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**Editor-In- Chief**

**Dr. Viral Dave**

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KES' Shri. Jayantilal H. Patel Law College, Mumbai

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## 1. SOCIAL JUSTICE AND EMPOWERMENT

**Miithrra Mohan**

*Saraswathy Law College, Tindivanam*

### Introduction

Human rights are universal entitlements that are essential for preserving human dignity and freedom. These rights encompass civil, political, economic, social, and cultural dimensions, all of which governments and institutions are obligated to protect and uphold. Social justice, on the other hand, embodies the principle of fairness within societal structures, ensuring that all individuals, irrespective of their background, have equitable access to resources, opportunities, and rights. The United Nations defines human rights as "rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status"<sup>1</sup>. Social justice is described as "the equitable distribution of opportunities, rights, and resources within a society, aimed at reducing inequality and promoting fairness" (Pankaj, 2013, p. 112)<sup>2</sup>. Dr. B.R. Ambedkar's work and teachings continue to inspire movements for social justice, establishing him as a central figure in India's modern history and a global icon for human rights. His vision of social justice extended across economic, political, and social realms, as he contended that true democracy can only be realized through the upliftment of all citizens. His legacy remains pivotal in ongoing discussions surrounding equality and justice in India<sup>3</sup>. Dr. Ambedkar's concept of equity was rooted in the aspiration to create a just society that offers equal opportunities and dignity to all individuals, regardless of caste, class, or gender. He championed substantive equality, addressing the unique disadvantages faced by marginalized communities—particularly Dalits—to ensure they had the same opportunities as others. In our brief study of social justice and empowerment, we will be studying about IDPs (Internally Displaced Persons)<sup>4</sup>.

### Literature on Internally Displaced Persons (IDPs)

Internally Displaced Persons (IDPs) are individuals who have been uprooted from their homes yet remain within the borders of their own countries. According to the United Nations High Commissioner for Refugees (UNHCR), these individuals are often compelled to flee due to armed conflict, widespread violence, egregious human rights violations, or the catastrophic consequences of natural and human-made disasters. By 2024, a staggering 72.1 million IDPs exist globally, with 48 million displaced as a direct result of conflict and violence. This number tells a harrowing story of suffering and survival, highlighting the urgent need for attention and action. In India alone, approximately 613,000 individuals find themselves in this precarious situation, and by December 2023, the number of those displaced by violence had swelled to an alarming 68.3 million.<sup>5</sup>

The plight of IDPs is a complex tapestry of personal, political, and social challenges. Their stories often encapsulate a loss of home and community, a shattering of security and stability. IDPs are not merely statistics; they are mothers, fathers, children, and elders whose lives have been irrevocably

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<sup>1</sup> "Mandal. S. (2017). Page 78."

<sup>2</sup> <https://pwnlyias.com/ncert-notes/social-justice-principles/>

<sup>3</sup> <https://ambedkarinsights.com/ambedkar-thoughts-on-social-justice/>

<sup>4</sup> <https://politicaqna.com/dr-b-r-ambedkars-views-on-indian-constitution/>

<sup>5</sup> <https://www.unhcr.org/in/about-unhcr/who-we-protect/internally-displaced-people>



altered. The struggles they face—often in silence—are profoundly tied to broader themes of justice, rights, and dignity.<sup>6</sup>

IDPs can be classified into distinct categories based on the reasons for their displacement. This classification not only sheds light on their diverse experiences but also calls for tailored responses to meet their unique needs:

1) Natural Disasters:

Individuals forced from their homes due to devastating events such as earthquakes, floods, and other natural calamities often find themselves abandoned by systems that should protect them<sup>7</sup>. The aftermath of such disasters leaves families disoriented and vulnerable, grappling with the loss of loved ones, property, and community support networks.

2) Development Projects:

Those displaced by state-sanctioned initiatives, such as the construction of dams, roads, or urban development projects. In India, these individuals are somewhat protected under the Land Acquisition Act of 2013 and the Disaster Management Act of 2005<sup>8</sup>. While these laws aim to provide some measure of protection, the reality on the ground often differs, leaving many to navigate bureaucratic red tape in their quest for justice and restitution.

3) Conflict and Violence:

Unfortunately, this group lacks specific legal protections within the Indian framework, leaving them vulnerable and without recourse. The trauma of fleeing violence is compounded by the absence of appropriate legal channels to address their grievances. This systemic neglect exacerbates their suffering and reinforces their marginalization in an already precarious society<sup>9</sup>.

### Categories of IDPs:

- Internally displaced citizens of the nation in question, often longing for a return to normalcy.
- Refugees who have returned but find themselves unable to access their former homes or secure a sustainable solution elsewhere in the country, facing stigma and hostility upon re-entry.
- Stateless persons who have established habitual residence within the nation, navigating the complexities of identity and belonging.
- Long-term residents from other countries, having lived in their host nations for generations, who largely sever connections with their homeland, enduring the pain of cultural dislocation.
- Foreign nationals residing in the country for extended periods, grappling with their unique vulnerabilities amid the turmoil surrounding them.

### Objectives and Aims

The exploration of IDP issues embodies a profound commitment to understanding and addressing the myriad challenges faced by these individuals. Key objectives include:

1. Uncovering the significance and issues confronting displaced persons, highlighting their resilience in the face of adversity and the inherent dignity that must be recognized.

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<sup>6</sup> Internally Displaced Persons: A Vulnerable Group in Need of Protection by Cristina Churrua Muguruza and Patricia García Amado

<sup>7</sup> Climate Change and Natural Disasters Displace Millions, Affect Migration Flows by Liz Heimann December 10, 2015

<sup>8</sup> Development-Induced Displacement: Legal and Human Rights Perspectives by Dr. Kaumudhi Challa

<sup>9</sup> Recognizing and Breaking the Cycle of Trauma and Violence Among Resettled Refugees by Meilynn Shi, Anne Stey and Leah C Tatebe

2. Identifying tangible solutions to alleviate their suffering, emphasizing collaborative efforts between governments, NGOs, and local communities.
3. Examining the impact of protests on the fundamental rights of IDPs, allowing for a deeper understanding of the dynamics between activism, policy change, and individual experiences.
4. Investigating the inner strengths that empower IDPs to adapt and work in diverse environments, often nurturing a deep sense of community and support among displaced populations.
5. Analysing the myriad challenges, they face and the protections that ought to be accorded to them, shedding light on the gaps in existing frameworks and policies.
6. Ensuring the inviolability of their rights under all circumstances, pushing for a more just and equitable treatment of IDPs.
7. Demystifying the criminal procedures and protections available to IDPs, empowering them with knowledge of their rights and potential avenues for recourse.

### **Hypothesis**

Providing holistic socio-economic support (education, healthcare, employment) for internally displaced persons significantly enhances their quality of life and integration into host communities. Grounded in social justice theories, this multi-disciplinary approach underscores the necessity of comprehensive services to foster empowerment and societal equity, informing policies to improve the lives of displaced individuals.

### **Research Questions**

Pivotal questions emerge in the quest to understand and support IDPs:

1. Is there an urgent need for the robust protection of their rights? The answer is a resounding yes, as the rights of IDPs remain grossly overlooked in many contexts.
2. Why do IDPs constitute one of the most vulnerable groups in society? Understanding the layers of vulnerability can inform more effective interventions.
3. Are there national organisations devoted to defending their rights? Highlighting successful initiatives can galvanize support and inspire action.
4. What factors expose them to chronic abuse and discrimination, and what measures have been implemented by authorities to combat these issues? A critical investigation into systemic root causes can lead to significant policy changes.
5. How can central and state governments better enforce protective measures to ensure that the rights and freedoms of these individuals are upheld? This question calls for a multidimensional approach that emphasizes accountability and community engagement.

### **Methodologies for Addressing the Needs of Internally Displaced Persons**

Addressing the needs of internally displaced persons (IDPs) requires a comprehensive and human-centred approach to ensure their protection, well-being, and long-term stability.

1. **Protection and Assistance:** The immediate priority is to provide essential services such as shelter, food, water, healthcare, and education. It is crucial to safeguard the rights of IDPs and prevent further displacement, ensuring their safety and dignity.
2. **Durable Solutions:** To help IDPs rebuild their lives, we focus on three primary pathways:
  - **Return to Place of Origin:** Supporting IDPs in safely and voluntarily returning to their homes.
  - **Local Integration:** Assisting IDPs in becoming part of the communities where they have sought refuge.

- **Resettlement in Another Part of the Country:** Helping IDPs relocate to other areas within the country where they can find stability and security.
- 3. **Livelihood Support:** Promoting self-reliance through vocational training, skills development, and income-generating activities. This empowers IDPs to become economically stable and contribute to their host communities.
- 4. **Community Mobilization:** Involving IDPs in decision-making processes and community activities to foster a sense of belonging and empowerment. This participatory approach enhances the effectiveness of interventions and promotes social cohesion.
- 5. **Legal and Policy Frameworks:** Establishing and enforcing laws and policies that protect the rights of IDPs. National legal frameworks should align with international standards to ensure IDPs have access to services and opportunities for durable solutions.
- 6. **Monitoring and Evaluation:** Continuously assessing the situation of IDPs to ensure their needs are being met and interventions are effective. Regular data collection, analysis, and reporting help inform policy and program adjustments, ensuring accountability and transparency.

By adopting these methodologies, we can address both the immediate needs and long-term well-being of IDPs, ensuring their dignity and rights are upheld.

### Scope of IDPs

The humanitarian impact of displacement is profound and far-reaching, with fundamental needs for safety, sustenance, and education often tragically overlooked. The echoes of displacement reverberate throughout communities, influencing not only those who are displaced but also the societies that host them<sup>10</sup>.

#### Employment Challenges:

IDPs frequently grapple with significant barriers to employment, engendering financial instability and a debilitating dependence on humanitarian aid. Their influx into host communities can place an immense strain on local resources, exacerbating competition for jobs and services. Innovative solutions, such as skills development programs, could help integrate IDPs into local economies and enhance their overall well-being.

#### Community Disruption:

Displacement disrupts the very fabric of social networks, fragmenting communities and impeding social cohesion, thereby undermining the resilience that binds them together. The loss of familiar environments can lead to feelings of isolation and hopelessness; therefore, fostering community spirit and support through local initiatives is crucial.

#### Psychological Effects:

The trauma associated with displacement inflicts profound psychological distress, leading to experiences of trauma, peer pressure, and a painful loss of identity for many individuals. This psychological landscape necessitates comprehensive support services, including mental health resources and community counselling initiatives, to assist IDPs in healing and rebuilding their lives.

### Guiding Principles for IDPs

The Guiding Principles on internal displacement offer a lifeline, addressing the unique needs of IDPs on a global scale. These principles articulate the rights and guarantees essential for safeguarding

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<sup>10</sup> <https://www.unrefugees.org/news/six-humanitarian-crises-that-impacted-refugees-and-displaced-communities-in-2023/>

individuals from forced displacement, ensuring appropriate assistance during their displacement, and facilitating their reintegration and resettlement<sup>11</sup>.

These Principles are firmly rooted in international human rights standards and humanitarian law, serving as a vital framework to guide:

1. The Representative of the Secretary-General on IDPs in fulfilling their mandate.
2. States confronting the complex realities of internal displacement, advocating for policy changes that prioritize the rights and needs of IDPs.
3. Authorities and organizations — both governmental and non-governmental — that engage with IDPs, fostering relationships grounded in respect and support. Collaborations can amplify the voices of the displaced and lead to meaningful change.

The implementation of these guiding principles must also be accompanied by robust monitoring mechanisms to ensure accountability. This involves empowering local communities to participate in oversight processes, ensuring that their voices are heard in discussions shaping policies and practices that directly impact their lives<sup>12</sup>.

## Conclusion

This comprehensive overview of IDPs shines a light on the multifaceted challenges they face, underscoring the urgent need for tailored, impactful approaches to protect their rights and improve their living conditions. By aligning policy with humanitarian efforts, we can catalyse transformative change, ensuring that the rights and dignity of internally displaced persons are upheld and celebrated. The journey toward restoring stability and dignity for IDPs is not just a policy issue; it is a deeply ethical imperative that calls for collective action, compassion, and a commitment to justice.

In advocating for IDPs, we advocate for our shared humanity, recognizing the bonds that unite us regardless of borders or circumstances. The fight for justice for IDPs is a shared responsibility—one that we must shoulder, forging pathways toward a future where all individuals can enjoy the safety and security they deserve in their own homes, wherever they may be.

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## 2. EMPOWERMENT THROUGH INCLUSION: THE ROLE OF SOCIAL JUSTICE IN DISABILITY RIGHTS

**Samragyee Biswas & Nayonika Sharma**

*Kirit. P. Mehta School of Law, NMIMS*

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### **Abstract**

*Even after various Indian and global frameworks such as the UNCRPD have promoted equal rights, People with Disabilities (PWDs) still lack proper education, employment, and social inclusion. Even though there are rights for PWDs, it's a reality that they are neglected in every aspect of their life. Social justice and empowerment for these individuals should be a central global issue, which requires legal, social, and economic interventions. The Disabilities Act of 2016 defines disability as a person who has a long term physical, mental, intellectual or sensory impairment which disables his full and effective participation in society. For protecting the rights of people with disabilities (PWDs), numerous policy and legal instruments have been introduced, supported by an assortment of support structures encompassing governmental agencies, non-governmental agencies (NGOs) and assistive technology. Through the evaluation of policy-practice gaps, the research seeks to acquire insights regarding existing legal and support systems that may facilitate social justice and ensure the inclusivity of PWDs. Multiple national and international provisions have been established to ensure the inclusivity of persons with disabilities (PWDs) within the general society and cater to the challenges they encounter. Despite all these attempts, it is clear that PWDs still persist to encounter significant barriers in accessing education and employment. Until and unless the acceptance of PWDs is absent, empowerment of PWDs is just a myth. Therefore, the study also aims to concentrate on people's views towards PWDs. Apart from this, it also seeks to analyze the problems and challenges encountered by PWDs from international to Indian points of view.*

**Key words-** *Disabilities Act, Inclusivity, Discrimination, Social Justice, Challenges*

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### **Introduction**

Disability rights are synonymous with social justice since the focus is on equity, equality, and removing the roots of disadvantage. Social justice makes sure that individuals with disabilities are not only accommodated but are included and empowered to enjoy independent living. According to Convention on the Rights of Persons with Disabilities, OHCHR all human beings have a right to life per se and shall pursue all available means to guarantee its effective enjoyment for the people with disabilities on an equal footing with others. Effort needs to be concentrated on enabling specially abled individuals to take charge of their lives, make decisions on an educated basis, and fight for their rights using education, jobs, and supportive policies. Realisation of disability rights has grown from time to time, with substantial improvement through global treaties like the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and local legislations like the Americans with Disabilities Act (ADA) and the Rights of Persons with Disabilities Act, 2016 (India).

Irrespective of their current situation or their past, the idea of social justice holds that everyone deserves to be treated equally, without unjust treatment. It firmly emphasizes on removing systematic obstacles and guaranteeing that marginalized communities, such as those with disabilities, have the same access and rights as everyone else. Social justice helps to erase discrimination, improve accessibility, and ensure inclusion in every aspect of their life, such as employment, education and public engagement. which caters to the rights of the disabled people.

### **LITERATURE REVIEW**

The discourse surrounding disability rights and social justice is intricately linked to structural disparities, poverty, and socioeconomic status. The prevalence of disability is high worldwide; estimates suggest that over 750 million people, or nearly 10% of the world's population, live with a



disability. Furthermore, 80% of people with disabilities reside in low-income countries, where they have very limited access to essential services like healthcare and education. Only 2–3% of the 150 million disabled children who are thought to exist worldwide are enrolled in school in low-income nations, highlighting the significant barriers to education faced by this underprivileged group.

There are still many obstacles in the way of people with disabilities achieving full social inclusion. These barriers are being made worse by neoliberal economic institutions, which prioritize market efficiency over social justice and occasionally overlook underserved groups. As a result, deeply embedded structural disadvantages prevent people with disabilities from becoming active citizens.<sup>2</sup> Furthermore, because factors like income, education, and occupation affect one's ability to access opportunities, social contacts, and basic resources, socioeconomic status plays a significant role in social inclusion. People with disabilities are further marginalized by lower socioeconomic status, which limits their opportunities for active participation in society.<sup>3</sup>

The reciprocal relationship between poverty and disability is one of the most significant facets of disability rights. Because of inadequate housing, inadequate nutrition, and inadequate healthcare, poverty tends to result in higher rates of disability. Disability, on the other hand, may make poverty worse by limiting employment options, increasing health care expenses, and impeding educational opportunities. Special interventions are necessary to break the cycle, which further reinforces economic marginalization and social exclusion.<sup>4</sup>

Together, these studies highlight the necessity of all-encompassing policies regarding the intersection of social justice, poverty, and disability. Structural change, adherence to the law, and inclusive policy approaches that support the interests of people with disabilities—especially in low-income environments—are necessary to address these. Effective inclusion and empowerment necessitate an intersectional approach that takes systemic injustices, cultural viewpoints, and socioeconomic status into account.

## **STATEMENT OF PROBLEM**

In spite of increased awareness about disability rights and inclusion, persons with disabilities remain to experience considerable barriers to education and work. Most societies are still in need of adequate policies, facilities, and social attitudes to promote equal opportunities for persons with disabilities. Discrimination, physical and information barriers, and low levels of awareness further add to their marginalization from inclusive education and the working environment.

The study aims to investigate the perception of disability inclusion, especially in the contexts of education and work. By examining the views of people from a variety of backgrounds, this research seeks to determine dominant attitudes, areas of lack of understanding, and possible areas for reform in policies and practices. The results will serve to emphasize the degree to which disability inclusion is currently being noted and put into practice, and whether current efforts are adequate in creating a more inclusive society.

## **OBJECTIVE**

To analyze the role of social justice frame work that contribute to the empowerment of specially abled individuals.

To examine the public perception of disability rights and challenges faced by specially abled in terms of social, economic and educational inclusion.

## **Human Rights Principles on Disability**

The foundation of disability rights is formed by fundamental human rights like equality, dignity, and non-discrimination. Equal treatment and opportunities to engage in society for the PWDs are ensured by these principles.

**Equality:** According to equality, people with disabilities must have same opportunities and rights just like anyone else in the society. In order to guarantee equality in public services, employment, and education it opposes discriminatory behaviour and supports reasonable accommodation.

**Dignity:** All people deserve to be treated with respect regardless of their skills. PWDs' autonomy and agency while rejecting paternalistic attitudes of benevolence toward them as objects are ensured by this principle. Autonomy and dignity are produced by accessibility and self-determination.

### **Models of Disability**

**Medical Model:** As according to this model, disability in a person is nothing but a medical condition which should be improved or treated. As one definition goes like: disability is an abnormality or deficiency that requires medical attention rather than being a social problem. Along side with improving medical care, it has also contributed to segregationist treatment by considering disability rather than social inclusion.

**Social Model:** Social model arose as a result of shortcomings of the medical model. As per this model disability is caused by social barriers rather than personal limitations. For example, discriminatory policies and inaccessible buildings rather than their own incapacity to walk leads to a barrier for wheel chair user. This model encourages the adoption of inclusive policies and removal of obstacles in order to support people with disabilities.

**Human Rights Model:** Non-discrimination, equality and dignity are the key concepts of this model. This emphasizes PWDs' autonomy and necessity of legal protection, calling for them to have the same human rights as everyone else. Social integration and the elimination of institutional and attitudinal barriers are hugely supported by this model, which is consistent with the UNCRDP and the national disability law.

### **Barriers to Inclusion**

Even though significant advancements in disability rights it is common that people with disability face many countless barriers to their active participation in society. As a result of these barriers exclusion and discrimination continues which prevents disabled people from engaging in public spaces, social life, work and education. Overcoming such barriers is very important in order to achieve an inclusive society where people with disabilities can exercise their rights with dignity and independence.

### **Barriers to Education**

It is a right of an individual to have access to education, but people with disabilities face major significant obstacles. These obstacles are a result of discriminatory practices and structural limitations that deny equal educational opportunities to them.

It has been observed that almost all of the schools lack infrastructure and setup like ramps, elevators and assistive technologies which creates a difficulty for students with disability to enter their schools. Moreover, paucity of adequate infrastructure, inclusion of students with intellectual or sensory disabilities are not acknowledged in the curricula. Further access is disrupted because of the lack of braille texts, sign language interpreters and specialized pedagogy in schools and other educational institutions. During the process of admission in schools PWDs often feel neglected and are subjected to prejudice owing to the fact that the schools view them as liabilities or as unable of achieving academic success.

**Legal and Policy Gaps:** Although disability rights are protected by both national and international law, in reality actual progress is still hampered by shortcomings in implementation and enforcement.



**Weak Enforcement of Disability Laws:** Although laws like the Americans with Disabilities Act (ADA) in the US and the Rights of Persons with Disabilities Act (RPWD Act, 2016) in India offer legal protection, lack of enforcement allows for sporadic compliance. Employers, educational institutions, and public buildings do not implement accessibility and anti-discrimination standards due to insufficient enforcement mechanisms and a lack of accountability.

#### Inadequate Accessible Facilities in Public Areas

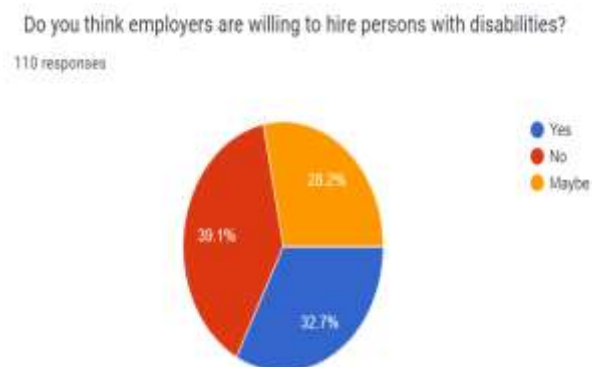
Mostly in all public areas, transit systems, and workplaces are physically inaccessible, even though accessible infrastructure is required by law. PWDs are not fully able to participate in public life because of ramp-less pavements, inaccessible public transport, and inaccessible government offices. Due to lack of awareness and resources in developing nations, the conditions are worse.

#### SAMPLE

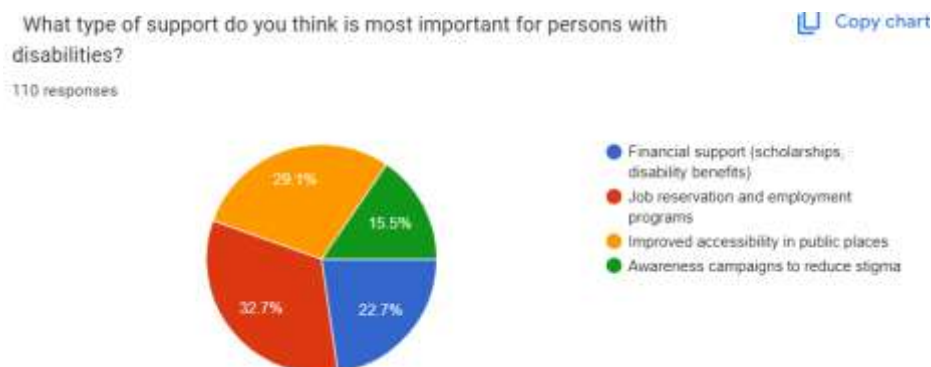
The survey was done with 110 participants to gauge public attitudes towards disability inclusion in education and employment. More than half of the respondents (50.9%) were male, with 40.9% of the respondents being female. The rest identified as other genders or did not want to provide their gender. Prompted to say if they were familiar with disability, 53.6% reported having known an individual with a disability personally, and 39.1% did not. A small percentage (7.3%) were uncertain.

#### MAJOR FINDINGS

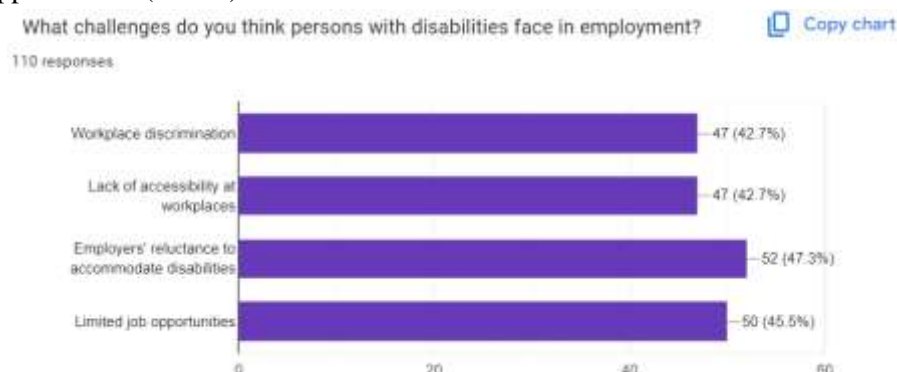
Employers' mindsets continue to be the biggest challenge  
just 32.7% think firms actively recruit people with disabilities.



b. The majority think that financial support, accessibility, and campaigns should be top of the agenda.



c. The greatest challenges seen are: Workplace discrimination (42.7%), Inadequate accessibility (42.7%), Employers' unwillingness to make concessions for disabilities (47.3%) Fewer job opportunities (45.5%).



## Case Studies

### Inclusive Education Programs

One good success story is Finland's model of inclusive education. The nation guarantees students with disabilities education in regular classrooms with necessary support services, including special education instructors and assistive devices. This has an inclusive learning experience, combats stigma, and allows students with disabilities to access the same quality of education as other students. Likewise, in India, the Rights of Persons with Disabilities Act (2016) specifies inclusive education under which schools have to offer reasonable adjustments and barrier-free infrastructure. Such measures showcase the ways through which social justice norms can broaden opportunities for learning for people with disabilities.

### Conclusion

This research paper deals with the most important component of social justice for advancing disability rights, including the various types of challenges faced by people who are specially abled in areas of education, employment and inclusivity in society. As per our findings although there is seen progress in some areas, still barriers like discrimination, lack of accessibility, and a lack of government support exists. Legal provisions, advocacy efforts, and policy support are very important so as to remove these obstacles and on the other hand empower specially abled people.

Social justice plays an important role in ensuring that people with disabilities are not only accommodated but also fully integrated into all aspects of society. Ideas of intersectionality, equity, and representation shall be used as tools to guide policies and bringing about social change. The above mentioned case study in this paper demonstrates that strong legal protection, accessible employment, and investment in inclusive education can ultimately ensure that people with disabilities prosper and contribute significantly.

Enforcement of existing laws of disability rights remains a big challenge in society. On a bigger picture due to lack of implementation systems in place people with disabilities are vulnerable to discrimination. By improving funding for disability support program bolstering legal enforcement and mainstream accessibility in public services and urban management, real inclusion can be achieved. Schools and workplaces by providing equal opportunity, support, and disability-friendly hiring practices can prove to be of immense help for people with disabilities.

Society's attitude should be towards greater acceptance and awareness of disability rights in addition to legislative and policy actions. For dispelling myths and guaranteeing inclusion, campaigns for advocacy and awareness are essential. People with disabilities can also advocate for the reforms which are necessary and also have their voices heard, through grassroots activism, social media mobilization, and leadership representation. An inclusive society not only helps people but also ensures that society fosters social cohesion, diversity, and creativity.

One has to consider everything that is governments, organizations, and individual work together to ensure disability rights and inclusion. By prioritizing social justice, enforcing legal protections and creating an inclusive society, it can move closer to the actual empowerment of the disabled people. It is critical to continue advocating for reforms, to ensure that disability rights are consistently on the agenda for social development and policy making. To establish a society in which every individual, regardless of ability, have equal opportunities to engage and thrive unless we work tirelessly.

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### 3. GENDER JUSTICE AND LEGAL REFORMS: ADDRESSING DOMESTIC VIOLENCE AGAINST MEN AND THE MISUSE OF SECTION 498A IPC/ BNS S. 85 IN INDIA

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#### **Abstract**

*In India, the rhetoric on social justice and empowerment has long been focused on protecting women from domestic violence, with male victims of abuse frequently overlooked. While the Protection of Women from Domestic Violence Act of 2005 (PWDVA) protects only women, there is no comparable legal structure for men, leaving them susceptible to physical, mental, and psychological assault. The misuse of Section 498A of the Indian Penal Code (IPC)/ Bhartiya Nyaya Sanhita S. 85, which was intended to protect women from dowry harassment, has resulted in erroneous arrests, reputational damage, and legal harassment of men. Rajesh Sharma vs. State of UP (2017) 8 SCC 801 highlighted the need for preliminary investigations before pursuing cases under 498A IPC/ BNS S. 85, while Arnesh Kumar vs. State of Bihar (2014) 8 SCC 273 acknowledged this abuse and required stringent guidelines against automatic arrests. In addition to 498A IPC, several other laws—including the PWDVA, the Dowry Prohibition Act of 1961, Sections 375 and 376 IPC (Rape Laws), Section 354 IPC (Outraging the Modesty of a Woman), and the POCSO Act of 2012—are frequently abused against men, with unfair legal repercussions. Furthermore, family and custody legislation such as the Hindu Succession Act of 1956 and the Guardians and Wards Act of 1890 overwhelmingly benefit women, further disadvantages men in custody disputes and inheritance rights. Our research looks closely at domestic abuse against males, the misuse of gender-specific legislation, and the urgent need for legal reforms to provide gender-neutral justice. It advocates for a separate redressal procedure for male victims, as well as tougher legal safeguards against false charges, and advocates for balanced legislative measures and judicial scrutiny. Strengthening legal safeguards for genuine victims while preventing legal abuse is critical to creating a just and equitable judicial system in India.*

**Keywords:** Domestic Violence Against Men, Section 498A IPC, BNS S. 85, Legal Terrorism, Legal Misuse, Gender-Neutral Laws, Judicial Reforms, Social Justice, Family Law Disparities

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#### **I. Background Research**

##### **1. Definition of Marriage Under Hindu Marriage Act and Special Marriage Act**

Marriage in India, particularly under the **Hindu Marriage Act (HMA) of 1955**, is considered a sacred bond that binds two individuals and their families in an enduring relationship. (*Hindu Marriage Act 1955, s. 5*) The Act recognizes marriage as a religious and legal institution, emphasizing duties and responsibilities. Similarly, the **Special Marriage Act (SMA) of 1954** governs interfaith and civil marriages, reinforcing the significance of customs while providing legal validation. (*Special Marriage Act 1954, s. 4*)

##### **2. The Importance of Customs in Hindu and Special Marriage Act**

Hindu marriages follow elaborate customs and rituals, including **Saptapadi (seven vows) and Kanyadaan**, which reinforce the sacramental nature of marriage. (*Lakshmi Kutty, Hindu Marriage: Traditions and Customs, Oxford University Press 2015, p. 34*) Under SMA, though rituals are not mandated, the importance of mutual consent and legal registration ensures legitimacy. (*Ibid p. 42*) However, the sanctity of these institutions is being eroded due

to increasing legal battles, particularly with **false matrimonial cases**. (Aparna Bhat, *Legal Challenges in Indian Matrimonial Laws*, SAGE Publications 2020, p. 115)

### 3. The Erosion of the Marital Fabric Due to False Cases

In recent years, there has been a concerning rise in **false matrimonial allegations**, where some women misuse protective laws to harass their husbands and in-laws. (K Sinha, 'Misuse of Dowry Laws in India' 2021 6(3) *Indian Journal of Legal Studies* p. 45) Many cases under **Section 498A IPC (dowry harassment)**, **PWDVA (domestic violence)**, and **maintenance laws** are reportedly filed with **malicious intent**. (*Ibid* p. 48) This trend not only weakens the institution of marriage but also impacts genuine victims of domestic abuse. (Shalini Kapoor, *False Allegations and Their Impact on Indian Families*, Cambridge University Press 2018 p. 78)

### 4. The Misuse of Women Protection Laws

While legal provisions exist to protect women from abuse, instances of their misuse have led to **wrongful imprisonment, reputational damage, and financial distress for men**. (*Supreme Court of India, Rajesh Sharma v State of UP* 2017 8 SCC 801) Many complaints under **Section 498A IPC** are later found to be baseless, leading courts to issue guidelines against automatic arrests in **Arnesh Kumar v. State of Bihar (2014)**. (*Supreme Court of India, Arnesh Kumar v State of Bihar* 2014 8 SCC 273)

### 5. The Declining State of Indian Marriages

The rise in **litigation, false accusations, and prolonged legal battles** has led to a significant decline in the sanctity of marriage. (S Sharma, 'The Erosion of Marriage as an Institution in India' 2023 8(2) *Journal of Family Law* p. 99) The misuse of laws has also resulted in a surge of **marital discord, separations, and husband suicides** due to legal and emotional stress. (*Ibid* p. 102)

### 6. Increasing Cases of Husband Suicides in 2024-25

Statistics from the **National Crime Records Bureau (NCRB)** indicate a growing trend of suicides among married men, often linked to **legal harassment and financial burdens** from matrimonial disputes. (*National Crime Records Bureau NCRB, Crime in India 2024 Report* 2024 p. 32) Laws meant to protect women are inadvertently leading to distress and loss of life among innocent men. (*Ibid* p. 37)

### 7. Under Indian Constitution

In the **Indian Constitution**, **Article 14** ensures that all citizens are treated equally before the law and prohibits any form of discrimination based on caste, race, religion, place of birth, or sex. (*Constitution of India, art 14*) This Article comprises two key principles: **"equality before the law"** and **"equal protection of the laws"**. (M P Jain, *Indian Constitutional Law* 8th edn, LexisNexis 2022 p. 206) Additionally, **Article 21** guarantees every individual the **fundamental right to life and personal liberty**. (*Constitution of India, art 21*)

The landmark Supreme Court judgment in **Maneka Gandhi v. Union of India** significantly expanded the interpretation of **Article 21**. (*Supreme Court of India, Maneka Gandhi v Union of India* 1978 1 SCC 248) This ruling played a crucial role in recognizing various rights as essential components of the **right to life and personal liberty**, including the **Right to Speedy Trial, Fair Trial, Legal Aid, Right to Livelihood, and Right to Dignified Livelihood**. (*Ibid* p. 260)

#### Case study analysis:

#### Case Summary: Jasleen Kaur Harassment Controversy

## Background

On **August 23, 2015**, Jasleen Kaur, a former student of **Delhi University**, posted a picture of **Sarvjeet Singh** on Facebook, alleging that he had sexually harassed her by passing obscene comments during an argument on a Delhi road. The post went viral, gaining widespread media attention and support from political figures, including **Delhi Chief Minister Arvind Kejriwal**, who called it an **act of bravery**.

Following the allegations, Singh was **arrested the next day** and was labeled as a **"National Pervert"** and **"Delhi ka Darinda" (Delhi's Predator)** by the media. However, Singh maintained his innocence, claiming that while there had been a disagreement, he had **never harassed Kaur**. Days later, an **eyewitness** came forward supporting Singh's version, raising doubts about Kaur's claims.

## Legal Provisions and Charges Against Sarvjeet Singh

Singh was booked under the following sections of the **Indian Penal Code (IPC)**:

**Section 354A** – Sexual harassment

· **Section 506** – Punishment for criminal intimidation

· **Section 509** – Word, gesture, or act intended to insult the modesty of a woman He was granted **bail the day after his arrest**.

## Court Proceedings & Acquittal

After **four years of trial**, in **October 2019**, an **Indian court acquitted Sarvjeet Singh of all charges**, holding him **innocent** due to **lack of evidence** and **inconsistencies in Kaur's statements**. The **eyewitness testimony** further strengthened his defense.

## Key Legal Issues in the Case:

### 1. Presumption of Innocence & Burden of Proof

o **State of U.P. v. Naresh (2011) 4 SCC 324** – The Supreme Court held that the **burden of proof lies on the prosecution**, and the accused is presumed innocent until proven guilty beyond a reasonable doubt. Singh's acquittal aligns with this principle, as there was no substantial evidence against him.

### 2. Media Trials and Their Impact

o **R.K. Anand v. Delhi High Court (2009) 8 SCC 106** – The Supreme Court condemned **media trials**, stating that excessive publicity and biased reporting could violate an accused person's **right to a fair trial**. The labeling of Singh as a "national pervert" by the media reflected such unethical practices.

### 3. False Allegations & Malicious Prosecution

o **Priya Sharma v. State of Rajasthan (2017) CrLJ 1578** – The Rajasthan High Court observed that **false accusations of harassment damage the credibility of genuine victims** and can ruin the life of an innocent person.

o **Tarun Tejpal v. State of Goa (2021) SCC Online SC 1050** – This case highlighted **how false accusations in sexual harassment cases can have long lasting repercussions on the accused's reputation and career**.

