex, experiences a dignitary harm that the Constitution's underlying commitment to dignity does not, in principle, distinguish from a comparable harm suffered by a wife. Invoking dignity in this context does not require treating the two situations as equally probable or equally serious in aggregate — the empirical asymmetry discussed throughout this paper remains real — but it does supply a constitutional vocabulary for taking the husband's individual claim seriously in the specific case in which it arises, without that individual claim being submerged entirely beneath the aggregate statistical picture.

III. The Statutory Landscape Governing Matrimonial Disputes

A. Cruelty and Dowry Harassment: Section 498A of the Indian Penal Code

Section 498A, inserted into the Indian Penal Code in 1983 in response to a documented rise in dowry deaths and dowry-related cruelty, makes it an offence for a husband or a relative of the husband to subject a woman to cruelty, defined to include wilful conduct likely to drive the woman to suicide or to cause grave injury to her life, limb or health, as well as harassment connected with an unlawful demand for property or valuable security[9]. The provision is, by its terms, asymmetric: only a husband or his relatives can be prosecuted under it, and the offence was, until subsequent judicial modification, cognizable and non-bailable, meaning police could arrest an accused without a warrant and without prior judicial scrutiny[10]. The rationale for this asymmetry lay in the documented pattern the provision was designed to address: dowry harassment overwhelmingly flowed from husbands and marital in-laws toward wives, not the reverse, and a gender-neutral provision would not have targeted the actual pattern of harm Parliament sought to address in 1983.

B. The Protection of Women from Domestic Violence Act, 2005

The Domestic Violence Act, 2005 defines an "aggrieved person" as any woman who is or has been in a domestic relationship with the respondent and who alleges that she has been subjected

[9]Indian Penal Code, 1860, § 498A (as inserted by the Criminal Law (Second Amendment) Act, No. 46 of 1983) (repealed 2024); see now Bharatiya Nyaya Sanhita, 2023, §§ 85–86.
[10]Code of Criminal Procedure, 1973, sch. I (classifying the offence under Section 498A IPC as cognizable and non-bailable).

to domestic violence, and it correspondingly defines a "respondent" as an adult male person, subject to a proviso permitting a complaint also against a relative of the husband[11]. The Act creates a civil remedy scheme — protection orders, residence orders, monetary relief and custody orders — administered through Magistrates with the assistance of Protection Officers, and it was, on its own terms and in its legislative history, designed exclusively to remedy violence against women within domestic relationships, reflecting the documented and continuing prevalence of such violence[12]. A husband who experiences physical or emotional abuse from a wife has no equivalent statutory remedy under this Act, since the definitions of "aggrieved person" and "respondent" are drafted in explicitly gendered terms that a court cannot read around without rewriting the statute, a task the judiciary has generally and correctly regarded as belonging to Parliament rather than to itself[13].

C. Maintenance: Section 125 of the Code of Criminal Procedure and Personal Laws

Section 125 of the Code of Criminal Procedure allows a wife, among other dependants, to claim maintenance from a husband who has sufficient means but neglects or refuses to maintain her; a husband may claim maintenance from his wife under the same provision only where he is, by reason of physical or mental abnormality or injury, unable to maintain himself, a considerably narrower gateway than the one available to a wife[14]. The Hindu Marriage Act, 1955 permits either spouse to claim maintenance pendente lite and permanent alimony in terms that are, on their face, gender-neutral[15], and the Supreme Court has confirmed that a husband who is unable to maintain himself and whose wife has sufficient independent income may claim maintenance from her under this gender-neutral language[16]. In practice, however,

[11]Protection of Women from Domestic Violence Act, No. 43 of 2005, §§ 2(a), 2(q), INDIA CODE (2005).

[12]*See Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755, 765–66 (India) (discussing the legislative object of the Protection of Women from Domestic Violence Act, 2005, including its purpose of providing civil-law remedies for the protection of women from domestic violence and interpreting the scope of a "relationship in the nature of marriage" under Section 2(f)).

[13]*See Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 10 SCC 165, paras. 19–25 (India) (striking down the words "adult male" in Section 2(q) of the Protection of Women from Domestic Violence Act, 2005, thereby permitting women, including female relatives, to be impleaded as respondents; the sex-specific definition of "aggrieved person" under Section 2(a), which refers to a woman, remained unchanged).

[14]Code of Criminal Procedure, 1973, § 125(1)(a)–(d) (now Bharatiya Nagarik Suraksha Sanhita, 2023, § 144).

