

“A COMPARATIVE STUDY OF LEGISLATIVE AND JUDICIAL MEASURES TO PREVENT MISUSE OF THE DOMESTIC VIOLENCE ACT IN INDIA VERSE THE UNITED STATES, UNITED KINGDOM AND AUSTRALIA”

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ABSTRACT

*The Protection of Women from Domestic Violence Act, 2005*¹ (hereinafter referred to as "the DV Act" or "the Act") represents one of the most significant legislative interventions in the domain of family law and the protection of women in post-independence India. Enacted with the express constitutional mandate of securing the dignity and safety of women within the domestic sphere, the Act introduced comprehensive civil remedies including protection orders, residence orders, monetary relief, and custody orders, thereby providing an accessible and expeditious mechanism for the protection of women facing domestic abuse. The DV Act was hailed at the time of its enactment as a paradigm shift from the purely punitive approach of Section 498A of the Indian Penal Code a shift toward a civil, victim-centred model of domestic violence intervention consistent with India's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

However, in the decades since its enactment, the DV Act has been the subject of considerable controversy and judicial scrutiny arising from the documented and alleged misuse of its provisions. Low conviction rates under the linked offence of Section 498A of the Indian Penal Code (now Section 85 of the Bharatiya Nyaya Sanhita, 2023), high acquittal rates, and judicial observations regarding frivolous filings in the context of matrimonial litigation have raised fundamental questions about the balance between victim protection and the protection of the due process rights of the accused.

The Supreme Court of India in *Shaurabh Kumar Tripathi v. Vidhi Rawal*² and a series of preceding decisions including *Arnesh Kumar v. State of Bihar*,³ *Rajesh Sharma v. State of U.P.*,⁴ and Social Action Forum for *Manav Adhikar v. Union of India*,⁵ has expressly acknowledged the phenomenon of "abuse of process" through vague and unsubstantiated allegations under domestic violence legislation. These decisions reflect a

¹The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), Government of India.

²Shaurabh Kumar Tripathi v. Vidhi Rawal, 2025 INSC 734.

³Arnesh Kumar v. State of Bihar & Anr., (2014) 8 SCC 273.

⁴Rajesh Sharma & Ors. v. State of U.P. & Anr., (2017) 11 SCC 39.

⁵Social Action Forum for Manav Adhikar & Anr. v. Union of India & Ors., (2018) 10 SCC 443.

sustained judicial effort to develop a doctrinal response to misuse in the absence of adequate statutory safeguards.

The phenomenon of legislative misuse in the context of domestic violence legislation is not unique to India. In the United States, the Violence Against Women Act (VAWA) has been the subject of contested debates around mandatory arrest policies, evidentiary standards, and the risk of false complaints.

In the United Kingdom, the Domestic Abuse Act 2021 introduced significant reforms to address definitional ambiguity and procedural gaps, while simultaneously grappling with concerns about allegations made instrumentally in the context of child custody disputes.

In Australia, a network of state and territory legislation, most notably the Domestic and Family Violence Protection Act 2012 (Queensland), has developed sophisticated risk assessment frameworks such as the DASH Risk Identification Tool and the Multi-Agency Risk Assessment Conference (MARAC) model, which have significantly enhanced both victim protection and procedural safeguards against misuse.

The present research seeks to undertake a rigorous comparative analysis of the legislative and judicial mechanisms that exist in India, the United States, the United Kingdom, and Australia to prevent misuse of domestic violence legislation. By examining the statutory safeguards, procedural filters, risk assessment frameworks, and judicial responses to frivolous litigation in these jurisdictions, the study aims to identify best practices that are capable of calibrated adoption within the Indian legal framework. Drawing principally upon a doctrinal methodology supplemented by secondary empirical data, the research proposes to offer evidence-based normative recommendations for reforming the DV Act regime in India so as to sustain its protective intent while simultaneously ensuring procedural fairness and judicial economy.