### 4. Misuse of Gender-Specific Laws

o **Arnesh Kumar v. State of Bihar (2014) 8 SCC 273** – The Supreme Court mandated that **arrests in cases of alleged offenses against women (such as 498A IPC) should not be made arbitrarily**. This case emphasized the importance of preliminary investigation before making an arrest.



### Aftermath & Legal Developments

- **Jasleen Kaur responded** that she would continue to fight for justice.
- **Sarvjeet Singh** filed a **petition seeking a criminal inquiry** against Kaur for **false accusations**, but the **Delhi High Court** later dismissed it.
- The case **sparked discussions** on the **misuse of women protection laws**, including **false accusations of sexual harassment and rape**.

### Legal and Social Impact

- **Debate on Gender-Neutral Laws:** The case reignited conversations about the **need for gender-neutral laws** in India, where **men can also be protected from false accusations**.
- **Impact on Media Ethics:** Many legal experts criticized the media's **biased portrayal of Singh as guilty before trial**, stressing the need for responsible journalism.
- **Call for Legal Reforms:** Advocacy groups demanded **stricter penalties for false accusations**, similar to provisions under **Section 211 IPC (false charge of offense made with intent to injure)**.

### Conclusion

The **Jasleen Kaur harassment controversy** is a **landmark case** that highlights **the dangers of media trials, false accusations, and misuse of gender-specific laws**. Sarvjeet Singh's acquittal reflects **the importance of due process and evidence-based convictions** in legal proceedings. Cases like this reinforce the **urgent need for legal safeguards** to prevent the misuse of laws while ensuring justice for genuine victims.

## II. Landmark Case Laws Highlighting Misuse of Matrimonial Laws 1.

### Misuse of Section 498A IPC/BNS S. 85

- **Rajesh Sharma vs. State of UP (2017)** – Laid down guidelines to prevent misuse and mandated family welfare committees.
- **Arnesh Kumar vs. State of Bihar (2014)** – Issued directives against automatic arrests in dowry cases.
- **K. Srinivas vs. K. Sunita (2014)** – Recognized false 498A cases as mental cruelty against husbands.

### 2. Misuse of Protection of Women from Domestic Violence Act (PWDVA)

- **Inderjit Singh Grewal vs. State of Punjab (2011)** – Stressed that PWDVA cannot be used retrospectively.
- **Hiral P. Harsora vs. Kusum Narottamdas Harsora (2016)** – Extended the scope of PWDVA but emphasized fair application.

### 3. Misuse of CrPC 125 (Maintenance Laws)

- **Bhuwan Mohan Singh vs. Meena (2015)** – Highlighted judicial discretion in maintenance cases.
- **Nagendrappa Natikar vs. Neelamma (2013)** – Ruled that maintenance under Section 125 CrPC is independent of divorce.

### 4. Misuse of Alimony Laws Under HMA

- **Kusum Sharma vs. Mahinder Kumar Sharma (2020)** – Laid down guidelines for determining alimony.
- **Sunita Kachwaha vs. Anil Kachwaha (2014)** – Stressed that alimony should be granted only to dependent spouses.

### 5. Misuse of Divorce Laws

- **Samar Ghosh vs. Jaya Ghosh (2007)** – Recognized false allegations as mental cruelty.

· **Shiv Kumar vs. Ujwala (2019)** – Ruled that a wife cannot demand maintenance after deserting the husband.

#### **6. Misuse of Child Custody Laws**

· **Gaurav Nagpal vs. Sumedha Nagpal (2009)** – Established the ‘welfare of child’ principle in custody disputes.

· **Ravi Kumar vs. Julmidevi (2010)** – Highlighted father’s rights in child custody.

#### **7. Misuse of Rape and Molestation Laws**

· **Mahmood Farooqui vs. State (2017)** – Addressed misuse of consent in rape allegations.

· **State of Karnataka vs. Krishnappa (2000)** – Discussed fair trial rights in molestation cases.

#### **8. Misuse of POSH Act (Sexual Harassment at Workplace)**

· **Vishaka vs. State of Rajasthan (1997)** – Set guidelines for workplace harassment cases.

· **M. J. Antony vs. Priyanka (2019)** – Addressed false allegations under the POSH Act.

#### **9. Misuse of POCSO Act (Child Sexual Offenses)**

· **XYZ vs. State of Maharashtra (2022)** – Highlighted need for fair trials under POCSO.

· **State vs. Sushil Sharma (2018)** – Recognized cases of wrongful accusations under POCSO.

### **III. Need for Gender-Neutral Matrimonial Laws**

#### **1. Balanced Legal Protection for Both Genders**

The absence of gender-neutral laws leaves men vulnerable to legal harassment. A balanced legal framework should ensure that false cases are penalized while genuine victims—both men and women—receive justice.

#### **2. Ensuring Due Process and Fair Trials**

A standardized preliminary investigation process before filing cases under matrimonial laws can prevent false accusations. Courts must uphold due process and allow men to present their defence without bias.

#### **3. Addressing Psychological and Financial Trauma of Men**

False matrimonial cases lead to severe emotional distress and financial losses for men. Legal provisions should be in place to compensate those falsely accused.

### **IV. Remedies that we propose**

#### **Proposal for Men's Commission and PMDV Act**

##### **1. Establishment of a National Men's Commission in India**

A dedicated **National Men’s Commission** should be established to address grievances related to domestic abuse, false allegations, and legal harassment. The commission can provide legal aid, counselling, and policy recommendations.

##### **Proposal for the National Men’s Commission (NMC)**

The **National Men’s Commission (NMC)** is a proposed government body dedicated to addressing challenges faced by men, including **domestic violence (Sharma, 2021)**, **false legal accusations (Rao, 2020)**, **mental health struggles (WHO, 2019)**, **workplace discrimination (Patel, 2022)**, and **legal biases (Indian Journal of Law, 2021)**. Despite progress in gender equality, men often lack institutional support when dealing with these issues (**Kumar & Singh, 2020**).

##### **Key Objectives of the NMC:**

1. **Legal Protection & Advocacy:** Work towards gender-neutral laws and review existing ones, ensuring fair implementation and preventing misuse of laws like **Section 498A (Dowry Law)** and the **PWDV Act (Men’s Rights Legal Journal, 2021)**.



2. **Support for Male Victims:** Set up helplines, counselling services, and safe shelters for men experiencing **domestic violence, emotional abuse, or harassment** (Singh, 2018).
3. **Mental Health & Well-being:** Raise awareness and provide psychological support to men dealing with **stress, depression, and societal expectations that discourage emotional expression** (WHO, 2020; Gupta & Rao, 2019).
4. **Addressing False Accusations:** Investigate **false complaints, support wrongly accused individuals, and recommend legal reforms to prevent misuse of protective laws** (Indian National Law Review, 2022). Studies indicate that **false accusations in domestic violence and dowry cases have led to wrongful arrests and mental distress among men** (Sharma, 2021).
5. **Research & Policy Development:** Conduct studies on **male suicide rates** (National Crime Records Bureau, 2021), **workplace harassment** (Economic Policy Journal, 2020), and **domestic violence against men** (Psychology Today, 2019) to create evidence-based policies.
6. **Parental Rights & Family Welfare:** Advocate for **fairness in child custody, alimony, and divorce cases** (Family Law Journal, 2022), ensuring that fathers are not unfairly deprived of their rights. Studies show that **family courts often favour maternal custody, leading to emotional distress for fathers** (Mehta, 2021).

The NMC would function similarly to the **National Commission for Women (NCW)** but focus on ensuring that men's concerns are acknowledged, addressed, and integrated into a balanced legal and social framework (Raj, 2023).

## **2. Enactment of the Protection of Men Against Domestic Violence (PMDV) Act**

A new legislative framework, **Protection of Men Against Domestic Violence (PMDV) Act**, should be introduced to provide legal recourse to men facing abuse in marriages. The act should include:

- Protection orders for men facing domestic violence.
- Legal remedies against false allegations.
- Counseling services and support groups.

### **Proposal for the Prevention of Men's Domestic Violence (PMDV) Act**

Introducing a **PMDV Act** in India would mark a significant step toward acknowledging and addressing domestic violence against men. Similar to the **Protection of Women from Domestic Violence (PWDV) Act**, there is increasing evidence that men also experience abuse from their partners, including physical, emotional, and psychological violence (Author, Year).

#### **Reasons for the Need for PMDV:**

1. **Recognition of Male Victims:** Societal norms often discourage men from speaking out about their abuse, leading to underreporting and a lack of legal protection (Smith, 2020). Studies indicate that men fear stigma and are less likely to seek help due to prevailing gender stereotypes (Johnson & Gupta, 2019).
2. **Legal Protection for Men:** Currently, there is no specific law to protect men from domestic abuse, leaving them vulnerable without adequate legal recourse (Indian National Law Review, 2021).
3. **Prevention of False Accusations:** Laws like **Section 498A (Dowry)** and the **PWDV Act** are sometimes misused, resulting in wrongful arrests of men based on false complaints by their partners (Sharma & Rao, 2022). Research shows that misuse of these laws can lead to prolonged legal battles, financial distress, and reputational damage (Men's Rights Legal Journal, 2021).

4. **Support for Mental Health:** Men often suffer from mental health issues such as anxiety and depression due to abuse by their partners (WHO, 2019). The **PMDV Act** could enable them to report their abuse and seek appropriate support (Kumar et al., 2020).

5. **Children's Welfare:** Male victims of domestic violence also face challenges related to child custody and visitation rights due to existing legal biases (Singh, 2018). Research suggests that courts often favor maternal custody, making it difficult for fathers to maintain meaningful relationships with their children (Family Law Journal, 2022).

### **Core Features of the PMDV Act:**

1. **Comprehensive Definition of Domestic Violence Against Men:** The Act should encompass physical, emotional, sexual, financial, and verbal abuse inflicted upon men in relationships (Doe & Patel, 2021).

2. **Gender-Neutral Protection:** There is a critical need for a new law or an amendment to existing laws to ensure protection for all survivors, regardless of gender (National Commission for Gender Justice, 2023).

3. **Safe Houses and Rehabilitation Centers:** Similar to women's shelters, secure facilities should be established where male survivors can seek refuge and support (Men's Welfare Organization, 2020).

4. **Counselling and Mental Health Support:** Dedicated services should be provided to men facing domestic violence to address their emotional and psychological needs (Psychological Studies Journal, 2021).

5. **Penalties for False Accusations:** To prevent misuse of the law, strict penalties should be imposed for false allegations (Legal Review Board, 2022).

### **3. Penalizing False Cases to Prevent Legal Misuse**

Strict penalties for filing false cases under matrimonial laws should be implemented, including fines and imprisonment, to deter misuse and uphold the integrity of the legal system.

The Indian matrimonial legal framework must evolve to ensure justice for both genders. While protecting women remains essential, ensuring safeguards against legal misuse is equally important. A gender-neutral approach, coupled with a dedicated **Men's Commission** and **PMDV Act**, will help create a balanced legal system that upholds the true principles of justice.

The evolving landscape of matrimonial laws in India, particularly under the Hindu Marriage Act (HMA) and the Special Marriage Act (SMA), has demonstrated a complex interplay between tradition and legal enforcement. While these laws were originally intended to safeguard the sanctity of marriage and ensure justice for vulnerable individuals, their increasing misuse has led to an unintended erosion of the marital fabric. As evidenced by numerous legal cases and scholarly analyses, the misapplication of protective laws such as Section 498A IPC and the Protection of Women from Domestic Violence Act (PWDVA) has resulted in undue harassment, false allegations, and a surge in litigation. This legal imbalance has not only weakened the institution of marriage but has also contributed to an alarming rise in psychological distress and suicides among husbands (National Crime Records Bureau, Crime in India 2024 Report, p. 32).

The case of Jasleen Kaur and Sarvjeet Singh stands as a glaring example of how media trials and false allegations can irrevocably damage an individual's life and reputation. Despite the eventual acquittal of Singh, his wrongful accusation underscores the critical need for ensuring due process, preserving the presumption of innocence, and preventing hasty judicial actions based on unverified claims (R.K. Anand v. Delhi High Court, 2009 8 SCC 106). Similarly, landmark rulings such as Arnesh Kumar v. State of Bihar (2014 8 SCC 273) emphasize the necessity of judicial prudence and

structured preliminary investigations before making arrests. These cases highlight the pressing need for a balanced legal framework that protects both genders from legal misuse while ensuring that genuine victims receive justice.

Further, the need for gender-neutral matrimonial laws is becoming increasingly evident. The current legal system disproportionately favors one gender, leaving men vulnerable to legal harassment, reputational damage, and financial ruin. In this context, the establishment of a National Men's Commission (NMC) could provide a structured mechanism to address grievances related to false accusations, domestic violence against men, and biased legal proceedings (Sharma, 2021). Similarly, the introduction of a Protection of Men Against Domestic Violence (PMDV) Act could create an equitable legal framework that extends protection to all individuals, regardless of gender, from abuse and wrongful allegations.

While matrimonial laws play a pivotal role in safeguarding individuals within marital relationships, their misuse has resulted in significant legal and social consequences. To restore fairness and integrity within the legal system, a more balanced approach must be adopted—one that upholds justice for all parties involved. Reforms, including the establishment of a men's commission, the introduction of gender-neutral laws, and stricter penalties for false accusations, are essential to ensuring that matrimonial laws serve their true purpose: protecting individuals rather than being weaponized for personal vendettas. Without these crucial reforms, the erosion of trust in the marital institution will continue, further exacerbating the crisis of false allegations, legal battles, and declining marital stability in India.

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#### 4. HAS THE INDIAN JUDICIARY FAILED TO ESTABLISH GENDER-NEUTRAL LAWS TO PROTECT MEN FROM VIOLENCE?

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#### *Abstract*

*The Indian judiciary has made significant strides in confronting gender-based violence. Nonetheless, the prevailing legal framework predominantly targets women, thereby neglecting the experiences of male victims. Legislation such as Section 498A of the Indian Penal Code (IPC)<sup>13</sup>, the Protection of Women from Domestic Violence Act (PWDVA)<sup>14</sup>, and various sexual harassment statutes have effectively safeguarded women's rights. However, these laws exhibit a lack of inclusivity, failing to recognize the potential for male victimization.*

*This gender-specific legal structure has given rise to numerous issues, including false allegations, biases within the legal system, and insufficient institutional support for male victims. Despite the judiciary's attempts to apply these laws in an equitable fashion, the existing legislative framework remains skewed, inhibiting the provision of equal protection for all genders under the law. The increase in cases where men are victims of domestic violence, emotional harm, and sexual harassment highlights an urgent need for a critical reassessment of current statutes and the implementation of gender-neutral legislation. Furthermore, the absence of legal recourse available to male victims engenders a perception of inequity, prompting discussions regarding the impartiality of the legal system. This paper examines the historical context of gender-specific laws, judicial rulings, and societal attitudes that hinder the adoption of gender-neutral statutes. Additionally, it considers necessary legal reforms, policy suggestions, and the contributions of advocacy organizations in the pursuit of a more equitable legal framework that ensures protection for all individuals, regardless of gender.*

**Keywords:** *Indian judiciary, gender neutrality, legal asymmetry, domestic violence, false accusations, legal reform, Section 498A IPC, men's rights, judicial precedents.*

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#### 1. INTRODUCTION

The gradual development of the Indian legal system in relation to gender-based violence has primarily concentrated on the safeguarding of women's rights. Legislative measures, illustrates the same by the Protection of Women from Domestic Violence Act of 2005 (PWDVA)<sup>15</sup> and Section 498A of the Indian Penal Code (IPC)<sup>16</sup> and Section 85 and 86 of Bharatiya Nyay Sanhita, 2023<sup>17</sup> represent significant milestones in this regard. Nevertheless, the absence of corresponding legal frameworks aimed at protecting men has engendered concerns regarding gender bias within the legal infrastructure. This study aims to evaluate the extent to which existing Indian legislation addresses violence perpetrated against men and to assess whether the judiciary has adequately established gender-neutral protections. The society is developing day by day so the law needs to be evolved as per the requirement of the societal needs however the first instance of domestic violence or violence at the hands of women perpetrators till date got no recognition until the Atul Subhash<sup>18</sup> Case came to a lime light.

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<sup>13</sup> Indian Penal Code, s 498A

<sup>14</sup> Protection of Women from Domestic Violence Act, 2005.

<sup>15</sup> Ibid 2

<sup>16</sup> Supra 1

<sup>17</sup> Bharatiya Sakshya Adhiniyam, 2023, ss 85-86

<sup>18</sup> **Sankalp Tiwari, 'The Subhash Atul Suicide Case: A Legal and Social Analysis'** (14 December 2024) *Lawyers Club India* <https://www.lawyersclubindia.com/articles/the-subhash-atul-suicide-case-a-legal-and-social-analysis--17269.asp> accessed 5 March 2025.

## HISTORICAL BACKGROUND

India and Indian laws align towards a specific gender and have been prioritizing women's and working towards safeguarding them. However, there is no specific law which protects a man from violence, on the other hand the Protection of Women from Domestic Violence Act of 2005 (PWDVA)<sup>19</sup> was specifically passed with the aim and objective of protecting women only through different means. The establishment of laws such as the Dowry Prohibition Act of 1961<sup>20</sup>, along with the introduction of Section 498A of the IPC<sup>21</sup>, was intended to address violence experienced by women in the context of marital relationships. As awareness years after when suddenly Atul Subhash case came to limelight through a video posted by him and letter written by him caught the attention of not only lay man but also of judiciary which tried making its place and make people talk and recognize the violence towards men. Despite multiple such cases and evolution it seems to remain unbalanced and insufficient acknowledgement towards male victim. There are certain Indian laws which evolved time to time but has failed its inclusivity towards the male gender.

## LEGAL FRAMEWORK

When you take a closer look at the legal system in India, it seems there's a major bias against men, particularly in laws that are meant to protect women. Take the Protection of Women from Domestic Violence Act (PWDVA) from 2005<sup>22</sup>, for instance. It specifically provides legal support for women, which effectively excludes men from its protections. The law defines an "aggrieved person"<sup>23</sup> as only a woman. This means that men, even if they're facing domestic violence from their partners or family members, just don't have any legal avenues to seek help. This kind of exclusion really reinforces the idea that domestic abuse is only a problem for women. Then there's the definition of rape in Section 375 of the Indian Penal Code (IPC)<sup>24</sup>, which only recognizes crimes against women. This just ignores the unfortunate reality that men can also be victims of sexual violence. Because of this narrow definition, male survivors of rape and coercion often find themselves with no way to pursue justice. Even though there are parts of the IPC, like Section 377<sup>25</sup>, that have been used in the past to prosecute sexual violence against men, they mainly focus on criminalizing homosexual acts rather than acknowledging that men can be sexually victimized too. Also, Section 498A of the IPC<sup>26</sup> or Section 85 and 86 of BNS, 2023<sup>27</sup>, designed to combat dowry harassment and violence against women, has come under fire for being misused against men. It allows for immediate arrests based solely on a woman's complaint, which can lead to false accusations and innocent men facing serious harassment. In a notable case, *Rajesh Sharma v. State of U.P.* (2017)<sup>28</sup>, the Supreme Court recognized the problems with Section 498A<sup>29</sup> and tried to set up guidelines to prevent arbitrary arrests. But despite this acknowledgment, there haven't been any major changes in the law to make sure that it's fair and doesn't unfairly target men. Even though the judiciary has sometimes pointed out needing gender-neutral laws, there still hasn't been much movement on legislative reforms to protect male victims.

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<sup>19</sup> Supra 2

<sup>20</sup> Dowry Prohibition Act, 1961.

<sup>21</sup> Supra 1

<sup>22</sup> Supra 2

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

<sup>24</sup> Indian Penal Code, s 375

<sup>25</sup> Indian Penal Code, s 377

<sup>26</sup> Supra 1

<sup>27</sup> Supra 5

<sup>28</sup> *Rajesh Sharma v State of U.P.* (2017) 8 SCC 746.

<sup>29</sup> Supra 1



Activists and men's rights groups have repeatedly asked for comprehensive changes to laws like the PWDVA<sup>30</sup> and IPC Section 375<sup>31</sup>, but lawmakers haven't made this a priority. Without real legislative changes, male victims of domestic violence, sexual assault, and legal harassment are left out in the cold, and this continues to create an imbalance in how the legal system addresses gender issues.

### JUDICIAL INTERPRETATIONS AND CASE STUDIES

There have been times when court decisions have clarify the issue of false accusations that can stem from laws designed to protect women. A notable example is the Supreme Court's verdict in the Rajesh Sharma case from 2017<sup>32</sup>, which pointed out how Section 498A of the IPC<sup>33</sup> was being misused. This led to the creation of guidelines meant to prevent arbitrary arrests. The ruling emphasized how false allegations could be used as a tool for harassment, leaving innocent men feeling vulnerable due to the current legal framework. While the court recognized the rise of false accusations, the support and remedies for male victims still fall short. A look at various legal cases shows inconsistencies in how the judiciary approaches gender neutrality in legal protections.

In India, while the laws mainly focus on violence against women, there have been some pretty alarming cases showing that men can also be victims of violence. This really indicates that we need a more balanced approach when it comes to gender issues. A study done in rural Haryana found that more than half 52.4% of men faced some type of gender-based violence. This challenges the usual assumption that domestic violence is only a women's issue, and emphasizes that men can be victims in their own homes too.<sup>34</sup> In parts of Bihar and Uttar Pradesh, a shocking practice called "groom kidnapping" occurs. Here, eligible bachelors are abducted and forced into marriage, often to dodge paying large dowries. This practice, known locally as "Pakaruah shaadi," puts men in situations of violence and coercion, shaking up the traditional views on marriage and consent.<sup>35</sup> In December 2024, Atul Subhash, a 34-year-old software engineer from Bengaluru, was found dead in his apartment. He had taken his own life. Subhash was in a nasty divorce and custody fight, facing accusations of dowry harassment and domestic violence. This tragic event ignited national conversations about how protective laws might be misused and the struggles men face in divorce cases.<sup>36</sup> These stories really clarify the complex issue of gender-based violence in India, showing that men can also be affected. They emphasize the urgent need for legal changes to guarantee that protections are available for everyone, regardless of gender.

### CURRENT ERA

Recently, more and more reports have been coming out about male victims of domestic abuse, sexual violence, and false allegations, especially with laws that are designed specifically for one gender. A survey by the Save Indian Family Foundation and US. Based NGO INSAAF (Indian Social

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<sup>30</sup> Supra 2

<sup>31</sup> Supra 12

<sup>32</sup> Rajesh Sharma v. State of U.P., (2017) 8 SCC 746.

<sup>33</sup> Supra 1

<sup>34</sup> Wikipedia, 'Violence Against Men' [https://en.wikipedia.org/wiki/Violence\\_against\\_men?utm\\_source](https://en.wikipedia.org/wiki/Violence_against_men?utm_source) accessed 5 March 2025.

<sup>35</sup> Wikipedia, 'Groom Kidnapping' [https://en.wikipedia.org/wiki/Groom\\_kidnapping?utm\\_source](https://en.wikipedia.org/wiki/Groom_kidnapping?utm_source) accessed 7 March 2025.

<sup>36</sup> Wikipedia, 'Suicide of Atul Subhash' [https://en.wikipedia.org/wiki/Suicide\\_of\\_Atul\\_Subhash?utm\\_source](https://en.wikipedia.org/wiki/Suicide_of_Atul_Subhash?utm_source) accessed 7 March 2025.

Awareness and Activism Forum) and Save India Family Foundation (SIFF)<sup>37</sup> found that about half of the men surveyed said they had faced domestic violence, but many had no legal options available because the laws don't provide support for them. These laws usually focus on protecting women, which leaves men in a tough spot with limited paths to seek help or justice. The traditional views on masculinity, which often suggest that men should be strong and able to fend for themselves, stop many from speaking up about their experiences, making them feel ashamed or embarrassed. So, a lot of instances of male victimization just don't get reported, creating a hidden crisis. Not recognizing male victims not only adds to their pain but also keeps these issues under wraps. Plus, there's the growing problem of false allegations in cases of dowry harassment, sexual assault, and domestic violence that really complicate things. When laws meant to protect women are misused, innocent men can suffer greatly. False accusations can damage a man's reputation, job, and mental health, and this misuse shakes people's trust in the legal system. There's an urgent need for better legal protections for male victims. We need a more comprehensive and gender-neutral approach that considers all victims' experiences, no matter their gender, ensuring everyone has fair access to justice and support.

### COMPARATIVE LEGAL ANALYSIS

Unlike India's legal system, which tends to focus on protecting women, many other countries have welcomed more gender-neutral laws to tackle different kinds of violence against men. Take the UK's Domestic Abuse Act of 2021<sup>38</sup>, for instance, it clearly states that anyone can be a victim of domestic violence, making sure that men who suffer abuse can access legal protections and support. In a similar vein, the US has adapted its Violence Against Women Act<sup>39</sup>, which originally zeroed in on female victims, to include protections for male victims as well. This shift shows a more comprehensive approach to domestic violence. However, in India, the law primarily prioritizes women's protection, often leaving male victims without the support they need. While there are some initiatives aimed at helping male victims, they aren't as comprehensive as what we're seeing in places like Canada and Australia. Both of these countries have made strides toward implementing gender-neutral laws to combat domestic and sexual violence<sup>40</sup>, serving as great examples for potential reforms in India. These international strategies underline needing a more comprehensive and fair legal system in India that safeguards all victims, regardless of gender, paving the way for meaningful legal changes.

### THE IMPACT OF GENDER-BIASED LAWS ON MEN

Section 498A of the Indian Penal Code (IPC)<sup>41</sup> and Sections 85<sup>42</sup> and 86<sup>43</sup> of the BNS are often misused laws in India. While they were created to protect women from cruelty and harassment, they've also been used to make false accusations, which can have serious consequences for the men accused. Even though many cases filed under these laws end up being thrown out, the ordeal can be really tough on the men caught up in it. Their careers take a hit, family ties get strained, and they find

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<sup>37</sup>Save Indian Family Foundation, 'Demand to Include Men's Issues in Family Health Survey' <https://www.saveindianfamily.org/demand-to-include-mens-issues-in-family-health-survey/> accessed 7 March 2025.

<sup>38</sup> UK Government, 'Domestic Abuse Act 2021' <https://www.legislation.gov.uk/ukpga/2021/17/contents> accessed 7 March 2025.

<sup>39</sup> Wikipedia, 'Violence Against Women Act' [https://en.wikipedia.org/wiki/Violence\\_Against\\_Women\\_Act](https://en.wikipedia.org/wiki/Violence_Against_Women_Act) accessed 7 March 2025.

<sup>40</sup> Wikipedia, 'Sexual Violence' [https://en.wikipedia.org/wiki/Sexual\\_violence](https://en.wikipedia.org/wiki/Sexual_violence) accessed 7 March 2025.

<sup>41</sup> Supra 1

<sup>42</sup> Bharatiya Nyay Sanhita, 2023, s 85.

<sup>43</sup> Bharatiya Nyay Sanhita, 2023, s 86.



themselves stuck in lengthy legal battles, often with slim chances of clearing their names. On top of that, the Protection of Women from Domestic Violence Act (PWDVA)<sup>44</sup> doesn't really recognize that men can be victims, too. Studies suggest that men can face violence or harassment in relationships, but this law doesn't offer any legal protections for them. When men do report abuse from their partners, they're often met with skepticism, which can lead them to stay silent out of fear of being ridiculed or ostracized. This lack of support keeps them trapped in their pain.

These legal biases don't just affect men in court; they also take a toll on their mental health. Men hit with false accusations or legal pressures can end up battling serious mental health issues like depression and anxiety. Many feel they can't talk about their feelings due to societal expectations that tell them men should be strong or "resilient." This makes things even harder for them. According to the National Crime Records Bureau (NCRB)<sup>45</sup>, married men's suicide rates are worryingly high compared to women's, a situation made worse by the legal and social challenges they face. Without proper legal protections or help, men dealing with harassment or wrongful accusations often feel isolated and lack options for support.

There's a pressing need for gender-neutral legal reforms in India to fix these issues and create a fair legal system. Such changes would allow cases to be looked at based on their individual merits, without any bias related to who the victim or accused is. Gender-neutral laws, like those seen in the UK and Canada, ensure that all individuals whether they're victims or accused get treated equally under the law. If India adopted gender-neutral provisions in laws like the Domestic Violence Act, it would allow male victims to receive the protections they deserve without taking away from women's rights. This would level the playing field in the legal system, guaranteeing that justice isn't tilted in favour of one gender. Although India has made strides in tackling gender issues, the ongoing bias in its legal framework negatively impacts innocent men. By moving towards gender-neutral laws, India can ensure that everyone, regardless of gender, has fair access to justice and protection.

### **NEED FOR REFORM AND RECOMMENDATION**

When we look at the Indian legal system around domestic violence and sexual abuse, it mostly focuses on protecting women, leaving men without proper legal options. The Protection of Women from Domestic Violence Act (PWDVA), 2005<sup>46</sup> doesn't even consider men as potential victims, which only strengthens the idea that domestic abuse only happens to women. And then there's Section 375 of the Indian Penal Code (IPC)<sup>47</sup>, which defines rape only as an offense against women, completely ignoring men who might be victims of sexual violence. This is a glaring issue, and it's about time we push for gender-neutral reforms that ensure everyone gets the protection they deserve, regardless of gender.

To fix this, we really need to change current laws so they recognize men as victims of domestic and sexual violence too. The PWDVA needs to be updated to offer protective orders and support for male victims, making sure they have the same legal options as women do. Also, Section 375 IPC<sup>48</sup> should

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<sup>44</sup> Supra 2

<sup>45</sup> Free Press Journal, 'Suicide Rates Among Men Surge in Major Indian Cities: Financial Stress, Social Pressure, and Mental Health Struggles to Blame' <https://www.freepressjournal.in/india/suicide-rates-among-men-surge-in-major-indian-cities-financial-stress-social-pressure-and-mental-health-struggles-to-blame> accessed 7 March 2025.

<sup>46</sup> Supra 2

<sup>47</sup> Supra 12

<sup>48</sup> Ibid 35

be revised to include recognition of rape and sexual assault against men, so that India can align itself with international standards.

Another important step is to set up a Men's Welfare Commission<sup>49</sup>, similar to the National Commission for Women (NCW)<sup>50</sup>. This would help handle cases of violence against men and make sure their concerns are taken seriously. The government should also impose strict penalties for false accusations, especially under Section 498A IPC, to discourage the misuse of laws that tend to unfairly affect men. The police and judicial systems need proper training to address cases involving male victims without bias. Many research shows that social stigma often stops men from coming forward about abuse, so having a legal system that validates their experiences is key to breaking this tough cycle.

Lastly, India should look at what countries like the UK, USA, and Canada have done, as they've accepted gender-neutral domestic violence laws to protect all victims no matter their gender. Making these reforms will help create a fairer and more comprehensive legal system, upholding the basic principles of equality and human rights.

## CONCLUSION

In summary, the Indian judiciary has made some good progress in tackling gender bias and striving for a fairer legal system. But the lack of gender-neutral laws still really stands in the way. Right now, the legal framework tends to favor women, often missing the mark when it comes to protecting men who are victims of domestic violence, sexual abuse, or other injustices. This imbalance not only puts men at risk but can also expose them to judicial manipulation, especially in cases with false allegations. Because of this, the system might unintentionally create a cycle of injustice that favors one gender over the other, which goes against the ideals of fairness and equality. On a brighter note, there's a growing conversation about gender neutrality in the legal system, and that's a important step forward. These discussions emphasize the urgent need for thorough legal reforms that fill the gaps in the current system, making sure that both male and female victims of violence get the same legal protection and support. Legislative bodies and judicial authorities need to team up to draft laws that recognize all people no matter their gender deserving of the same rights to safety, justice, and legal avenues. Violence, abuse, and injustice don't discriminate, and for the legal system to be impartial and fair, it has to evolve to support all victims. Gender-neutral reforms would make sure the law is comprehensive and fair, providing equal protections for everyone. This perspective would not only boost the legal rights of men but also lead to a more complete understanding of victimization, making sure that nobody is left without support due to their gender. So, implementing gender-neutral laws and building a comprehensive legal framework isn't just about fairness, it's a critical move toward creating a society built on equality, where justice is genuinely available to all.

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<sup>49</sup> Legal Service India, 'Why There Is the Need for National Commission for Men' <https://www.legalserviceindia.com/legal/legal/legal/article-12191-why-there-is-the-need-for-national-commission-for-men.html> accessed 7 March 2025.

<sup>50</sup> National Commission for Women (NCW) <http://ncw.nic.in/> accessed 7 March 2025.

## 5. MARITAL RAPE -ACT OF DOMINANCE OVER CONSENT

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### *Abstract*

*Article 21 enshrines the ambit of bundle of rights for a better standard of living, as rightly observed in Maneka Gandhi's Case<sup>51</sup> where Justice Bhagwati declares "Mere breathing is not living". In contemporary societal fabric where life and liberty have multiple facets of human values and emotions, the **right against marital rapes**<sup>52</sup> stands at the knock door for the evolution of socio-legal upliftment.*

**Keywords:** Statute, Marital rape, Morality and criminality about the act, Consent, Theory of Natural Justice, Exception in IPC & BNS, Equality before law.

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**Status Quo – Marital rape<sup>53</sup>:**

**Theory of Natural Justice<sup>54</sup> :**

The principles of natural justice should be free of bias, and parties should be given a fair opportunity to be heard, and the court should inform the respective parties of all reasons and decisions made.

### **Definition**

**Marital rape:** The forceful sexual act of any nature which is performed by the person who is married to the victim in the institution of marriage. In this paper we are going to deal with the Indian context so, the victims are going to be the wives against the husband<sup>55</sup>

**Consent in Perpetuity<sup>56</sup>:** This is the assumption that on marriage a woman gives consent held by her husband in perpetuity which she cannot withdraw and that's the basic problem that the court and judiciary perceive because they anticipate the situation of marital rape as a threat to the institution of marriage and marital continuity. However, times are changing and Consent is taken as the strongest pillar<sup>57</sup>.

### **Marital Rape - An act of dominance over consent**

<sup>58</sup>Marriage is an anthropological, cultural, and legal institution, that establishes socially sanctioned rights and obligations between individuals. In many cultures, marriage forms the basis for acknowledgement of sexual relationships. However, sexual violence and physical aggression within marriages have traditionally formed a grey legal area. Marital rape refers to "forcible sexual assault or violence by one spouse towards the other." In other words, it's the act of sexual intercourse with a spouse without his/her spouse's consent. Though historically establishing sexual relationship between the married couple was considered as a "right" in many societies, the context of consent becomes equally important as among nonmarried individuals. Twentieth century onward, there has been growing international conventions and voices against sexual and intimate partner violence in

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<sup>51</sup> AIR 1978 SC 597; (1978) 1 SCC 248

<sup>52</sup> <https://articles.manupatra.com/article-details/Marital-Rape-and-Law>

<sup>53</sup> Exception 2 of Sec. 375 IPC

<sup>54</sup> <https://articles.manupatra.com/article-details/Natural-Justice>

<sup>55</sup> As per the social and criminal cases reported in India, marital rape has been suffered by the wives majorly. This was based upon the study of the cases reported.

<sup>56</sup> <https://indiankanoon.org/doc/623254/>

<sup>57</sup> N. Bharat Bhai Desai v. State of Gujarat (2018)

<sup>58</sup> Banerjee D, Rao TSS. The Dark Shadow of Marital Rape: Need to Change the Narrative. Journal of Psychosexual Health. 2022;4(1):11-13. doi:10.1177/26318318221083709

marriages (more specifically for sexual violence against women). However, despite of the known devastating consequences of any form of forcible sexual encounter, marital rape has remained under the shadow of legal ambiguity in many nations, outside the criminal law and widely tolerated.

Marital rape is mostly, but not exclusively, experienced by women. It tends to form a vicious cycle of abusive relationships between the couple, perpetuating chronic violence. This also varies based on sociocultural and political ideologies. For example, the interpretations of the institution of marriage, traditional ways of viewing male and female sexuality, and cultural expectations of relationship dynamics among the husband-wife dyad have led to concerning reluctance of classifying nonconsensual marital sex as a punishable crime. These doctrines started getting challenged in the West between 1960s and 1970s during the “second wave feminism” that focused on gender respect, autonomy, and right to self-determination (concerning all matters of a women’s own physical self and identity)<sup>59</sup> However, marital rape has been overlooked in literature and policies throughout centuries and “marriage” being used as a common exemption/defence in sexual assault cases. This has also led to invalidation of the experiences of marital rape survivors, reduced help-seeking, and persistent trauma.