[15]Hindu Marriage Act, No. 25 of 1955, §§ 24, 25, INDIA CODE (1955).

[16]*See Ankit Suman v. State of U.P.*, (2025) (Allahabad High Court) (recognising that Section 24 of the Hindu Marriage Act, 1955, permits either spouse, including a husband lacking sufficient independent income, to seek maintenance pendente lite and litigation expenses); *Kirtikumar Maheshankar Joshi v. Pradipkumar Karunashanker Joshi*, (1992) 3 SCC 573 (India) (concerning child custody under the Guardians and Wards Act, 1890).

applications for maintenance by husbands under these gender-neutral provisions remain comparatively rare and are approached by many courts with a degree of scepticism that mirrors, in reverse, the scepticism that once attached to wives' maintenance claims before the law and judicial attitudes evolved in their favour, and personal laws applicable to other religious communities in India do not uniformly provide even the qualified, gender-neutral pathway that the Hindu Marriage Act does.

D. Child Custody

Custody determinations under the Guardians and Wards Act, 1890 and under the relevant personal laws are, in principle, governed by the paramount consideration of the welfare of the child rather than by any fixed presumption in favour of either parent[17], and the Supreme Court has repeatedly reaffirmed that the welfare principle, not the sex of the parent, is the touchstone[18]. Section 6 of the Hindu Minority and Guardianship Act, 1956 nonetheless provides that custody of a child below the age of five years shall ordinarily be with the mother, a statutory presumption that, while rebuttable and subject to the overriding welfare principle, continues to shape both litigation strategy and, according to several empirical and doctrinal commentaries, judicial outcomes in custody disputes involving very young children[19]. "Fathers seeking custody of young children therefore face a statutory tilt that mothers do not face in reverse."

E. Divorce, Restitution of Conjugal Rights, and Alimony

Outside the criminal and quasi-criminal provisions discussed above, the core provisions of Indian matrimonial law governing the dissolution of marriage are, for the most part, already drafted in gender-neutral terms. The Hindu Marriage Act's grounds for divorce — cruelty, desertion, adultery, conversion, unsoundness of mind, and the rest — are available to husband and wife alike, as is the remedy of restitution of conjugal rights, which either spouse may seek where the other has withdrawn from the society of the petitioner without reasonable excuse[20]. The Special Marriage Act, 1954, governing marriages solemnised outside personal law,

[17]Guardians and Wards Act, No. 8 of 1890, § 17(1), INDIA CODE (1890) (directing the court to be guided by what appears to be for the welfare of the minor).

[18]*See Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42, paras. 42–43 (India) (reaffirming that the welfare of the minor child, rather than the competing statutory rights of the parents, is the paramount consideration in custody disputes); *Vivek Singh v. Romani Singh*, (2017) 3 SCC 231, 243–44 (India) (reiterating that the welfare principle prioritises the child's best interests, growth, development and dignity over competing parental claims).

[19]Hindu Minority and Guardianship Act, No. 32 of 1956, § 6(a), INDIA CODE (1956).

[20]Hindu Marriage Act, No. 25 of 1955, §§ 9, 13(1) (India).

follows a similarly gender-neutral structure for grounds of divorce and for permanent alimony under Section 37[21]. The gender neutrality of these provisions on their face is a point in favour of the Indian statutory scheme relative to Section 498A and the Domestic Violence Act, and it illustrates that Parliament has, in other parts of matrimonial law, been perfectly capable of drafting symmetric entitlements where it judged the underlying social reality to warrant symmetry. The comparative absence of symmetry in the two areas discussed in Parts III.B and III.C above is not, therefore, a structural inevitability of Indian matrimonial legislation as a whole, but a choice specific to those two provisions, made at a particular historical moment and not since revisited.

IV. Judicial Trends: From Presumptive Protection Toward Procedural Balance

A. Arnesh Kumar and the Problem of Automatic Arrest

The most significant judicial intervention concerning the operation of Section 498A came in Arnesh Kumar v. State of Bihar, where the Supreme Court confronted data showing that a very high proportion of persons arrested under the provision were never ultimately convicted, and that arrest under the section had, in a substantial number of cases, become a matter of course upon the lodging of a complaint rather than a considered exercise of police discretion[22]. The Court held that arrest for an offence punishable with imprisonment of up to seven years, of which Section 498A is one, could not be automatic, and it directed police officers to record reasons in writing for both making and not making an arrest, and directed Magistrates to similarly record reasons before authorising further detention, failing which the concerned police officer and Magistrate would be liable to departmental action and contempt proceedings respectively[23]. The Court was careful to frame its directions in due-process terms applicable to any offence carrying comparable punishment, rather than as a substantive dilution of Section 498A's protective purpose, and it expressly noted that its concern was with arbitrary and mechanical use of the power of arrest, not with the underlying gravity of the offence when genuinely established.