INTRODUCTION

(i) Object and Scope of the Study

The present research is guided by the following five primary objectives:

First, to critically examine the legislative framework governing the prevention of misuse of the Protection of Women from Domestic Violence Act, 2005 in India, with particular reference to procedural safeguards, evidentiary standards, and the interface with related criminal provisions such as Section 498A of the Indian Penal Code and its successor provision under the *Bharatiya Nyaya Sanhita, 2023*.⁶

Second, to undertake a comparative analysis of the statutory and institutional mechanisms available in the United States, the United Kingdom, and Australia for preventing misuse of domestic violence legislation, with a focus on mandatory evidence thresholds, pre-filing screening mechanisms, risk assessment frameworks, and legislative penalties for false complaints.

Third, to evaluate the role of the Indian judiciary particularly the Supreme Court and the High Courts in developing doctrinal responses to the misuse of the DV Act through the exercise of inherent jurisdiction, guidelines for arrest, and the quashing of frivolous proceedings, and to compare these judicial interventions with analogous developments in the comparative jurisdictions.

Fourth, to identify the structural gaps and normative deficiencies in the existing Indian legislative and judicial regime that facilitate misuse of the DV Act, drawing upon NCRB data, Law

⁶Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), Government of India.

Commission reports, and judicial observations, and to evaluate these gaps against the best practices identified from the comparative jurisdictions.

Fifth, to propose a set of normative and policy recommendations for legislative reform, judicial guidelines, and institutional mechanisms that would strengthen the protective efficacy of the DV Act in India while incorporating calibrated safeguards against its misuse, informed by the comparative experience of the United States, the United Kingdom, and Australia.

The scope of the study is confined to the legislative and judicial frameworks in the four aforementioned jurisdictions within the temporal period commencing from the enactment of the DV Act in 2005 to the present, with particular emphasis on developments from 2020 onwards including the seminal 2025 Supreme Court decisions.

(ii) Research Problem / Research Statement

The central research problem addressed by this study may be stated as follows: The Protection of Women from Domestic Violence Act, 2005, while enacting a comprehensive civil remedy framework for the protection of women against domestic abuse, has over time demonstrated structural vulnerability to misuse particularly in the context of matrimonial litigation owing to the absence of adequate pre-filing procedural filters, the lack of statutory penalties for false complaints, and the non-existence of evidence-based risk assessment mechanisms.

This vulnerability has been judicially acknowledged and partially addressed through a series of landmark Supreme Court decisions; however, the absence of statutory reform continues to create significant tension between the protective mandate of the Act and the imperatives of due process, judicial economy, and the integrity of the justice delivery system.

This research problem is further compounded by the fact that the comparative jurisdictions the United States, the United Kingdom, and Australia have, through varying combinations of statutory reform and institutional innovation, developed more sophisticated mechanisms for balancing victim protection with procedural fairness. An examination of these mechanisms and the lessons they offer for the Indian framework is therefore both academically necessary and practically urgent, particularly in the context of the transition to the Bharatiya Nyaya Sanhita, 2023, which presents a legislative opportunity for calibrated statutory reform.

(iii) Research Questions

The following five research questions guide the inquiry throughout this study:

1. What are the legislative provisions and procedural safeguards governing the prevention of misuse of the Protection of Women from Domestic Violence Act, 2005 in India, and how have these been interpreted and supplemented by the courts over time?
2. To what extent do the statutory and institutional mechanisms in the United States, the United Kingdom, and Australia including mandatory evidence thresholds, pre-filing screening, risk assessment tools, and penalties for false complaints prevent misuse of domestic violence legislation, and what lessons do these frameworks offer for India?
3. How has the Indian judiciary, through its exercise of inherent jurisdiction under Section 482 of the Code of Criminal Procedure, suo motu proceedings, and the formulation of binding guidelines, responded to the documented misuse of the DV Act, and how do these judicial responses compare with analogous developments in the comparative jurisdictions?