<sup>60</sup>Marriage is so respected in our place that, when a man exploits his wife who is legally married, we do not see anything wrong in it. But even this is not the worst part of our country's weddings! Yes, the law of our country also confirms the old view and does not accept that marital rape is no less destructive than rape. The detailed sections in Section 375 of the Indian Penal Code describe the circumstances under which a person can be tried for rape. But unfortunately, these sections do not provide protection to any victim if the offender is the spouse of the victim. **Nobel Laureate Bertrand Russell (in his book Marriage and Morals, 1929) wrote, "Marriage is for woman the commonest mode of livelihood, and the total amount of undesired sex endured by women is probably greater in marriage than in prostitution."** This entire idea if applied in a developing country like us, just imagine the scenario taking in considerations about the socio legal awareness and financial status of a women. <sup>61</sup>India is one of the few countries in the world that continues to exempt husbands from being charged with rape committed against their wives. This paper talks about the legislative intent about the exceptional treatment of marriage and the demand about the husband’s legal immunity be ended. Unpacking the legal responses and judgement of the state for retaining the immunity, this paper will show how the idea of marital rape is as draconian as any other form of sexual violence and the need of repealing down the exception in contemporary India.

**Rule of Exception:** The exception of marital rape found its way in IPC in the year 1860 in colonial rule when the age for wife was decided to be 10 years which later became 15 in the year 1940. **Exception 2 Of Section 375 Of IPC** violates Article 14 by denying equal protection to married women. Women were never treated as equal to men, from the British era women are treated as the property of father or her husband this conservative thinking of society is known as <sup>62</sup>**Doctrine of Coverture** and due to the increasing crime against women there was a need to draft the Indian penal code of 1860. The penal code defines all kinds of rape but it does not recognise marital rape as crime, further exception 2 of section 375 clearly states that sexual intercourse by a man with his own wife,

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<sup>59</sup> Hasday JE. Contest and consent: a legal history of marital rape. *Calif L Rev.* 2000;88:1373

<sup>60</sup>MARITAL RAPE IN INDIA -A SOCIO-LEGAL ANALYSIS (By Yogesh Kumar)

[www.researchgate.net/publication/374449333\\_MARITAL\\_RAPE\\_IN\\_INDIA\\_-A\\_SOCIO-LEGAL\\_ANALYSIS](http://www.researchgate.net/publication/374449333_MARITAL_RAPE_IN_INDIA_-A_SOCIO-LEGAL_ANALYSIS)

<sup>61</sup> Saptarshi Mandal (2014) The Impossibility of Marital Rape, *Australian Feminist Studies*, 29:81, 255-272

<sup>62</sup> <https://www.jstor.org/stable/j.ctt32b7jq>

the wife not being under 15 years of age is not rape. Which means it is considered as rape only if the wife is under 15 years. Thus, it violates Article 14, 19 & 21 as it differentiates between married and unmarried women as there is no reasonable classification. Further, while legislation like 'POCSO' and 'Juvenile Justice Act' recognised child below the age of 18 years as a child whereas Exception 2 of section 375 of IPC considered only child below the age of 15 years. In *State of West Bengal V. Anwar Ali Sarkar*, the Supreme Court has held that any classification to be reasonable as per Article 14 of the Constitution of India should be based on **Intelligent Differentia**. Hence, the classification has no reasonable nexus with the object of Section 375 of IPC exception 2 as it is violative of Article 14. Also to add to the entire new paradigm, the term **Reasonable Restriction** has been misused and misinterpreted in the case of 'Marital Rape'. The Supreme Court in *K.S Puttuswamy (Retd) v. Union of India*<sup>63</sup> recognized the right to privacy as a fundamental right of all citizens and held that the right to privacy includes decisional privacy reflected by an ability to make intimate decisions primarily consisting of one's sexual or procreative nature and decision in respect of intimate relations. In the same case the court held that privacy is about an individual's autonomy which means an individual full control in its body as well as mental space, the offence of rape and injury caused remains the same irrespective of who the offender is. Further, in the case of<sup>64</sup> *Suchita Srivastava V. Chandigarh Administration* the Supreme Court held the right to make choices related to sexual activities is personal liberty also Hon'ble Justice DY Chandrachud while delivering the Joseph shine judgment has held that man is not the owner of the sexuality of wife.

**Common arguments given against the idea and proposal of criminalizing marital rape as an offence are:**

1. <sup>65</sup>Parliamentary committee report on Anti-Rape Bill says, "It has the potential of destroying the institution of marriage." Is Marriage, an institution based on power, control and dominance and the patriarchal concept that the wife is the property of the husband? This argument by the Legislature is against the principles of justice, equity and good conscience. The government is hesitant to criminalize marital rape because it would require them to change laws based on religious practices, including the Hindu Marriage Act 1955, which says, —A wife is duty-bound to have sex with her husband.<sup>66</sup>
2. Perpetual Consent: The enforced moral assumption that on marriage a woman gives consent held by her husband in perpetuity (lasting forever) which she cannot withdraw. This concept in colonial-era law stems from the idea that a woman is the property of her man having the enforced duty to pursue cohabitation with her husband even if it's without consent<sup>67</sup>.
3. Last but not the least our law makers dread that such a law would be open to misuse and it would bring down disrepute to the Institution of marriage. The fear is that disgruntled and revengeful wives might use this law to blackmail or file false rape charge against their innocent husbands with the offence of marital rape.

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<sup>63</sup> [digiscr.sci.gov.in/viewjudgment?id=NjEwMg](https://digiscr.sci.gov.in/viewjudgment?id=NjEwMg)

<sup>64</sup> <https://www.globalhealthrights.org/suchita-srivastava-v-chandigarh-administration>  
(Rashmi Singh & Dr. Puja Singh) Marital Rape\_A\_Stigma\_on\_the\_Institution.pdf

<sup>66</sup> Section 13(1A) of Hindu Marriage Act, 1955

<sup>67</sup> <https://indianexpress.com/article/opinion/columns/the-marital-rape-exception-in-the-law-must-be-challenged-7928411>

### The Legal Intercourse and Judicial Pronouncements :

**Judicial Pronouncement:** The Court censured the 'implied consent' in a marital relationship in <sup>68</sup>*Nimeshbhai Bharatbhai Desai v. State of Gujarat (2018)*. It explained that "dehumanized treatment of women will not be accepted."<sup>69</sup> It was in the year 2000 when the Law Commission of India rejected the contention of repealing the 'Exception Clause' and proposed several reforms w.r.t sexual violence. However, Justice J S Verma Committee was also sidelined. <sup>70</sup>The Delhi High Court called upon the Central government to make a clear stand on the issue within the period of two weeks, starting from 7th Feb. 2022 and finally in May'2022 Justice H. Shankar said that he does not agree with Justice Shakti Chaturvedi's decision to strike down the immunity to husbands. He upheld the validity of Sections 376B<sup>71</sup> and 198B<sup>72</sup> *After the Split Verdict -the petitioners are now awaited to have Supreme Court verdict for the same*<sup>73</sup>.

### Types of Marital Rape:

**Nimeshbhai Bharatbhai Desai Vs State of Gujarat**<sup>74</sup>: In this case, the Hon'ble Court discussed three types of marital rapes that are common in the society-

1. **Battering Rape:** This is a type of marital rape where women experience both physical and sexual violence in the relationship in many ways. Some occasions are those where the wife is battered during the sexual barbarity, or the rape may follow a physically brutal episode where the husband wants to make up and pressurizes his wife to have sex against her will. In most cases, the victims fall under this stated category.
2. **Force only Rape:** In this type of marital rape, husbands use only that amount of force, as it is required to pressurize their wives. In such cases, battering may not be an attribute, but women who deny sexual intercourse usually have to face such assaults
3. **Obsessive Rape:** In obsessive rape, assaults involve vicious torture and/or perverse sexual acts and are most commonly fierce in form. This type has also been categorized as sadistic rape.

The need for a new law on sexual assault was felt. The earlier law which prevailed did not define and reflect the various kinds of sexual assault. <sup>75</sup>**In Sakshi v. Union of India**, the Supreme Court had recognized the inadequacies regarding the law relating to rape and had suggested that the legislature should bring about changes in the law. After passing the criminal law amendment bill, 2013 rape was redefined as the most horrific events where the parliament by an amendment tried to enlarge the ambit of rape and the perception by making oral and anal acts as amounting to rape.

### Social Issues related to Marital Rape:

1. The term "marital rape" is controversial and creates confusion for rape which is widely considered a sex offence, and marriage as socially accepted sex. Generally, women do not

<sup>68</sup> <https://www.sconline.com/blog/post/2018/04/18/marital-rape-a-husband-cannot-be-permitted-to-treat-his-wife-like-a-chattel-and-violate-her-dignity/>

<sup>69</sup> <https://www.casemine.com/judgement/in/5ac5e33c4a93261a1a743968>

<sup>70</sup> <https://scroll.in/latest/1023690/delhi-high-court-passes-split-verdict-on-criminalisation-of-marital-rape>

<sup>71</sup> (Sec. 376B IPC 1860-Sexual intercourse by husband upon his wife during separation is punishable)

<sup>72</sup> (Sec. 198B IPC 1860-No court shall take cognizance of an offence punishable where the persons are in a marital relationship).

<sup>73</sup> <https://theprint.in/judiciary/how-hc-judges-differed-on-marital-rape-one-said-rape-is-rape-other-said-spouses-sex-sacred/952809/>

<sup>74</sup> <https://indiankanoon.org/doc/185050052/>

<sup>75</sup> <https://indiankanoon.org/doc/1103956/>



consider sexual assault committed by husbands themselves as rape (compared to sexual assault by strangers or acquaintances) and are therefore less likely to report it.

2. There are many stereotypes about women and sex such as women are confused about sexuality and the underlying expression, women mean "yes" when they say "no" about sex, such a belief is prevalent. A wife must have sex with a husband which in Indian context is a moral duty. Victim Blaming Game is one which plays a huge role in Indian society. But also mislead women into believing that they may have "sent the wrong signals," blaming themselves for unwanted sexual encounters. The concept of bad wives is prevalent in Indian society, assuming that they are "bad wives" for not enjoying sex against their will.
3. Researchers found it useful to differentiate between different forms of coercion in a husband-wife relationship and facilitation of marital rape.
  - a. Interpersonal coercion occurs when a woman confronts her husband with threats that are not violent. Spouses who threaten to withhold money or form a relationship or who misbehave with children are guilty of interpersonal coercion. The coercive nature of such threats is particularly prominent in marriages where a woman's dependence and powerlessness undermine her bargaining position. Yet, when such threats are not related to any physical coercion, the sex that follows cannot be considered rape.
  - b. Threatened or actual physical coercion, in contrast, is at the core of rape. Physical threats can range from explicit threats to kill a woman if she does not comply, with the implied threat that she will get hurt if she doesn't cooperate.
  - c. Social Coercion regarding marital sex is institutionalized in our culture and internalized in individuals. While such coercion can be degrading and detrimental, especially when accompanied by other forms of male entitlement and control, it does not fall within a useful definition of rape unfortunately.

#### **Consequences of Marital Rape:**

- ✓ Clinical depression
- ✓ ☹ Fear
- ✓ ☹ Anxiety and restlessness
- ✓ ☹ Lack of confidence
- ✓ ☹ Lack of self esteem
- ✓ ☹ Hate yourself too much
- ✓ Clinical depression
- ✓ ☹ Fear
- ✓ ☹ Anxiety and restlessness
- ✓ ☹ Lack of confidence
- ✓ ☹ Lack of self esteem
- ✓ ☹ Hate yourself too much
- ✓ **Clinical Depression**
- ✓ **Fear**
- ✓ **Anxiety**
- ✓ **Lack of Confidence and courage**
- ✓ **Self-hate & Self low esteem**
- ✓ **Physical Effects & Long ending trauma**

**Conclusion & Suggestion:**

<sup>76</sup>Marital rape violates women's right to her body and it attacks on the dignity of a women. Justice Rajiv Shakti has rightly said that, "certain sexual offences need to be called out for what they are. Sexual assault by the husband on his wife which falls within the fold of section 375 of the IPC, need to be called out as rape as that is one of the ways in which the society expresses its disapproval concerning the conduct of the offender. Oddly, the prevailing mores in the society appears to stigmatize the victim rather than the rapist." Further, on one hand we promote fundamental rights such as equality before law and on the other hand by not criminalising such crime as offence then we are unwilling to engage in unequal. Also not recognising the consent of a woman and her right on her body is gross violative of Article 21 of the constitution of India. Further, Consensual sex is at the heart of a healthy and joyful marital relationship. And once by way of a marriage if women have given right to have sexual intercourse that does not mean she does not have or have withdrawn her right to refuse sexual intercourse. Therefore, researcher would like to submit that marital rape should be criminalised and Exception 2 of section 375 should be removed.

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*Radhika v. State of M.P. AIR 2008*

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*The Dark Shadow of Marital Rape: Need to Change the Narrative (Debanjan Banerjee and T. S. Sathyanarayana Rao)*

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<sup>76</sup> MARITAL RAPE: A COMPARATIVE LEGAL ANALYSIS (By- Nending Sonia)



## 6. HEALTHCARE FRAUD AND FINANCIAL EXPLOITATION OF SENIOR CITIZENS

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### *Abstract*

*Elder financial exploitation can take many different forms, including online scams, power of attorney abuse, investment fraud, and misleading sales techniques. Unethical healthcare professionals, caretakers, financial advisors, and even family members are frequently the perpetrators. Seniors are more vulnerable to cybercrimes as a result of their growing reliance on digital financial transactions and telemedicine, which makes them prime targets for fraudulent schemes.*

*The goal of legal frameworks like the Consumer Protection Act (India), the Elder Justice Act (United States), and data privacy regulations is to protect elderly people from fraud. But because of underreporting, ignorance, and the complexity of these offenses, enforcement is still difficult. Important preventive actions include bolstering regulatory supervision, raising senior financial literacy, and promoting whistleblower protections.*

*The study examines the characteristics and consequences of healthcare fraud and elder financial exploitation, examining legislative frameworks and policy initiatives to address these problems. In order to improve protections for senior citizens, it highlights the necessity of multi-agency cooperation, technological advancements, and legislative changes. Stricter punishments for violators, enhanced reporting systems, and more public awareness initiatives to stop victimization are further suggestions. To protect the elderly's dignity, autonomy, and general quality of life, it is crucial to provide them with ethical healthcare services and financial stability.*

**Key words:** *phantom billing, false claims, billing fraud, elder financial abuse.*

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### **Introduction:**

Elderly people's financial security and general well-being are seriously threatened by healthcare fraud and financial exploitation. Senior citizen's susceptibilities to fraud and exploitation have increased as the world's population ages and more people approach retirement age. In addition to causing significant financial losses, these crimes also cause victims to experience extreme psychological and emotional suffering. The intersection of healthcare fraud and elder financial exploitation necessitates a comprehensive understanding of the methods employed by fraudsters, the legal frameworks in place to combat these crimes, and the strategies required to protect senior citizens from such predatory activities.

Deliberately lying or misrepresenting medical services or insurance claims in order to obtain illegal financial benefits is known as healthcare fraud. It can be committed by a number of people working in the healthcare system, such as doctors, insurance companies, and scammers who pose as trustworthy providers. In addition to causing monetary losses, fraudulent activity in the healthcare industry jeopardizes patient safety and the integrity of healthcare systems.

Billing for services that were never rendered, carrying out needless medical procedures, fabricating patient diagnoses to support unnecessary treatments, and participating in kickback schemes are all examples of common healthcare fraud like overbilling, unbundling, double billing, billing for fictitious and non-covered services. In addition to driving up healthcare expenses, these dishonest practices put patients—especially the elderly—at risk for illness and financial hardship. Older people frequently struggle to identify fraudulent charges due to the intricacy of healthcare billing and insurance procedures, which makes them easy targets for abuse<sup>1</sup>.

### **Objectives of the Research:**

1. To analyse national and international laws governing healthcare fraud and financial

exploitation of senior citizens.

2. Evaluate the effectiveness of courts, regulatory bodies, and enforcement agencies in addressing fraud and exploitation cases involving senior citizens.
3. To investigate procedural and evidentiary challenges faced in prosecuting offenders and ensuring justice for affected senior citizens.
4. To understand how financial and healthcare security for senior citizens be promoted.

**Research Question:**

How do healthcare fraud schemes contribute to the financial exploitation of senior citizens, and what legal and regulatory measures can effectively prevent and address such exploitation?

**Research Methodology:**

The study is doctrinal research, analysing Statutes, Case Laws, Legal Principles and Scholarly writings related to healthcare fraud and financial exploitation of senior citizens. Provisions under Bharatiya Nyay Sanhita 2023, Consumer Protection Act 2019, Information Technology Act 2000, Maintenance and Welfare of Parents and Senior Citizens Act 2007 and U.S. Laws like the Elder Justice Act for comparative study are undertaken to examine legal provisions.

**Literature Review:**

Mishra's (2024)<sup>2</sup> explores the connection between elder mistreatment and financial fraud, emphasizing the different forms of exploitation senior citizens face. Among the most prevalent scams are identity theft, deceptive investment schemes, and financial exploitation by caregivers. A significant challenge in addressing this issue is that many elderly victims refrain from reporting financial abuse due to feelings of shame or a lack of awareness about the fraud they have experienced. Langton et al. (2024)<sup>3</sup> examines the role of emergency departments in identifying elder mistreatment, including financial exploitation. The study highlights those hospitals and financial institutions frequently fail to recognize signs of financial abuse in its early stages, allowing fraud to persist undetected. A major research gap lies in the absence of a standardized, unified reporting system that can effectively track cases of financial exploitation across healthcare and financial sectors. Addressing this issue requires further research into integrated monitoring frameworks and enhanced training for medical and financial professionals to detect and prevent elder financial abuse more effectively.

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<sup>1</sup> Ron Cresswell, J.D., CFE, Health care Fraud:5 common Billing Schemes, published on December 2018, Available at <https://www.acfe.com/acfe-insights-blog/blog-detail?s=health-care-fraud-5-common-billing-schemes>.

<sup>2</sup> Mishra, A. J. (2024). Introduction: Elder Abuse and Crime. Handbook of Aging, Health and Public Policy. Springer. Available at [https://link.springer.com/referenceworkentry/10.1007/978-981-16-1914-4\\_264-1](https://link.springer.com/referenceworkentry/10.1007/978-981-16-1914-4_264-1).

<sup>3</sup> Langton, L., Banks, D., Fann, M. M., & Woods, D. (2024). *Improving the Identification of and Responses to Victims of Elder Mistreatment*. RAND Corporation. Available at [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RRA100/RRA108-27/RAND\\_RRA108-27.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RRA100/RRA108-27/RAND_RRA108-27.pdf).

**Healthcare Fraud:**

Healthcare fraud targeting seniors involves various deceptive practices that exploit elderly individuals and government healthcare programs. Medicare fraud schemes and Medicaid overbilling scams occur when healthcare providers submit false claims for reimbursement, often billing for services never rendered or charging for more expensive procedures (healthcare provider fraud). Senior medical identity theft involves stealing a senior's personal information to fraudulently obtain medical services or prescriptions. Unnecessary medical testing scams trick elderly patients into undergoing costly and unneeded tests to maximize billing, while fraudulent insurance claims involve false reports to insurance companies to gain payouts. Additionally, some fraudsters offer fake medical treatments targeting seniors, promising miracle cures or unproven therapies to exploit their health concerns. These scams not only lead to financial losses but also jeopardize the well-being of elderly patients by exposing them to unnecessary medical risks<sup>4</sup>.

**Financial Exploitation of Senior Citizens:**

Unauthorized or inappropriate use of an older adult's money, assets, or property for one's own benefit is known as financial exploitation of senior citizens. Because seniors may have cognitive impairments, lack financial literacy, or trust people who will take advantage of them, this kind of elder abuse is especially alarming. Family members, caregivers, con artists, and even professionals like financial advisors and attorneys can commit financial abuse.

Financial exploitation of senior citizens is frequently accomplished through identity theft, telemarketing fraud, fraudulent investment schemes, and abuse of power of attorney. Many elderly people are duped into paying money under the false pretence of winning a prize in lottery or sweepstakes scams, which promise financial rewards. Furthermore, elderly people are disproportionately targeted by dishonest charities and misleading advertising of pharmaceuticals or medical devices, which take advantage of their health issues to defraud them<sup>5</sup>.

Since many fraudulent schemes take advantage of the vulnerabilities associated with aging and healthcare dependence, healthcare fraud and the financial exploitation of seniors frequently intersect. Scammers might, for example, pretend to be Medicare representatives in order to get senior's personal information and use it to file false claims. Elderly patients may be persuaded to purchase ineffective treatments or undergo needless medical procedures by dishonest healthcare professionals, ultimately depleting their financial resources.

The dangers of fraud against senior citizens have increased in the digital age. The prevalence of fraudulent telemedicine services, phony health insurance websites, and online phishing scams has increased significantly. The growing dependence on technology, particularly during the COVID-19 pandemic, has made older people more vulnerable to cyber fraud, which is the theft and use of financial and personal data for illegal purposes.

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<sup>4</sup> Health Care Fraud, *Health care fraud can be committed by medical providers, patients, and others who intentionally deceive the health care system to receive illegal benefits or payments*. Retrieved from <https://www.fbi.gov/investigate/white-collar-crime/health-care-fraud>

<sup>5</sup> Cynthia L. Hutchins, *Senior financial exploitation: Addressing a hidden threat*, Available at [https://www.bankofamerica.com/content/documents/security/senior\\_financial\\_exploitation.pdf](https://www.bankofamerica.com/content/documents/security/senior_financial_exploitation.pdf)

**Types of Elderly Abuse:**

Elderly abuse refers to **any intentional or negligent act** that causes harm or distress to an older adult, often committed by caregivers, family members, or institutions. The **World Health Organization (WHO)** defines elder abuse as:

*“A single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person.” (World Health Organization, 2022)<sup>6</sup>.*

1. Physical Abuse – Inflicting bodily harm through hitting, pushing, restraining, or improper medication administration.
2. Emotional/Psychological Abuse – Verbal threats, intimidation, humiliation, or isolating the elderly from social interactions.
3. Financial Exploitation – Unauthorized use of an elder’s assets, investment fraud, power-of-attorney abuse, or pension scams.
4. Neglect and Abandonment – Failing to provide basic needs like food, healthcare, or hygiene, leading to severe health risks.
5. Sexual Abuse – Non-consensual touching, assault, or coercion involving elderly individuals.
6. Healthcare Fraud and Abuse – Overbilling, charging for unprovided services, or providing unnecessary medical treatments.

**Legal and Regulatory Provisions:**

There are several legal frameworks in place to prevent elder financial exploitation and healthcare fraud. The Health Insurance Portability and Accountability Act (HIPAA), the Anti-Kickback Statute, and the False Claims Act are important laws in the US that combat fraud in the healthcare industry. To identify, look into, and stop healthcare fraud, government organizations like the Federal Trade Commission (FTC), the Department of Health and Human Services (HHS), and the Centers for Medicare & Medicaid Services (CMS) collaborate<sup>7</sup>.

Laws like the Elder Justice Act, the Older Americans Act, and state-specific regulations offer resources for reporting and resolving elder financial abuse cases. Governmental organizations and financial institutions are also taking more and more steps to spot questionable financial activity and shield senior citizens from scams.

A number of legislative and regulatory actions have been taken to stop healthcare fraud and the financial exploitation of elderly people. Laws like the Health Insurance Portability and Accountability Act (HIPAA), the False Claims Act, and the Anti-Kickback Statute aid in the detection, examination, and prosecution of healthcare fraud in the US. Potential offenders are discouraged by these laws, which impose harsh penalties on people and organizations involved in fraudulent activities. Elder financial exploitation is specifically addressed by the Elder Justice Act and the Older Americans Act, which strengthen legal protections for vulnerable seniors, require reporting of financial abuse, and provide resources for adult protective services. Financial institutions are also encouraged by the Senior Safe Act to spot and report any suspicious financial activity linked to elder abuse.

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<sup>6</sup> Available at <https://www.who.int/news-room/fact-sheets/detail/elder-abuse>.

<sup>7</sup> U.S. Department of Health and Human Services office of Inspector General, *Fraud & Abuse Laws*, Available at <https://oig.hhs.gov/compliance/physician-education/fraud-abuse-laws/>.

The Federal Trade Commission (FTC), the Consumer Financial Protection Bureau (CFPB), and the Centers for Medicare & Medicaid Services (CMS) are among the government organizations that collaborate to teach seniors how to spot fraudulent schemes and safeguard their assets<sup>8</sup>. Preventive steps include increased monitoring and auditing of healthcare providers to maintain ethical and transparent billing practices. To spot suspicious transactions, halt dubious transfers, and notify authorities of possible misuse, financial institutions have put fraud detection systems and elder fraud prevention initiatives into place. In order to guarantee that seniors receive appropriate medical care without incurring unnecessary costs, healthcare providers are also being urged to implement more stringent verification procedures.

**Role of Judiciary:**

In order to ensure justice, deterrence, and legal protection for vulnerable groups, the judiciary is essential in combating healthcare fraud and the financial exploitation of senior citizens. Fraudulent schemes targeting the elderly have become a major concern due to the growing complexity of the healthcare system and the aging population. Courts in many jurisdictions play a crucial role in interpreting and upholding legislation that prevents healthcare fraud and protects the financial interests of senior citizens.

Healthcare fraud is when individuals, insurance companies, or medical professionals engage in dishonest business practices that cause financial losses for patients, government healthcare programs, or insurance companies. Due to age-related cognitive decline, reliance on caregivers, and ignorance of their financial and healthcare rights, senior citizens are especially at risk. Fraudulent schemes include overcharging for prescription drugs, identity theft, Medicare/Medicaid fraud, unnecessary medical procedures, billing scams, and phony insurance policies. By bringing criminal charges against violators, directing reparations, and interpreting the law to protect victims, the judiciary upholds accountability.

Another rising issue is the financial exploitation of senior citizens, which is frequently carried out by family members, telemarketers, financial advisors, or caregivers. Elderly people suffer significant financial losses as a result of scams like forgeries, undue influence, fraudulent investment schemes, predatory lending, and abuses of power of attorney. Such exploitation can cause serious financial hardship because many seniors depend on fixed incomes or retirement savings. In these situations, judicial interventions include asset recovery, protective orders, civil and criminal proceedings, and penalizing dishonest actors.

Beyond making decisions, the judiciary also shapes legal precedents, influences policy choices, and fortifies consumer protection laws. In order to create more robust protections against fraud, courts have the power to interpret laws such as the General Data Protection Regulation (EU), the Consumer Protection Act (India), and the Elder Justice Act (USA). Courts have underlined in historic cases the necessity of strict regulatory oversight, the moral duties of healthcare and financial professionals, and consumer rights education. Governments are also compelled by judicial scrutiny to implement compliance measures in healthcare facilities, financial institutions, and elder care services.

The judiciary is also essential to alternative dispute resolution processes like mediation and arbitration, which provide effective ways to settle cases involving elder financial abuse without drawn-out legal proceedings. Access to justice is further improved by specialized tribunals and senior citizen-specific legal aid programs. Courts support senior citizen's dignity, autonomy, and security by respecting constitutional and human rights principles.

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<sup>8</sup> Bureau of Consumer Protection, Available at <https://www.ftc.gov/about-ftc/bureaus-offices/bureau-consumer-protection>.

**International Perspective:**

Governments and organizations worldwide have implemented various measures to address healthcare fraud and financial exploitation:

1. **Legislative Frameworks:** Robust legislative frameworks play a crucial role in curbing fraudulent activities. For instance, the U.S. Department of Justice's Health Care Fraud Unit employs a Strike Force Model for efficiently prosecuting health care fraud and illegal prescription cases across the United States. Similarly, the U.K.'s Financial Conduct Authority (FCA) has implemented regulations to oversee and regulate financial markets, aiming to protect consumers and enhance market integrity. In Australia, the Elder Abuse Action Plan has been established to address and prevent the abuse of older individuals, including financial exploitation.
2. **Technology and AI in Fraud Detection:** Advanced AI-driven detection systems enhance fraud prevention by identifying suspicious patterns in financial transactions and healthcare claims. These technologies enable the analysis of large datasets to detect anomalies that may indicate fraudulent activities.
3. **Public Awareness Campaigns:** Governments and NGOs educate seniors on common scams through workshops and outreach programs. For example, the Consumer Financial Protection Bureau (CFPB) has created guides to help prevent elder financial abuse, aiming to protect older consumers from financial harm and assist them in making sound financial decisions.
4. **Stronger Banking Regulations:** Financial institutions have strengthened verification processes to prevent unauthorized access to seniors' accounts. The Financial Crimes Enforcement Network (FinCEN) has issued advisories urging financial institutions to detect, prevent, and report suspicious financial transactions related to elder financial exploitation.
5. **International Cooperation:** Organizations like INTERPOL collaborate to track and dismantle cross-border fraudulent operations. INTERPOL coordinates transnational law enforcement efforts and supports multi-agency task forces to improve cooperation between police, customs, regulatory bodies, and the private sector. Additionally, the Transnational Elder Fraud Strike Force investigates and prosecutes individuals and organizations engaged in foreign-based fraud schemes that disproportionately affect American seniors<sup>9</sup>.

**Analysis of Research Question:**

*How do healthcare fraud schemes contribute to the financial exploitation of senior citizens, and what legal and regulatory measures can effectively prevent and address such exploitation?*

Elderly people's financial security and general well-being are seriously threatened by healthcare fraud and financial exploitation. Senior citizens' susceptibilities to fraud and exploitation have increased as the world's population ages and more people approach

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<sup>9</sup> INTERPOL, U.S. Department of Justice (DOJ), Financial Crimes Enforcement Network (FinCEN), Consumer Financial Protection Bureau (CFPB), and Financial Conduct Authority (FCA). (n.d.). *Global Strategies to Combat Healthcare Fraud and Financial Exploitation of Seniors*. Retrieved from: INTERPOL: <https://www.interpol.int/>, U.S. DOJ: <https://www.justice.gov/criminal-fraud/health-care-fraud-unit>, FinCEN: <https://www.fincen.gov/>, CFPB: <https://www.consumerfinance.gov/>, FCA (UK): <https://www.fca.org.uk/>



retirement age. In addition to causing significant financial losses, these crimes also cause victims to experience extreme psychological and emotional suffering. The relationship between elder financial exploitation and healthcare fraud demands a thorough grasp of the tactics used by scammers, the laws that are in place to prevent these crimes, and the tactics needed to shield senior citizens from these predatory practices.

When medical services or insurance claims are purposefully misrepresented in order to obtain illegal financial benefits, this is referred to as healthcare fraud. Several actors in the healthcare system, such as doctors, insurance companies, and scammers impersonating trustworthy providers, can commit it. Fraudulent activities in the healthcare industry jeopardize patient safety and the integrity of healthcare systems in addition to causing financial losses.

Unauthorized or inappropriate use of an older adult's money, assets, or property for one's own benefit is known as financial exploitation of senior citizens. Because seniors may have cognitive impairments, lack financial literacy, or trust people who will take advantage of them, this kind of elder abuse is especially alarming. Family members, caregivers, con artists, and even professionals like financial advisors and attorneys can commit financial abuse.

Financial exploitation of senior citizens is frequently accomplished through identity theft, telemarketing fraud, fraudulent investment schemes, and abuse of power of attorney. Many elderly people are duped into paying money under the false pretence of winning a prize in lottery or sweepstakes scams, which promise financial rewards. Furthermore, elderly people are disproportionately targeted by dishonest charities and misleading advertising of pharmaceuticals or medical devices, which take advantage of their health issues to defraud them.

By preying on their dependence on medical services, their faith in healthcare professionals, and their frequently inadequate understanding of insurance claims and billing procedures, healthcare fraud schemes greatly contribute to the financial exploitation of senior citizens. Due to their reliance on private insurance plans, Medicare, or Medicaid, many seniors are vulnerable to fraudulent billing practices like upcoding, phantom billing, and prescribing unnecessary treatments.

False billing for medical services or treatments that were never rendered is one of the most prevalent scams. Elderly people may get bills for operations they never had, which could result in financial losses and identity theft. In a similar vein, dishonest medical professionals may recommend costly but unnecessary drugs or equipment because they know that elderly patients are unlikely to challenge their advice. In addition to depleting seniors' financial resources, these dishonest practices put them at risk for negative health outcomes, like unwarranted reactions to treatments or procedures.

Fraudulent home healthcare services are another common scam. Under false pretences, scammers may provide in-home medical care, giving them access to seniors' financial information, personal information, and even tangible assets. Once trust has been built, criminals may trick elderly people into signing false documents that grant them access to property deeds or bank accounts. Victims of this kind of financial exploitation lose all of their savings and become more susceptible to future abuse.

Fraud detection and prevention are further complicated by the disjointed structure of financial institutions and the healthcare system. In order to effectively combat fraudulent activities, regulatory agencies frequently struggle with limited resources, and improved coordination among stakeholders—including law enforcement, financial institutions, healthcare providers, and advocacy groups—is constantly needed.

**Conclusion and Suggestions:**

Elder financial exploitation and healthcare fraud are serious problems that need immediate attention. As the population ages, it is critical to enhance fraud detection systems, fortify legal frameworks, and teach seniors how to safeguard themselves against fraudulent schemes. Policymakers, medical professionals, financial institutions, caregivers, and the general public must work together to address these issues. Society can guarantee the financial stability and well-being of senior citizens, enabling them to age with dignity and independence, by cultivating a culture of alertness and putting strong protective measures in place.

Even with current legal safeguards, there are still a number of obstacles to preventing financial exploitation and healthcare fraud. Because of victims' embarrassment, ignorance, or fear of reprisals, many cases remain unreported. Furthermore, as fraudulent schemes become more complex, it becomes more challenging for law enforcement to effectively track down and prosecute offenders. Fraud detection and prevention are further complicated by the disjointed structure of financial institutions and the healthcare system. In order to effectively combat fraudulent activities, regulatory agencies frequently struggle with limited resources, and improved coordination among stakeholders—including law enforcement, financial institutions, healthcare providers, and advocacy groups—is constantly needed.

It takes a multifaceted strategy that includes awareness-raising, legal actions, and technological safeguards to protect senior citizens from healthcare fraud and financial exploitation. Seniors can greatly lower their risk of becoming victims of fraud by being informed about common fraud schemes and given the tools to confirm financial transactions and healthcare providers.

Stricter oversight procedures, such as fraud detection systems and improved consumer protection measures, should be put in place by financial institutions and healthcare organizations. Families and caregivers are essential in keeping an eye on senior citizens' financial and medical activities in order to quickly identify any anomalies. Protective measures can also include advising seniors to consult with reliable experts before making financial decisions and to get second opinions on medical treatments. As former U.S. Senator Claire McCaskill stated, “*Financial exploitation of seniors is a growing epidemic that requires immediate action to prevent lifelong savings from being stolen*”<sup>10</sup>. Addressing these concerns is essential to **preserving the dignity, security, and quality of life of older adults**.

Governmental and non-profit organizations must keep pushing for improved reporting procedures, more funding for programs that prevent elder abuse, and stronger legal protections. Campaigns to raise public awareness and partnerships between financial institutions and law enforcement can aid in the more effective detection and handling of fraudulent schemes.

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<sup>10</sup> McCaskill, C. (2018). *Examining the Financial Abuse of Seniors: Congressional Hearing Before the U.S. Senate Special Committee on Aging*. United States Government Publishing Office. Retrieved from <https://www.aging.senate.gov>

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## 7. BALANCING JUSTICE: ADDRESSING THE MISUSE OF SECTION 498/BNS SECTION 85 WHILE PROTECTING GENUINE VICTIMS

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### *Abstract*

*The nation like India where traditions rituals and customs play the most pivotal and dominant part in the community. The nation like India is filled with emotionally attached customs, traditions and rituals. Amongst the wide variety of tradition and custom, Marriage is one such sacred foundation laid for the growth and raise of further generation. Our Nation celebrates auspicious occasion like Mahashivratri as Lord Shiva and Mata Parvati had got married on this day. With change of era in Indian community marriage has become just an arrangement of fulfilling wishes in the form of dowry from the bride's family. In the olden times Stridhan under Hindu Law was considered Woman's property but with changing time there was greed developed by the patriarchal society in which the men had entire control over the women and her Stridhan which was her property was taken by groom and his family. Earlier Stridhan was considered a blessing but the replacement of word Dowry made it a curse. As innocent brides were torched by the groom and his family for dowry not only in initial days after marriage but it continued till years which lead to death of the wife either by suicide or murdered by husband and his family. This led to a very worst phase of cruelty and harassment over women. Therefore, for the protection of women, Section 498A was brought under Indian Penal Code, 1860 by the Act 46 of 1983. There was a drastic social transformation due to the emerged law which created fear in the mind of the groom and his family and they became very stringent on not getting into any legal issues and taking dowry. Nevertheless, in recent years, it has been observed that women misuse Section 498A of Indian Penal Code for their self Interest. Women threaten Men over the power they have received through IPC Section 498A/BNS Section 85. With growing era and increase in technology the law should frame strict rules against Misuse of laws for woman. We are in 21st century where Laws should be framed in such a way that they are gender neutral.*

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**Keywords:** *Misuse, BNS Section 85, Section 498A, Harassment, Cruelty.*

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### **INTRODUCTION:**

India is a country where customs and traditions have been set on priority over and above all the other practices. As a nation India is enriched with wide variety of rituals and beliefs. Marriage has always been the most precious and sacred custom. The olden days of Indian History has a lot of knowledge about how this tradition came into force but with this beautiful concept of marriage where two people unite and so do their families there was a concept of dowry which started its roots then and slowly the blessing for the families became a curse for the bride's family as a lot of dowry in form of cash or property or gold was demanded by the groom's family. Newlywed wives were frequently killed for dowries. If not killed they are tortured the bride to that extent that she would commit suicide and therefore there was a hard-core need felt for a legal system to prevail to curb these venerable traditions. The term Dowry is defined under Section 21 of Dowry Prohibition Act, 1961. Section 498-A3 was introduced because of the pressing needs to stop all sorts of cruelty towards a married woman which was a burning problem of the country. This section was proposed to protect the women from the brutality of her husband and other members in his family. The section was embodied to safe guard the women from ill treatment and torture. But in present situation the legislation has become an evil in society. Instead of defence, the particular section is now used with mala fide intention by women as a weapon to threaten and harass the men for personal benefits and slaking for self-profit.