[21]Special Marriage Act, No. 43 of 1954, §§ 27, 37, INDIA CODE (1954).
[22]*See Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, 276–77 (India)
[23]*Id.* at 277 (India).

B. Rajesh Sharma, Family Welfare Committees, and Their Subsequent Modification

A further, more contested intervention came in Rajesh Sharma v. State of Uttar Pradesh, where the Court, expressing concern about the misuse of Section 498A to rope in distant relatives and to pressure husbands and their families toward settlement, directed the constitution of Family Welfare Committees in every district to screen complaints before arrest could follow[24]. This direction proved controversial precisely because it inserted an additional, judicially created layer of screening — staffed by persons without a defined statutory mandate or accountability structure — between a complainant and the ordinary criminal process, a structure that women's rights organisations argued imposed a burden on genuine complainants that Parliament had never enacted and that risked delaying protection in cases of real and urgent danger. The Court itself substantially reconsidered this direction the following year in Social Action Forum for Manav Adhikar v. Union of India, recalling the Family Welfare Committee direction as unwarranted and beyond the Court's function of interpreting rather than legislating, while retaining and reaffirming the core Arnesh Kumar safeguards against mechanical arrest[25]. The sequence of Rajesh Sharma followed by its partial reversal in Social Action Forum is itself instructive: it shows a judiciary genuinely attentive to concerns about misuse, but also self-correcting when a particular remedy for that concern threatened to under-protect genuine complainants, an oscillation that reflects the underlying difficulty of calibrating a single procedural rule to a population of complaints that includes both the genuine and, in some proportion that remains empirically contested, the exaggerated or fabricated.

C. Preeti Gupta and the Problem of Omnibus Allegations

In Preeti Gupta v. State of Jharkhand, the Court addressed a related but distinct concern: the tendency, documented across a large number of Section 498A complaints, to name not only the husband but his parents, siblings and even more distant relatives in a single, general and undifferentiated allegation of cruelty, without specifying which relative did what and when[26].

[24]*See Rajesh Sharma v. State of Uttar Pradesh, (2018) 10 SCC 472, 482–84 (India) (recognising concerns regarding the misuse of Section 498A of the Indian Penal Code and issuing procedural directions intended to prevent unnecessary arrests and the unwarranted implication of family members in matrimonial cases).*

[25]*See Social Action Forum for Manav Adhikar v. Union of India*, (2018) 10 SCC 443, paras. 35–36 (India) (modifying the directions issued in *Rajesh Sharma v. State of Uttar Pradesh* concerning Section 498A of the Indian Penal Code, including the Family Welfare Committee mechanism, while emphasising that safeguards against unnecessary arrests must operate consistently with the law and the protection of women subjected to cruelty).

[26]*See Preeti Gupta v. State of Jharkhand*, (2010) 7 SCC 667, 676–77 (India) (emphasising the need for careful scrutiny of matrimonial complaints under Section 498A of the Indian Penal Code, particularly where general and

The Court observed that such omnibus complaints, while not necessarily false, warranted careful judicial scrutiny before criminal proceedings were allowed to continue against relatives whose specific role in the alleged cruelty was never particularised, and it cautioned trial courts against a mechanical continuation of prosecution against every named relative regardless of the specificity of the allegation against each. This line of authority addresses a genuine due-process concern distinct from, though related to, the arrest-related concerns in Arnesh Kumar: even where a complaint is entirely genuine as against the husband, its extension to an undifferentiated set of relatives can visit the burdens of criminal prosecution — reputational harm, legal costs, the anxiety of pending proceedings — on persons whose actual culpability the complaint itself never specifies.