4. What are the principal structural and normative deficiencies in the existing Indian legislative and judicial framework that enable the misuse of the DV Act in the context of matrimonial disputes, and how are these deficiencies reflected in NCRB data, conviction rates, and acquittal statistics?
5. What normative, legislative, and institutional reforms drawing upon the comparative experience of the United States, the United Kingdom, and Australia are necessary to recalibrate the DV Act regime in India so as to sustain its protective purpose while ensuring due process, judicial economy, and the integrity of the justice delivery system?

(iv) Hypothesis

The research proceeds on the following primary hypothesis:

"Although the Protection of Women from Domestic Violence Act, 2005 provides a robust normative framework for the protection of women against domestic abuse, the absence of adequate pre-filing procedural filters, statutory penalties for false complaints, and evidence-based risk assessment mechanisms — combined with systemic delays in the justice delivery system — has rendered the Act susceptible to misuse in matrimonial litigation, a gap that is significantly addressed by the legislative and institutional frameworks of the United States, the United Kingdom, and Australia, from which India can draw calibrated lessons for reform."

The study further proceeds on a subsidiary hypothesis that the Indian judiciary's incremental doctrinal responses to DV Act misuse, while constituting a significant contribution to the development of safeguards, remain inherently limited in their effectiveness as a substitute for statutory reform, and that a comprehensive legislative intervention is necessary to ensure the sustainable protection of both victims and accused persons.

(v) Methodology

Nature of Research

The present research is primarily doctrinal in nature. Doctrinal legal research involves the systematic analysis of legal norms, principles, rules, and concepts as expressed through primary and secondary legal sources, and is the methodology best suited to an examination of the legislative and judicial frameworks governing the prevention of misuse of domestic violence legislation across multiple jurisdictions. This methodology is appropriate for the present study as it seeks to examine the statutory and constitutional architecture of the DV Act and its comparative counterparts, trace the development of relevant legal principles through judicial pronouncements across four jurisdictions, and evaluate the normative adequacy of the existing regime against the standard of comparative best practices.

In addition to the primary doctrinal approach, the research incorporates a secondary empirical dimension by drawing upon published statistical data from the *National Crime Records Bureau (NCRB)*,⁷ the UK Ministry of Justice, the United States Department of Justice, and Australian state-level reporting bodies. This data is utilised not for original empirical analysis but as corroborative evidence in support of doctrinal findings regarding the incidence and impact of misuse.

Research Approach

The research adopts a comparative and analytical doctrinal approach. The study undertakes a systematic comparison of the legislative frameworks and judicial responses to DV Act misuse across India, the United States, the United Kingdom, and Australia. The comparative method is central to the research

⁷National Crime Records Bureau, Crime in India 2023 (Ministry of Home Affairs, Government of India, 2024).

design, as the identification of best practices for normative recommendation requires a rigorous examination of how analogous problems have been addressed in jurisdictions with shared common law traditions and comparable constitutional commitments to gender equality and due process.

The analytical approach involves a critical evaluation of the gap between the protective intent of the DV Act and the documented reality of its misuse, drawing on judicial observations, Law Commission reports, and secondary empirical data. The research does not adopt a socio-legal or empirical fieldwork approach, as the central inquiry is normative rather than sociological; it seeks to evaluate legal frameworks rather than to document lived experiences.

Sources of Data

Primary sources for this research include: the text of domestic violence legislation and allied statutes in all four jurisdictions; landmark judicial decisions of the Supreme Court of India, High Courts, and analogous courts in the United States, the United Kingdom, and Australia; Law Commission Reports; Parliamentary Debates and Committee Reports; and official government reports and guidelines.

Secondary sources include peer-reviewed journal articles, monographs, edited volumes, and reports of international organisations including CEDAW, WHO, OECD, and AIHW. Statistical data from NCRB Annual Crime Reports, the UK Ministry of Justice Domestic Abuse Statistics, the US Bureau of Justice Statistics, and AIHW reports are used as secondary empirical support.