**Legal Provisions under IPC Section 498A and BNS Section 85**

Section 498A of the Indian Penal Code (IPC) was introduced in 1983 as a legal safeguard against cruelty inflicted upon married women by their husbands or in-laws. This provision was implemented as a response to the increasing instances of dowry-related violence and abuse against women in India. The primary objective of this section is to ensure the protection of women from any form of mistreatment, including physical, emotional, or mental harassment, occurring within the matrimonial relationship. Similarly, Section 85 of the Bharatiya Nyaya Sanhita (BNS) serves the same purpose, emphasizing the prevention of cruelty within marital institutions through legal intervention.

**Essential Elements of IPC Section 498A and BNS Section 85**

1. **Cruelty:** Section 498A of IPC and Section 85 of BNS explicitly recognize acts of cruelty against married women, which may be perpetrated by their husbands or in-laws. Such cruelty may manifest in various ways, including physical abuse, emotional torment, and coercion intended to force compliance with unlawful demands. The provision broadly covers both physical violence and psychological oppression.
2. **Demand for Dowry:** A fundamental component of these legal provisions is the criminalization of dowry demands. Any instance where a husband or his relatives demand money, property, or valuable gifts from the bride's family either at the time of marriage or subsequently falls within the scope of cruelty. Dowry-related offenses continue to be a pervasive issue in India, leading to severe consequences for victims, including physical violence, harassment, and, in extreme cases, loss of life.

**Instances of Cruelty as a Social Concern in Contemporary Society**

Several scenarios exemplify the different forms of cruelty that constitute violations of IPC Section 498A and BNS Section 85:

- **Persistent Dowry Demands:** When a woman is repeatedly subjected to demands for dowry and is harassed physically or mentally as a result, it qualifies as an act of cruelty.
- **Verbal and Emotional Abuse:** Insulting or demeaning a woman through persistent taunts regarding her appearance, intelligence, or worthiness in the household constitutes mental cruelty. For instance, if a wife is continuously belittled or harassed from the initial days of marriage, it amounts to psychological abuse.
- **Malicious Legal Accusations:** If a husband or his family engages in litigation against the wife with false allegations, intending to distress or intimidate her, it can be deemed cruelty. The misuse of legal mechanisms, such as unwarranted search warrants or confiscation of personal property, exacerbates the suffering of the victim.
- **Neglect and Financial Deprivation:** A husband's refusal to fulfil his responsibilities by depriving his wife and child of essential sustenance while indulging in destructive habits like gambling also falls under the definition of cruelty. This neglect, when prolonged, may severely impact the wife's well-being and stability.

The concept of cruelty remains broad and context-dependent. The law does not provide an exhaustive definition, as acts of cruelty can vary based on the socio-cultural background, physical and mental health parameters, and family circumstances of the affected woman. Judicial interpretations continue to shape the understanding of cruelty under IPC Section 498A and BNS Section 85, ensuring that legal provisions evolve to address the realities of domestic abuse in contemporary society.

**Misuse of Section 498A of IPC, 1860**

The introduction of Section 498A of the Indian Penal Code 1860 (IPC) and Section 85 of the Bharatiya Nyaya Sanhita 2023 (BNS) was intended to address the rising cases of dowry-related cruelty and domestic abuse against married women in India. However, despite their protective purpose, these legal provisions have increasingly been misused by individuals filing false allegations to harass their spouses and in-laws.

While Section 498A IPC was initially incorporated to provide legal protection to victims of cruelty, the growing number of acquittals compared to convictions suggests significant misuse of this law. The Supreme Court of India, which once upheld the section as a shield for women, has since recognised its potential for misuse, even going so far as to describe it as a form of 'legal terrorism' in *Rajesh Sharma & Ors v State of UP* [(2017) 8 SCC 746]. Despite concerns raised by the judiciary regarding its large-scale abuse, there remains a lack of empirical data to quantify the extent of its misuse.<sup>77</sup>

**Instances of Misuse of Section 498A****1. False Accusations and Abuse of Legal Provisions**

- Some individuals have exploited Section 498A IPC by lodging baseless allegations against their spouses and in-laws to cause harassment and extract financial settlements.
- False accusations have led to severe social and psychological consequences for men, including loss of reputation, professional setbacks, and emotional distress.
- Several judicial observations and legal studies indicate an increasing trend of wrongful accusations under Section 498A, resulting in unnecessary legal battles and wrongful arrests.

**2. Impact on the Family System**

- False complaints under Section 498A IPC have caused significant emotional and financial hardship for families, often leading to prolonged litigation and even imprisonment of innocent individuals.
- The misuse of this provision has contributed to an increase in marital breakdowns, weakening family structures and relationships.

**3. Judicial and Legal Observations**

- Courts in India have acknowledged the misuse of Section 498A IPC, notably in *Arnes Kumar v State of Bihar* [(2014) 8 SCC 273], where the Supreme Court issued guidelines to prevent arbitrary arrests in such cases.
- Law enforcement agencies have faced criticism for initiating arrests without conducting thorough investigations, resulting in undue hardship for accused individuals and their families.

**Misuse of Section 85 of BNS****1. False Claims Under Domestic Violence Laws**

- Section 85 BNS was introduced to protect women from cruelty, but there have been cases where individuals have filed false domestic violence complaints to harass their spouses.
- Some complainants have used the provision for personal gains, taking advantage of legal loopholes that make it challenging to distinguish genuine cases from fabricated ones.

**2. Penalizing False Accusations**

- Section 85 BNS includes provisions to address false claims in domestic violence cases, but proving the falsity of accusations remains a legal challenge.

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<sup>77</sup> <https://blog.ipleaders.in/misuse-section-498a-ipc/> accessed 18 March 2025.



- The enforcement of penalties against those who file false complaints is complex, as establishing malicious intent requires strong evidence.

Although Sections 498A IPC and 85 BNS were designed to offer legal protection to victims of cruelty, their misuse has resulted in wrongful accusations and undue harassment. Judicial pronouncements have acknowledged these concerns, prompting efforts to curb misuse through legal safeguards. However, achieving a balance between protecting genuine victims and preventing false cases remains a critical challenge. Further legal reforms and empirical studies are necessary to ensure that these provisions serve their intended purpose without being used as instruments of personal vendetta.

### **Judicial Reinforcement Against the Misuse of Section 498A IPC**

The Supreme Court of India has once again emphasized the necessity of preventing the misuse of Section 498A of the Indian Penal Code 1860 (IPC), a provision originally intended to protect women from cruelty within matrimonial relationships. Legal experts have examined the broader implications of this ruling, highlighting its significance for the criminal justice system, judicial scrutiny, and the delicate balance between safeguarding genuine victims and preventing wrongful harassment of innocent individuals.

#### **1. Supreme Court's Balanced Approach in Matrimonial Disputes**

The judgment reflects the Supreme Court's commitment to curbing the misuse of criminal proceedings in matrimonial matters. Unlike some High Courts, which have often been quick to quash First Information Reports (FIRs), the Supreme Court has adopted a more cautious and measured stance. The ruling underscores that while protecting women's rights remains a priority, legal provisions should not be weaponized for settling personal grievances.

#### **2. Reinforcement of Established Legal Precedents**

This ruling aligns with previous judicial decisions that have cautioned against frivolous complaints under Section 498A IPC. In landmark cases such as *Sushil Kumar Sharma v Union of India* [(2005) 6 SCC 281] and *Dara Lakshmi Narayana v State of Telangana* [(2017) 3 SCC 495], the Supreme Court had already acknowledged the increasing trend of false accusations under Section 498A. The recent judgment serves as a reminder that legal remedies must not be misused for vindictive purposes, reinforcing the legal principles established in past rulings.<sup>78</sup>

#### **3. Necessity of Clear and Specific Evidence in Criminal Cases**

The Supreme Court reiterated that cases filed under Section 498A IPC must be supported by concrete prima facie evidence rather than broad or vague allegations. A crucial takeaway from the judgment is that findings in civil cases, such as divorce decrees granted on cruelty grounds, can impact criminal proceedings when overlapping allegations exist. If a court has already rejected claims of cruelty in a civil dispute, it provides substantial grounds for quashing criminal proceedings based on the same accusations.

#### **4. Judicial Scrutiny in Dowry-Related Allegations**

The ruling clarifies that unsupported accusations of dowry harassment without material evidence cannot be the basis for criminal prosecution. While laws against dowry harassment and domestic violence remain essential for the protection of women, their misuse can erode public trust in the legal

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<sup>78</sup> Law Chakra, 'False 498A, Dowry, And SC/ST Act Charges | Supreme Court Grants Relief To Husband After 5-Year Legal Battle' (Law Chakra, 2025) <https://lawchakra.in/blog/false-498a-dowry-sc-st-act-supreme-court/> accessed 18 March 2025.

system. The Supreme Court's ruling reinforces the need for courts to carefully scrutinize complaints and prevent the law from being used as an instrument of harassment.

#### 5. Preventing the Misuse of Section 498A IPC

By setting a strong precedent, the judgment ensures that criminal cases under Section 498A IPC and the Dowry Prohibition Act 1961 cannot proceed in the absence of substantial evidence. Courts have been urged to thoroughly examine complaints before proceeding with criminal trials, reducing the risk of unwarranted harassment of accused individuals and their families. This decision acts as a deterrent against baseless litigation, preventing the judicial system from being overwhelmed by false claims.

#### 6. Strengthening the Fair Use of Legal Provisions

The ruling has broader implications for handling matrimonial disputes, emphasizing the need for a cautious legal approach in cases involving allegations of cruelty and dowry harassment. While Section 498A IPC was introduced as a protective measure for married women, instances of false accusations have led to severe consequences for husbands and their families, including distant relatives. The judgment highlights the importance of thorough investigations before filing FIRs and suggests that those responsible for false claims should face legal consequences.

#### 7. Call for Legislative and Procedural Reforms

The Supreme Court's ruling underscores the urgent need for legislative and procedural reforms to prevent the misuse of matrimonial laws. While laws should continue to protect genuine victims, there must be mechanisms in place to distinguish between legitimate grievances and false accusations. The judgment suggests that refined legal mechanisms and stricter penalties for false complaints could restore fairness and prevent the law from being exploited for personal vendettas.

#### 8. Impact on Future Matrimonial Cases

This ruling sets an important precedent in matrimonial litigation, cautioning individuals against using legal provisions as a means of harassment or financial extortion. The misuse of laws such as Section 498A IPC, the Dowry Prohibition Act 1961, and the Protection of Women from Domestic Violence Act 2005 has been observed in cases where individuals attempt to settle personal disputes through criminal prosecution. By reinforcing the necessity of prima facie evidence, the judgment discourages the filing of baseless complaints.

The Supreme Court's latest ruling on Section 498A IPC is a critical step toward ensuring that legal protections do not become tools of injustice. By emphasizing substantive evidence, judicial scrutiny, and safeguards against malicious litigation, the judgment strengthens the fair use of matrimonial laws. This ruling sends a clear message: while the rights of genuine victims must be protected, the criminal justice system should not be misused for personal revenge. Going forward, additional legislative and procedural reforms may enhance the effectiveness and fairness of these legal provisions, creating a balanced approach between protecting victims and preventing misuse.

### SUGGESTIONS

Based on the research conducted on the misuse of Section 498A of the Indian Penal Code (IPC), 1860, the following recommendations are proposed to address the issue effectively:

#### 1. Expediting Trials for 498A Cases

The judicial process in India for criminal cases, especially serious offenses, often extends 8 to 10 years or more, depending on the severity of the crime. A speedy trial is crucial to ensure that innocent individuals falsely accused under Section 498A receive prompt justice. It is imperative that the judiciary not only ensures effectiveness but also accelerates the trial process for cases under Section 498A IPC to prevent undue harassment.

## 2. Independent Investigation by Civil Authorities

To avoid arbitrary arrests and wrongful prosecution, investigations under Section 498A should be conducted exclusively by civil authorities. Law enforcement officers should take action only after gathering sufficient evidence to establish prima facie guilt. This will prevent misuse of legal provisions and ensure fair trials.

## 3. Urgent Legislative Amendments to Section 498A IPC

The provisions of Section 498A IPC, 1860 require immediate amendment to prevent misuse. It is imperative for lawmakers to introduce necessary changes to maintain the original intent of the law protecting genuine victim while preventing its use as a tool for legal harassment.

## 4. Establishment of Family Counselling Centres

India lacks a structured and formalized family counselling framework. The establishment of government-recognized family counselling centres can provide legal guidance, emotional support, and mediation for couples in distress. This will help in resolving matrimonial disputes amicably and reducing the number of frivolous complaints filed under Section 498A.

## 5. Role of NGOs and Human Rights Organizations

Non-Governmental Organizations (NGOs) and human rights organizations should act as neutral entities to ensure that criminal cases are not filed for minor disputes. Public awareness campaigns should be conducted to educate individuals about the fair use of matrimonial laws and the consequences of false allegations.

## 6. Making Section 498A a Bailable Offense

Currently, Section 498A IPC is non-bailable, leading to the unjust incarceration of innocent individuals without sufficient evidence. A genuine effort should be made to reclassify it as a bailable offense to prevent wrongful imprisonment and undue hardship for falsely accused persons and their families.

## 7. Penalizing False Allegations

There is no deterrent mechanism for individuals who file false complaints under Section 498A. The judiciary must impose penalties and take stringent action against those making false accusations to curb the misuse of this legal provision. A system of punitive damages or criminal liability for false accusers should be introduced to discourage malicious litigation.

## 8. Strict Actions Against Corrupt Law Enforcement Officials

Cases involving corruption and negligence by law enforcement officers must be dealt with strictly. Any police officer found guilty of falsifying evidence, wrongful arrests, or mishandling cases under Section 498A should face severe penalties, including suspension or dismissal. This will restore public trust in the criminal justice system.

## CONCLUSION

The provisions under Section 498A IPC were originally enacted to protect women from cruelty, domestic violence, and dowry harassment. However, the law has become one of the most debated provisions in contemporary legal discourse due to its frequent misuse. If legislative action is not taken, this legal provision could evolve into a serious societal issue, often referred to as "legal terrorism".

While it is undeniable that many women face genuine domestic abuse and require protection, false accusations under Section 498A create a new form of injustice where innocent husbands and their families become victims of legal manipulation. This not only affects the accused individuals but also has far-reaching consequences on their dependents, reputations, and social standing.

A balanced approach is necessary one that safeguards victims of domestic violence while also preventing the exploitation of legal provisions. The recommendations provided in this research aim to strengthen judicial fairness, streamline legal processes, and introduce deterrents against misuse.

Thus, urgent legislative and procedural reforms are required to prevent the abuse of Section 498A IPC and ensure that it continues to serve its intended purpose protecting genuine victims rather than being misused as a tool for personal vendetta.

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*Dara Lakshmi Narayana v State of Telangana [(2017) 3 SCC 495].*

*Dowry Prohibition Act 1961, ss 3, 4.*

*Indian Penal Code 1860, s 498A.*

*Protection of Women from Domestic Violence Act 2005, s 12.*

*Rajesh Sharma & Ors v State of UP [(2017) 8 SCC 746].*

*Sushil Kumar Sharma v Union of India [(2005) 6 SCC 281]*

## 8. REDEFINING PROTECTION: THE LEGAL FRAMEWORK FOR MALE VICTIMS OF DOMESTIC VIOLENCE IN INDIA

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### **Abstract**

*It is just as necessary to empower men in today's modern society as it is to support the ideology of feminism. There is a great deal of unreported cases of male domestic abuse, when the male victims refrain from reporting the offence, because they fear social disgrace. In one of the recent incident where a 34-year-old man called Atul Subhash, allegedly committed suicide due to harassment from his wife in matrimonial matters. This has brought attention to misuse of Section 85-86 of Bhartiya Nyaya Sanhita, 2023 where husbands and their family members are harassed in cases filed under domestic violence and dowry laws.*

*Even while people in contemporary cultures are aware of domestic abuse against married male members, there continues to be an absence of clarity in education and training. For lodging a complaint against such abuses, there are internet pages and online forums available. Domestic violence carries the weight of not only physical abuse but also financial, emotional, and psychological abuse. A consistent harassment can lead to a more systematic form of domestic abuse where men become habituated towards the actions of their battering woman.*

*The Indian criminal jurisprudence on male domestic abuse is devoid of provisions and stringency, which makes it challenging to punish the perpetrators. The Bhartiya Nyaya Sanhita, 2023 defines cruelty as being centred around women, and only women are eligible to be the victims of such domestic abuse and cruelty under Sections 85 and 86. The said Code contains not even a single provision that would hold a woman accountable for domestic abuse. Even if the male victim reports a case of domestic abuse, the law enforcement machinery is unable to help him. Facets of gender neutrality and human rights are equally shared by men and women.*

*This paper will analyse the reasons behind increased domestic violence against male members of the society in India. It is the need of the hour to have gender neutral laws emphasizing on breaking the stereotypes. This paper will not only analyse the judicial interpretations of domestic abuse towards a male married man but also it will recommend certain amendments in the existing legal provisions to safeguard the rights of such men in India.*

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**Keywords:** Domestic Violence; male victims; protection; The Bharatiya Nyaya Sanhita; Cruelty

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### **1. Introduction:**

There was a time when domestic abuse was only associated with women but the times are changing and so is the society's definition of a victim. There are so many cases in Indian households where a man is tortured by his wife whether it is done socially, economically, physically or mentally. The cruelty as mention in the *Bhartiya Nyaya Sanhita 2023* still victimises women and is gender biased. Even though the cases of domestic abuse on men is not so much as that on a woman, the researcher emphasises that misuse of law also cannot be ignored.<sup>1</sup>

Domestic abuse can be physical, sexual, economic or psychological depending upon the offender's conduct and actions. It generally is seen in intimate relationships inside an Indian household. It was typical of law and enforcement machinery to accuse and imply a man behind this abuse. And in some cases even the family members of the husband are held guilty. For protecting the vulnerable group of women in India, Domestic Violence Act, 2005 was enacted. Due to gender inequalities and cultural stigma present in the society, this is an ongoing issue.<sup>2</sup>

The problem is that even men face these issues but it is not significantly discussed or recognised by our Indian society. There is a grave chance that a man can also face domestic violence by female partners

or family members. Financial problems can also lead to domestic abuse towards men. Legal frameworks like Section 3 of the Protection of Women from Domestic Violence Act (2005) primarily focusses on preventing cruelty against women but it will limit the remedies against men. But now it is time to understand the atrocities men face in India and acknowledge them as victims equally claiming for support and protection from law enforcement agencies.<sup>3</sup> Certain recommendation and guidelines by the Apex court of India has also aided in understanding the nuances of domestic abuse against men and what can be done about it provisionally.<sup>4</sup>

## 2. The New Law: Bhartiya Nyaya Sanhita 2023

The plain reading of Section 86<sup>5</sup> of Bhartiya Nyaya Sanhita 2023 defines ‘cruelty’ as 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 or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.<sup>6</sup>

The provision of ‘cruelty’ under section 86 of the Bharatiya Nyaya Sanhita 2023, now includes Physical as well as ‘Mental’ cruelty in its purview. It is a positive step by the legislative thinkers to incorporate mental element in the definition of cruelty. Apart from judicial decisions, such statutory acknowledgement was necessary and the need of the hour.<sup>7</sup>

Section 85<sup>8</sup> of the new law talks about the cruelty done by the husband or family members of husband on the victim wife. It says that whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.<sup>9</sup>

According to the Supreme Court, any abuse of legislation such as Sections 85 and 86 of the Bhartiya Nyaya Sanhita 2023 can be contested in court, and reparation can be obtained by bringing counterclaims based on false accusations and facts. The wife accused her husband of dowry harassment in the 2013 case of *K. Srinivas Rao v. D.A. Deepa* but the case turned out to be false, and the husband was arrested. The spouse claimed that the fake criminal case had caused him and his family great mental pain and filed for divorce on the grounds of mental cruelty.<sup>10</sup>

### 1. Section 13 of the Hindu Marriage Act, 1955

This makes it abundantly evident that the law exclusively punishes husbands or their relatives, and that there is no legal foundation to protect the male victims of such crimes. Domestic abuse and cruelty against the husband are grounds for divorce under the Hindu Marriage Act of 1955, however there is no criminal punishment for these offenses. Under the aforementioned law, a disgruntled husband may petition the family courts for a divorce and use physical or mental abuse as a valid reason. The victim husband has access to this civil remedy.<sup>11</sup>

<sup>1</sup> Kaur, Navpreet & Gulati, Shobha, Domestic Violence Against Men in India: A Critical Analysis with Special Reference to Indian Laws. South India Journal of Social Sciences, 2024.

<sup>2</sup> *Ibid*

<sup>3</sup> Gajmer, Pooja & Tyagi, Swati, Domestic violence: An overview of Sec 498A IPC- A case report. Indian Journal of Forensic and Community Medicine, 2021.

<sup>4</sup> *Ibid*

<sup>5</sup> Section 86, Bhartiya Nyaya Sanhita, 2023

<sup>6</sup> Section 86 of The Bharatiya Nayay Sanhita 2023- For the purposes of section 85, “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; or

<sup>7</sup> *Ibid*

<sup>8</sup> Section 85, Bhartiya Nyaya Sanhita, 2023

<sup>9</sup> Thakur, M. S., Domestic Violence Against Men and Women in India: Why Blame Only Us If You Can Do It Too? Retrieved from Legal Bites: <https://www.legalbites.in/domestic-violence-against-men/>, October 2020.

<sup>10</sup> Kaur, Dilpreet & Kashyap, Priyambada, The Violence in our Homes: Role of Family Dynamics in Domestic Violence against Women, 2023.



In the case of *Naveen Kohli v. Neelu Kohli (2006)*, the husband, Naveen Kohli, sought divorce on the grounds of mental cruelty. He alleged that his wife had filed multiple false criminal cases against him, defamed him publicly, and caused mental agony to him because of which the marriage has come to an irreparable stage. The Supreme Court held that persistent efforts by the wife to malign and defame the husband, and filing false complaints, amounted to mental cruelty. The Court granted the husband divorce on the ground of irretrievable breakdown of marital relationship.<sup>12</sup>

### **1. Report of International Institute of Population Sciences (IIPS) Mumbai:**

It was observed by the International Institute for Population Sciences (IIPS), Mumbai that the maximum number of perpetrators of domestic abuse against husband are women who are working or who have access to mobile phones.<sup>13</sup>

It showed that there are 29 cases of marital abuse against men for every 1,000 people in India. According to NFHS-4, the percentage of married women who abuse their husbands ranged from 2 per 1,000 in Sikkim to 90 per 1,000 in Tamil Nadu. Additionally, it was discovered that, with the exception of Sikkim, Goa, and Mizoram, the prevalence of domestic violence against husbands rose sharply in most states between 2005–06 and 2015–16. Additionally, it was noted that as the wife ages, the husband experiences more spousal violence. Additionally, the study found that nuclear families were more likely to experience violence than joint families.<sup>14</sup>

Gender based violence is not a new concept and has been recognised globally as a concern for humanitarian law and human rights. This can lead to medical conditions such as depression, morbidity, mortality, suicidal tendencies and post-traumatic stress.<sup>15</sup> Since India has the history of patriarchal societies for ages, it is difficult to perceive that even men can fall prey to the assaults of a female.<sup>16</sup>

The legal framework lacks provisions in support of male victims of abuse but there are growing number of men who are facing harassment issues on a daily basis and due to their reputation in the society or by the very fact that they are 'male' members of the society they hide behind the walls of shame and do not complain regarding such violent attacks.<sup>17</sup> There is no provision in the Act which protects male members of the family institution from domestic violence. When the law itself is gender biased, it is assumed that always men are guilty for the offence of domestic abuse.<sup>18</sup>

### **1. International law regarding domestic violence against men**

The laws in international law regarding men are quite underdeveloped. There are several conventions supporting women in various areas but convention related to men and their rights against abuse is limited to basic human rights provided under the Declaration. It is the need of the hour to tender laws related to domestic violence against men which ought to be globally recognised.<sup>19</sup> There are multiple Conventions which speak about right to life, liberty and security of a person, for example- Universal Declaration of Human Rights, but explicit provision for protection of male victims is missing in all these Conventions.

#### **1.1. Universal Declaration of Human Rights (UDHR), 1948:**

The Declaration per se does not provide for rights for men against domestic abuse but Article 3 of the declaration make it specifically clear that all individuals, whether men or women, have right to life, liberty and security. The said declaration is gender-neutral and favours the male victims as well, and its principles advocate against any form of abuse or biasness, thus extending protection to male victims of domestic violence.

<sup>11</sup> Awasthi, A., An Indian Perspective on Domestic Violence against Men. Retrieved from Times of India, 2023.

<sup>12</sup> E.V., S. Domestic Violence Against Men: Hidden Victim. International Journal of Law Management and Humanities, 2192 – 2198, 2021.

<sup>13</sup> Aparajita Chattopadhyay, Deepanjali Vishwakarma, Suresh Jungari (all IIPS), and Santosh Kumar Sharma (The George Institute for Global Health, New Delhi).

<sup>14</sup> 'Prevalence and risk factors of physical violence against husbands: evidence from India', published by Cambridge University Press, 2023.

<sup>15</sup> World Health Organisation. *The Third Milestones of a Global Campaign for Violence Prevention Report*. Geneva: World Health Organization; 2007.

**1.1. International Covenant on Civil and Political Rights (ICCPR), 1966:**

The International Covenant for Civil and Political Rights (ICCPR) provides for right to equality before the law for both men and women under Article 26 and in continuation of this provision, there is another provision that protects individuals from cruelty, inhuman treatment and degradation of any kind as provided under Article 7<sup>20</sup>. Article 3 also states that 'The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.' <sup>21</sup>

**1.2. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979:**

According to Article 1 of the Convention, every action related to gender-based abuse that causes or is likely to cause any kind of physical, sexual, or psychological harm or injury to women including threats of such actions, coercion, or arbitrary deprivation of liberty is considered "violence against women" for the purposes of this Convention, whether it takes place in private or public life. Despite CEDAW's emphasis on women's rights, regulations against domestic abuse can nevertheless protect men by applying the non-discrimination principle. The non-discrimination principle safeguards the right of women as well as men as per the rule of law and equality. Natural justice also demands gender equality for particular laws.

The Vishakha guidelines came up as a judicial activism promoting the statute of Prevention of Sexual Harassment of Women at Workplace Act, 2013. Gender-neutral frameworks for domestic abuse cases can be modelled after several of the CEDAW elements, such as protection from assault. In spite of being a party to CEDAW convention and also ratifying the Convention, India took 11 years to frame a law upon sexual harassment at workplace.<sup>22</sup>

<sup>16</sup> Sawant ST. Place of the woman in Indian society: A brief review. *J Hum Soc Science*, 2016.

<sup>17</sup> *Domestic Violence against Men*. San

Francisco, [https://www.en.wikipedia.org/wiki/Domestic\\_violence\\_against\\_men](https://www.en.wikipedia.org/wiki/Domestic_violence_against_men).

<sup>18</sup> Awsthi, A., An Indian Perspective on Domestic Violence against Men. Retrieved from Times of India, <https://timesofindia.indiatimes.com/readersblog/my-thoughts-on-paper/an-indian-perspective-on-domestic-violence-against-men-50632/>, 2023.

<sup>19</sup> Batista, Vanessa & Barreto, Mayckel & Gomes, Nadirlene & Prado, Eleandro & Padoin, Stela & Godoy, Fernando & Trigueiro, Tatiane & Marcon, Sonia, unveiling family relationships based on the context of domestic violence: A Grounded Theory. *Revista da Escola de Enfermagem da USP*. 57. 10.1590/1980-220x-reeusp-2023-0009en, 2023.

<sup>20</sup> International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI), 16 December 1966, 23 March 1976, in accordance with Article 49.

<sup>21</sup> Shalini Shivajirao Ghumare, D. P on Domestic Violence - A curse to a Man in a male dominated society. *International Journal of Creative Research Thoughts*, 754-760, 2021.

<sup>22</sup> <https://www.un.org/womenwatch/daw/cedaw/>

### **1.3. The Istanbul Convention (Convention on Preventing and Combating Violence Against Women and Domestic Violence)**

This convention is one of the most comprehensive frameworks on domestic violence. While it mainly focuses on protecting women, it does not exclude men. Article 2 of the Convention states that it applies to "all forms of violence," regardless of gender.<sup>23</sup>

These are the salient features of the said convention:<sup>24</sup>

- The Convention obliges states to ensure that all victims of domestic violence, regardless of their gender, are protected.
- Some countries have interpreted this convention in a way that includes men as victims of domestic violence.
- Several judgments of the ECHR have interpreted rights related to Article 3 of the European Convention on Human Rights, which protects against inhuman or degrading treatment, as being applicable to domestic violence cases, including male victims.
- The ECHR mandates that all people, regardless of gender, have a right to life and freedom from inhuman treatment, meaning domestic violence protection laws must be gender-neutral.

### **1.4. The United Kingdom:**

In the year ending in March 2020, an estimated 2.3 million adults aged 16 to 74, 1.6 million women, and 757,000 men were victims of domestic abuse. Due to the cumulative effect of minor year-over-year decreases, including a notable decrease in the year ending March 2009, the prevalence of domestic abuse experienced by adults aged 16 to 59 years in the year ending March 2020 (6.3%) was significantly lower than the year ending March 2005 (8.9%). In the year ending in March 2017, an estimated £66 billion was spent on victims of domestic violence in England and Wales.<sup>25</sup>

Because it is gender-neutral, the Domestic Abuse Act of 2021 is applicable to both men and women. Men can file criminal complaints or apply for protection orders against their abusers, and the United Kingdom law defines abuse as including coercive, financial, emotional, and physical control.

### **1.1. The United States of America:**

Originally passed in 1994 with the primary goal of protecting women, the Violence Against Women Act (VAWA) has been expanded to include men. The law offers access to shelters, legal assistance, and protective services, acknowledging that men can also become victims of domestic abuse. Advocates for men's rights have pushed for more expansive interpretations of current legislation to include males as victims of intimate partner and domestic abuse.

VAWA has ensured that victims and their families have access to the services they need to achieve safety and rebuild their lives by focusing on the needs of underserved communities, establishing coordinated community responses that bring together diverse stakeholders to work together to prevent and respond to violence against women, providing legal relief for battered immigrants so that abusers cannot use the victim's immigration status to prevent victims from calling the police or seeking safety, and supporting tribal governments.

With over 3 million calls answered and over 22,000 calls received each month, the National Domestic Violence Hotline has improved safety, decreased recidivism, and assisted in responding to urgent needs for aid.<sup>26</sup>

<sup>23</sup> <https://www.coe.int/en/web/istanbul-convention>

<sup>24</sup> <https://www.coe.int/en/web/gender-matters/council-of-europe-convention-on-preventing-and-combating-violence-against-women-and-domestic-violence>

<sup>25</sup> <https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/domestic-abuse-bill-2020-overarching-factsheet#:~:text=The%20act%20will%3A,the%20Commissioner's%20functions%20and%20powers>

## 2. Role of Judiciary and Police enforcement for guidelines and registration of complaints respectively

Men often face social stigma and police reluctance when reporting abuse by their wives. Police officers may dismiss or downplay complaints due to the entrenched belief that domestic violence predominantly affects women. To address this, some countries have issued guidelines encouraging law enforcement to handle such complaints without bias. In India, there are several judgments which states the guidelines to protect men from misuse of law by women.

Recommendations by committees which are set up for their protection also needs to be acknowledged by the Legislature.<sup>27</sup>

### 2.1. Misuse of Section 498 A (Cruelty against married women):

When, by means of this law, the women accuse their husbands under Section 498A of the Indian Penal Code (now called as Bhartiya Nyaya Sanhita, 2023 with amendments), the offence being cognizable and non-bailable, it puts the man behind the bars without giving a proper chance to him and if the husband is innocent, the justice is denied on his part. The situation of the women in India is still awful. But despite the rights provided for them by the legislature, there is a constant need to uplift their status everything need rights to uplift themselves in society. It has been proved time and now that the women are using the law as a weapon when it was meant to be used as a shield by them.<sup>28</sup>

The Supreme Court of India in the case of *Rajesh Sharma v. State of UP (2017)* provided certain guidelines issued to prevent the misuse of Section 498A old Indian Penal Code, 1860 by recommending that Family Welfare Committees (FWC) should examine the complaints before the police proceed with arrests.

The Apex court in the case of *Savitri Devi v. Ramesh Chand and Others* held that law is blatantly abused and misused to the point where it affects the very basic foundational requirements of a marriage. The court also recognized that in order to stop such abuse, authorities need to examine the current law and amend certain provisions for strengthening the rules against abuse. It is obvious that this clause was created to shield married women from the savagery of their in-laws. But there are other women who exploit this law, and in *Saritha v. R. Ramachandran*, the court pointed out the abuse and asked the Law Commission and Parliament to change this offense to one that is not punishable by law and is subject to bail. The court has a duty to condemn violence and safeguard the defenceless, but what if the victim turns into the abuser?<sup>29</sup>

<sup>26</sup> The Violence Against Women Act, fact sheet published in 1994 [https://obamawhitehouse.archives.gov/sites/default/files/docs/vawa\\_factsheet.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/vawa_factsheet.pdf)

<sup>27</sup> Kumar, Anant. (2012). Domestic Violence against Men in India: A Perspective. Journal of Human Behaviour in the Social Environment. 22. 290-296. 10.1080/10911359.2012.655988.

<sup>28</sup> Domestic Violence in India: Exploring Strategies, Promoting Dialogue, Men, Masculinity and Domestic Violence in India Summary Report of Four Studies, ICRW.

<sup>29</sup> *Saritha v R. Ramachandran* I (2003) DMC 37

The Punjab and Haryana court noted in the year 1990 in the landmark case of *Jasbir Kaur versus Territory of Haryana* <sup>30</sup> that an estranged wife will go beyond reasonability to accuse as many members of the husband's family as possible to revenge and avenge the marital expectations. In the case of *Kanaraj versus Territory of Punjab* <sup>31</sup>, the Apex Court remarked that all the members of the family including the husband cannot be held guilty where the fault is only of the husband concerned. When the family members are accused, their acts require to be proved beyond reasonable doubt that they were unlawful. They cannot be held guilty merely on the basis of speculation of involvement. The court observed that roping in all the family members without proper evidence needs to be checked.

### 3. Conclusion

Men can face domestic violence not only in marriage but also during co-habitation. How the Indian laws have designated wife to include 'live-in relationship partner', it should be equally applicable for male victims who are cohabiting with their female partners and suffering cruelty or violence. Every person should be treated equally before the law, according to Article 14 of the Indian Constitution, and the law will protect each person equally. Caste, ethnicity, religion, place of birth, or sex will not be grounds for discrimination. Under Article 21, which the Supreme Court of India has expanded in numerous cases as needed, it also ensures that everyone, regardless of gender, has the fundamental right to life and personal liberty.

The recent incident of *Atul Subhash* has brought attention to the issue of domestic violence and its misuse by women and her relatives. He was a 34-year-old married man, a techie working in Bangalore, committed suicide leaving 80-minute video behind and a 24-page suicide note accusing his wife and her family members for filing false cases of dowry demand against him. There have been many incidences of false implications of men in dowry cases leading to such tragic outcomes and questioning our criminal justice system.

The disregard and indifference towards male victims of heinous crimes like sexual assault and domestic violence, to mention a few, is shocking in India, where the judiciary and legislature are making several admirable efforts to achieve gender equality and close any gaps between sex-based discrimination. Even if society still has the patriarchal belief that only women can be the victims of such crimes, the figures have a completely different story to tell and a different reality to show us.