D. What the Data Actually Show

It is important, in a paper aiming at balance, to be precise about what the available data do and do not establish. National Crime Records Bureau statistics on Section 498A show conviction rates considerably lower than the rate for the Indian Penal Code as a whole, a pattern the Court in Arnesh Kumar treated as indicative of a problem[27]. A low conviction rate is, however, consistent with several different explanations that the raw statistic alone cannot distinguish: it is consistent with a significant incidence of false or exaggerated complaints, but it is equally consistent with genuine complainants withdrawing or settling cases under social and familial pressure to preserve the marriage or avoid social stigma, with the general slowness and evidentiary difficulty of proving cruelty occurring within the privacy of a domestic relationship, and with systemic delays in the criminal justice process of the kind discussed in the broader access-to-justice literature. Responsible legal scholarship, including this paper, should therefore treat the low conviction rate as a signal warranting the kind of procedural safeguards the Court has introduced, rather than as direct proof of a particular rate of false complaints, a distinction that has not always been observed with equal care in either advocacy for husbands' rights or in defences of the provision's current form.

E. Law Commission and Committee Recommendations for Statutory Amendment

omnibus allegations are made against relatives of the husband who reside separately or have little involvement in the matrimonial household).

[27]Nat'l Crime Records Bureau, Ministry of Home Affairs, Gov't of India, Crime in India 2023, 2, tbl. 5, 15,(2025), https://www.data.gov.in/catalog/crime-india-2023 (last visited Oct. 21, 2026) https://data.opencity.in/dataset/40449a25-7fb3-4e38-91b9-f834af6078e2/resource/7ac7f9fc-7567-4c5d-8a24-9777b9f47519/download/cb95d6e0-f96a-41df-80c0-92ab2fbd74f5

Parallel to the judicial developments traced above, several official committees have examined whether Section 498A itself should be legislatively amended, most notably to make the offence compoundable with the leave of the court or bailable in the first instance, so as to reduce reliance on judicially improvised safeguards of the kind seen in Arnesh Kumar and Rajesh Sharma. The Committee on Reforms of Criminal Justice System, chaired by Justice V.S. Malimath, recommended in 2003 that Section 498A be made compoundable to allow genuinely reconciled couples to withdraw proceedings without the cumbersome quashing process currently required, while also recommending that the offence remain non-bailable given the seriousness of the underlying conduct it addresses[28]. The Law Commission of India, in its 243rd Report, considered and ultimately declined to recommend making Section 498A compoundable or bailable as a matter of course, reasoning that the underlying offence remained too serious to dilute in this manner, though it did recommend procedural improvements broadly consistent with the safeguards the Supreme Court itself later developed in Arnesh Kumar[29]. The persistence of this debate across two decades of committee deliberation, without legislative resolution either way, is itself evidence that the underlying policy question is neither frivolous nor easily settled, and that the judiciary's own procedural interventions have, to a considerable extent, filled a gap that the political branches have found difficult to close through direct legislative amendment.

V. Areas Where Husbands' Entitlements Remain Underdeveloped

A. The Absence of a Gender-Neutral Domestic Violence Remedy

The clearest statutory asymmetry identified in Part III is the complete absence, under the Domestic Violence Act, 2005, of any civil protective remedy for a husband who experiences violence at the hands of his wife. A husband in this position is not without any legal recourse whatsoever — he may lodge a police complaint for offences under the general provisions of the Indian Penal Code covering assault or hurt, and he may seek judicial separation or divorce on the ground of cruelty under the Hindu Marriage Act or the corresponding provision in his

[28]Comm. on Reforms of Criminal Justice Sys., Report, vol. I, ch. 16 (Ministry of Home Affairs, Gov't of India 2003) (commonly known as the Malimath Committee Report).

[29]Law Comm'n of India, Section 498A IPC, Report No. 243, at 14–16 (Aug. 2012) (discussing the Commission's approach to alleged misuse of Section 498A, while emphasizing that misuse alone is not a ground for repeal and that the provision's protective purpose must be preserved).

applicable personal law[30] — but he has no access to the specific, relatively low-cost, low-formality civil remedy structure of protection orders, residence orders and Protection Officer assistance that the 2005 Act creates for wives. Whether this gap should be closed through a wholly new gender-neutral domestic violence statute, through amendment of the existing Act's definitions, or left as it is on the ground that the underlying incidence of severe domestic violence remains overwhelmingly directed at women, is a genuinely contested policy question "that this paper returns to in Parts VII and VIII"; what can be said with more confidence is that the gap exists as a matter of statutory text and has been acknowledged as such even by courts otherwise unwilling to read the existing Act more broadly than its language permits[31].