(vi) Limitations

Being principally a doctrinal study supplemented by secondary empirical data, the research does not undertake original empirical data collection, field surveys, or direct interviews with survivors, accused persons, Protection Officers, or judicial officers. The findings, therefore, may not fully capture the ground-level realities of DV Act misuse or the lived experiences of those affected by either domestic violence or the misuse of the protective legislation.

The comparative analysis is further limited by the inherent differences between the federal constitutional structure of the United States and Australia where domestic violence legislation operates at both federal and state/territory levels and the quasi-federal unitary constitutional structure of India, which may constrain the direct transposability of certain legislative models. Cultural, social, and institutional differences between the four jurisdictions may similarly limit the straightforward transfer of legal mechanisms.

The research also acknowledges that the rapidly evolving nature of judicial decisions and legislative amendments particularly in the context of the transition to the Bharatiya Nyaya Sanhita, 2023 may result in certain post-submission developments not being reflected in the final analysis. The cut-off date for judicial and legislative developments considered in this study is November 2025.

The study does not examine the misuse of domestic violence legislation in the context of same-sex relationships, non-binary persons, male victims, or persons with disabilities as a distinct focus, although the frameworks examined are noted where they address these groups. These remain important areas for future research.

(vii) Scheme of the Study

The present study is organised into six chapters, each addressing a distinct dimension of the central research problem, as follows:

Chapter I Introduction: This introductory chapter establishes the context and rationale for the study by examining the genesis and legislative history of the Protection of Women from Domestic Violence

Act, 2005, its constitutional underpinnings, and the emerging problem of its misuse in matrimonial litigation. It sets out the objectives, hypothesis, research questions, methodology, scope, and limitations of the study, defines key concepts, and provides a brief overview of the structure of the thesis.

Chapter II The Legislative and Judicial Framework Governing Domestic Violence in India: This chapter undertakes a comprehensive examination of the statutory architecture of the DV Act, the interface with Section 498A IPC and Section 85 BNS 2023, the existing procedural safeguards, and the judicial response to documented misuse through landmark decisions including Arnesh Kumar (2014), Rajesh Sharma (2017), Social Action Forum (2018), and Shaurabh Kumar Tripathi (2025).

Chapter III Comparative Legislative Frameworks (United States, United Kingdom, and Australia): This chapter undertakes a systematic comparative analysis of the legislative and institutional frameworks in the three comparative jurisdictions, examining the VAWA, the Domestic Abuse Act 2021, the Domestic and Family Violence Protection Act 2012 (Qld), mandatory evidence thresholds, pre-filing screening, risk assessment tools (DASH, MARAC), and penalties for false complaints.

Chapter IV Judicial Responses to DV Act Misuse: A Comparative Analysis: This chapter evaluates the Indian judiciary's doctrinal contribution to curbing misuse and compares these responses with analogous judicial developments in the United States, the United Kingdom, and Australia, identifying divergences and convergences in judicial philosophy.

Chapter V Normative Gaps, Structural Deficiencies, and the Case for Legislative Reform: This chapter identifies and critically examines the principal normative and structural deficiencies in the existing Indian regime, drawing upon judicial observations, Law Commission reports, NCRB data, and the comparative analysis, and evaluates specific gaps including the absence of pre-filing filters, statutory penalties for false complaints, and independent monitoring mechanisms.

Chapter VI Conclusion and Recommendations: This chapter synthesises the findings of the preceding chapters, addresses the central hypothesis, and proposes a comprehensive set of normative, legislative, and institutional recommendations for reforming the DV Act framework in India.

(viii) Literature Review

Domestic Violence Legislation and Its Misuse in India

The foundational legislative scholarship on the DV Act is provided by *Flavia Agnes's seminal work on women's rights and family law*,⁸ which situates the Act within the broader trajectory of feminist law reform in India, and by *Indira Jaising's writings on the constitutional imperative for domestic violence legislation*⁹.