In India, despite the existence of laws protecting women, the general public still believes that these kinds of offenses are only committed against women, who are severely denied their rights. Over the course of a year in New Delhi, a study supported by the Indian Council of Medical Research found that 515 of the 1000 males in the sample had experienced violence at the hands of their own spouse. Although the majority (49.6%) reported experiencing emotional violence, they also reported experiencing physical violence (0.6%) and sexual violence (0.4%). Furthermore, about 60 lakh women have physically abused their husbands without cause, according to the National Health Family Survey, which was carried out in 2005–2006. In India, there are a pitiful 3 crore incidences of domestic abuse against men, and males are more likely to experience violence from their wives' family members and relatives than from the wives themselves.<sup>32</sup>

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<sup>30</sup> *Jasbir Kaur v. Territory of Haryana* (1990) 2 REC Cri R 243

<sup>31</sup> *Kanaraj v. Territory of Punjab* 2000 Cri LJ 2993

<sup>32</sup> <https://www.tsclld.com/domestic-violence-against-men-india>

**The following recommendations are suggested by the authors:**

- As an inclusive nation state, there is a need to form a statutory definition for domestic abuse, emphasising that domestic abuse is not just physical violence, but can also be emotional, controlling or coercive, and economic abuse and it should not be gender biased. Even men should have certain rights under the new Bhartiya Nyaya Sanhita 2023 against cruelty by their spouse.
- It is possible to create a position for a Commissioner of Domestic Abuse, outlining the Commissioner's duties and authority.
- Impose an obligation on local government agencies to offer accommodation-based assistance to victims of domestic violence and their children in safe havens such as refuges.
- Forbid abusers from personally cross-examining their victims in India's family and civil courts.
- Include post-separation abuse in the offense of controlling or coercive behaviour.
- Establish a statutory plan for those who commit domestic abuse.
- Ensure that every qualified homeless person who has experienced domestic abuse has a "priority need" for homelessness support.
- Establish a legal rule of conduct for handling information about domestic abuse for immigration purposes.



## 9. IMPACT OF ARTIFICIAL INTELLIGENCE ON THE RIGHTS OF MIGRANT WORKERS: A LEGAL ANALYSIS

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### ***Abstract***

*The integration of artificial intelligence (AI) at fast shape is providing new dimensions to global labour markets but also is creating certain impact in reference to the rights of migrant workers. The migrant workers fall under the head of the most vulnerable section but with the increase in use of AI, they are facing number of challenges. These challenges are further increased with the integration of AI are in recruitment, workplace management, surveillance and decision-making. This paper investigates the impact of AI on the rights of migrant workers with the help of comparative analysis of international and national legal instruments. The important international instruments such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 and International Labour Organisation (ILO) are discussed and examined to safeguard migrant rights. However, the AI process creates certain obstacles such as algorithmic opaqueness, bias, and decision making process. It focuses on the end of discriminatory practices and the erosion of traditional labour protections.*

*The legal framework regulating migrant workers, Inter-State Migrant Workmen Act 1979 and the Contract Labour (Regulation and Abolition) Act 1970, are in conflict with impact arising from automated systems. As privacy has been held as a fundamental right by the Supreme Court in Justice K S Puttaswamy v Union of India (2017), there is a need for regulatory framework for addressing AI's specific risks. AI tools are being used at workplaces from hiring to workplace surveillance with diluted accountability and right to privacy is being infringed. An urgent need arises for changes to be made in that balances AI governance with the protection of migrant workers' rights.*

*After analysis certain recommendations are made aiming at harmonising technological innovation with human rights imperatives of the migrant workers, the most vulnerable segments of society.*

**Keywords:** *Artificial intelligence, migrant workers, legal frameworks, automated systems, technological innovation, human rights.*

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### **I. Introduction**

On the one hand, artificial intelligence has increasingly made its place in every aspect of modern work and on the other hand migrant workers are placed at precarious positions. Many AI driven technologies like facial recognition or verification through biometric, automated hiring systems and predictive labour rights enforcement are being used by various governments and organisations. These tools are used to detect and unfair labour practice and provide remedial measures. AI instruments may have many benefits such as tracking human trafficking. But these tools also limit access to employment for marginalised communities and infringe their rights. The author has discussed the intersection of AI and migrant workers' rights through legal framework, judicial precedents and case studies.

### **2. Meaning and Definition**

#### **2.1. Artificial Intelligence**

Artificial Intelligence is similar to the human cognitive capabilities such as Problem solving, learning and decision making. European Commission defines AI as "Artificial intelligence (AI) refers to systems that display intelligent behaviour by analysing their environment and taking actions – with some degree of autonomy – to achieve specific goals. AI-based systems can be purely software-based, acting in the virtual world (e.g. voice assistants, image analysis software, search engines, speech and

face recognition systems) or AI can be embedded in hardware devices (e.g. advanced robots, autonomous cars, drones or Internet of Things applications).”<sup>1</sup>

## 2.2 Migrant Workers

Migrant workers, the vulnerable section, are subject to inadequate legal protection because of the social factors surrounding them. In many areas, they are exposed to exploitation, wage theft, and discriminatory practices. With the advent of AI, employers increasingly rely on automated systems for screening of applications, monitoring the performance and wage determination. Such systems can exacerbate existing inequalities, if not carefully regulated. For example, opaque recruitment algorithms might systematically disadvantage migrant applicants by relying on biased data sets. It is not possible to audit AI. AI-driven workplace surveillance raises serious privacy concerns.

## 3. Artificial Intelligence: Its Application and Rights of Migrant Workers

### 3.1. Automated Recruitment and Contract Verification

Artificial Intelligence tools are being used for recruitment and contract verification making the workers get the job quickly. These prevent them from falling into fraudulent recruitment schemes, wage theft and many other unfair practices.

The use of tools impacts their right to privacy. They also become a victim of bias and discrimination. As in the case of Amazon, the women employees were not favoured over the male employees by the algorithm.<sup>2</sup> This was the result of the training of the algorithm over biased dataset of AI app. The Philippines President made the statement in respect to verification of contracts through automated means that it will help the workers in securing jobs fast but the automation takes much of time and raises the issue regarding data quality.<sup>3</sup> ‘VerifyAI’ is another algorithmic application which quickly reviews contracts and also provides references for each source involved in the contract.<sup>4</sup> ‘Legly, Spellbook, LEGALFLY, Evisort and Luminance’ are some AI applications which are used to review on the basis of any anomaly, ingestion of documents, recognition of clauses, risk assessment and check to the compliance of rules.<sup>5</sup> ‘MigrantPal’, a chatbot which is used to respond quickly to the needs of the migrant workers by answering to their queries.<sup>6</sup> International Labour Organisation through the launch of Observatory on Artificial Intelligence (AI) and Work in Digital Economy has

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<sup>1</sup> Azamat ABDOULLAEV, ‘On the EC’s Definition of AI, or How to Define Artificial Intelligence as Real and Concerned with Essence of Intelligence’ (*FUTURIUM - European Commission*, 8 January 2019) <<https://ec.europa.eu/futurium/en/european-ai-alliance/ecs-definition-ai-or-how-define-artificial-intelligence-real-and-concerned>> accessed 6 March 2025.

<sup>2</sup> ‘Why Amazon’s Automated Hiring Tool Discriminated Against Women | ACLU’ (*American Civil Liberties Union*, 12 October 2018) <<https://www.aclu.org/news/womens-rights/why-amazons-automated-hiring-tool-discriminated-against>> accessed 6 March 2025.

<sup>3</sup> ‘OEC and Contract Verification Online Automation on Your Smartphone’ (*OWWA Member*, 6 August 2022) <<https://owwamember.com/oec-contract-verification-online/>> accessed 5 March 2025.

<sup>4</sup> ‘VerifAI | The Easiest AI Contract Review Tool’ <<https://www.spotdraft.com/products/verifai>> accessed 6 March 2025.

<sup>5</sup> ‘The 9 Best AI Contract Review Software Tools for 2025 | LEGALFLY’ <<https://www.legalfly.com/post/9-best-ai-contract-review-software-tools-for-2025>> accessed 6 March 2025.

<sup>6</sup> Migrantpal\_final-1.Pdf <[https://reachalliance.org/wp-content/uploads/2023/07/migrantpal\\_final-1.pdf](https://reachalliance.org/wp-content/uploads/2023/07/migrantpal_final-1.pdf)> accessed 6 March 2025.

laid down key areas and few of them are the use of the algorithm to manage/track and supervise workers and provide guidance to the employers to handle collection of worker's personal data.<sup>7</sup>

### 3.2. AI in Monitoring Labour Rights Violations

As per the report of the Human Rights Watch, many of the workers who were employed for Qatar FIFA, 2022 were the victims of wage abuse, delayed wages, unpaid wages, arbitrary and Qatar earlier had committed to abolish Kafala system. The Kafala system conferred arbitrary powers over employers. Algorithms can be beneficial while detecting and preventing forced labour and check the workplace conditions to be hazardous or not.<sup>8</sup>

'Scale AI' is one of the American AI companies which has paid less wages to the workers or withheld payments thus infringing the very basic rights of the migrant workers.<sup>9</sup> Dubai's 'Smart Tunnel Project' uses machine learning through face recognition technology and European Travel Information Authorisation System assesses the migratory risks which can impact the individual.<sup>10</sup> Amazon through its AI application allegedly uses to check the work environment.<sup>11</sup>

### 3.3. AI in Access to Justice and Legal Aid

Most of the times, migrant workers struggle to get justice or legal aid. 'Justice Chatbot' is one of the AI tools which provides guidance in respect to the legal knowledge to the people.<sup>12</sup> 'Jus Mundi' has launched International Jus AI Assistant, a generative AI tool which will act as an assistant for arbitration and International Law.<sup>13</sup>

### 3.4. AI and Human Trafficking

Use of Artificial Intelligence helps the immigration authorities detect suspicious activities but potential risks arise over data privacy.<sup>14</sup> In the '2024 Trafficking in Persons Report', it has been shared

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<sup>7</sup> 'ILO Launches New AI and Digital Economy Online Knowledge Hub | International Labour Organization' (20 September 2024) <<https://www.ilo.org/resource/news/ilo-launches-new-ai-and-digital-economy-online-knowledge-hub>> accessed 6 March 2025.

<sup>8</sup> Maham Javaid, 'How Can We Work Without Wages?' [2020] Human Rights Watch <<https://www.hrw.org/report/2020/08/24/how-can-we-work-without-wages/salary-abuses-facing-migrant-workers-ahead-qatars>> accessed 6 March 2025.

<sup>9</sup> 'Philippines: Scale AI Creating "Race to the Bottom" as Outsourced Workers Face "Digital Sweatshop" Conditions Incl. Low Wages & Withheld Payments' (*Business & Human Rights Resource Centre*) <<https://www.business-humanrights.org/en/latest-news/philippines-scale-ai-creating-race-to-the-bottom-as-outsourced-workers-face-poor-conditions-in-digital-sweatshops-incl-low-wages-withheld-payments/>> accessed 6 March 2025.

<sup>10</sup> 'VFS Global | Insight' <<https://www.vfsglobal.com/en/individuals/insights/enhancing-border-management-systems-using-artificial-intelligence.html>> accessed 6 March 2025.

<sup>11</sup> Columbia Law Review, 'ON ALGORITHMIC WAGE DISCRIMINATION' (*Columbia Law Review*) <<https://live-columbia-law-review.pantheonsite.io/content/on-algorithmic-wage-discrimination/>> accessed 6 March 2025.

<sup>12</sup> 'Home - Justice Chatbot' (16 September 2023) <<https://justicechatbot.org/>, <https://justicechatbot.org/>> accessed 6 March 2025.

<sup>13</sup> 'Jus Mundi Launches the First International Legal AI Assistant - Daily Jus' (13 February 2024) <<https://dailyjus.com/news/2024/02/jus-mundi-launches-the-first-international-legal-ai-assistant-en>> accessed 6 March 2025.

<sup>14</sup> Super\_Admin, 'How AI Is Revolutionising Immigration and Transforming Global Expansion' (*Centuro Global*, 1 June 2023) <<https://www.centuroglobal.com/article/how-ai-is-revolutionising-immigration/>> accessed 5 March 2025.

by the victims that they met their traffickers online and the digital technology must be used by the government to combat it as well.<sup>15</sup> ‘RoboDogs’ are being used at the border of Mexico and U.S.<sup>16</sup>

#### 4. International Legal Frameworks AI

Internationally, several instruments are there for the protection of the rights of migrant workers. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 establishes a comprehensive framework, setting minimum standards for fair treatment and non-discrimination. Likewise, many conventions have been laid down on the standards of ILO such as Convention concerning Migration for Employment (No. 97), 1949, the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No.143), 1975, the Recommendation concerning Migration for Employment (No. 86), 1949, the Recommendation concerning Migrant Workers (No.151), 1975, the Convention concerning Forced or Compulsory Labour (No. 29), 1930 and the Convention concerning Abolition of Forced Labour (No. 105), 1957 provide benchmarks for decent work and occupational safety.<sup>17</sup> These frameworks were drafted before the advent of digital technologies. AI’s reliance on big data and algorithmic processes pose new challenges, such as reinforcing historical inequalities while hiring migrant workers or wage practices, infringing their personal privacy etc. Recent European initiatives, notably the EU General Data Protection Regulation (GDPR), 2016<sup>18</sup> and the proposed EU AI Act<sup>19</sup> seeks to address these issues by mandating transparency, accountability and human oversight in automated systems. These measures, while promising, underscore the need for further refinement to protect vulnerable groups such as migrant workers. The proposed New York AI Act<sup>20</sup> (In the footnote -. lays down that employers have to provide explanation to the employees about the purpose behind the use of AI while screening and that algorithmic recruitment is not to be used while deciding any benefit relating to unemployment. Artificial Intelligence (Regulation and Employment Rights) Bill, 2023<sup>21</sup> was drafted by the Trade Union Congress. It would bind the employees to conduct AI risk assessment and request can be made by the employees for the information about the involvement of AI. The Digital Personal Data Protection Act, 2023<sup>22</sup> (DPDP

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<sup>15</sup> ‘2024 Trafficking in Persons Report - United States Department of State’

<<https://www.state.gov/reports/2024-trafficking-in-persons-report/>> accessed 6 March 2025.

<sup>16</sup> Nafees Ahmad, ‘New AI Programs Compromise the Rights of Helpless Migrants’ (*Fair Observer*, 24 April 2024) <<https://www.fairobserver.com/business/technology/artificial-intelligence/new-ai-programs-compromise-the-rights-of-helpless-migrants/>> accessed 6 March 2025.

<sup>17</sup> ‘International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families’ (*OHCHR*) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>> accessed 6 March 2025.

<sup>18</sup> ‘General Data Protection Regulation (GDPR) – Legal Text’ (*General Data Protection Regulation (GDPR)*) <<https://gdpr-info.eu/>> accessed 6 March 2025.

<sup>19</sup> ‘The AI Act Explorer | EU Artificial Intelligence Act’ <<https://artificialintelligenceact.eu/ai-act-explorer/>> accessed 6 March 2025. There is a proposed EU AI Act. The Artificial Intelligence Act was proposed by the European Commission in April 2021

<sup>20</sup> ‘NY State Senate Bill 2023-S8209’ <<https://www.nysenate.gov/legislation/bills/2023/S8209>> accessed 7 March 2025. It was proposed in 2021, and is still under review.

<sup>21</sup> ‘Artificial Intelligence (Regulation and Employment Rights) Bill | TUC’ (18 April 2024) <<https://www.tuc.org.uk/research-analysis/reports/artificial-intelligence-regulation-and-employment-rights-bill>> accessed 7 March 2025.

<sup>22</sup> ‘2bflf0e9f04e6fb4f8fef35e82c42aa5.Pdf’

<<https://www.meity.gov.in/static/uploads/2024/06/2bflf0e9f04e6fb4f8fef35e82c42aa5.pdf>> accessed 7 March 2025.

Act) Act, provides for certain rights of the data principles such as rectification, purpose behind the processing, informed consent etc., to protect privacy.

### 5. National Legislative Landscape in India

India hosts one of the largest populations of migrant workers, both within its borders and as part of its diaspora. The legal framework governing migrant workers in India has traditionally centred on statutes like the Inter-State Migrant Workmen Act 1979<sup>23</sup> and the Contract Labour (Regulation and Abolition) Act 1970.<sup>24</sup> However, these laws were designed in a pre-digital era and do not explicitly account for challenges posed by AI.

It is emphasised that right to privacy was upheld as a fundamental right and is extended to protect migrant workers from algorithmic discrimination and intrusive surveillance. Yet, there is absence in the regulatory framework for digital recruitment and automated wage management.

### 6. Case Studies and Judicial Interpretations

A number of case studies illustrate the impact of AI on migrant workers' rights. For example, the challenges by AI chatbots are that it needs continuous monitoring so that it does not absolutely rely on predetermined responses and datasets. Both predefined and AI generated responses must be used for developing the chatbot.<sup>25</sup> The challenge faced by Artificial Intelligence is that there is a danger present to false predictions which can have bad impact by not allowing the individual to migrate.<sup>26</sup> 'DeepSeek' has been banned in most of the countries due to the concerns of privacy.<sup>27</sup> With the opaque criteria present in reference to the training datasets of AI Algorithms, there can be discrimination on both political and racial grounds.<sup>28</sup> Even there have been discussions on replacement of migrant workers with robots at low wages for employment.<sup>29</sup>

### 7. Challenges Posed by AI to Migrant Workers' Rights

The deployment of AI in managing workforces introduces several interrelated challenges:

#### 7.1 Algorithmic Bias:

AI systems often rely on historical data that may reflect entrenched prejudices. "Bots at the Gate: A Human Rights Analysis of Automated Decision Making in Canada's Immigration and Refugee System", a report released in September 2018 by the University of Toronto's International Human

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<sup>23</sup> 'INTER-STATE MIGRANT WORKMEN | Chief Labour Commissioner' <<https://clc.gov.in/clc/acts-rules/inter-state-migrant-workmen>> accessed 7 March 2025.

<sup>24</sup> 'Contract Labour (Regulation & Abolition) Act, 1970 | Chief Labour Commissioner' <<https://clc.gov.in/clc/acts-rules/contract-labour-regulation-abolition-act-1970>> accessed 7 March 2025.

<sup>25</sup> 'Migrantpal\_final-1.Pdf' <[https://reachalliance.org/wp-content/uploads/2023/07/migrantpal\\_final-1.pdf](https://reachalliance.org/wp-content/uploads/2023/07/migrantpal_final-1.pdf)> accessed 6 March 2025.

<sup>26</sup> 'VFS Global | Insight' <<https://www.vfsglobal.com/en/individuals/insights/enhancing-border-management-systems-using-artificial-intelligence.html>> accessed 6 March 2025.

<sup>27</sup> 'DeepSeek Banned: List of Countries and Government Agencies That Have Imposed Restrictions on This Chinese AI Model' (*Jagranjosh.com*, 6 February 2025) <<https://www.jagranjosh.com/general-knowledge/list-of-countries-and-govt-agencies-which-banned-the-use-of-deepseek-ai-1738828041-1>> accessed 6 March 2025.

<sup>28</sup> Uwe Peters, 'Algorithmic Political Bias in Artificial Intelligence Systems' (2022) 35 *Philosophy & Technology* 25 <<https://doi.org/10.1007/s13347-022-00512-8>> accessed 6 March 2025.

<sup>29</sup> Honey Wyatt, "'Hire Robots Instead of Migrant Workers", Minister Says' (*HR Magazine*, 2 December 2024) <<https://www.hr-magazine.co.uk/content/news/hire-robots-instead-of-migrant-workers-minister-says/>> accessed 7 March 2025.



Rights Program (IHRP) ,deals with the impact of AI decision making where there are high chance of jeopardizing human rights.<sup>30</sup>

### **7.2 Privacy Infringements:**

AI-driven surveillance lead to excessive monitoring of migrant workers invading privacy and have impact on various other fundamental rights.

### **7.3 Lack of Transparency and Accountability:**

The “black box” nature of many AI systems complicates decision-making.

### **7.4 Exacerbation of Vulnerability:**

With increase in bias and discrimination, it can lead to more vulnerability of migrant workers.

## **8. Proposed Legal Reforms**

To effectively mitigate the negative impact of AI on migrant workers, the following legal reforms are proposed:

### **8.1 Incorporation of AI Governance into Existing Labour Laws:**

The integration of AI governance into existing labour laws, such as the Inter-State Migrant Workmen Act, 1979 and the Contract Labour Act, 1970, is essential to ensure that technological advancements in the labour market do not compromise the rights of migrant workers. Specifically: The Inter-State Migrant Workmen Act (1979) <sup>31</sup> regulates the conditions of migrant workers who migrate across states in search of employment. By amending this Act and incorporating AI governance, the law can ensure that migrant workers are not discriminated against or exploited by AI systems during recruitment or employment processes. For example, AI tools should be scrutinized for potential biases in recruitment, pay distribution, and worker monitoring, to avoid unfair treatment based on nationality, gender, or immigration status.

The Contract Labour Act (1970)<sup>32</sup>governs the employment of contract labourers and ensures that their rights are protected. Amending this legislation to include provisions related to AI can mandate companies to implement AI systems that respect workers’ rights to fair wages, non-discrimination, and equal treatment. Introducing requirements for algorithmic audits and transparency in AI-driven decision-making processes can help to ensure that migrant workers are not subjected to unfair working conditions or exploited through automated systems.

Both Acts can include specific provisions requiring periodic algorithmic audits of AI tools used in the workplace. These audits would assess the fairness and transparency of AI decisions and ensure that migrant workers’ rights to equal treatment and safety are upheld.

### **8.2 Development of a National AI Framework for Labour Rights:**

The establishment of a National AI Framework for Labour Rights would be a crucial step in addressing the growing role of AI in the workplace, particularly for migrant workers. This framework would provide clear regulations for the use of AI technologies in the workplace, covering areas like hiring, performance monitoring, wage determination, and surveillance. The framework would aim to ensure that AI does not infringe upon migrant workers’ fundamental rights, including the right to privacy, non-discrimination, and protection from exploitation.

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<sup>30</sup> Petra Molnar, ‘Using AI in Immigration Decisions Could Jeopardize Human Rights’ (*Centre for International Governance Innovation*) <<https://www.cigionline.org/articles/using-ai-immigration-decisions-could-jeopardize-human-rights/>> accessed 6 March 2025.

<sup>31</sup> Supranote 23

<sup>32</sup> Supranote 24



Different industries and sectors (such as agriculture, construction, domestic work, etc.) have different labour dynamics. The framework should tailor regulations to these specific sectors to address AI's potential negative impact on migrant workers' rights in each context. The framework would align with international labour standards, such as those set by the International Labour Organization (ILO), ensuring that AI tools are deployed in ways that are consistent with international labour rights protections.

The framework should include provisions that require employers to disclose their use of AI systems, provide explanations of how algorithms work, and ensure the systems' fairness. It should also mandate the inclusion of ethical guidelines in the development and deployment of AI systems, particularly regarding migrant workers.

### **8.3 Judicial Oversight and Accessible Redress Mechanisms:**

It is critical to have robust judicial oversight and accessible redress mechanisms to ensure that migrant workers can challenge AI-driven decisions that may violate their rights. These mechanisms should include:

Establishing labour tribunals or courts with specialized knowledge of AI and its implications for migrant workers' rights would allow workers to seek timely and effective remedies. These courts would focus on cases involving AI-based discrimination, unfair labour practices, and violations of migrant workers' rights, ensuring that the legal system remains responsive to new technological challenges.

Migrant workers who experience harm or discrimination due to AI systems should have access to clear and accessible redress channels. These could include dedicated government bodies, worker advocacy groups, or ombudsmen specifically tasked with overseeing AI-related disputes in the workplace. The redress mechanisms should be low-cost, accessible in multiple languages, and inclusive of migrant workers who may face challenges in accessing legal recourse. Migrant workers often lack awareness of their rights, especially in relation to emerging technologies like AI. Legal reforms should include provisions for public education campaigns that inform workers about their rights in the context of AI-driven decision-making. This would empower them to challenge unfair practices and seek justice when necessary.

A mechanism for independent third-party audits of AI systems should be put in place to ensure that workers' complaints are objectively reviewed. These auditors can assess whether AI systems violate workers' rights and offer impartial opinions that can be used in legal disputes. Inclusion of AI Literacy in Worker Training Programs: As AI becomes more integrated into workplaces, it is important for migrant workers to understand how AI systems affect their rights. The introduction of AI literacy programs within worker training initiatives can empower migrant workers to better navigate AI-driven workplace dynamics and advocate for themselves when their rights are at risk.

There is a need to develop comprehensive ethical AI standards tailored to the needs of migrant workers. These standards would outline the best practices for AI use in migrant labor markets, including the prevention of exploitation, bias, and unfair treatment. It would also include guidelines for ensuring that migrant workers are treated with dignity and respect, even when AI is involved in monitoring or evaluating their work.

Collaboration with International Bodies: Given the transnational nature of migration, it is important for governments to collaborate with international organizations, such as the International Labour

Organization (ILO), to harmonize labour standards concerning AI. This would help prevent migrant workers from facing inconsistent protection across borders and ensure that their rights are upheld globally.

**9. Suggestions:**

In addition to above proposed legal reforms, it can be further suggested that given the transnational nature of migration, it is important for governments to collaborate with international organizations, such as the International Labour Organization (ILO), to harmonize labour standards concerning AI. This would help prevent migrant workers from facing inconsistent protection across borders and ensure that their rights are upheld globally.

**10. Conclusion:**

The impact of Artificial Intelligence on the rights of migrant workers is a pressing issue that requires comprehensive legal analysis and action. While AI can bring efficiencies and innovations in the labour market, its potential for discrimination, exploitation, and infringement on fundamental rights cannot be overlooked. To safeguard the rights of migrant workers, it is essential for policymakers to create robust legal frameworks.

The proposed legal reforms outlined in this article emphasize the urgent need for a comprehensive and forward-thinking approach to regulating AI's impact on migrant workers' rights. By amending existing labour laws, establishing a national AI framework, and introducing effective judicial oversight and redress mechanisms, we can ensure that migrant workers are not left vulnerable to exploitation, discrimination, or unfair treatment by AI systems. These reforms will not only protect the rights of migrant workers but also ensure that AI technologies are deployed ethically, transparently, and in alignment with human dignity and labour rights. Effective implementation of these reforms will be key to creating a fairer, more inclusive labour market in the age of artificial intelligence.

Ultimately, effective regulation and proactive legal strategies will play a crucial role in protecting the rights of migrant workers in the face of rapidly advancing AI technologies

## 10. DOMESTIC VIOLENCE AGAINST MEN-MISUSE OF SECTION 498A OF IPC AND BNS SECTION 85

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### **Abstract**

*This research papers give overview of Domestic Violence on Men, Section 498A of IPC and BNS 85 is misused men are tortured and forced to pay money on demand with the help of legal parameters by women after marriage. Section 498A is believed it to be a safeguard tool against cruelty towards women by her husband and his relatives but now it damages its genuine integrity and called anti male law due to its alleged misuse by the women in the society at large. There is a serious need to make strategies and policies. The judiciary has to play important role to stop Domestic violence against men and to create the safe environment for the men as well as women. In society after allegations due to Section 498A, man and his entire family has to face the criminal status and stigma and due to this fear, men are taking drastic steps like suicide. There are no laws to address cases of domestic violence and harassment against men and due to such problems, number of divorces also increase in the society. Due to that custody of children is also a serious issue before the Judiciary and divorce proceedings go on and on. Men also suffer along with women due to Domestic Violence Protection Act, 2005 on one side and on the other side Section 498A of IPC, divorce petitions and child custody all cause great damage to men, women and their minor children also due to dispute of their parents. The whole society at large suffers a lot and pays for the same.*

*The paper moreover examines the legal, societal and psychological implications of the misuse of Section 498A. The research based on an analysis of existing case studies to address the problem at large.*

**Keywords:** 498A, section 85 BNS, Domestic Violence, misuse

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**Introduction:** The primary objective of section 498A of IPC 1860 and section 85 Bhartiya Nyaya Sanhita, 2023 is to address cruelty towards married women from their husband or relatives of their husband and his family members, dowry-related offenses, also possibly providing legal remedy and recourse for victims of domestic abuse and violence, especially in India wherein such violent acts are quite common, even among the educated people. Over the years, this section of the IPC has empowered countless women to come forward and seek legal remedies against their oppressors by ensuring that their voices are heard, and their rights are safely maintained and protected. The provision has acted as a deterrent, sending a clear message that acts of cruelty and dowry demands shall not be tolerated. On the other hand, the sheer misuse of Section 498A of the IPC has been a matter of concern and debate. While this provision was enacted with the aim of safeguarding women against acts of cruel behaviour and harassment in marital relationships, there have been instances where it has been wrongfully used, resulting in distress and long-term impact on the accused and their families. The repercussions of the misuse of Section 498A are far-reaching. Innocent individuals and their kin undergo some form of social stigma, emotional distress, damage to their reputation, and monetary strain due to legal expenses. The misuse of the provision can burden relationships, lead to marital breakdown, and create a negative impact on the overall perception of the institution of marriage in the society.

### **Section 498A IPC and Section 85 BNS:**

Section 498-A was introduced through the Criminal Law (Amendment) Act, 1983. The legislative intent behind the birth of this social welfare provision which permits the State to make laws for the benefit of women and children, because of the increasing number of dowry deaths (suicide or murder) of helpless females due to cruelty by husband and his relatives. 'Cruelty' is defined as (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; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.<sup>33</sup>

The provision criminalizes cruelty by a husband or his relatives, making it a non-bailable and cognizable offense. Section 498A is a cognizable and non-compoundable offence, which means that the victim (wife) cannot absolve the case and the police can make an arrest without a warrant. This clause was added to safeguard the victim from any possible threats or pressure to dismiss the allegations. The necessity of safeguards and a fair implementation to prevent false accusations and guarantee the rights of the accused has been questioned in light of this misuse of the clause. It was initially seen as a progressive step in protecting women's rights and deterring domestic abuse. However, its broad definition and strict implementation led to unintended consequences.

However, in recent years, amidst the positive impact, concerns have been raised regarding the exploitation of this legal provision by women in marital disputes. While it is important to acknowledge the genuine cases of domestic abuse and violence and the entirely applicable need for legal protection, we must also address the issue of false allegations and accusations, exaggerated claims and their detrimental effects on innocent individuals and their kin. We need to strike a balance between genuine victims and preventing the misuse of Section 498A IPC as it is crucial in upholding the principles of justice, righteousness, and gender equality.

According to the National Crime Records Bureau Report of 2022 (latest) Volume I, there were 1,40,019 incidents reported under Section 498-A, with the number of victims (women and/or relatives) being 1,44,593. While the nationwide crime rate under this section was 20.9 per cent, Delhi's tally alone was as high as 49.7 per cent! <sup>34</sup>The analysis provided by the NCRB suggests that while in States and Union Territories, the combined crime rate for Section 498-A IPC was at 31.4 per cent, this stood at 32.6 per cent in metropolitan areas.

#### **Misuse of Section 498A IPC now Section 85 BNS:**

However, over the years, cases of false complaints and legal harassment of innocent individuals have been reported, leading to widespread debates on the misuse of the law. The Supreme Court and various High Courts have acknowledged the overuse of Section 498A, resulting in a need for judicial guidelines and legislative amendments.

Several socio-cultural factors contribute to the misuse of Section 498A. The existence of dowry practices, gender dynamics, societal expectations, and family pressures can influence the filing of false cases. In some cases, Section 498A may be used as a means of revenge or as a tool to gain a leverage in divorce or custody battles.

These factors, coupled with societal bias and presumptions, can exacerbate the misuse of this provision. And not only this, the false accusations made under Section 498A can have grave outcomes for the accused and their kin. It can lead to immediate societal ostracization, damaged reputations, and very strained relationships. As a result of these untruthful claims, the accused might be subjected to societal stigma and be subjected to public humiliation, even before any legal proceedings or investigations have taken place, which can actually tarnish their personal and professional lives,

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<sup>33</sup> Bharatiya Nyaya Sanhita (BNS) 2023, s. 86

<sup>34</sup> Mainstream, Vol 62 No 49-52, Dec 7, Dec 14, Dec 21 to Dec 28, 2024 (Annual Number)

causing long-lasting psychological distress 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 a lengthy legal battle only to prove their innocence. The financial burden of legal fees and the psychological toll of navigating the legal system can be incredibly overwhelming. Even if ultimately acquitted, the scars left by the legal process and the impact on their lives may be long lasting. The emotional toll and strain of battling false accusations, the fear of being wrongfully convicted, and the uncertainty surrounding their future can lead to significant psychological and systemic trauma, further resulting in the accused and their family members experiencing anxiety, depression, and a loss of trust in the justice system. Recognizing the complex interplay of socio-cultural factors, implementing legal safeguards, and fostering a more empathetic and balanced approach to marital disputes can help prevent the misuse of the provision. Striking a balance between protecting genuine victims and safeguarding the rights of the accused is essential in ensuring justice and upholding the principles of fairness, equality, and the rule of law. These protocols work to ensure that justice is administered in a fair and balanced manner by defending the rights of both the accused and the victim.

The following case laws comprise some of the instances where the misuse of section 498A has manifested and judiciary has taken direct impact:

**1. Kans Raj v. State of Punjab (2000):<sup>35</sup>**

Due to an inadequate amount of evidence, the Punjab and Haryana High Court in this particular case dismissed the Section 498A charge against the defendants. The court ruled that broad and obscure accusations cannot serve as proof of cruelty. It emphasized the significance of specific cruelty episodes backed up by reliable evidence to establish the offence.

**2. Savitri Devi v. Ramesh Chand (2003):<sup>36</sup>**

Due to a lack of evidence to back up the accusations of cruelty under Section 498A in this case, the Delhi High Court found the accused not guilty. The court emphasised the significance of following due process and due process norms and that mere allegations without substantial proof are inadequate to prove an offence.

**3. Arnesh Kumar v. State of Bihar (2014):<sup>37</sup>**

In this historic judgement, the Supreme Court stressed upon the significance of safeguarding innocent people from arbitrary arrests while acknowledging the possibility for 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

**4. Rajesh Sharma v. State of U.P. (2017):<sup>38</sup>**

This noteworthy instance raised awareness of Section 498A's abuse. In order to prevent arbitrary arrests and the filing of fictitious charges in accordance with the provision, the Supreme Court recognized the misuse and issued recommendations. The court asserted the need for an impartial, fair investigation and forbade the automatic arrest of the accused based on unproven claims.

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<sup>35</sup> Kans Raj v State of Punjab (2000) 5 SCC 207 (SC India)

<sup>36</sup> Savitri Devi v Ramesh Chand 2003 Cri LJ 2759 (Delhi HC)

<sup>37</sup> Arnesh Kumar v State of Bihar (2014) 8 SCC 273 (SC India)

<sup>38</sup> Rajesh Sharma v State of UP (2017) 3 SCC 821 (SC India)

**5. Social Action Forum for Manav Adhikar v. Union of India (2018):<sup>39</sup>**

The Supreme Court, in this case, put weight on the need of preventing Section 498A abuse. The court highlighted the significance of keeping the proper balance between defending the rights of the accused and shielding women from abuse. The verdict emphasised how important it is to deal with fabricated accusations in order to stop harassing innocent people.

In December 2024 in the recent case of Atul Subhash a placard with writing “Justice is due!” was found in room of this Bengaluru IT employee who committed suicide by hanging, who left not just devastated parents and a brother but also a 24-page suicide note which detailed all the agony he had faced at the hands of his estranged wife and his in laws besides their unreasonable monetary demands in the name of maintenance for their four-year-old child.

These case laws highlight instances where individuals were acquitted due to the lack of substantial evidence or the misuse of Section 498A. The judgments emphasize the importance of fair investigations, adherence to due process, and the burden of proof on the prosecution. Striking a balance between protecting victims and safeguarding the rights of the accused is crucial, and efforts have been made to introduce guidelines and reforms to prevent arbitrary arrests and false accusations under Section 498A.

**Preventive measures and solution:**

**a. No immediate arrest before investigation:** In 2014, the Supreme Court emphasized the necessity to stop arbitrary arrests of people in situations concerning section 498A via the case of Arnesh Kumar v. State of Bihar (supra). Acknowledgement was made regarding to the improper use of this provision in the IPC. Therefore, the court issued guidelines to make sure that arrests were only made after full investigations and when absolutely required to avoid any more harm to any individuals.

**b. To form committees and counsellors:** In Rajesh Sharma v. State of U.P. (supra) – The court provided guidelines, including forming family welfare committees to review complaints before arrests. These committees, which are made up of social workers, professionals, and specialists, have the responsibility of reviewing allegations before Section 498A arrests are made and before starting legal action. The goal is to ascertain the truth of the allegations and offer a platform for reconciliation to save the marriage.