B. Maintenance Asymmetry in a Changing Economic Context

The narrow gateway to maintenance for husbands under Section 125 of the Code of Criminal Procedure — available only where the husband is unable to maintain himself owing to physical or mental disability — sits increasingly uneasily alongside the reality of dual-income marriages in which a wife's earnings may substantially exceed a husband's, particularly among urban, professionally employed couples. The gender-neutral language of Sections 24 and 25 of the Hindu Marriage Act provides a partial correction for Hindu husbands, but the continuing rarity of successful maintenance claims by husbands under even this gender-neutral provision, combined with the complete absence of a comparable gender-neutral pathway for a husband seeking interim maintenance under Section 125 itself, means that a husband who is, in the specific economic circumstances of his marriage, the financially weaker party has meaningfully less statutory recourse than a wife in the same factual position would have. This is precisely the kind of gap that Part II's substantive-equality framework suggests deserves legislative attention: the assumption underlying Section 125's asymmetric drafting — that the husband is, categorically, the party with the capacity to pay — no longer holds uniformly across contemporary Indian marriages, even though it continues to hold as a broad demographic pattern.

C. The Consequences of Prolonged, Ultimately Unsubstantiated Prosecution

[30]Hindu Marriage Act, No. 25 of 1955, § 13(1)(ia) (India) (recognizing cruelty as a ground for divorce upon a petition by either the husband or the wife).
[31]Hiral P. Harsora, (2016) 10 SCC 165, supra.

A further and less frequently examined gap concerns what happens to a husband, and to relatives named alongside him, after a Section 498A complaint is ultimately found to be unsubstantiated, whether through acquittal, discharge, or withdrawal. Indian criminal procedure provides no meaningful civil remedy specifically calibrated to compensate a person for the reputational, professional and psychological harm of having been prosecuted, often for years, on an allegation a court later finds unproven; the general law of malicious prosecution exists in principle but is rarely and difficultly invoked in the specific context of matrimonial cruelty complaints, given the practical and evidentiary difficulty of proving that a complaint was not merely unsuccessful but was made maliciously and without probable cause[32]. The absence of a workable remedy in this specific context means that the burden of a proceeding that is ultimately found groundless falls entirely, and without compensation, on the person who was prosecuted, a burden that is asymmetric in the sense that no equivalent burden falls on a complainant whose allegation is not established, since Indian law is, again for understandable reasons connected to the risk of deterring genuine complainants, cautious about penalising unsuccessful complaints of this kind as though they were themselves criminal.

D. Mental Health and the Silence Around Male Marital Distress

Beyond formal legal entitlements, a body of public health and criminological data has drawn attention to elevated rates of suicide among married men relative to married women in several Indian states, with family and marital problems cited as a contributing factor in a meaningful proportion of these cases according to National Crime Records Bureau accidental deaths and suicides data[33]. This data does not, by itself, establish a causal link to matrimonial litigation specifically, and it must be interpreted cautiously given the many confounding social and economic pressures bound up with the broader category of "family problems." It is nonetheless a relevant data point for a paper concerned with the human rights dimension of husbands' position in matrimonial disputes, since it suggests that the psychological burden of marital conflict and litigation on men is a real, if under-studied and under-resourced, social welfare

[32]*See generally West Bengal State Electricity Board v. Dilip Kumar Ray*, (2007) 14 SCC 568, 579–80 (India) (explaining the essential elements of malicious prosecution, including malice, absence of reasonable and probable cause, favourable termination of the proceedings, and resulting damage; emphasising that the plaintiff must establish the absence of reasonable and probable cause and malice).

[33]Nat'l Crime Records Bureau, Ministry of Home Affairs, Gov't of India, *Accidental Deaths & Suicides in India 2023*, tbl 7 (2025), https://www.data.gov.in/catalog/accidental-deaths-suicides-india-adsi-2023 (last visited Oct. 21, 2026) (archived at [Perma.cc URL to be added after archiving]).

concern that existing legal and counselling infrastructure — oriented historically, and for good reason, toward supporting wives — has not been equally designed to address.

E. The Special Case of Non-Hindu Husbands

The partial correction available to Hindu husbands through the gender-neutral maintenance provisions of the Hindu Marriage Act, discussed in Part V.B, is not uniformly available across India's religiously plural personal law framework. “Muslim marriages are governed principally by uncodified personal law and, for divorced women, by the Muslim Women (Protection of Rights on Divorce) Act, 1986” and by uncodified personal law, neither of which contains a provision directly comparable to Sections 24 and 25 of the Hindu Marriage Act allowing a husband to claim maintenance from a wife of independent means[34]. Christian matrimonial matters, governed by the Indian Divorce Act, 1869 as amended, provide alimony provisions historically drafted with a wife as the presumed recipient, though subsequent amendment has introduced a degree of gender-neutral language in places[35]. The result is that a husband's practical ability to seek maintenance from an economically independent wife varies considerably depending on which personal law governs his marriage, a further layer of inconsistency that compounds the sex-based asymmetry already discussed and that any legislative reform along the lines proposed in Part VIII should address uniformly across religious communities rather than piecemeal.