Agnes locates the DV Act within the evolution from purely punitive matrimonial law to a civil remedies-based protective framework, and her analysis of the intersection between the DV Act and property rights remains the most comprehensive doctrinal treatment of the Act's civil remedies. Jaising's institutional monitoring reports, published by the Lawyers' Collective, provide primary-source documentation of the implementation gaps in the Act's enforcement machinery, including the inadequate appointment of Protection Officers and the under-utilisation of residence orders.

⁸Flavia Agnes, *Family Law Volume I: Family Laws and Constitutional Claims* (Oxford University Press, 2011).

⁹Indira Jaising (ed.), *Lawyers Collective, Staying Alive: First Monitoring and Evaluation Report on the Protection of Women from Domestic Violence Act, 2005* (2009).

The documented misuse of the Act has been extensively addressed in judicial literature. The Supreme Court's observations in *Arnesh Kumar v. State of Bihar*¹⁰ regarding arbitrary arrest under Section 498A IPC marked a pivotal moment in the judicial recognition of systemic misuse, as the Court observed that Section 498A had become a tool for personal vendetta and settling scores. The guidelines issued in *Rajesh Sharma v. State of U.P.*¹¹ for the constitution of Family Welfare Committees, subsequently modified in Social Action Forum for *Manav Adhikar v. Union of India*,¹² represent the most significant judicial attempt to introduce a pre-arrest screening mechanism for Section 498A complaints.

The express acknowledgment of "abuse of process" in *Shaurabh Kumar Tripathi v. Vidhi Rawal*¹³ (2025) further demonstrates the Supreme Court's evolving awareness of the phenomenon of misuse in matrimonial litigation.

NCRB Annual Crime Statistics for the years 2020–2025 provide the empirical foundation for the study's quantitative analysis of conviction and acquittal rates under Section 498A IPC and the DV Act. The data, which consistently demonstrates conviction rates below 20 per cent alongside acquittal rates exceeding 50 per cent in many states, constitutes the principal statistical evidence of the misuse phenomenon at a systemic level, notwithstanding the methodological caution that low conviction rates are not per se evidence of false complaints.

Comparative Domestic Violence Law

The comparative literature on domestic violence legislation is substantial. In the United States context, *Evan Stark's seminal work Coercive Control (2007)*¹⁴ provides the conceptual underpinning for the expanded definition of domestic abuse adopted in the UK Domestic Abuse Act 2021, and represents the most influential theoretical contribution to the reconceptualisation of domestic abuse as a pattern of behaviour rather than isolated incidents of violence. Stark's framework has been widely adopted by courts in the United Kingdom and Australia, and has significantly influenced the definitional provisions of the UK Act.

The empirical literature on the Violence Against Women Act has been extensively reviewed by *the National Institute of Justice and the Urban Institute*,¹⁵ whose evaluations of VAWA's effectiveness in reducing recidivism and improving victim safety are directly relevant to the present study. These evaluations, which document statistically significant reductions in intimate partner violence following VAWA's mandatory funding provisions for victim services and law enforcement training, provide comparative evidence for the proposition that institutional investment in victim services — rather than purely punitive approaches — is more effective in reducing domestic violence.

In the United Kingdom, the domestic violence literature is anchored by the work of the Home Office and the Domestic Abuse Commissioner,¹⁶ whose reports on the Domestic Abuse Act 2021 and the MARAC framework constitute essential primary sources.

¹⁰ (2014) 8 SCC 273

¹¹ (2017) 11 SCC 39

¹³ 2025 INSC 734

¹⁴ Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press, 2007).

¹⁵ National Institute of Justice (USA), "Research on Violence Against Women: 25 Years of Progress" (NIJ, 2020).

¹⁶ Home Office (UK), "Domestic Abuse Statutory Guidance Framework" (2022).