**c. Prevention of Arbitrary power of police arrests:** According to the National Crime Records Bureau Report of 2022 (latest) Volume I, there were 1,40,019 incidents reported under Section 498A, with the number of women victims and/or relatives coming out to be 1,44,593.<sup>40</sup> Judicial processes have focused on preventing arrests that happen automatically based only on the Section 498A allegation. The importance of conducting a thorough investigation to obtain proof prior to making an arrest has been underlined by the courts. This action aims to stop needless harassment and shield innocent people from misleading accusations.

**d. Mediations and settlements:** The judiciary has promoted the use of counselling and mediation services to address the underlying problems in marital conflicts. These alternative conflict resolution processes offer a forum for direct discussion, communication, and settlements between the parties. The goal of encouraging mediation and counselling is to settle disagreements amicably, eliminating the need for judicial fights and lowering the risk of abuse.

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<sup>39</sup> Social Action Forum for Manav Adhikar v Union of India (2018) 10 SCC 443 (SC India)

<sup>40</sup> <https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701935180TABLE3A2.pdf>



**e. Legal Aids services:** The judiciary plays an important role to provide legal aids services to victims and trying to protect the rights of victims by providing legal counsel and providing legal protection not only to victims but both the parties for the welfare of the marriage institution.

**f. Education and public awareness programs:** In society, judiciary is the last pillar to save the life of the individual in legal battles. In order to provide knowledge to public at large, arrangement for public awareness programmes and education workshops, campaigns for public etc. should be made.

**Need for Recommendations for Legal Reforms:**

A balanced approach is necessary to prevent the misuse of section 498A while ensuring justice for victims. Some key recommendations include as:

- **Mandatory Pre-investigation Screening:** Police should conduct a preliminary inquiry before registering an FIR under 498A and now 85 in BNS.
- **Mediation Mechanisms:** Encouraging counselling and mediation before initiating criminal proceedings to both the parties
- **Gender-Neutral Provisions:** Expanding legal protections to ensure that men unjustly accused have adequate legal recourse and not take any drastic steps.
- **Stronger Punishment for False Accusations:** Introducing penalties for those who file false complaints to deter misuse of section 498A and try to create power of judiciary to stop such evils in the society.

**Conclusion:** On one side, Section 498A of IPC and Section 85 of BNS remains as an essential and effective legal provision for safeguarding women from domestic cruelty, but its misuse must be addressed to uphold fairness. The reforms by judiciary attempt to modernize criminal law by introducing checks against wrongful prosecution while ensuring protection for genuine victims. A judicially balanced approach, supported by legislative refinement and societal awareness, is crucial in ensuring justice for all. Therefore, to protect vulnerable spouses from cruelty and harassment, Section 498A of the Indian Penal Code (IPC) was enacted with good intentions. The objective of Section 498A is to offer a protective shield to married women who suffer from cruelty, abuse and harassment within the institution of marriage. It is widely recognized that the status of women in some Indian states lags behind and remains lower than in others, particularly in terms of education, financial empowerment and economic participation and autonomy with heightened disparities. But in today's scenario it is seen that this provision is being misused by women to harass their husband and his family members in the guise of law for their own vested interests. It is essential to stop the unwarranted harassment of innocent individuals while also making sure that dowry-related crime and domestic abuse victims get the protection and justice they are entitled to. A presumption of innocence until proven guilty and careful assessment of the evidence are necessary for striking a balance. A fair and impartial approach achieves its goals without impinging on the rights of the implicated individual. It is imperative to promote ongoing dialogue and reforms regarding Section 498A in order to ensure justice for both parties. This ultimately promotes fairness, justice, and the well-being of society. A fair and balanced strategy that protects the rights of both the accused and actual victims is required to address the misuse of Section 498A of the IPC and gender equality to be maintained to give justice to all. This can only be achieved through proper investigations by the police authorities and bringing reforms in the society particularly in the area of marital conflicts as there are always grey areas and if it continues then it will lead to a dangerous society where justice is biased and innocent individuals will suffer. To prevent this, it should be the ultimate goal of our judiciary to protect the rights of all humans regardless of their gender in the society.

## 11. ATMANIRBHAR BHARAT: OPPORTUNITIES AND CHALLENGES FOR SPECIALLY ABLED

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### INTRODUCTION

Humans are considered as one of the most intelligent species on this earth. Amongst humans, it can be observed that all have different skills and qualities, through which they contribute to the society. It is also observed that few special people are different from the majority of them, in respect of skills and abilities. Due to certain challenges, they are differently abled and at times need some more attention, due to certain disability. According to the ICMR's publication based on survey of 2019-21, this class of people comprises of 4.52% of total population, making them a population of 63.28 million people in India. This class of people also should get all opportunities to live a life similar to that of other people. Further they are also equally entitled to live a professionally and financially stable life with dignity and pride. Person with disabilities frequently face discriminations due to societal prejudice and a lack of understanding by employers and people at large. The employment of differently-abled individuals in India continues to face numerous challenges despite the existence of various legal frameworks and policies aimed at ensuring their inclusion. While the Rights of Persons with Disabilities Act, 2016 [RPWDA'16], and other legislative measures have made development in promoting accessibility and equal opportunities, the reality remains that many skilled and educated individuals with disabilities still encounter significant barriers in securing stable and meaningful employment. This paper aims to explore these issues by identifying the key obstacles that differently-abled individuals face in the employment sector, analysing the relevant laws and initiatives that support their inclusion, and proposing strategies to enhance their financial independence. It also proposes to understand how India can create a more inclusive environment for its differently-abled population, ensuring that they have equal access to opportunities and can contribute meaningfully to the nation's workforce.

### (I) OBJECTIVE

The aim of this paper is:

- To understand and identify various challenges faced by skilled and educated persons with disability in relation to employment opportunities.
- To analyse laws applicable to this class of people and emphasise the crucial role of government, private sector and NGO's initiatives.
- To propose effective strategies to improve their financial independence of differently-abled class of people.

### (II) HYPOTHESIS

The specially-abled, skilled and educated people face various challenges in relation to employment opportunities in India.

### **(III) LITERATURE REVIEW**

#### **(i) Understanding ‘person with disability’**

As per RPWDA’16, ‘person with disability means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.’<sup>41</sup>

#### **(ii) Understanding ‘inclusive education’**

As per RPWDA’16, ‘inclusive education means a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities.’<sup>42</sup>

### **(IV) METHODOLOGY**

The study undertaken is a descriptive study. Qualitative research method has been applied. The literature concerning people with disabilities has been reviewed.

It is based on secondary data only. Secondary data collected from books, journals, e-resources, etc. have been utilised for undergoing the study.

### **(V) CONTENT ANALYSIS**

#### **(A) VARIOUS CHALLENGES AND ISSUES ENCOUNTERED**

Differently abled individuals encounter several challenges in securing a stable employment, despite various legal protections and affirmative measures. Few of the challenges that have been quite prevalent are:

##### **(i) Lack of accessibility**

It has been observed that many workplaces, public transport, and infrastructure lack in providing accessibility like ramps, elevators and accessible washrooms. Also Digital accessibility is often overlooked, making it difficult for visually impaired or hearing impaired individuals to use online job portals.

##### **(ii) Social stigma and discrimination**

Disability has also been viewed as a social stigma and a limitation rather than a different ability. Employers are also found to hold misconceptions about the capabilities of differently abled professionals.

##### **(iii) The hiring policy lacks inclusivity**

Many organisations do not have a dedicated policy for hiring differently abled individuals. They have also not fulfilled the required 4% reservation for differently-abled individuals as mandated by the RPWDA’16

##### **(iv) Limited educational and Skill development opportunities**

Many differently abled people do not have access to quality education due to a lack of inclusive schools and higher education institutions. Vocational training centres for differently abled are limited and often do not match industry requirements.

##### **(v) Inadequate implementation by government**

While there is a law like RPWDA’16, which provides various job reservations, its enforcement is weak. Government job quotas for differently abled are often not fully implemented due to bureaucratic hurdles.

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<sup>41</sup> Section 2(s) of the Rights of Persons with Disabilities Act, 2016

<sup>42</sup> Section 2(m) of the Rights of Persons with Disabilities Act, 2016

**(vi) Support and workplace adjustments**

Employers are unwilling to invest in workplace modification such as assistive technologies, ergonomic seating, or flexible work schedules.

**(vii) Limited awareness amongst employers and HR managers**

Many HR managers and recruiters are unaware of the benefits of hiring differently abled professionals. Accordingly sensitisation programmes about inclusion and diversity are still in their early stages in many industries.

**(viii) Mobility and transportation issues**

Public transportation is mostly inaccessible to people with disabilities, and private transportation is often prohibitively expensive. Additionally, wheelchair-accessible cabs are not readily available.

**(ix) Low representation in the private sector**

Quotas for differently-abled individuals are only available in government jobs, while the private sector lacks mandatory hiring requirements. This limits opportunities to work for differently abled people.

**(x) Wage disparities and job security**

Differently abled professionals often receive lower salaries to their peers in the industry.

**(B) ANALYSIS OF THE APPLICABLE LAWS**

The Rights of Persons with Disabilities Act, 2016, is a landmark piece of legislation designed to safeguard the rights of individuals with disabilities. Following is few analyses of the Act, related to employment that has been done along with its impact on the employment opportunities of qualified differently-abled individuals in India.

**(i) Reservations in Government jobs**

Section 34 of the Act increased reservation in government jobs from 3% to 4%. This is applied to professionals with benchmark disabilities (disabilities with 40% or more impairment). Proper administration is required to identify specific differently-abled friendly jobs and the said list should be updated periodically.

The increase of limits in job reservations has opened more opportunities for differently-abled in government sectors. However, a lack of implementation and monitoring has left many vacancies unfilled.

**(ii) Equal Opportunity and Non-Discrimination**

Employers in both the public and private sectors must ensure non-discriminatory practices in hiring, promotions, and workplace accommodations. The Legislation mandates the creation of Equal Opportunity Policies by all establishments to ensure equal treatment for the differently-abled. Section 20 prohibits the termination or demotion of an employee based on disability acquired during service.

**(iii) Private Sector Participation**

The Act encourages private sector participation in hiring differently-abled by offering some incentives. Pursuant to Section 21, corporations are encouraged to implement inclusive policies. Further it is proposed that such organisations should be provided with financial benefits or tax-based incentives to promote employment for differently abled.

The Act provides a provision for reservation in the private sector, but does not mandate it. Accordingly private companies lack awareness and fail to comply with the law.

**(iv) Workplace Accessibility and Reasonable Accommodation**

Section 20 requires employers to provide reasonable accommodations and conducive environment. Section 40 empowers Central Government to formulate rules, in relation to the standards of accessibility for the physical environment, transportation, and other facilities and services.

Though the Act emphasises workplace accessibility, its implementation remains weak. Most workplaces lack ramps, elevators, and assistive technologies, making employment challenging for differently-abled employees.

**(v) Grievance Redressal and Enforcement**

Section 23 mandates government establishments to appoint a Grievance Redressal Officer to address complaints concerning the rights of differently-abled employees. Section 89 provides for penalties in case of non-compliance with the provisions of the Act.

Enforcement agencies often fail to monitor and ensure compliance, reducing the Act's effectiveness.

**(C) INITIATIVES TAKEN BY GOVERNMENT, PRIVATE SECTOR AND NGOS**

(i) In 2015, the Department of Empowerment of Persons with Disabilities launched the Accessible India Campaign (Sugamya Bharat Abhiyan), a nationwide initiative aimed at promoting universal accessibility for Persons with Disabilities.

(ii) Entrepreneurship Development Institute of India, specialises in entrepreneurship training, education, research, and institutional development. It has been recognized as a Centre of Excellence in Entrepreneurship by the Ministry of ESD, Government of India.

(iii) Samarthanam is dedicated to empowering persons with disabilities and underserved communities through initiatives that provide quality education, accommodation, nutritious meals, vocational training, and employment-based rehabilitation.

(iv) IDEA SAKSHAM is a capacity-building organization that offers financial support and market linkages to differently-abled, enabling them to sell their products across the country. Through its efforts, more than 1,000 differently-abled have received training and successfully transitioned into entrepreneurship.

(v) Mitti Cafe operates a chain of cafes entirely run by differently-abled, dedicated to promoting employment and sustainable livelihoods for differently-abled.

(vi) Infosys BPM, the business process management subsidiary of Infosys, provides integrated outsourcing and transformation services. It has created numerous opportunities for differently-abled across the IT, Administration, and Finance sectors.

(vii) In 2023, Adani Group launched GreenX Talks, featuring resilient individuals with disabilities sharing their inspiring journeys of overcoming challenges. Adani Enterprises Limited (AEL) reaffirmed its commitment to inclusive hiring and career growth for differently-abled individuals through an official statement. Additionally, *Shark Tank India* and Sony LIV shared a video of Jeet Adani on Instagram, announcing a special episode showcasing entrepreneurs who turn challenges into opportunities.

(viii) Introduction and implementation of RPWDA'16 is one of the significant steps taken by the government, which contributes to make life of differently-abled better in terms of financial independence. Supreme Court also encourages rights of differently-abled. They have advised through their handbook that if a person with a disability doesn't raise the issue, they may face difficulties in court due to stigma or lack of awareness about their rights and accommodations. Judges should assess

whether everyone in the courtroom, both in-person and virtually, can fully participate. If uncertain, judges should check with those who might face barriers to participation, including those with unseen disabilities like mental health conditions, and offer accommodations as needed.

#### **(D) INTERNATIONAL STANDARDS FOR EMPLOYMENT OF DIFFERENTLY-ABLED INDIVIDUALS**

Globally it can be observed that different countries have adopted inclusive employment policies backed by international standards, ensuring equal job opportunities for differently-abled individuals, like;

##### **(1) UN Convention on the Rights of Persons with Disabilities**

This has been implemented by 177 countries, including India. It has established equal employment rights and prohibits workplace discrimination. It provides for reasonable accommodation and assistive technology in workplaces.

##### **(2) United States of America - Americans with Disabilities Act, 1990**

This Act prohibits discrimination in employment (private & public sectors). It requires workplace accessibility (elevators, digital tools, ergonomic workstations). It also provides tax incentives for companies hiring differently-abled.

##### **(3) United Kingdom - Equality Act, 2010,**

This Act states that employers must make 'reasonable adjustments' (flexible work schedules, accessible workspaces). It also provides funding for assistive devices for disabled employees. Government offers subsidized vocational training.

##### **(4) Canada - Employment Equity Act, 1995**

The Act requires businesses to meet hiring quotas for differently-abled. Further, 'Accessible Canada Act' mandates physical and digital accessibility in workplaces. It provides grants and wage subsidies to businesses hiring differently-abled.

##### **(5) Australia - Disability Discrimination Act, 1992**

It covers anti-discrimination laws in all job sectors. 'JobAccess' program provides funding for workplace modifications. It offers free consultancy to employers on inclusive hiring.

#### **Ideas India can adopt:**

Considering internationally countries have taken effective measures to protect differently-abled, our country can also learn from these nations and adopt new concepts in India too, for betterment of differently-abled community at large, like;

- i. Strengthen private sector inclusion laws beyond the 4% quota in government jobs.
- ii. Implement tax benefits for private companies hiring differently-abled.
- iii. Mandate flexible work options & workplace adaptations in private jobs.
- iv. Establish government-funded assistive technology programs.
- v. Introduce financial incentives for companies employing differently-abled.
- vi. Ensure stronger enforcement of digital accessibility in workplaces.
- vii. Create a centralized support system like 'Job Access' for employers
- viii. Provide government-sponsored workplace adaptations.

#### **(E) STRATEGIES TO IMPROVE FINANCIAL INDEPENDENCE WITHIN ATMANIRBHAR BHARAT**

Learning from different nations globally, India can implement following principles in India, thereby strengthening the protection for differently-abled, like;



**(i) Strengthening private sector inclusion:** The job reservation policies should be extended beyond government jobs. Further tax benefits and subsidies for organisations hiring differently-abled should be provided.

**(ii) Workplace Accessibility Mandates:** Steps be taken to enforce workplace modifications like, providing elevators, ramps, Braille signage. Also digital accessibility standards like screen readers, AI-driven tools, should be mandated.

**(iii) Assistive Technology & Financial Aid:** Devices like prosthetics, voice recognition software should be available at subsidised prices. Government funding be established for employers to improve accessibility.

**(iv) Flexible Work Policies & Remote Job Opportunities:** Options for work-from-home facility be available for eligible differently-abled. Flexible working hours should be provided to accommodate medical needs.

**(v) National Awareness & Employer Training Programs:** To transform employers approach, awareness campaigns should be launched. Further establish free consultancy services for businesses on disability hiring policies.

## **(VI) CASE STUDIES**

In India adequate steps have been taken by judiciary system to provide equal opportunities to differently-abled. Few of the cases have been discussed hereunder

### **(i) Rathod, Om. v. The Director General of Health Services, (2024)**

Supreme Court ordered that medical admission for differently abled students should be based on functional competence rather than disability percentage.

### **(ii) Syed Bashir-ud-Din Qadri v Nazir Ahmed Shah and others (2010)**

A teacher with cerebral palsy's appointment was challenged due to disability, Supreme Court stated, disabilities should not impact on one's professional capabilities and directed reasonable accommodations should be provided

### **(iii) The New Indian Express (2025)**

Supreme Court allows visually impaired persons in judiciary, and strikes down discriminatory rules

### **(iv) Rajive Raturi vs Union of India (2024)**

Supreme Court brought many futuristic changes to accessibility and transport of the visually impaired people.

### **(v) Zill Suresh Jain vs the state CET cell and others (2023)**

Bombay High Court allowed several visually impaired persons, including students, lawyers and assistants, are effectively functioning in various courts across India.

### **(vi) Anmol v. Union of India**

Supreme Court instructed National Medical Commission to amend its guidelines to comply with the RPWDA'16.

## **(VII) RECOMMENDATIONS**

Given the current situation in India, it will be prudent to apply following measures to ensure equal and adequate professional life for differently abled people.

- 1) Stronger implementation of existing legislation.
- 2) Stricter penalties for non-compliance similar to the UK's Equality Act 2010.
- 3) Make it compulsory for providing flexible hours, assistive technology, accessible working place.

- 4) Indian laws should make it compulsory by rewarding them with tax benefits
- 5) Introduce stronger penalties for discrimination in hiring process
- 6) Enforce on companies to provide a transparency report in the hiring process.
- 7) Implementation of employment quotas in the private sector.
- 8) Promotion of self-employment and entrepreneurship programs.
- 9) Provide loans to startups by differently abled at low interest.
- 10) Mentorship program for differently abled entrepreneurs.
- 11) Implement accessible workplaces and inclusive HR policies.
- 12) Launch disability friendly hiring campaigns.

## CONCLUSION

In conclusion, achieving equal employment opportunities and financial independence for differently-abled individuals in India demands a comprehensive approach. This includes stronger enforcement of existing laws, enhanced accessibility, and increased awareness among employers. While Indian government has made notable development with the implementation of the RPWDA'16, challenges remain in its effective enforcement and wider application across both public and private sectors. The initiatives by NGOs, government programs, and private companies are commendable but need to be scaled up to ensure real inclusion.

For India to truly empower its differently-abled citizens, thereby making them *atmanirbhar*, there must be a greater emphasis on improving workplace accessibility, expanding skill development programs, and mandating inclusive hiring policies. Additionally, nurturing a culture of acceptance and diversity through awareness campaigns and training programs for employers is essential to challenge prevailing stigmas and misconceptions. Adopting international best practices, such as the implementation of mandatory workplace accommodations and financial incentives for inclusive employers, can strengthen India's employment landscape for persons with disabilities. Moreover, encouraging entrepreneurship, providing financial aid for assistive technologies, and offering subsidies for workplace modifications can further promote financial independence and self-reliance.

Ultimately, for a truly inclusive society, the government, private sector, and civil society must collaborate and commit to removing barriers to employment and creating a more accessible, equitable environment for individuals with disabilities. Only through such concerted efforts can India achieve an inclusive workforce that empowers its differently-abled population and fully harnesses their potential. Accordingly, we should aim to not only to make our nation self-dependent, i.e., *Atmanirbhar*, but also take steps and support the specially abled class of people to be *atmanirbhar* and live a respectful life without any sympathy or mercy of any other people.

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## 12. VICTIMS OF ABUSE WITH REFERENCE TO CHILD, WOMEN AND ELDERLY CITIZENS: MARITAL RAPE

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### ***Abstract***

*Marital rape, or non-consensual sexual intercourse within marriage, is quite a serious but often overlooked form of abuse. Many societies and law systems do not view it as a crime, which further backs up the untrue idea that marriage implies consent that lasts perpetually. Even though some countries, like the U.S. and the U.K., consider marital rape a crime, other countries, such as India and Nigeria, still have legal ways for perpetrators to avoid punishment.*

*Important factors are gaps in the law, standards of male dominance, relying on money, and also incorrect understandings of religion. Many women, importantly in particular conservative societies, fear reporting due to large stigma, clear social pressure, or possible economic insecurity.*

*Adults who suffered from a childhood abuse are bound to repeat the cycle and find themselves becoming abusers or staying in an abusive relationship. Kids who see this abuse are hurt without being the direct target and often start to think violence is normal in relationships later on. Women of older age in damaging, long-term marriages might also suffer silently due to financial reliance on their husband, and due to social views.*

*WHO and UN studies' data do strongly imply that 10-40% of married women go through rape in their marriage, and underreporting stays a big problem. Even in countries where laws exist, they still have important problems guaranteeing the laws are followed. Where things are not explicitly illegal, victims completely lack recourse through the legal system.*

*Marital rape is a grave violation of basic rights. It ought to be pinpointed and prohibited by societies, guaranteeing that weddings are never used to pardon sexual abuse. To deal with this secret problem, legal updates, schooling, as well as aid for those who have survived are very important.*

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### **INTRODUCTION:**

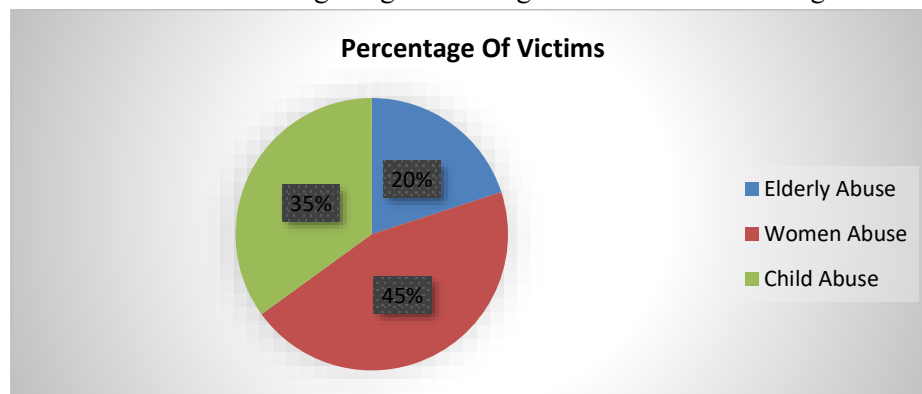
Abuse is a common problem that affects vulnerable populations like kids, women, and older adults. It might appear in multiple forms, like *physical, emotional, sexual, financial, and neglectful abuse*. These groups often battle to escape many abusive situations. This is due to dependence on caregivers, social stigma, or lack of sufficient legal protection.

Abuse directed towards children, women, and the aged remains an unrelenting scourge throughout the world. It is true that the implementation of laws and their accompanying publicity has resulted in some progress; however, a great deal remains to be done. All stakeholders, including governments, society, and citizens, need to come together to build a world where the weak are genuinely protected and empowered. Collaboration is the only proven way out of mistreatment towards any person who has been abused and provide equity.

One form of abuse that is escalating and receiving scant attention is elder abuse, which is primarily inflicted on older people physically, mentally, and financially. As people get older and frailer, their reliance on caretakers increases making them especially vulnerable to abuse. Many elderly people suffer through abuse inflicted by their own family members, caregivers, or nursing home aids, with no means of escaping such situations.

A caregiver intentionally withholding medication to control an elderly person's behaviour. If those who give care don't provide enough of it, this can cause big problems with cleanliness, not enough food, or a lack of medical attention. It is not good to disregard an older person's health requirements.

It is also not good to fail to supervise them for extended periods. Taking money, property, or items from older adults. When a relative forges signatures to get into an elder's banking.



### EMOTIONAL AND PSYCHOLOGICAL ABUSE:

It includes multiple spoken insults, belittling behaviour, multiple menaces, or the action of keeping older people away from relatives and companions. Caregivers trick older people into providing them funds. They also cause older people to feel like a bother. Elderly women, especially those with disabilities, may experience sexual assault in addition to often lacking the means to report it. Sexual abuse situations in many care facilities, where those attacked are too powerless or afraid to retaliate. Younger people and older people are more likely to experience abuse. Whereas children frequently lack the knowledge or power with which to report abuse, elderly victims may remain silent because of dependence as well as social isolation.

Marital rape is a severe but often overlooked form of abuse located at the intersection of marriage, violence against women, and law. It is thoroughly defined as sexual acts, or intercourse of a substantially sexual nature, that are absolutely non-consensual and forcefully carried out by one partner on the other, specifically husbands on their wives. Despite its frequency, many past societies and legal frameworks did not recognize rape within marriage as a crime, often supporting the concept that marriage implies continuous consent.

Marital rape is a grave violation of basic rights that frequently remains hidden due to legal loopholes, social standards, and cultural limitations. It describes multiple sexual acts between spouses without consent, typically involving men forcing their wives into sexual activity. Rape in a marriage, unlike rape by someone unknown, happens within a marital relationship, and those who are victimized usually have a harder time obtaining justice because of strong beliefs that marriage equals unending consent.

Several countries have made spousal rape illegal, recognizing that people in a marriage can control their own body. However, sometimes, old laws prevent husbands from being charged, which reinforces male-cantered standards. A number of social attitudes as well as a lack of enforcement generally obstruct justice. A few laws exist in these places. Women, especially in conservative societies, may face overwhelming pressure to remain completely silent due to severe stigma, fear of swift retaliation, as well as total economic dependence.

The consequences of spousal rape are certainly important, resulting in both bodily as well as mental harm. Victims may go through injuries, issues concerning reproduction, depression, PTSD, and feelings of helplessness. Infringements of trust within a marriage may potentially result in emotional

distress, alongside extended ramifications on self-view, and also bonds with others. Elderly women or women in arranged or forced marriages may be more vulnerable because of financial dependence or cultural constraints.

Children in households where marital rape occurs are unquestionably indirect victims, observing domestic violence initially and maturing in a conclusive environment of abuse. These experiences could bring about psychological trauma.

In certain countries, marital rape is not regarded as unlawful due to older regulations. India, Bangladesh, as well as other parts of Africa still have legal gaps that shield husbands from being charged with raping their wives. These countries are not alone in failing to protect the rights of women legally. Countries like the U.S., U.K., and Canada have placed laws against marital rape, but the gaps in enforcement are shocking. Societal norms dictate that a wife must willingly be available for a husband's sexual gratification.

In most cultures, even discussing rape in a marriage is too sensitive for public open forums, and thus, aids in the victim's ostracism from the greater society. A great number of women, especially in third-world countries, are financially dependent on their husbands, which makes it harder to leave abusive relationships. Heaps of victims suffer great emotional trauma and are so tormented that their children take their chances with having to endure shocking custody battles. Even after blaming the victim, a large number of people turn a blind eye to rape that happens within the confines of a marriage. Specific religious doctrines misinterpret certain texts to justify a husband's dominance over his wife, reinforcing forced sexual relations within a marriage.

A few injuries to the reproductive system, several unwanted pregnancies, along with many sexually transmitted infections (STIs). Frequent sexual violence can cause health problems. For example, lasting pain disorders can result from it. People who have been harmed could go through depression, anxiety, Post-Traumatic Stress Disorder (PTSD), and suicidal thoughts. A definite inability to connect emotionally and a special decline in faith in relationships.

Domestic violence is witnessed by children developing in homes where marital rape actively occurs, and this can possibly result in trauma. Boys are more likely to become abusers later in life, and girls are more likely to put up with abuse in their own relationships. Older women who are abused in their marriages go through it quietly as a result of not being financially independent and not having social support. Marital rape later in life may cause large bodily harm. It also may cause a meaningful decline in mental well-being.

In the **1978 Oregon v. Rideout** court case, the woman said that her husband sexually assaulted her. Even though the case thoroughly broke some new ground, he was found entirely not guilty because society was patently unwilling to acknowledge rape in multiple marriages.<sup>43</sup>

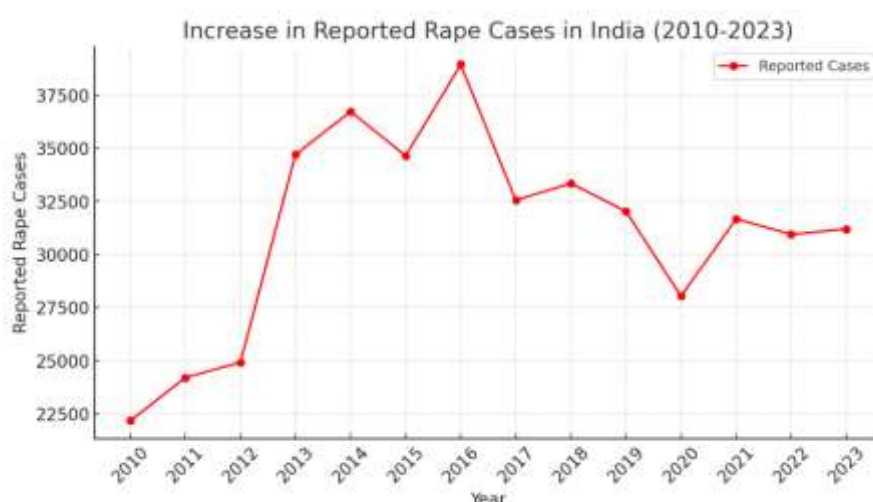
In 1994, the **Violence Against Women Act (VAWA)** greatly improved protections from sexual violence that spouses commit. A proposal to officially criminalize marital rape was formally presented in the **Delhi High Court** in 2022, but the court's ultimate verdict was notably not unanimous. Those who want reform are still trying to get changes made. "For example, there is the case of a 26-year-old woman who said she was assaulted repeatedly by her husband but did not get legal assistance."

In Nigeria, where marital rape is legal, a 35-year-old woman, Fadeke, discussed how she was forced to have sex by her husband for many years but was greatly opposed by her community.

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<sup>43</sup> By New York times Dec. 28, 1978

Dealing with spousal rape requires complete changes to the law, far-reaching efforts to educate people, and solid networks to help those who have been hurt. Societies must boldly challenge cultural narratives that wrongfully justify spousal sexual violence as well as guarantee that marriage does not strip people of their basic and fundamental rights. Developing secure reporting systems as well as supplying psychological support are vital in fighting this common yet concealed crime. In addition to psychological support, offering judicial support is also quite vital.



#### GLOBAL TRENDS:

According to statistical data of provided by WHO, ratio of around one in three women, globally faces some form of sexual violences, one of those kinds include Marital rape.

Survey of a 2018 UN report, found that over 50% of sexual assault in marriage go unreported due to fear and societal fears.

#### -STATISTICAL DATA ON MARITAL RAPE:

COUNTRY.	MARITAL RAPE CRIMINALIZED?	PERCENTAGE OF WOMEN AFFECTED.
USA	YES	10-14%
UK	YES	12%
INDIA	NO (except under special cases)	20-25%
PAKISTAN	NO	30-40%
NIGERIA	NO	25%
SOUTH AFRICA	YES	15-18%

Grasping the causes, consequences, along with necessary interventions is important to preventing and dealing with abuse. Bodily maltreatment includes impressive or scorching. It also includes causing physical injury.



- **Emotional Abuse**- Multiple spoken affronts, many menaces, and steady disregard that impair a child's psychological wellness.
- **Sexual Abuse** - Exploiting, molesting, or raping children.
- **Neglect**- Not providing certain necessities such as nourishment, housing, and health services.
- **Parental neglect**- resulting from either not having enough knowledge, poverty, or drug or alcohol use.

Customs in culture and religion: that make physical punishment common. Online exploitation as well as trafficking, where some predators take advantage of a collection of children. Certain bodily wounds, several growth impairments, and multiple long-term diseases. Lowered self-regard, PTSD, important depression, as well as anxiety.

More of a chance of turning into an abuser or experiencing abuse relationships later in life.

A lot of orphanages and promote homes say there are many instances of child neglect and sexual abuse, and the people hurt often cannot get justice because of power differences.

1. Domestic Violence- Concrete physical or impactful emotional abuse from a partner or a relative.
2. Marital Rape- Sexual activity happening in a marriage without agreement.
3. Sexual Harassment and Assault- Workplace bullying, sexual assault, and human trafficking.
4. Honor Killings and Dowry-Related Abuse- Cultural practices that cause violence against women.

Financial Abuse involves limiting access to funds. It also involves limiting access to other things. A society focused on men that makes male power look ordinary. Important legal gaps that often fail to fully criminalize certain repugnant offenses, such as marital rape. Depending cheaply on abusers, making it difficult to escape violence.

#### **CONSEQUENCES OF WOMEN'S ABUSE:**

- Injuries to the body, issues with the reproductive organs, and unexpected pregnancies.
- A number of mental health issues exist. Examples are depression, PTSD, and suicidal thoughts.
- Children who witness domestic violence may suffer emotional harm and may go on to commit violent acts as adults.

#### **CASE STUDY: THE NIRBHAYA CASE (INDIA, 2012)**

That one violent gang rape in Delhi resulted in large global anger and changes to the law in India, including increased punishment for rapists.

Legal reforms: guaranteeing a genuinely strict amount of punishment for abusers as well as guaranteeing it. Providing safe houses and shelters to survivors. Carrying out awareness plans to get rid of cultural biases about abuse.

#### **Dealing with Abuse:**

- Underreporting: mainly a result of extreme fear, harmful social shame, or complete reliance on the abuser.
- Existing laws lack enforcement.
- Cultural and religious reasons that can make abuse seem normal.
- Monetary issues preventing abused people from leaving dangerous situations.

#### **A. Legal Reforms and Enforcement:**

- Instituting rigid rules that address each kind of mistreatment.

- Firmly guaranteeing a number of expedited fast-track courts for all cases involving children, women, and elderly victims.

**B. Education and Awareness Campaigns:**

- Teaching children about maintaining safety and providing consent.
- Holding community meetings to educate people on recognizing and reporting abuse.
- Setting up a number of helplines and a number of crisis.

One of the most fragile parts of society is children, who do not have resources to defend themselves from any form of abuse. There are countless ways in which a child can be abuse and even traumatized, such as: physical, emotional, sexual and neglect. The consequences of such trauma can have much greater impact on the child's physical and emotional wellbeing and use up a lot of his mental and emotional energy where it is needed to function at such a basic level.

It involves causing physical harm to a child through impressive, burning, or other forms of physical power. Impressive a child with an object, confining them in spaces, or purposely causing injuries are all instances. These are negative instances.

A child's feelings and self-regard are affected by psychological abuse. Unending fault-finding, verbal menaces, alternatively, it might present as belittling or overlooking a child's emotions.

Each sexual act with a minor, including child sexual abuse, sexual assault, and child exploitation. Caregivers not giving basic things like food, clothing, shelter, and medical care.

**PARENTAL NEGLECT AND SUBSTANCE ABUSE:**

Parents with alcoholism or drug addiction may not provide for their children's needs.

Children in these types of houses are often not supervised well and may be harmed even further. Injuries such as bruises, broken bones, burns, or internal injuries. Persistent health issues existed. These included chronic pain and emotional maltreatment resulting from neglect. Other victims may suffer from anxiety, depression, PTSD, or even active suicidal thoughts.

People with a past of child abuse are more likely to become abusers themselves or find themselves in abusive relationships as adults.

**A CASE OF CHILD ABUSE IN INSTITUTIONS:**

Child neglect and sexual abuse are reportedly high in many orphanages, boarding schools, and encourage care systems around the world. For example: The scandal of sexual abuse inside the Catholic Church, where many children were victimized by priests in organizations that were supposed to protect them.

**STRENGTHENING CHILD PROTECTION LAWS:**

Governments should put into effect many strict laws against child labour and sexual exploitation. They should also put into effect strict laws against corporal punishment. Punishments for child abusers should be unequivocally severe to deter such heinous and unforgivable crimes. Adding child safety education into schools would teach children about abuse and how to report it. It is vital to teach parents and caregivers about multiple good discipline strategies so they can use them instead of detrimental punishment practices.