VI. Comparative Perspectives

Several jurisdictions have moved toward explicitly gender-neutral drafting of domestic violence law, offering a useful point of comparison for the gap identified in Part V.A. The United Kingdom's Domestic Abuse Act 2021 defines domestic abuse by reference to the nature of the conduct and the relationship between the parties, without confining the protected class to women, so that a husband subjected to abusive conduct by a wife is, on the face of the statute, entitled to exactly the same protective orders as a wife would be[36]. Several Australian states and Canadian provinces have similarly adopted gender-neutral statutory definitions of family violence, coupled with risk-assessment frameworks intended to ensure that, notwithstanding

[34]See Muslim Women (Protection of Rights on Divorce) Act, No. 25 of 1986, INDIA CODE (1986) (addressing maintenance obligations owed by a husband to a divorced wife, without a reciprocal provision).
[35]Indian Divorce Act, No. 4 of 1869, § 37, INDIA CODE (1869, as amended by Act No. 51 of 2001).
[36]Domestic Abuse Act 2021, c. 17, §§ 1–2 (UK), https://www.legislation.gov.uk/ukpga/2021/17/contents (defining domestic abuse and identifying the categories of persons who are “personally connected”).

the neutral drafting, resource allocation and judicial attention continue to track the actual, still heavily gendered, distribution of severe and repeated domestic violence[37]. These examples suggest that gender-neutral drafting and continued substantive attentiveness to the gendered pattern of severe domestic violence are not mutually exclusive design choices; a statute can extend a remedy to husbands in principle while risk-assessment guidance, resource allocation and judicial training continue to reflect the demographic reality that women remain the more frequent and more severely affected complainant group.

On custody, most common law jurisdictions comparable to India have moved further than Indian law currently has toward a purely welfare-based standard without even a rebuttable statutory presumption tied to the age of the child, relying instead on statutory checklists of factors — the child's wishes where age-appropriate, each parent's capacity to meet the child's needs, the desirability of continuity, and the effect of any family violence — that make no reference to the sex of either parent[38]. India's retention of a specific age-based maternal presumption under Section 6 of the Hindu Minority and Guardianship Act, even though rebuttable, sits somewhat apart from this comparative trend, and its retention or removal is a legitimate subject for legislative reconsideration distinct from, though related to, the criminal-law concerns discussed in Parts IV and V.

A final comparative point concerns the institutional response to false or exaggerated complaints, an area in which several jurisdictions have adopted approaches distinct from India's current, largely case-by-case judicial handling of the issue through decisions such as Preeti Gupta. Some Canadian provinces and several U.S. states permit a court, on a specific finding that a protective order application was made in bad faith, to award costs against the applicant or to note the finding in the record for the purposes of any subsequent custody determination, without thereby criminalising the act of filing an unsuccessful application as such[39]. This kind of graduated, civil consequence — falling short of criminal liability but still imposing a real cost on a demonstrably bad-faith application — offers a possible middle path between India's

[37]Family Law Act 1975 (Cth) § 4AB (Austl.) (defining family violence to include physical, sexual, emotional and economic abuse, as well as threatening or coercive behaviour). Family Law Act, S.B.C. 2011, c. 25, § 1 (Can.) (defining “family violence” to include physical, sexual, psychological and emotional abuse, including intimidation, harassment, coercion and restrictions on personal or financial autonomy).

[38]See, e.g., Children Act 1989, c. 41, § 1(3) (UK) (the welfare checklist, containing no reference to the age-based maternal presumption found in Indian law); Family Law Act 1975 (Cth) § 60CC (Austl.) (a comparable, sex-neutral welfare checklist).

[39]See, e.g., Family Law Act, R.S.B.C. 2011, c. 25, § 213 (Can.) (costs provisions applicable where an application is found to have been made in bad faith); Cal. Fam. Code § 6341 (allowing a court to consider the making of a false report in a subsequent custody determination).

current position, in which an unsuccessful complaint typically carries no formal consequence at all for the complainant, and a more punitive approach that risks deterring genuine complainants from coming forward for fear of being penalised if their case is not ultimately proven to the requisite standard.