The MARAC model,¹⁷ which involves a multi-agency conference bringing together police, social services, health professionals, and independent domestic violence advisers (IDVAs) to assess and manage the risk posed by high-risk domestic abuse cases, represents a particularly significant institutional innovation with direct relevance to the Indian context.

The IJIRL study of 2025 comparing India with Australia, the United Kingdom, and South Africa on *CEDAW-aligned domestic violence prevention mechanisms*¹⁸ is particularly significant for this research, as it represents the most recent comparative doctrinal analysis directly engaging with the jurisdictions covered by this study. The study identifies the absence of mandatory risk assessment in India as the most critical structural gap relative to the comparative jurisdictions.

Procedural Safeguards and Due Process in Domestic Violence Law

The tension between victim protection and the due process rights of the accused in domestic violence proceedings has been examined by *Zorza and Woods in the American context*,¹⁹ and by *Rosemary Hunter in the Australian context*.²⁰

Hunter's work on the Women's Safety Agenda and the reform of domestic violence legislation in Queensland has been influential in demonstrating the ways in which procedural reform can enhance victim safety while simultaneously protecting accused persons from unsubstantiated findings. Her analysis of the role of judicial officers in domestic violence proceedings, and the need for specialised training, has direct relevance to the Indian context.

The Law Commission of India's reports on *matrimonial legislation*,²¹ including the 202nd Report, provide a valuable institutional perspective on the relationship between domestic violence law and matrimonial disputes in India. The Commission's recommendations regarding the need for cooling-off periods and welfare screening mechanisms in matrimonial proceedings anticipate several of the reforms proposed in the present study.

The study by *Supremo Amicus (2022) contrasting the US VAWA's mandatory arrest provisions and victim services with India's fragmented approach*,²² and the *JARSSC analysis of the UK's integrated community response model*,²³ are directly informative for the comparative dimensions of this research, and provide

¹⁷SafeLives, "MARAC and IDVA Services: Making Things Better for High-Risk Victims" (SafeLives Research Briefing, 2020).

¹⁸International Journal of Innovative Research in Law (IJIRL), "Comparative Study of Domestic Violence Laws: India, Australia, UK and South Africa in light of CEDAW" (2025) Vol. 7(1) IJIRL 45.

¹⁹Joan Zorza and Laurie Woods, *Analysis of New Jersey Supreme Court Task Force on Women in the Courts: The First Year Report* (National Battered Women's Law Project, 1994).

²⁰Rosemary Hunter, "The Good Lawyer Thesis and the Ethics of Advocacy in Family Cases" (2015) 22(2) International Journal of the Legal Profession 177.

²¹Law Commission of India, *202nd Report on Proposal to Amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954* (2007).

²²Supremo Amicus, "Misuse of Domestic Violence Laws in India: A Comparative Perspective with the United States" (2022) 23 Supremo Amicus 411.

²³Journal of Advanced Research in Social Sciences and Criminology (JARSSC), "Integrated Community Response to Domestic Violence: Lessons from the UK for India" (2023) 8(2) JARSSC 89.

secondary empirical support for the proposition that integrated multi-agency responses are more effective than fragmented, single-agency approaches in both preventing domestic violence and preventing the misuse of domestic violence legislation.

Identified Gaps in the Existing Literature

While the existing literature provides rich insights into individual dimensions of the problem, several significant gaps remain. First, there is a dearth of comprehensive doctrinal studies that systematically examine the full spectrum of legislative and judicial safeguards against DV Act misuse across all four identified jurisdictions within a single integrated comparative framework.

Second, the post-2025 empirical landscape following the Supreme Court's significant decisions in Shaurabh Kumar Tripathi and the implementation of the Bharatiya Nyaya Sanhita 2023 has not yet been comprehensively assessed in the academic literature.

Third, there is a notable absence of policy-oriented scholarship that translates comparative lessons into concrete, India-specific legislative recommendations. The present research seeks to fill these gaps by offering a holistic comparative doctrinal analysis grounded in secondary empirical data, culminating in a reform matrix and evidence-based policy recommendations.