Establishing a number of around-the-clock helplines and thorough crisis centre where children can report abuse anonymously. Educators, community members, as well as family members are being strongly urged to make known any possible child abuse situations.

**DEPENDENCE ON CAREGIVERS:**

Some family members exploit older relatives in order to gain access to their retirement funds, financial assets, or inherited real estate. Frequently, society does not appreciate older adults, possibly causing abuse to be ignored or not brought to anyone's attention.

**HEALTH OF THE BODY AND MIND DECLINE:**

Those who are victimized often deal with grave wounds, serious lack of nutrition, or long-term illnesses that get worse at a fast rate. Many people experience depression, anxiety, and complete withdrawal from others. Important Loss of Financial Stability and Security Financial exploitation results in many older adults becoming homeless or without the ability to pay for medical care.

**HIGHER MORTALITY RATES:**

Studies show that a number of abused elderly people are apt to die prematurely as a result of stress and neglect.

*Example: Mistreatment of Seniors. This appears in Nursing Homes*

Nursing home reports from many locations around the world show many abuse incidents, including staff ignoring, harming, or taking advantage of residents.

*As an example, in 2019, a video that was shared a lot showed nursing home workers ridiculing and physically hurting an elderly individual residing in the U.S.<sup>44</sup>.*

**CONCLUSION:**

The data helps to drive the marking of the changes in society and needs for the change in society as whole and the law shape the justice system that India carry as democratic nation the rape is an overgrowing concern and needs to be addressed with a change in the mindset of the people in society and laws will be a beacon of light in this journey.

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### 13. DOMESTIC VIOLENCE AGAINST MEN: SHEDDING LIGHT ON A NEGLECTED ISSUE

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#### ***Abstract***

*Male domestic violence is a forgotten cause, with current legislation such as Section 498A IPC and Section 8 BNS providing security to women only. This lack of legal support, combined with social stigma, denies male victims any protection or redress. Most experience physical, emotional, sexual, verbal, and economic abuse but fear reporting it out of shame and lack of legal support. Moreover, abuse of these laws has resulted in false arrests and reputational damage. Judicial decisions recognize this issue, but male victims are still at risk. This paper proposes gender-neutral domestic violence legislation, public awareness campaigns, and judicial reforms to guarantee equal protection for everyone.*

**Keywords:** *Domestic violence, Men, Misuse, Section 498A IPC, GRNDR-NEUTRAL*

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#### **Introduction**

Domestic violence against men is an almost overlooked phenomenon in public policy and discourse. While legal provisions to safeguard women are a must, there being no analogous protections for men tips the scales of justice unevenly. In India, Section 498A of the IPC was enacted in 1983 to provide a response to increased instances of dowry harassment and cruelty against wives. The newly instituted Section 85 of the BNS also seeks to maintain these safeguards. But there have been mounting reports and judicial comments regarding the abuse of these sections by some parties for private scores, leading to serious repercussions for the accused men and their families.

Men often face unique challenges in accessing support for domestic violence due to cultural stereotypes that portray them as invulnerable and powerful. This stereotype makes male victims mute and perpetuates the expectation of a legal and social system treating men as perpetrators. This fear of public humiliation, loss of reputation, and lack of institutional support makes reporting abuse difficult. The lack of legal protection for male victims adds to their vulnerability, as existing legal instruments, such as Section 498A IPC and Section 85 BNS, are geared towards women's protection. These provisions have been accused of being easily misused, eroding the credibility of the legal process and distracting attention from legitimate cases of domestic abuse.

This article aims to cover the lacuna in the debate related to domestic violence against men and the violation of their inherent rights, ensured by the Constitution, abuse of Section 498A IPC and Section 85 BNS. It also looks into the legal framework, reviews trends in abuse, and addresses the implication of such provisions on society. It aims at highlighting the available lacuna under the current laws on domestic violence, which remain women-centric at present, requesting that they should be made gender-neutral, both from the stand of the accused as well as the victim.

#### **Research Methodology**

This paper analyzes domestic violence against males using doctrinal study and legal texts from legislative manuals like the Indian Penal Code, Bhartiya Nyaya Sanhita, Indian Constitution, and government releases. It evaluates laws, judgments, and misapplication of Section 498A IPC and Section 85 BNS, using qualitative evaluation and deductive reasoning to identify the lack of legal protection for male victims and promote gender-neutral reforms.

## MEANING OF DOMESTIC VIOLENCE AND CRUELTY

### Domestic Violence

Domestic abuse, also called "domestic violence" or "intimate partner violence", can be defined as a pattern of behaviour in any relationship that is used to gain or maintain power and control over an intimate partner. Abuse is physical, sexual, emotional, economic or psychological actions or threats of actions that influence another person. This includes any behaviours that frighten, intimidate, terrorise, manipulate, hurt, humiliate, blame, injure, or wound someone. Domestic abuse can happen to anyone of any race, age, sexual orientation, religion, or gender. It can occur within a range of relationships including couples who are married, living together or dating. Domestic violence affects people of all socioeconomic backgrounds and education levels.<sup>45</sup>

### Cruelty

Behaviour that causes pain or suffering to others, especially deliberately<sup>46</sup>

## SECTION 498A OF IPC AND SECTION 85 OF BNS

### SECTION 498A OF IPC

Section 498A<sup>47</sup> Husband or relative of husband of a woman subjecting her to cruelty-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation For the purpose of this section, "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; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

### Section 85 of BNS

Section 86. Cruelty defined:- For the purposes of section 85<sup>48</sup>, "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; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

## FORMS OF DOMESTIC ABUSE EXPERIENCED BY MEN IN INDIA

Domestic violence against men in India is a growing issue, causing physical, emotional, sexual, verbal, and financial abuse. Despite increased gender equality awareness, male victims are often neglected or belittled, leaving them vulnerable and without appropriate support due to social stigma, cultural beliefs, and legal biases.

<sup>45</sup> What is domestic abuse? United Nation<<https://www.un.org/en/coronavirus/what-is-domestic-abuse>>accessed 3 March 2025

<sup>46</sup> Oxford Learner's dictionaries<[https://www.oxfordlearnersdictionaries.com/definition/american\\_english/cruelty](https://www.oxfordlearnersdictionaries.com/definition/american_english/cruelty)>accessed 3 March 2025

<sup>47</sup> Dr. Manmohan Joshi (MJ Sir) The Bhartiya Nyaya Sanhita 2023

<sup>48</sup> Dr. Manmohan Joshi (MJ Sir) The Bhartiya Nyaya Sanhita 2023

**Physical abuse**

Physical abuse against men, often involving small disagreements, can cause harm, injury, or disability. In Indian society, men are often seen as guardians and symbols of strength, leading to mockery and stigmatization of victims. This deterrence discourages reporting abuse or seeking legal help, with fear of humiliation in public and loss of reputation often silenced. Slapping is the most commonly reported form of physical violence.

**Sexual abuse**

Sexual abuse of men in India is a taboo issue, often involving physical force, emotional blackmail, or psychological coercion. Despite being associated with female victims, men are also subjected to such violence, especially in intimate relationships. The cultural perception leads to silence, severe psychological effects, and loss of self-worth.

**Verbal abuse**

Verbal abuse is a prevalent form of domestic violence against Indian men, often involving criticism, insults, and threats. It targets men for their professional skills, masculinity, or sexual performance, causing severe emotional and psychological trauma. In Indian culture, accepting verbal abuse can be challenging, and chronic abuse can lead to anxiety and depression.

**Emotional abuse**

Emotional abuse is a domestic violence faced by men in India, which encompasses manipulation, humiliation, and isolation. It exists in many different forms, ranging from emotional blackmail, threats, and intimidation to the destruction of personal belongings. Victims remain silent because of social expectations and insufficient gender-neutral legislation, compounded by ignorance.

**Financial abuse**

Financial abuse is a form of domestic violence in India, where men control partners' resources, limit access to money, and force economic dependency. Women exploit their status to dominate men, leading to financial dependence on female partners. Legal provisions exacerbate this issue, leaving men emotionally and economically shattered.

**Allegations OF ABUSE OF SECTION 498A IPC AND SECTION 85 BNS**

In spite of the good intentions, Section 498A IPC was soon caught up in controversies and charges of rampant abuse. These charges revolve around the following major points:

**False Accusations**

Critics argue that Section 498A is often misused to settle personal scores, vindictiveness, or gain an advantage in divorce or property disputes, with women filing false complaints against their husbands and families, often under pressure or misguided advice.

**Lack of Verification and Premature Arrests**

Section 498A's non-bailable nature and inadequate police investigations often resulted in wrongful arrests and detentions of innocent individuals, often entire families, due to the lack of sufficient evidence or verification.

**Low Conviction Rate**

The low conviction rate in Section 498A cases, despite the registration of numerous cases, has led to concerns about potential misuse due to the significant number of false or insufficient evidence cases.



**Harassment and Extortion**

Section 498A has been accused of being used for harassment and extortion, with women or their families filing complaints to pressure husbands and families to accept financial demands in exchange for withdrawing the case.

**Examples Misuse of Section 498A and Section 85 BNS in the modern era****Savitri Devi v. Ramesh Chand & Ors<sup>49</sup>**

The Hon'ble Court highlighted how Section 498A was being exploited to settle personal scores. The court emphasized that legal provisions should not be manipulated to the detriment of marital harmony and urged lawmakers to review and reform these provisions to prevent their abuse.

**Saritha v. R. Ramachandran<sup>50</sup>**

The court noticed a reverse trend wherein Section 498A was being utilized as a harassment tool against the husband and his relatives. The court recommended that the offence be declared non-cognizable and bailable so as to avoid undue hardship arising from false complaints.

**Anju v. Govt. of NCT of Delhi<sup>51</sup>**

Here, the petitioner's wife had challenged the acquittal of the respondents under Section 498A/34 IPC. This case highlighted how Section 498A allegations are usually put through rigorous judicial scrutiny and brought to light the effect of false allegations on the accused.

**Inder Raj Malik and Ors. v. Sumita Malik<sup>52</sup>**

The Delhi High Court ruled that Section 498A, which seeks a cause of cruelty along with a dowry demand, is constitutionally valid, despite arguments based on Article 14 and Article 20(2) of the Constitution. The court explained that Section 498A punishes for demanding dowry alone, not just for cruelty.

**In response to the increasing misuse of Section 498A and Section 85 BNS the Supreme Court laid down specific guidelines****Arnesh Kumar v. State of Bihar<sup>53</sup>**

- Police officers should not arrest the accused automatically on the filing of a case under Section 498A.
- Arrests must be made only after fulfilling the conditions under Section 41 of the Criminal Procedure Code (CrPC).
- Police have to draw up a checklist of reasons and evidence for the arrest. Magistrates would only grant authorization of detention after perusing the police report.
- Disobedience of these guidelines may lead to departmental action and contempt charges.

**Rajesh Sharma v. State of Uttar Pradesh<sup>54</sup>**

- Designating a special police officer to investigate complaints under Section 498A.

<sup>49</sup> Savitri Devi v. Ramesh Chand & Ors 2003 CriLJ 2759 (Del)

<sup>50</sup> Saritha v. R. Ramachandran, 2003 CriLJ 721 (Mad)

<sup>51</sup> Anju v. Govt. of NCT of Delhi, 2011 SCC OnLine Del 2843

<sup>52</sup> Inder Raj Malik and Ors. v. Sumita Malik, 1986 CriLJ 1510 (Del)

<sup>53</sup> Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273

<sup>54</sup> Rajesh Sharma v. State of Uttar Pradesh, (2018) 10 SCC 472

- Allowing parties to approach the High Court under Section 482 CrPC for quashing proceedings if a settlement is reached.
- Considering bail applications promptly without undue prejudice.
- Avoiding the impoundment of passports or the issuance of Red Corner Notices in routine cases.
- Limiting these safeguards to cases without physical harm or death.

#### **Social Action Forum for Manav Adhikar v. Union of India<sup>55</sup>**

- Section 498A and connected offenses must be investigated by a specific officer.
- In case a settlement is arrived at, the parties can go to the High Court under Section 482 CrPC to quash the proceedings.
- Bail applications shall be heard with at least one day's notice to the complainant or Public Prosecutor and decided on the same day where possible.
- Disputed dowry items alone would not necessarily be the sole ground for denying bail if rights of other women or minor children are safeguarded.
- These guidelines do not extend to situations of physical injury or death.

#### **Manju Ram Kalita v. State of Assam<sup>56</sup>**

- The court made it clear that "cruelty" under Section 498A encompasses behavior which will force a woman to commit suicide or lead to serious harm.
- Bare harassment without proof of such intention does not amount to cruelty under the section.

#### **Preeti Gupta v. State of Jharkhand<sup>57</sup>**

- The court recognized the growing abuse of Section 498A, highlighting the necessity of ensuring rigorous scrutiny of evidence prior to instituting criminal proceedings.
- It urged legislative bodies to consider suitable amendments to prevent false implications.

#### **Domestic Violence Against Men- The Indian Scenario**

In India, though there is data available on domestic violence against men, individuals are still under the impression that such crimes are gender-specific with only women being the victims.

- The study reports that **52% of men** who experience domestic violence **do not report** due to **fear of social stigma**.<sup>58</sup>
- **Common forms of abuse:** Psychological abuse (48%), economic abuse (32%), and physical violence (20%).<sup>59</sup>
- Based on **survey data from 3,000 men** in Gujarat and Uttar Pradesh.<sup>60</sup>

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<sup>55</sup> Social Action Forum for Manav Adhikar v. Union of India, (2018) 10 SCC 443

<sup>56</sup> Manju Ram Kalita v. State of Assam (2009) 13 SCC 330

<sup>57</sup> Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667

<sup>58</sup> Broom A and others, "Men's Experiences of Family, Domestic and Honour-Related Violence in Gujarat and Uttar Pradesh, India"

(2012)<[https://www.researchgate.net/publication/267726637\\_Men's\\_Experiences\\_of\\_Family\\_Domestic\\_and\\_Honour-Related\\_Violence\\_in\\_Gujarat\\_and\\_Uttar\\_Pradesh\\_India](https://www.researchgate.net/publication/267726637_Men's_Experiences_of_Family_Domestic_and_Honour-Related_Violence_in_Gujarat_and_Uttar_Pradesh_India)>accessed 3 March, 2025

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- **1 in 3 men (32%)** reported experiencing **some form of domestic violence**.<sup>61</sup>
- **Financial exploitation (41%)** was the most common abuse, followed by **verbal abuse (35%)** and **physical violence (24%)**.<sup>62</sup>
- **Only 5% of victims filed complaints**, citing **lack of legal protection**.<sup>63</sup>
- **6% of married men** reported experiencing **physical violence** from their spouse.<sup>64</sup>
- **Psychological abuse (42%)** was more common than **physical abuse (14%)**.<sup>65</sup>
- **Data from National Family Health Survey (NFHS-5)** across **29 Indian states**.<sup>66</sup>
- **Survey of 265 young men & women** to understand **attitudes toward domestic violence against men**.<sup>67</sup>
- **Most common justification** for abuse: **"Men should be emotionally strong" (57%)**.<sup>68</sup>

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<sup>60</sup> Broom A and others, "Men's Experiences of Family, Domestic and Honour-Related Violence in Gujarat and Uttar Pradesh, India"

(2012) <[https://www.researchgate.net/publication/267726637\\_Men's\\_Experiences\\_of\\_Family\\_Domestic\\_and\\_Honour-Related\\_Violence\\_in\\_Gujarat\\_and\\_Uttar\\_Pradesh\\_India](https://www.researchgate.net/publication/267726637_Men's_Experiences_of_Family_Domestic_and_Honour-Related_Violence_in_Gujarat_and_Uttar_Pradesh_India)> accessed 3 March ,2025

<sup>61</sup> C Vashishtha, R Singh, , " Domestic Violence Against Men: An Empirical Analysis (2025) <

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<sup>62</sup> C Vashishtha, R Singh, , " Domestic Violence Against Men: An Empirical Analysis (2025) <

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<sup>64</sup> Chattopadhyay A and others, "Prevalence and Risk Factors of Physical Violence against Husbands: Evidence from India"

(2023) 56 Journal of Biosocial Science 391 < [Prevalence and Risk Factors of Physical Violence Against Husbands: Evidence from India \(Chattopadhyay et al., 2024\)](#)> accessed 2 March ,2025

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<sup>67</sup> Rodriguez AL and others, "A Network Analysis of Domestic Violence Beliefs Among Young Adults in India" (2019) 36

Journal of Interpersonal Violence NP12041 < [A Network Analysis of Domestic Violence Beliefs Among Young Adults in India \(Rodriguez et al., 2021\)](#)> accessed 2 March ,2025

- **Support for gender-neutral laws** was high among younger individuals (72%).<sup>69</sup>
- **Over 1.5 lakh (150,000) domestic violence cases were filed by men** in 2023.<sup>70</sup>
- **Less than 5% of cases** led to convictions, showing **high rates of false accusations or lack of legal provisions**.<sup>71</sup>
- **Suicide rates among married men (2023)**<sup>72</sup>:
  - **Over 70,000 married men** committed suicide in India due to domestic issues (compared to **28,000 married women**).
  - **Economic distress and false accusations** were cited as **major contributing factors**.
- **1 in 7 men (13.9%)** in India reported being a victim of domestic abuse.<sup>73</sup>
- **25% of domestic abuse cases** recorded by police were committed **against men**.<sup>74</sup>
- The **major barrier** to reporting is **societal stigma and lack of legal recognition** for male victims.<sup>75</sup>

### Impact on Men and their Families

#### Wrongful Arrest and Detention

False accusations often lead to unjust arrest and detention of innocent individuals and their relatives, causing significant psychological trauma, humiliation, and loss of dignity.

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<sup>68</sup> Rodriguez AL and others, "A Network Analysis of Domestic Violence Beliefs Among Young Adults in India" (2019) 36 Journal of Interpersonal Violence NP12041 < [A Network Analysis of Domestic Violence Beliefs Among Young Adults in India \(Rodriguez et al., 2021\)](#) > accessed 2 March ,2025

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<sup>70</sup> "Statistics on Male Victims of Domestic Abuse" (*Mankind*, April 10, 2024) <<https://mankind.org.uk/statistics/statistics-on-male-victims-of-domestic-abuse/>> accessed March 2, 2025

<sup>71</sup> "Statistics on Male Victims of Domestic Abuse" (*Mankind*, April 10, 2024) <<https://mankind.org.uk/statistics/statistics-on-male-victims-of-domestic-abuse/>> accessed March 2, 2025

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<sup>73</sup> Martin L, "Debates of Difference: Male Victims of Domestic Violence and Abuse," *Domestic Violence* (2016) < [Statistics on Male Victims of Domestic Abuse – ManKind Initiative](#) > accessed 2 March, 2025

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**Social Stigma and Loss of Reputation**

The simple allegation under Section 498A is loaded with social shame. Men and their families become outcasts for their communities irrespective of the outcome of the case. This could affect their social status, careers, and personal relationships in the future.

**Emotional and Psychological Distress**

Baseless allegations, court proceedings, and social boycotting can cause significant emotional and psychological trauma, including anxiety, depression, and suicidal thoughts, as well as the destruction of family ties.

**Financial Burden**

Self-defense in a Section 498A case is very expensive in terms of legal costs, court hearings, and possible loss of income as a result of job interruptions and social ostracism. The financial burden can be crippling, especially for middle-class and low-income families.

**Fractured Family Relationships**

Section 498A allegations can lead to permanent disintegration of relationships, including between spouses, parents, siblings, and relatives, and even if the case is dismissed, family trust and relations can be strained.

**Impact on the Legal System and Society****Erosion of Trust in the Justice System**

Misuse allegations can undermine trust in the judicial system's fairness and impartiality, as people may perceive laws being misused for harassment or personal revenge, questioning the validity of the judicial framework.

**Discouragement of Men from Seeking Legal Recourse**

Section 498A's negative impact may discourage men's domestic violence victims from seeking legal recourse, as their concerns may be overlooked due to the focus on women's protection laws.

**Hindrance to Genuine Efforts to Combat Domestic Violence**

The debate over Section 498A can sometimes distract from the urgent need to effectively address all types of domestic violence, as the focus on abuse may weaken the overall urgency and resources allocated to preventing domestic violence against both genders.

**RECOMMENDATION / OPINION/POLICIES****Gender Neutral Laws**

In India, gender equality is crucial for both men and women. Men are often falsely accused of rape, domestic violence, and sexual assault. To address this, gender-neutral laws must be adopted, classifying domestic violence as spousal violence. Existing laws are women-oriented, and special amendments and provisions must be created to ensure victims receive fair redress and protection for both spouses.

**Raise Awareness**

Conduct public awareness campaigns to shatter prevailing society norms and stereotypes that imply that men are not victims of domestic Violence. Myths are shatterable, and reporting and seeking help can be facilitated through awareness and education campaigns.

**Legal Protection**

Strengthen legal systems to protect male domestic violence victims. Make sure domestic Violence is defined to encompass men and that protection orders and restraining orders are issued to all victims. Encourage reporting and prosecution of domestic violence against men.

**Research and Data Collection**

Fund research studies to gather valid statistics on the occurrence and impact of domestic violence against men. These statistics will help policymakers, organizations, and stakeholders understand the issue better and develop evidence-based interventions and prevention measures.

**Inclusive Policies**

Encourage gender-sensitive policies that recognize and respond to the needs of male victims of domestic Violence. Push the government to allocate money and create programs specifically designed to help male victims and prevent domestic violence.

**CONCLUSION**

Along with progressing society, the needs and requirements of mankind also change, and so has to change the law. It must never be lost sight of that the law is made for human beings so that they can live their life without undue interference, to ensure that their rights shall never be infringed upon by anyone, even the State (with the only exception of in accordance with due process of law), to ensure that Justice shall reign supreme in society- and society, does not consist of a single sex. Domestic violence against men can be detected through efficient legislative changes, raising awareness and demolishing stereotypes and presumptions.

After the entire research, the researcher can conclude that even though Section 498-A of IPC, 1860 was added to law for protection of women from torture by her husband and his family members but now this section is being misused.

Women are inflicting injuries on their husbands and relatives, which is resulting in prosecution under Section 498A of IPC, 1860. Judicial steps should be taken to avert "legal terrorism" by misuse of law provisions. Though there are gender neutrality concerns, it is essential to take up the cases of the victims and pursue legal action, as they are the sufferers.

It is important to remove such cultural prejudices and beliefs prevailing in the world today against men as violators of virtually any crime, much less domestic violence. It is time that the legislature and the judiciary, both identify the current gaps in the domestic violence laws, and take harmonious steps towards the achievement of social justice and gender equality, not only on paper, but in reality as well.



## 14. STATELESS WITHIN STATES: EXAMINING THE STATUS QUO OF INTERNALLY DISPLACED PEOPLE

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### **Abstract**

*"The greatest challenge facing us today is to take an active interest in the problems of others, to see how we can help, to work together." - Kofi Annan (Former UN Secretary-General). The above statement aligns with one of the most overlooked global crisis that is about the lives, Identities and rights of millions; it's about the Internally Displaced People (IDPs), The United Nations High Commissioner for Refugees (UNHCR) defines the IDPs as "The people or groups of people who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border." Internally Displaced Persons (IDPs) are the forgotten victims of conflict and catastrophe, ripped from their homes, their communities, and their identities. They suffer unimaginable burdens of unfair life, forced to spend their lives in the dark oblivion, where safety is nowhere to be seen and principle requirements of any human being are not fulfilled. Shut within their own frontiers, they are not availed the treatment which should be equivalent to the refugees, surviving in spontaneous jittery and unpredictability. Struggling against violence, stigma, and neglect, they fight to reclaim their lives in a world that often ignores their suffering. Their resilience is forged in the flames of despair, but their pain remains largely unseen, However The authorities such as the United Nations (UNHCR, UNDP) and other governmental institutions come into the picture by undertaking the initiatives to foster, relocate and protect as well as contribute towards the alleviating the suffering of this vulnerable community.*

**Keywords:** Internally Displaced people, Identity, Invisible citizens, IDMC.

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### **1 INTRODUCTION**

The UNHCR identifies internally displaced persons (IDPs) as potentially the largest population of vulnerable individuals worldwide. Although it remains difficult to determine the exact number of urban IDPs globally, existing estimates suggest the figure could be close to four million. Despite these alarming statistics, IDPs often face marginalization, lacking visibility and long-term solutions to alleviate their distress. A significant portion of this population comprises women and children, who are especially susceptible to violations of their basic rights.

In many cases, IDPs remain near conflict zones or become trapped within them, facing heightened threats of exploitation, including being used as human shields, tools, or victims by armed groups—risks even more severe than those typically encountered by refugees. As of May 2024, the global count of forcibly displaced individuals has reached a staggering 120 million, marking the twelfth consecutive annual rise in displacement figures. Within this, approximately 43.4 million people are either recognized as refugees or are awaiting international protection, while the number of IDPs continues to surge.

This unprecedented scale of displacement calls for urgent, coordinated international action aimed at providing humanitarian support, ensuring security, and tackling the root causes of displacement. The first major recognition of internal displacement as a global concern emerged in 1972, when the United Nations Economic and Social Council (ECOSOC) responded to the crisis in Sudan, triggered by internal conflict and its resulting humanitarian fallout. ECOSOC requested that UNHCR take responsibility for coordinating aid for those displaced within their own borders, establishing the first formal approach to addressing internal displacement.

The reasons behind internal displacement are varied, with conflict and violence standing out as the primary drivers. In 2023 alone, nations such as Sudan, Palestine, and the Democratic Republic of the Congo accounted for nearly two-thirds of conflict-related displacement, contributing to a total of 75.9 million people displaced internally due to violence.

There was a 9% rise in displacement from 2022, and apart from conflict, several other factors continue to drive internal displacement. Climate change plays a significant role, particularly in

## **2 CHALLENGES FACED BY THE IDPS**

regions like South and East Asia, the Middle East, and Sub-Saharan Africa, where people are increasingly uprooted due to severe floods, prolonged droughts, and other extreme weather events. Additionally, development projects have also been a major contributor to forced displacement, often pushing communities out of their native lands.

It is important to note that the term "Internally Displaced People" only gained formal usage in 1998, following the United Nations' introduction of the Guiding Principles on Internal Displacement. Prior to this, although the issue of internal displacement began to appear on the international agenda in the early 1990s, it lacked a clear definition or a standardized legal and policy framework. This absence made it difficult for states and international bodies to respond effectively to the needs of internally displaced populations.

The overwhelming number of people displaced each year continues to be a perplexing challenge for the global community. Despite its severity, internal displacement often lacks proper legal recognition, largely because many governments, concerned about their international image, choose to overlook the issue. This deliberate neglect leaves internally displaced persons (IDPs) without sufficient legal protection, limited access to essential resources, and deeply affected by the emotional and economic toll of losing their homes and livelihoods.

The vulnerability of IDPs is further heightened by the instability and unpredictability of their living conditions. Many suffer from preventable health problems, including frequent colds, respiratory infections, and the flu, due to unsanitary environments, inadequate healthcare facilities, and harsh weather exposure. However, the impact is not only physical—mental health concerns among IDPs are widespread. High incidences of post-traumatic stress disorder (PTSD), anxiety, and depression are reported, as individuals struggle to cope with the trauma of displacement, continuous uncertainty, and a lack of psychological support systems.

Beyond health, IDPs face numerous barriers just to live a basic, dignified life. Displacement doesn't merely involve a change in location—it often results in the erosion of fundamental rights, as individuals are caught in a web of violence, corruption, and ongoing conflict that strips them of safety, voice, and stability.

In February 2022, the Russian military launched a full-scale invasion of Ukraine, targeting not only military infrastructure but also civilian homes in major cities. As a result, more than two million individuals were forced to flee the country, becoming refugees. Despite widespread international condemnation and calls for a ceasefire, the war has persisted.

The International Organization for Migration (IOM) has been monitoring the situation through a General Population Survey (GPS), gathering data on internally displaced persons (IDPs), returnees, and residents who have not been displaced. According to IOM estimates, approximately 3.6 million individuals in Ukraine are currently internally displaced. This ongoing war has triggered one of the most severe internal displacement crises in modern times, displacing millions due to ongoing

violence, instability, and the destruction of vital infrastructure.

IDPs in Ukraine face numerous obstacles, such as limited access to housing, employment, and basic services, while returnees often struggle to rebuild their lives in war-torn communities. Analyzing Ukraine's demographic data offers insight into the scale and complexity of the displacement. A significant proportion of the population has been forced to abandon their homes, with nearly 80% of IDPs remaining displaced for over a year. The median duration of displacement stands at two years and three months, reflecting the long-term nature of the crisis and the challenges involved in returning or resettling.

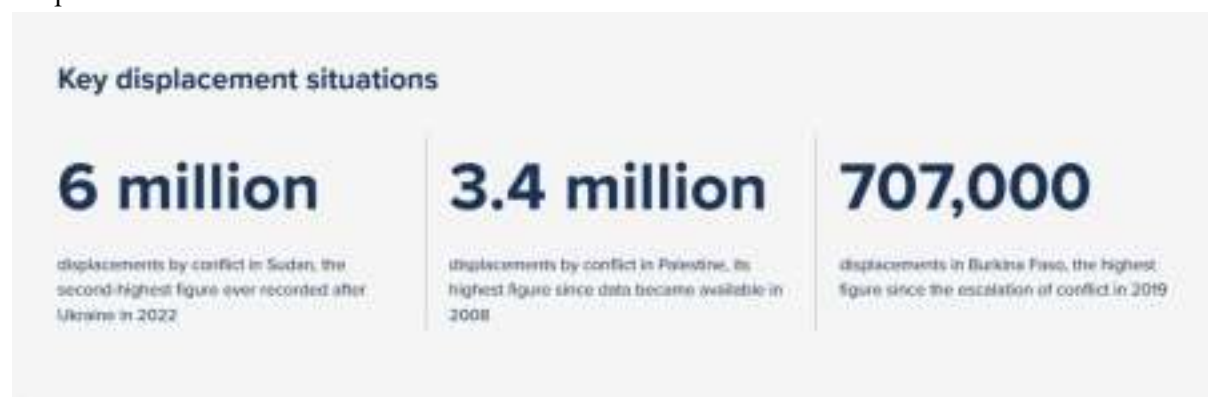
To cope with the crisis, many displaced families rely on livelihood-based coping mechanisms. However, a concerning 24% of IDP households have resorted to emergency strategies such as reducing food consumption, selling assets, or accumulating debt—compared to 16% of the non-displaced population. This disparity underlines the heightened vulnerability of IDPs, who often lack stable employment, social support, and access to essential services, making recovery more difficult.

#### 4 CASE STUDY- UKRAINE

Key needs identified by the displaced population highlight the gravity of the humanitarian crisis. Power banks and generators emerged as the most urgent requirement for 26% of respondents, signaling the widespread energy shortages and the critical need for reliable electricity in regions where infrastructure has been severely damaged. Additionally, 10% of respondents identified income-generating opportunities as a primary concern, reflecting the economic hardships caused by job losses and disrupted businesses. Despite government efforts to provide financial aid and employment programs, many IDPs continue to face economic instability.

Furthermore, 9% of respondents emphasized the need for access to medicines, highlighting the healthcare crisis exacerbated by the conflict. Damage to medical facilities, disrupted supply chains, and limited access to essential drugs have made it difficult for many IDPs to receive adequate care. While both the Ukrainian government and international agencies are working to improve healthcare access, substantial gaps remain.

Similar to Ukraine, countries like Sudan, Palestine, and Burkina Faso are also grappling with large-scale internal displacement driven by armed conflict, political unrest, ethnic violence, and economic instability. These global parallels reflect a shared and urgent need for sustained international cooperation and humanitarian intervention.



## 5 GLOBAL STATISTICS-

<sup>1</sup>Now when we dive into the statistics around the globe depicting the status quo of the IDPs - These statistics not only highlight the sheer magnitude of displacement but also shed light on the critical challenges faced by IDPs, through which we can have insights of the patterns of displacement, assess the adequacy of response mechanisms, and determine the long-term prospects for resettlement or return.<sup>2</sup>



<sup>1</sup>The dramatic surge in the global population of internally displaced persons (IDPs), now estimated at around 79 million over the past two years, highlights the critical need for comprehensive policy frameworks and well-coordinated efforts to enhance their living conditions. This stark increase is a direct outcome of escalating conflicts, environmental disasters, economic instability, and widespread governance challenges, all of which have compelled millions to flee their homes.

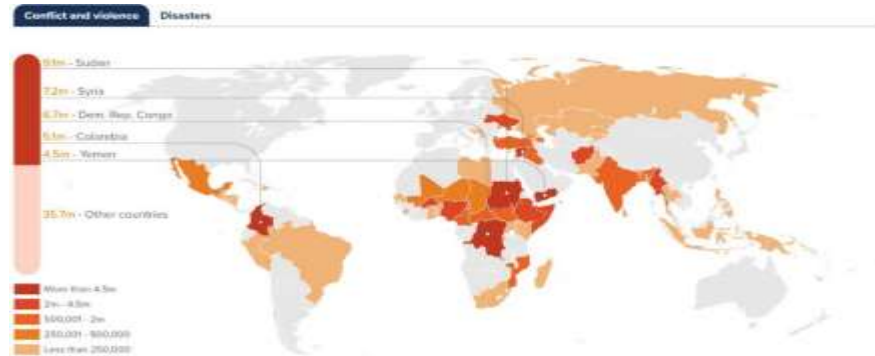
Addressing this growing humanitarian crisis requires more than short-term relief—it demands the formulation and execution of extensive programs that prioritize long-term recovery, social

<sup>1</sup>Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2024* <https://api.internal-displacement.org/sites/default/files/publications/documents/IDMC-GRID-2024-Global-Report-on-Internal-Displacement.pdf> accessed 5th march 2025

integration, and economic self-sufficiency. Collaborative efforts among governments, international bodies, and civil society organizations are essential to creating sustainable pathways forward. These include ensuring access to secure housing, skill development initiatives, financial support systems, and inclusive educational opportunities, thereby enabling displaced populations to rebuild their lives with dignity and resilience.

<sup>2</sup>**Two of the major causes of internal displacement all over the world are violence and disasters.**

### Internally Displaced Persons (IDPs) Due to Conflict and Violence (2024)<sup>3</sup>



### <sup>3</sup>Internally Displaced Persons (IDPs) Due to Conflict and Violence (2024)

	Country	Number of IDPs (Millions)
1	<b>Sudan</b>	9.1
2	<b>Syria</b>	7.2

<sup>2</sup>Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2024*  
<https://api.internal-displacement.org/sites/default/files/publications/documents/IDMC-GRID-2024-Global-Report-on-Internal-Displacement.pdf> accessed 5th march 2025

	Country	Number of IDPs (Millions)
3	<b>Democratic Republic of Congo</b>	6.7
4	<b>Colombia</b>	5.1
5	<b>Yemen</b>	4.5
-	<b>Other countries combined</b>	35.7

### Internally Displaced Persons (IDPs) Due to Disasters (2024)



### Internally Displaced Persons (IDPs) Due to Disasters (2024)<sup>4</sup>

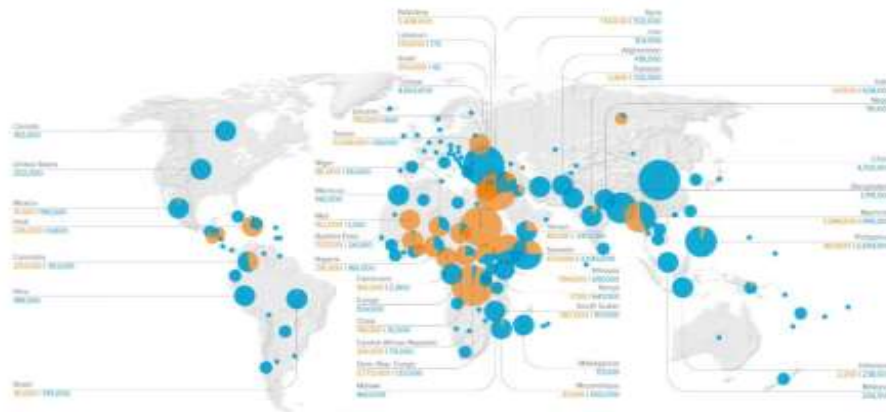
<sup>4</sup>Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2024* <https://api.internal-displacement.org/sites/default/files/publications/documents/IDMC-GRID-2024-Global-Report-on-Internal-Displacement.pdf> accessed 5th march 2025

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	Country	Number of IDPs (Thousands)
1	Afghanistan	1,500
		881
2	Ethiopia	822
		1.2 (Million)
3	Turkey	639
4	Pakistan	2,600
5	China	
.	other countries combined	

These numbers highlight the scale of displacement caused by both conflict and disasters, with Sudan, Syria, and the Democratic Republic of Congo facing the most severe crises due to violence, while Afghanistan has the highest disaster-related displacement.