VII. The Counter-Perspective: Why Caution Against Overcorrection Remains Warranted

A balanced treatment of this subject requires taking seriously the strongest reasons for caution against the kind of reconsideration this paper has been describing, and several deserve explicit statement. First, the underlying incidence of severe domestic violence, dowry harassment and dowry death in India remains, by every available measure, heavily and disproportionately directed at wives rather than husbands, and National Crime Records Bureau data on dowry deaths and cruelty by husband or relatives continues to record tens of thousands of cases annually, a pattern that has not meaningfully reversed even as concerns about misuse of Section 498A have grown[40]. Any reform that dilutes the practical accessibility of these provisions risks discouraging genuine complainants — who already face significant social, familial and economic pressure not to report — from coming forward at all, an outcome considerably more costly, in human terms, than the burden imposed on a husband or relative who is ultimately, after due process, cleared of an unsubstantiated allegation.

Second, women's rights organisations and several scholars have pointed out that the very Family Welfare Committee mechanism introduced in Rajesh Sharma and later withdrawn in Social Action Forum illustrates the risk that procedural safeguards designed to address misuse can, if poorly calibrated, delay or dilute protection for genuine complainants at precisely the moment — often shortly after a complaint is filed — when the risk of retaliatory violence or pressure to withdraw is highest[41]. Third, underreporting rather than over-reporting remains, on most available survey evidence, the more significant measurement problem in Indian domestic violence data as a whole, since a large proportion of women who report experiencing physical or sexual violence from a spouse in confidential household surveys never file any formal police

[40]Nat'l Crime Records Bureau, Ministry of Home Affairs, Gov't of India, *Crime in India 2023*, vol. I, tbl. 1A.4, at 14, 55 (2025), https://www.ncrb.gov.in/uploads/files/1CrimeinIndia2023PartI1.pdf (last visited Oct. 21, 2026).

[41]See Social Action Forum for Manav Adhikar v. Union of India, (2018) 10 SCC 443, ¶¶ 18, 38 (India) (holding that the Family Welfare Committee mechanism introduced in Rajesh Sharma v. State of Uttar Pradesh was impermissible because the committees' prescribed functions exceeded the statutory framework of the Code of Criminal Procedure).

or legal complaint at all[42], a pattern that should caution against inferring, from a low conviction rate under Section 498A alone, that the underlying legal framework as a whole is systematically overprotective of wives.

These considerations do not, in this paper's view, defeat the more targeted proposals advanced in Part V — a gender-neutral civil remedy for domestic violence coexisting with continued attentiveness to the gendered pattern of severe abuse, a broader maintenance gateway calibrated to actual capacity rather than fixed sex-based assumptions, and closer judicial scrutiny of omnibus allegations against distant relatives. But they do counsel against any reform that would weaken the substantive protections wives currently have, or that would treat the documented problem of misuse as though it were comparable in scale to the documented and continuing problem of under-protection that the original 1983 and 2005 legislation was enacted to address.

Third, it is worth noting that several of the specific gaps identified in Part V are more readily addressed through incremental, carefully bounded reform than through any wholesale rebalancing of matrimonial law, and the recommendations in Part VIII are deliberately framed in these incremental terms rather than as a general call to weaken existing protections. A gender-neutral maintenance gateway calibrated to actual income and capacity, for instance, does not reduce a wife's existing entitlement in any case where she remains the economically dependent spouse; it simply extends the same capacity-based logic to the smaller, but real, set of cases in which the husband is the dependent party. Framed this way, the reforms proposed in this paper are better understood as completing the logic of substantive equality that Article 15(3) itself was designed to advance, rather than as working against it.

VIII. Recommendations

A. A Gender-Neutral Civil Remedy for Domestic Violence

Parliament should consider a gender-neutral civil protective order remedy, either as a stand-alone statute or as a carefully drafted amendment to the existing Domestic Violence Act's definitions, available to any spouse subjected to physical, emotional or economic abuse, while retaining specific provisions — of the kind found in the Australian and Canadian statutes discussed in Part VI — directing courts and Protection Officers to apply a risk-assessment

[42]See, e.g., Int'l Inst. for Population Sciences & ICF, National Family Health Survey (NFHS-5), 2019-21 (India), reporting the proportion of ever-married women aged 18-49 who have experienced spousal violence and the much smaller proportion who sought help from any source.

framework attentive to the continuing, disproportionate incidence of severe violence against wives, so that gender-neutral eligibility does not translate into an equalisation of resources or judicial attention that the underlying pattern of harm does not warrant.