**These numbers are not limited to some countries but its around the globe and several countries are facing this challenge is at high levels**



9

The data highlights the scale and distribution of internally displaced persons (IDPs) across various regions, showing how conflicts, environmental disasters, and instability force millions to flee within their own countries.<sup>5</sup>

**The global policy initiatives, global action taken by the international governments, state and non-state actors across the world.**

#### **Durable Solutions for Internally Displaced Persons (IDPs)**

Internally Displaced Persons (IDPs) continue to face persistent hardships even after the cessation of conflict or natural disasters. Displacement causes prolonged disruptions in their access to housing, employment, healthcare, and education. Many IDPs return to find their homes destroyed, illegally occupied, or inaccessible, while others encounter legal and societal barriers when attempting to



resettle elsewhere. A lack of economic opportunities, inadequate public services, and social stigma further obstruct their path to full reintegration, often leaving them marginalized and vulnerable.

<sup>5</sup>A **durable solution** is attained when IDPs no longer require assistance specific to their displacement and are able to fully enjoy their human rights on an equal footing with others. This may be realized through **voluntary return, local integration, or resettlement in another part of the country**, but each of these options must be supported by strong legal safeguards, socio-economic inclusion, and community acceptance.

To ensure sustainable reintegration, it is essential to secure IDPs' access to food, water, housing, healthcare, and education, along with freedom of movement and personal security. Long-term solutions must also include livelihood programs, employment opportunities, and robust legal frameworks that guarantee the restoration of housing, land, and property rights or provide adequate compensation.

<sup>5</sup>Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2024* <https://api.internal-displacement.org/sites/default/files/publications/documents/IDMC-GRID-2024-Global-Report-on-Internal-Displacement.pdf> accessed 5th march 2025

## 10 SUGGESTIONS IN ORDER TO UPLIFT THE IDPs

Organizations such as the United Nations, NGOs, and national governments play a pivotal role in enabling IDPs to rebuild their lives with dignity. The **Inter-Agency Standing Committee (IASC)**—the principal humanitarian coordination mechanism established in 1992 under UN General Assembly Resolution 46/182—has emphasized the importance of collaborative humanitarian responses. By promoting inclusive decision-making and effective coordination among multiple stakeholders, the IASC ensures that internally displaced populations are not only protected but also empowered to move toward long-term, self-reliant futures.

### Role of National Authorities in Achieving Durable Solutions for Internally Displaced Persons (IDPs)

The **primary responsibility** for providing durable solutions for internally displaced persons (IDPs) rests with national authorities. States must take proactive and sustained measures to ensure the **reintegration, protection, and long-term stability** of displaced populations. While international humanitarian and development actors play a vital **supporting role**, it is the state that bears the **core duty** in addressing the complex challenges associated with internal displacement.

To facilitate this process, authorities must ensure **unhindered and prompt access** for humanitarian and development organizations working to assist IDPs. All efforts must be anchored in the fundamental principle that the **needs, rights, and legitimate interests** of displaced individuals are central to the design and implementation of any policy or program.

Equally important is the **right of IDPs to make informed and voluntary decisions** about their preferred durable solution—whether it be return, local integration, or relocation elsewhere within the country. Their **active participation** in the planning, execution, and monitoring of these solutions is essential to their long-term sustainability and effectiveness.

Importantly, if IDPs choose to integrate locally or relocate elsewhere due to a lack of safe return options, this decision must not be construed as a **permanent forfeiture of their right to return**. Should the situation improve, they must retain the **unrestricted freedom** to return to their original homes and reclaim their properties.

National and local authorities must, at a minimum, ensure that **legal and policy frameworks** are in

place to secure the rights of IDPs. They must also establish **efficient governance structures** to coordinate the response across levels, facilitate the delivery of humanitarian and development assistance, and allocate sufficient resources—both from national budgets and international aid—for the implementation of durable solutions.

Although the **primary obligation** lies with the state, international organizations and NGOs have a **complementary role**. Their actions should be guided by international human rights norms and focused on the **protection, participation, and empowerment** of IDPs. Durable solutions often intersect with issues of **sovereignty, territorial integrity, and national security**, but these concerns must be balanced with a **rights-based approach** that prioritizes the needs and vulnerabilities of displaced individuals.

## 15. FROM EXCLUSION TO INCLUSION: THE STRUGGLE FOR ACCESSIBLE EDUCATION

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### **Abstract**

*Education is a fundamental human right and a crucial tool for personal development and social inclusion. However, people with disabilities continue to face significant barriers that prevent them from fully accessing and benefiting from education. There are a number of reasons for these difficulties, including as physical barriers like inaccessible classrooms and school buildings, mental hurdles like stigma and prejudice, curriculum restrictions that don't meet the requirements of students with different learning styles, and a shortage of instructors with the necessary training. These obstacles affect the inclusion of students with impairments in addition to impeding their academic performance, limiting their opportunities for future employment and independence.*

*Despite legal frameworks such as the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA), which mandate equal access to education, many students with disabilities still struggle due to inadequate implementation of these laws. Insufficient funding, lack of assistive technology, and an overall shortage of inclusive educational policies further exacerbate the situation. These challenges highlight the gap between legislative progress and real-world practice, leaving many students marginalized in traditional educational settings.*

*This paper aims to explore the historical evolution of disability education, assess the effectiveness of current inclusive practices, and analyze the different types of disabilities that influence learning experiences. Additionally, it examines the consequences of educational barriers on academic achievement, self-esteem, and socialization. The study also discusses best practices and strategies for fostering inclusivity, such as teacher training programs, adaptive curricula, and improved accessibility measures.*

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### **Introduction:**

Globally, Education is seen as a tool for individual development and societal advancement. Sadly, for people with disabilities, educational equality is still a challenge.<sup>1</sup> There has been progress in legislation and policymaking in the tedious fight towards individuals with disabilities have access to education.<sup>2</sup> In the United States, there are specific laws that have been enacted, such as the ADA and the IDEA. Systemic barriers still persist in educational systems worldwide. The barriers can be physical, attitudinal or pedagogical. It reduces how effective the access and inclusion is for students with disabilities.<sup>3</sup>

Inaccessible school buildings, lack of assistive technologies, negative stereotypes, or misconceptions, the list of challenges go on, whether physical or behavioural. Many schools continue to depend on their curricula that is rigid or traditional teaching methods. These methods don't accommodate the needs of students with disabilities. So, the educational experiences of people with disabilities is many times limited. Their opportunities for academic and social success are sadly compromised.<sup>4</sup>

This paper looks at barriers that people with disabilities face in education. It focuses on how these obstacles trouble their academic achievement and social integration. Only when the paper looks at the types of disabilities, the historical evolution of disability education, and the current challenges in inclusive education, this paper aims to provide a comprehensive understanding of the issue. Later, the paper will discuss strategies and solutions to mitigate these barriers. It puts importance on creating inclusive educational environments that promote equal opportunities for every student.<sup>5</sup>

**Historical Context:**

Education of people with disabilities has experienced exclusion, stigma and gradual movement towards inclusion. Previously, there were individuals with disabilities who were locked out of formal education. They believed that they could not derive any advantage from education systems. Sadly, many were institutionalised or kept in their homes. In the course of time, they have been segregated from other people. This line of thinking began to change in the mid-20th century. This was when the western civil rights movement spearheaded efforts for equality and access to education for all. In Europe, there was the Salamanca Statement in 1994.<sup>6</sup> India has had its Protection of Rights, Persons with Disabilities Equal Opportunity and Full Participation Act of 1995 as the initial legal framework into this battle.<sup>7</sup> The Right to Education Act 2009 ensured that there was compulsory and free education for disabled children.<sup>8</sup> This was followed by the Rights of Persons with Disabilities Act, 2016 that ensured schools also had to offer accommodations. Implementation has been uneven particularly in rural regions. Schools in rural India lack accessibility, trained instructors and assistive technology.<sup>9</sup> Social stigma and attitudes continue to prevail, restricting the integration of students with disabilities into general classrooms.<sup>10</sup> While international and national policies have improved towards inclusion, there is much more to be done to provide students with disabilities with equal and quality education.<sup>11</sup>

<sup>1</sup> Importance of Education < <https://leverageedu.com/blog/importance-of-education/> > Accessed 5 March 2025

<sup>2</sup> Curriculum Development < <https://specialeducationnotes.co.in/IDDPAPER5UNIT1.htm> > Accessed 5 March 2025

<sup>3</sup> 10 ways to make society more inclusive for people with disabilities < <https://www.oneyoungworld.com/blog/10-ways-make-society-more-inclusive-people-disabilities> > accessed 5 March 2025

<sup>4</sup> Is there equality for students with disabilities when accessing government grants for post-secondary education? < <https://researchoutreach.org/articles/equality-students-disabilities-accessing-government-grants-post-secondary-education/> > accessed 5 March 2025

<sup>5</sup> Inclusive Education: Creating an Environment that Welcomes and Supports All Students < <https://proactiveapproaches.co.uk/inclusive-education-creating-an-environment-that-welcomes-and-supports-all-students/> > Accessed 5 March 2025

<sup>6</sup> Right to Education < <https://www.un.org/esa/socdev/enable/discom403.htm> > accessed 5 March 2025

<sup>7</sup> Citizens with Disabilities: Making Their Rights Real < <https://www.nextias.com/ca/editorial-analysis/03-12-2024/citizens-with-disabilities> > accessed 5 March 2025

<sup>8</sup> Education for Children with Disabilities < <https://inclusion.in/domains/women-and-child/2014/04/education-for-children-with-disabilities/> > accessed 5 March 2025

<sup>9</sup> Policy on accessible education for students with disabilities < <https://www3.ohrc.on.ca/en/policy-accessible-education-students-disabilities> > accessed 5 March 2025

<sup>10</sup> Children with disabilities < <https://theirworld.org/resources/children-with-disabilities/> > accessed 5 March 2025

<sup>11</sup> Inclusive Education for Students with Disabilities < <https://psico-smart.com/en/blogs/blog-inclusive-education-for-students-with-disabilities-11719> > accessed 5 March 2025

**Types of Disabilities and Their Impact on Education:**

The challenges for people with disabilities change by the type of their disability. Each disability type have their own special challenges. Disabilities can be classified into mental health, physical, cognitive and learning and sensory impairments. Each impact how students learn and interact with their surroundings.

**Physical Disabilities**

Physical disabilities need changes to physical space. School would need to offer ramps, elevators, and accessible restrooms for students impaired by mobility<sup>12</sup>. The physical arrangement of classrooms can also be changes to bring in wheelchairs aids. In physically accessible schools, students with physical disabilities can find it hard to engage in extracurricular activities which are not accessible.<sup>13</sup>

**Cognitive and Learning Disabilities**

Dyslexia and ADHD can impact on a student's capacity to study or learn. These students could have difficulty with reading, writing and attention tasks<sup>14</sup>. Their academic progress may be compromised. Most schools offer education services that help students with these disabilities<sup>15</sup>. Students still encounter difficulties in standard educational environments that are not accommodating<sup>16</sup>. Dyslexic students will find it hard to read conventional texts and may need textbooks presented in a different format, i.e., audio books or Braille.

**Mental Health Disabilities**

Anxiety, depression and other disorders also impact the learning ability and integration of a student.<sup>17</sup> Students with mental health disabilities may struggle to focus, attend class every day, or interact socially with classmates and teachers<sup>18</sup>. Additionally, stigma around mental health issues can lead to discrimination, bullying, and social exclusion. Poor awareness and lack of understanding about mental illness within schools usually adds to the challenges, hindering students from reaching their full potential.

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<sup>12</sup> How to Create Inclusive Classroom Spaces for Students With Physical Disabilities < <https://www.weareteachers.com/inclusive-classroom-spaces/> > accessed 5 March 2025 <sup>13</sup> The Role Of Assistive Technology In Supporting Disabled Learners < <https://www.teachthought.com/technology/the-role-of-assitive-technology-in-supporting-disabled-learners/> > accessed 5 March 2025

<sup>14</sup> Deciding if a student has a learning difficulty in literacy < <https://www.schools.vic.gov.au/deciding-if-student-has-learning-difficulty-literacy> > accessed 5 March 2025

<sup>15</sup> Essential Accommodations for Dyslexia at School < <https://magrid.education/essential-accommodations-for-dyslexia-at-school/> > accessed 5 March 2025

<sup>16</sup> How disabilities like ADHD, Autism, and Dyslexia affect learning < <https://glean.co/blog/how-disability-affects-learning> > accessed 5 March 2025

<sup>17</sup> Impact of Anxiety and Depression on Student Academic Progress < <https://ibcces.org/blog/2019/05/01/impact-anxiety-depression-student-progress/> > accessed 5 March 2025

**Sensory Impairments**

Sensory impairment, including blindness, low vision, deafness, and hearing impairment, is also a serious obstacle to education. Students with visual impairments need Braille textbooks, screen readers, and other assistive materials to access information written in books<sup>18</sup>. In the same way, students who are hearing impaired might need sign language interpreters, hearing aids, or captioned services to enable them to have access to written information fully. Sadly, most schools lack the resources to provide these, meaning that students with sensory impairments are disadvantaged.<sup>19</sup>

Students with Autism Spectrum Disorder (ASD) experience distinct difficulties in schools, especially **Autism Spectrum Disorder (ASD)**

with communication and social interaction. ASD children can experience difficulties with verbal and non-verbal communication, sensory sensitivities, and fixed thinking styles<sup>20</sup>. These difficulties complicate students' ability to participate in standard classroom activities and socialise with others. Specialised educational approaches, such as individualised support plans and social skills training, can be helpful, but many schools are ill-equipped to provide such tailored programs.<sup>21</sup>

**Multiple Disabilities**

At times, students are afflicted with multiple disabilities that exacerbate their difficulties in learning.<sup>22</sup> For instance, a student who is both visually handicapped and mentally challenged would require a mix of physical adjustments, individualised training, and assistive technology. A lot of cooperation between special education professionals, teachers, and parents is typically required when working with students who have various impairments in order to ensure that their needs are met.<sup>23</sup>

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<sup>18</sup> Sensory Impairments: Types and Examples < <https://uniquecs.co.uk/blog/sensory-impairments/> > accessed 5 March 2025

<sup>19</sup> From Sign Language to Hearing Aids: Diverse Hearing Impaired Services You Should Know About < <https://restorehearingnow.com/from-sign-language-to-hearing-aids-diverse-hearing-impaired-services-you-should-know-about/> > accessed 5 March 2025

<sup>20</sup> What are the Behavioral Characteristics of Children with Autism < <https://www.crossrivertherapy.com/autism/behavioral-characteristics-of-child-with-autism> > accessed 5 March 2025

<sup>21</sup> What Are Special Educational Needs < <https://citizenside.com/technology/what-are-special-educational-needs/> > accessed 5 March 2025

<sup>22</sup> Multiple Disabilities < <https://pressbooks.pub/disabilitysummary/chapter/multiple-disabilities/> > accessed 5 March 2025



## Barriers in Educational Settings:

### Physical Barriers

When it comes to allowing or excluding people with disabilities from accessing education, the physical environment of schools plays a significant role. Since most schools' older buildings were not designed with accessibility in mind, they may not have the ramps, lifts, or larger doors that are required.<sup>24</sup> Poor access to classrooms, restrooms, and cafeterias can present severe barriers for students with mobility impairments. Even in newer, more accessible facilities, the layout of rooms such as libraries, gymnasiums, and computer labs can still be difficult for students who use mobility aids or assistive devices.<sup>25</sup> Moreover, educational materials and resources are not available to students with disabilities. For instance, students with visual impairments need screen readers or Braille books, while students with hearing impairments need captioned DVDs or sign language interpreters. Yet, many schools lack the budget or infrastructure to offer these tools, rendering students without the same educational materials as their non-disabled peers.

Attitudinal barriers, including societal stigma, negative stereotypes, and lack of awareness, often prevent persons with disabilities from fully participating in educational activities<sup>26</sup>. Teachers, peers,

### Attitudinal Barriers

and even parents may harbour misconceptions about the capabilities of students with disabilities, leading to low expectations and exclusionary practices<sup>27</sup>. For instance, intellectually disabled students are assigned to separate classrooms with limited contact with the non-disabled peers, reinforcing their belief that they are less competent. Likewise, mentally ill students can be stigmatised or stereotyped as lazy or disruptive, pushing them further from the learning environment. Discriminatory mindsets can also be expressed in bullying and harassment, both of which are prevalent in schools. Disabled students are mocked for being different, becoming isolated from society, having poor self-esteem, and no drive to achieve. These attitudinal barriers are best dealt with through wide-ranging awareness programs among students and staff, along with robust policies to prevent bullying and discrimination.<sup>28</sup>

<sup>23</sup> Tips for Teaching Students with Severe Multiple Disabilities < <https://theadaptedclassroom.com/tips-for-teaching-students-with-multiple-disabilities/> > accessed 5 March 2025

<sup>24</sup> Basic Facilities Must Be Available in The School < <https://www.rawatpublicschool.com/blog/school-facilities> > accessed 5 March 2025

<sup>25</sup> The physical environment < <https://www.education.act.gov.au/our-priorities/inclusive-education-a-disability-inclusion-strategy/a-community-conversation/the-physical-environment> > accessed 5 March 2025

<sup>26</sup> Addressing the Barriers to Inclusive Education for All Learners < <https://schoolingstories.com/barriers-to-inclusive-education/> > accessed 5 March 2025

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## Curriculum Barriers

Traditional curricula are not necessarily structured to meet the varied needs students with disabilities<sup>29</sup>. Standardised testing, strict lesson plans, and one-size- fits-all instructional approaches may not work for students with varying learning styles or abilities<sup>30</sup>. For example, students with dyslexia might have trouble reading from printed texts, whereas students with ADHD might have trouble sitting through lengthy lectures. This inflexibility in the curriculum can restrict students with disabilities from enjoying full educational opportunity and failing to achieve their potential.

Apart from curriculum constraints, most schools do not have alternative assessment strategies that can be used for students with disabilities<sup>31</sup>. For instance, students who cannot sit for written exams because of physical or mental impairments might not be provided with alternative means of assessment, like oral exams or project-based assessments. This presents an uneven playing field where students with disabilities are unjustly disadvantaged.<sup>32</sup>

## Teacher Preparedness

When it comes to helping kids with disabilities, teachers are usually the first to respond, yet the majority of them lack sufficient training in inclusive teaching methods or special education.<sup>33</sup> Teachers may become frustrated, burn out, and teach ineffectively as a result of feeling unprepared to serve children with impairments. Many schools also do not have the resources to employ specialised personnel, including special education teachers or aides, to offer targeted support.<sup>34</sup> To serve students with disabilities effectively, instructors must have continuing professional development on topics like differentiated instruction, classroom management, and the application of assistive technology. Nevertheless, most instructors lack the time or resources to undertake such training, restricting their potential to serve the needs of students effectively.

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<sup>28</sup> Discrimination, Bullying and Harassment Policy < <https://www.nulondon.ac.uk/academic-handbook/policies-and-procedures/general/student-welfare/discrimination-bullying-and-harassment-policy/>

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## Policy and Legislative Barriers

Although progress has been made through legislations such as IDEA and ADA, there continue to be loopholes in their implementation and enforcement. The majority of the time, schools disregard accessibility requirements, and inadequate financing for special education programs guarantees that kids with disabilities receive inadequate assistance. Additionally, different school districts' uneven implementation of the law may result in disparities in the educational opportunities offered to kids with disabilities..<sup>35</sup> Most schools also experience difficulties in establishing inclusive learning environments that offer both academic and social integration for disabled students. Such obstacles are usually exacerbated by the absence of a consistent policy framework that promotes the full inclusion of disabled students in regular education.

### Contribution of Barriers to Academic Achievement and Social Integration:

The handicaps experienced by individuals with disabilities in school environments have serious impacts on their academic performance as well as social inclusion. Disabled students tend to have reduced academic performance in comparison to their non-disabled counterparts, because of the difficulties they encounter in securing resources, conforming to the curriculum, and accessing individualised support<sup>36</sup>. For instance, learners with learning disabilities will have challenges in reading comprehension or in mathematical reasoning, whereas learners who have physical disabilities will have challenges in accessing the materials or tools used to learn specific subjects.

These educational challenges are frequently exacerbated by social obstacles. Students with disabilities are often socially isolated because of negative stereotypes, bullying, and lack of understanding from their peers. Students may be isolated in and out of the classroom due to the stigma associated with disabilities, which can prevent them from forming meaningful relationships with others.<sup>37</sup> Their ambition to succeed, sense of self-worth, and mental health may all suffer long-term consequences from this social isolation.. In addition, the effects of these barriers go beyond the classroom. Most students with disabilities have challenges in transitioning to post-secondary education or the labor market. The absence of inclusive educational opportunities may reduce their opportunities for gaining the qualifications and skills necessary to access higher education or employment<sup>38</sup>. Consequently, students with disabilities may have lower socioeconomic status and diminished quality of life in adulthood.

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<sup>34</sup> Involvement of Teachers in Learning of Children with Disabilities and Their Challenges < <https://gradesfixer.com/free-essay-examples/involvement-of-teachers-in-learning-of-children-with-disabilities-and-their-challenges/> > accessed 5 March 2025

<sup>35</sup> Disabilities Inclusive Education Systems and Policies Guide for Low- and Middle-Income Countries < <https://www.ncbi.nlm.nih.gov/books/NBK554622/> > accessed 5 March 2025

<sup>36</sup> Overcoming Social Barriers for Persons with Disabilities < <https://udservices.org/barriers-for-persons-with-disabilities/> > accessed 5 March 2025

## Solutions and Strategies for Overcoming Barriers:

To counter the barriers to education for individuals with disabilities, overall solutions need to be introduced at various levels. The solutions can be classified into modifications in educational policy, refinement of teaching practices, and utilisation of assistive technologies.

### 1. Inclusive Education Practices

Inclusive education, where students with disabilities are included in general education classrooms with supports, has been found to improve both academic and social outcomes<sup>39</sup>. By creating an inclusive setting, students with disabilities can gain from interacting with their non-disabled peers, learning from a wider set of perspectives, and acquiring crucial social skills<sup>40</sup>. Inclusion is not just a matter of academic integration, but must be practiced in extracurricular activities, sports, and social life. Schools must provide reasonable accommodations to students with disabilities, such as assistive devices, altered curricula, or individualised support, in order to allow them to fully participate in school life.

### 2. Teacher Training and Professional Development

Teachers should be provided with the knowledge and skills to help students with disabilities effectively. Teachers must pursue ongoing professional development in areas like differentiated education, classroom management, and assistive technology to make sure they are prepared to meet the diverse needs of their students.<sup>41</sup> In order to foster a welcoming and inclusive classroom environment that lessens stigma and encourages respect for kids of all abilities, teachers must also get training.<sup>42</sup> Additionally, in order to provide kids with disabilities with specific support, schools must prioritise hiring special education instructors and aids.

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<sup>37</sup> Disability Discrimination < <https://www.studysmarter.co.uk/explanations/social-studies/stratification-and-differentiation/disability-discrimination/> > accessed 5 March 2025

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<sup>40</sup> Inclusive Education for Special Needs Students < <https://resilienteducator.com/classroom-resources/inclusive-classrooms-special-needs/> > accessed 5 March 2025

### 3. Universal Design for Learning (UDL)

A learning approach called Universal Design for Learning (UDL) increases the flexibility of education. Through applying UDL, teachers can structure their instruction to meet a range of learning styles and abilities. This includes giving students with disabilities several ways to interact, be represented, and express themselves so they may acquire the material in ways that best meet their requirements.<sup>43</sup> To help students engage with the material, teachers might, for example, use visual aids, audio recordings, and experiential exercises.<sup>44</sup> UDL has the potential to assist in providing every student, independent of ability, with an equal chance of achievement in the classroom.

### 4. Use of Assistive Technologies

For students with disabilities, assistive technology such as communication devices, speech-to-text software, and screen readers can be essential in levelling the playing field.<sup>45</sup> By equipping students with the tools they require to access learning material and communicate effectively, assistive technology can enable students to overcome many of the physical and cognitive obstacles that they encounter. The schools need to invest in such technologies and give training to both teachers and students on their effective usage<sup>46</sup>. For instance, students with visual impairments would be helped with screen magnification software, and students with hearing impairments would be helped with captioned videos or sign language interpreters.

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<sup>41</sup> How to Create a Positive and Inclusive Classroom Environment - Planit Teachers < <https://www.planitteachers.ai/articles/how-to-create-a-positive-and-inclusive-classroom-environment> > accessed 5 March 2025

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## 5. Policy Reforms and Advocacy

Government policies and educational structures need to be bolstered to guarantee unqualified access to inclusive education for all students with disabilities. Special education services should be funded more, and schools ought to be made accountable for putting accessibility standards in place<sup>47</sup>. There is also a need to campaign for more public awareness of disability-related matters as this serves to counter societal attitudes and push for better understanding of the needs of students with disabilities<sup>48</sup>. Schools should cooperate with families and community organisations in addition to offering direct support to create support networks that guarantee students with disabilities may get the help they need both inside and outside of the classroom.<sup>49</sup>. These kinds of support networks may fill up resource shortages and serve as a safety net for kids who would otherwise become lost.

## Conclusion:

In summary, students with disabilities encounter numerous barriers within the educational context that discourage them from complete involvement in the learning process. Such barriers—physical, attitudinal, curricular, or policy-based—restrict their academic performance as well as social inclusion. Although amelioration through legislation like the ADA and IDEA has been achieved, wide gaps in implementation and access are still evident, and it is challenging for a large number of students with disabilities to succeed in educational environments. The effects of such barriers go well beyond the schoolroom. Disadvantaged students tend to be less academically successful, socially isolated, and denied opportunity for future careers or further education. There are, however, solutions that promise to reduce such difficulties. By implementing inclusive education methods, investing in assistive technologies, utilising Universal Design for Learning, and providing continuous training for teachers, schools may create more welcoming and encouraging learning environments for all students.. Furthermore, ongoing advocacy and policy changes must be made to ensure students with disabilities receive the same access to education and the tools they need to succeed as other students. Finally, creating an inclusive education system is a common effort that involves educators, policymakers, students, and society in general. By a joint endeavour to eliminate and overcome the hindrances to education, we can make sure all students, based on their capability, have an opportunity to excel to their capacity and contribute productively to society.

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## 16. MIGRANT WORKERS: TRAFFICKING AND SMUGGLING WORKING ACROSS BORDERS

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### **Abstract**

*Shifting from one nation to another for work, either willingly or unwillingly, is one of the problems most at the forefront of international development. Over 270 million people live and work outside of their home country, to put it in a nutshell. Because of economic globalization, there is greater dependence on migrant labor within many economically important fields like agriculture, construction, hospitality, domestic work, and even factory work. These fields frequently rely on foreign employees because the local population is not willing to work in these sectors. Albeit missing, this phenomenon is accompanied by substantial problems including, but not limited to, the human trafficking and smuggling. The purpose of this article is to analyze the various dimensions of the plight of migrant workers who are victims of human trafficking or modern-day slavery alongside examining the pull and push factors of migration as well as the differences between human trafficking and smuggling. Certain dynamics of poverty, conflict, and environmental tensions serve as push factors that compel migrants to opt for opportunities in foreign countries. On the other side, pull factors, including economic conditions and employment opportunities with better remuneration from host nations like the US, UK, and the Gulf region encourage people to migrate. Irregular migrants are, unfortunately, victims of criminal enterprises trafficking women for sex or illegal migrants seeking to move across borders. There is illegal movement where individuals sign contracts for resources such as labor or sex to be offered in return. This enables Smuggling can be defined as the illegal movement of people, goods, and services across borders.*

**Keywords:** *Migrant Workers, Human Trafficking, Illegal Migration, Exploitation of Migrants*

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### **I. INTRODUCTION**

Every year, there are millions of people moving from one location to another. Consequently, migrant workers are becoming an increasing workforce of the international community. These workers are economically unproductive in both the home country they are trying to flee or one of conflict and poverty, and the new country they are immigrating to for better economic prospects. Still, such employment cycles involve immense risks such as human trafficking and smuggling, which makes it very hard economically for the low-class people to find gainful employment..

Though trafficking and smuggling often intermingle, each has a different definition. Trafficking can be categorized as the exchange of human beings for forced labour or sexual exploitation while smuggling includes deceitful methods of moving people across international borders. Either way both concepts are severe issues that stem from violence towards migrant workers who are already facing dire circumstances of abuse, neglect, and mistreatment.

In this paper, I will tackle the life of a migrant worker subject to human trafficking and smuggling, reasons why these incidences occur, their impacts on the victim, and what is being done on a global platform to combat the issue.

#### **●Migrant Workers and Global Economic Development:**

Migration as a phenomenon has a vital importance to the economy. According to the International Labour Organization (ILO), more than 270 million people live outside their country of origin, engaging with both developed and developing economies. Migrant workers normally take jobs in agriculture, construction, hospitality, domestic services, and manufacturing, industries that most locals find difficult or do not possess the skills to do.

**●Push and Pull in Migration**

As with any sociological or economic phenomena, migration can be understood through its push and pull factors. Push elements are typically those aspects of a situation that drive people away, such as extreme poverty, civil unrest, war, environmental catastrophes, and limited economic mobility. Such problems lead people to look for economic opportunities outside their home countries for themselves and their families.

Some of the grabbers for migration could be job opportunities in the host nation, higher pay rates, better standards of living, and high political stability. United States, United Kingdom and some Middle Eastern countries are known to have a high inflow of migrants because of the lack of workers, especially in physically demanding and low skill industries.

Nonetheless, a number of challenges arise for the migrant workers while in transition. The legal avenues available make it difficult to migrate, in addition to the high price required for adequate documentation. Because of this, many migrants opt to use illegal forms of migration only to put themselves at the mercy of human traffickers and smugglers.

**●Legal versus Irregular Migration**

Legal pathways to migration may be available, however, millions of migrant workers seek employment through irregular migration channels which may place them at risk of coming into contact with criminal gangs engaged in human trafficking and human smuggling. As noted by the ILO, approximately 50 percent of all migrant workers are in some way irregular. Those migrants, who do not have the required papers or other forms of identification, are most likely to be victims of exploitation because they lack legal protections.

**●Understanding Human Trafficking and Smuggling**

Migrant smuggling, as well as human trafficking are two forms of illegal immigration that impact vulnerable migrant workers and, while distinctly different, are very much interconnected.

**●Human Trafficking**

The term refers to recruitment, relocation, and exploitation of a person or people in some deceitful fashion through fraud or violence. It can take the form of forced labor, prostitution, or human slavery. Migrants who want a better life become the target of traffickers who lure them in with promises of good jobs overseas. The migrants who do get help in relocating the victims is often met with abusive employment conditions, and if they are paid at all, the wages are not worth the effort they put into their work, or worse, they are treated as slaves.

Trafficking involves sophisticated syndicates that factor in the transport of both the victim and their exploitation. The various control methods used in exploitation include but are not limited to debt bondage, manipulation, threats, and violence. Often times, forced migrant workers are unaware of their rights, heteroglossia, and have limited avenues for redress when they are surely taken advantage of.

**●Smuggling Migrants**

Smuggling migrants refers to the offering, for a fee, of illegal access into a country with the intent to take up employment or reside in the country. For the most part, the migrant who pays for this service is willing to break immigration laws, though it can be very dangerous. When people are issues, these so-called “migrants” tend to get the worst end of the deal, which ends with them being left in alien streets, or in horrendous conditions from which escape is impossible, while having to work in exploitative conditions. Peak vulnerability is touted by smugglers after these desperate individuals reach the promised land, since at this point they are often completely abandoned. In some instances,

these “migrants” are compelled to work under harsh conditions without pay, just to offset the money lost during the crossing

#### ●**Motives for Trafficking and Smuggling**

Certain elements lead to the trafficking and illegal transport of migrant workers. These elements are multi-faceted and usually come together to form a scenario ripe for abuse.

#### ●**Socio Economic Conditions**

The single most important factor that is likely to push migrant workers into the hands of traffickers and smugglers is lack of money. There are numerous cultures whose citizens are ready to take a gamble with their lives for a chance to get a job overseas. It is during this time that traffickers exploit these prospects by promising desperate migrants a decent job and good living conditions abroad.

#### Corruption and Ineffective Governance

The presence of a corrupt environment along with poor liberalization of immigration laws give an added advantage to traffickers and smugglers. A large number of countries have perverse order of things where corrupt agents assist traffickers by letting them get away with their nefarious activities. Likewise, the absence of adequate control or supervision over the recruiting office exposes the migrant workers to becoming victims of exploitation.

#### ●**Treacherous Migration Paths**

A large number of migrants depend on smugglers to help them administer the crossing of illegal borders, oftentimes taking dangerously unsafe paths. These routes are usually run by criminal syndicates which seek to make money of migrants. The journey is full of risk where migrants can be killed, injured, or exploited.

#### ●**Effects of Human Trafficking and Smuggling of Migrant Workers.**

The impact of trafficking and smuggling is vitally pernicious to migrant workers, both in the short- and long-term.

#### **A.Psychological and Physical Damage**

Those migrant workers who become the victims of trafficking or smuggling tend to get physically beaten, raped, and psychologically disturbed. Many trafficking victims are made to work under very humiliating conditions where violence and death threats are used to control them.

#### **B.Loss of Rights and Dignity**

Missing and exploited workers are exposed to extreme cases of humiliation and loss of dignity. They are subjected to many forms of violence, like unwarranted and coerced servitude, denial of movement, and utterly no access to any legal recourse. The reality is even more grim for a significant portion of migrant workers who get severed from their families and communities.

#### **C.Economic, Political Impacts**

Migrant workers contribute significantly to their host countries' economies, but the illegal human labour market has some adverse impacts too. Migrant worker exploitation can cause social unrest, drain public services, and form illegitimate labor markets which violate workers' rights. Sometimes, unlawful organized cartel activity can provoke instability within certain regions, causing tension among governments and migrants.

#### **D.Economic Issues for the Source Country**

The impact of trafficking and smuggling is felt economically by sending countries too. Some remittance-dependent economies suffer when their migrant workers are maltreated or even trafficked. The drain of available skills through capital and the mistreatment of migrants can deepen the cycle of poverty in the sending nations.

**●Particular Instances****Instance 1: Southeast Asia Region**

In Southeast Asia, migrants pour into Thailand, Malaysia, and even Indonesia resulting in these countries being major funnel points for migrants where many end up getting tied of smuggled or trafficked to routines of labor extreme exploitation. For example, Thai and Malaysian government officials have been accused of ignoring trafficking activities associated with the fishing and agricultural sectors. A substantial number of workers from Myanmar, Cambodia, and Laos are channelled into these industries with the promise of gainful employment and end up becoming part of enslavement.

**Instance 2: The Middle East**

Countries like Qatar, UAE and Saudi Arabia which are in the Gulf Cooperation Council, receive millions of foreign workers mainly from South and Southeast regions of Asia annually. These workers form a huge portion of the population that is affected due to the 'kafala' system of bound sponsorship. This type of slavery allows an employer undue control regarding the residency permit of an employee. A large number of migrants are often denied their dues, have very poor accommodation, and at times, have to endure physical abuse. The setting process involves the hiring of sub-contracting agents who for a fee and make the workers slaves to the employers while plunging them into uncontrollable debt. This leaves workers vulnerable and an easy target for exploitation.

**●Mobilization Attempts to Alleviate the Exploitation of Migrant Workers**

The abuse of power through Human Trafficking and Smuggling, as well as Migrant Workers Protection, has been implemented at varying levels, these being local, national, and international.

**●International Laws Systems**

International organizations like the United Nations Donor Fund (UNDF) and International Labour Organization (ILO) have created treaties that safeguard the wellbeing of Migrant Workers. The UN Protocol aimed to Prevent, Suppress and, Punish Trafficking in Persons Particularly Women and Children for the purposes of the year 2000 was an incredible instrument to fight against trafficking while the ILO no 97 protected the rights and well-being of migrant workers.

**●Policies and Regulations**

Almost all regions in the world have put in place labor laws to help safeguard the welfare of migrant workers. Nevertheless, too many laws remain incompletely implemented. Some governments have increased border control measures to combat human trafficking, while others have instituted regulative schemes concerning the recruitment of foreign laborers.

**●NGOs and Civil Society Action**

Civil society and non-governmental organizations do commendable work to assist and advocate for victims of trafficking and smuggling.

**II. CONCLUSION**

While there is a need in the economy for migrant workers, their exposure to exploitation, trafficking, and smuggling is greatly harmful. These realities highlight the need to establish legal processes for migration, strengthen border control, and protect the fundamental rights of migrants. When there is international collaboration for factoring in more stringent legislation, and increasing the education on the dangers of trafficking and smuggling, these vulnerable workers will receive better protection. The world at large must come together to tackle issues surrounding human trafficking and smuggling once and for all.

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