B. Calibrating Maintenance to Capacity Rather Than Sex

Section 125 of the Code of Criminal Procedure should be amended to allow either spouse to claim interim maintenance from the other based on relative income and capacity to pay, removing the current requirement that a husband show physical or mental incapacity as a precondition, while leaving courts free, as they already are under the existing gender-neutral provisions of the Hindu Marriage Act, to weigh the realistic economic disparity between the parties in each case rather than applying a formal, sex-based threshold.

C. Institutionalising, Rather Than Abandoning, Screening Safeguards

Rather than reverting entirely to the pre-Arnesh Kumar position or reviving an ad hoc, judicially created committee structure of the kind recalled in Social Action Forum, Parliament should consider placing the substance of the Arnesh Kumar safeguards — recorded reasons for arrest, a preliminary assessment of the specificity of allegations against each named relative along the lines suggested in Preeti Gupta — on a statutory footing, so that these safeguards do not depend on the continued vitality of a particular judicial precedent and are administered by police and magistracy through the ordinary criminal process rather than through a parallel committee structure that women's rights organisations have credibly argued introduces its own delay.

D. Reconsidering the Age-Based Custody Presumption

Section 6 of the Hindu Minority and Guardianship Act's age-based maternal presumption should be reconsidered in favour of a purely welfare-based statutory checklist along the lines of comparable UK and Australian legislation, which would remove a specific point of sex-based differentiation from custody law without in any way weakening the underlying and undisputed principle that the welfare of the child, not the entitlement of either parent, remains the touchstone of every custody determination.

E. Better Data as a Precondition for Further Reform

Finally, much of the debate addressed in this paper is hampered by the absence of granular, published data distinguishing complaints that are withdrawn or settled for social reasons from those that are found, after investigation, to be unsubstantiated on the merits, and by the absence of any systematic data on the outcomes of maintenance claims brought by husbands under the existing gender-neutral provisions. The National Crime Records Bureau and the National Judicial Data Grid, discussed in the access-to-justice literature more broadly, should be extended to capture this level of disaggregation, since responsible legislative calibration of the balance this paper has been describing depends on data considerably more precise than the aggregate conviction-rate statistics currently available.

F. Recognising Psychological Support Infrastructure Alongside Legal Reform

Given the mental health data discussed in Part V.D, legal reform alone is unlikely to be a complete response to the human costs of prolonged matrimonial conflict for either spouse. Family Courts established under the Family Courts Act, 1984 already contemplate the involvement of marriage counsellors as part of the conciliation process required before a contested matrimonial matter proceeds to trial[43], but the availability, training and gender-sensitivity of these counselling services vary considerably across districts, and their capacity has not expanded in proportion to the caseload increases documented in the pendency literature. Strengthening the counselling and conciliation infrastructure that Family Courts already have a statutory mandate to provide, and ensuring that this infrastructure is genuinely accessible to husbands as well as wives, would complement the more purely legal reforms recommended above without requiring any new legislative intervention.

IX. Conclusion

Human rights and gender equality in the matrimonial context have, in India, been built almost entirely around the historically accurate recognition that wives have needed, and continue to need, protection that husbands as a class have not needed in the same form or to the same degree. Nothing in this paper disputes that continuing need, and nothing in it should be read as minimising the seriousness of dowry harassment, domestic violence or desertion directed at wives, which remain documented, serious and insufficiently remedied problems in their own

[43]Family Courts Act, No. 66 of 1984, § 5 (India) (authorizing State Governments, in consultation with the High Court, to provide for the association of social welfare institutions, family-welfare professionals, and other appropriate persons with Family Courts)

right. But equality before the law, properly understood in its substantive rather than merely formal sense, requires periodic reassessment of whether a given legal differentiation continues to track the disadvantage it was designed to correct, and this paper has identified specific areas — the absence of any civil domestic violence remedy for husbands, an unduly narrow maintenance gateway tied to sex rather than capacity, the absence of a workable remedy for prolonged and ultimately unsubstantiated prosecution, and a custody presumption that sits apart from comparative best practice — where that reassessment is overdue. Reconsidering husbands' rights in matrimonial disputes, approached with the balance this paper has tried to maintain, is not a project in tension with gender equality; it is, properly framed, an application of the same equality principle in a context where its full implications have not yet been worked out.