



Pre-Nuptial Agreement: A Solution for Protecting the Unscrupulous Complaint Victims of Section 498-A Indian Penal Code,1860

Dr Mandeep Verma*

Meenakshi Parmar**

*Associate Professor, School of Law, Bahra University, Solan (H.P.) India.

**Research Scholar Ph.D. Law, School of Law, Bahra University, Solan (H.P.) India.

Abstract

India's Section 498A of the Indian Penal Code (now Sections 85 and 86 of the Bhartiya Nyaya Sanhita), which was established to protect women from harassment and cruelty related to dowry by their husbands and in-laws, has faced judicial scrutiny due to concerns regarding its potential for misuse. From 2021 to 2025, courts in Delhi processed around 9,950 trials under Section 498A, leading to a mere 23 convictions, which translates to a success rate of about 0.2%. This figure is considerably lower than the national average conviction rate of 15%. Furthermore, nearly 47% of these cases were dismissed by the Delhi High Court. The Supreme Court has consistently highlighted the necessity of avoiding vague and broad allegations that implicate extended family members without concrete evidence, referencing a case from 26 years ago that was annulled in May 2025 as an illustration of the misuse of legal provisions. In order to tackle these challenges while still safeguarding genuine victims, various reform initiatives have been studied in this research paper, such as implementing pre-nuptial agreements that include asset disclosures and affidavits. Research also highlights approaches which are designed to minimize frivolous lawsuits, emotional distress, reputational damage, and coerced settlements, thus ensuring that legal practices align with the protective intent of the law.

Keywords: Section 498A IPC, Section 85 BNS, Judicial Pronouncements, Misuse of Laws, Preventive Tools, Prenuptial Agreements.

1.0 Introduction

The legal framework initially established to address dowry-related concerns and protect women's rights primarily Section 498A of the Indian Penal Code,1860 now Section 85 under Bhartiya Nyaya Sanhita (BNS), and the Dowry Prohibition Act has recently been subject to critical examination due to instances of misuse. The Supreme Court has consistently emphasized the need for caution, highlighting concerns that the dowry laws may be increasingly exploited as tools for harassment, personal vendettas, or financial leverage, affecting not only individuals but entire families.

This ongoing issue has led to calls for the development of reliable mechanisms to prevent potential legal abuse, particularly in matrimonial contexts where financial demands might escalate into protracted legal disputes. One approach to minimizing the misuse of Section 498A involves the use of prenuptial agreements. Although such agreements are not yet formally recognized under Indian personal law, legal experts acknowledge their potential as a constructive measure to delineate clear boundaries and protect both parties from frivolous dowry allegations by explicitly defining what constitutes a gift versus a dowry commitment.

Prenuptial agreements, despite lacking formal recognition in Indian law, can serve as a preventive tool by providing clarity and documented intent prior to marriage. Their benefits include including sworn affidavits and detailed asset inventories to distinguish voluntary gifts from dowry offerings, thereby creating a documented record to counter false claims, establishing clear financial responsibilities, alimony limits, and maintenance terms in advance, which can reduce emotional pressure during divorce proceedings and prevent allegations of cruelty or harassment motivated by financial considerations, having persuasive value during mediations or court proceedings, as judges may refer to these agreements during settlement discussions, thus discouraging frivolous or exaggerated claims, promoting open communication regarding assets, expectations, and financial boundaries, which can help prevent misunderstandings and reduce the likelihood of dowry demands escalating into legal disputes. While not a comprehensive solution, a well-crafted prenuptial agreement provides an additional layer of protection in an environment where the misuse of Section 498A is acknowledged by the judiciary. It offers couples a proactive means to safeguard their rights and intentions well in advance of any potential disputes.

2.0 Misuse of Section 498-A of Indian Penal Code

With divorce statistics in India on an increasing trend, there is misuse of Domestic Violence Act and also of Section 498A of Indian Penal Code (Dowry Cases. Divorces put the debt burden on his /her partner (Alimony, Maintenance, Lawyer fees etc.). The tragic death by suicide of a 34-year-old software engineer in Bengaluru in December 2024 had brought attention to concerns regarding the misuse of Section 498A of the Indian Penal Code (IPC), now Section 85 under Bhartiya Nyaya Sanhita (BNS), which relates to cruelty within matrimonial relationships. The Section 498A is significantly misused, and that India's legal framework is skewed in favour of women, often at the expense of men. The issue of misuse is not recent.

2.1 The Committee on Reforms of the Criminal Justice System (2003) recommendation on misuse of 498-A

It has been observed that Section 498A is often misused, and there is a perception that India's legal system favours women, sometimes at the expense of men. This concern is not new; in 2003, the Committee on Reforms of the Criminal Justice System¹, chaired by Justice V.S. Malimath (2003), noted that the non-bailable and non-compoundable nature of Section 498A complicated reconciliation processes between spouses. The committee highlighted that impulsive or less tolerant wife might file FIRs over minor incidents, leading to immediate arrests of the accused and their families, which can result in job loss or suspension, and significant familial strain. The Malimath Committee addressed concerns regarding the misuse of Section 498A, especially given its cognizable, non-bailable, and non-compoundable status, which often leads to arrests based on trivial or frivolous complaints. Such actions can cause serious consequences, including employment loss, extended custody, and strained family relationships. To mitigate these issues, the committee recommended reforms such as making Section 498A bailable and compoundable, facilitating settlement and reconciliation in appropriate cases. It also advocated for judicial evaluation prior to arrests or FIR registration, encouraging law enforcement to assess cases carefully rather than acting mechanically. Furthermore, the committee emphasized the importance of data-driven decision-making and the implementation of statutory safeguards to prevent misuse, while ensuring genuine victims remain protected.

2.2 The 243rd Law Commission Report on misuse of 498-A

The Law Commission of India's 243rd Report (August 2012)² addresses Section 498A of the Indian Penal Code (IPC), which pertains to cruelty committed by a husband or his relatives towards a married woman. Originally enacted to safeguard women from dowry-related harassment and domestic violence, concerns have since been

¹ Government of India, "Report of the Committee on Reforms of Criminal Justice System Government of India", (Ministry of Home Affairs March (2003).

² Law Commission of India, "243rd Report on Section 498A IPC, 1860" (August 2012).

raised regarding its potential for misuse. The report was initiated in response to warnings from the Supreme Court, High Courts, and the Home Ministry about the section's misuse. In *Preeti Gupta v. State of Jharkhand (2010)*³, the Supreme Court observed that exaggerated allegations were common and recommended a review of the legislation.

The primary issue identified in the report is the misuse of Section 498A in numerous cases. There are instances where the section has been exploited as a tool for harassment, with authorities sometimes making arrests without proper inquiry or investigation. Notably, the offence under Section 498A is non-compoundable; it cannot be withdrawn even if parties reach a reconciliation. Furthermore, as the offence is non-bailable and cognizable, it often results in automatic arrests and denial of bail.

The Law Commission recommends several reforms, including making Section 498A a compoundable offence with court permission to facilitate reconciliation. It also suggests implementing safeguards prior to arrest, such as preliminary police inquiries, and proposes amendments to the Criminal Procedure Code (CrPC), including adding a subsection to Section 41 to ensure arrests are made only when necessary. Additionally, it advocates for clear guidelines for police to prevent arbitrary arrests. The Commission did not recommend a specific penalty for false complaints, citing concerns that such penalties might deter genuine victims from coming forward. Instead, it emphasizes the importance of the state's obligation to provide legal and financial assistance to women in genuine distress.

The 243rd Law Commission (2012) highlighted concerns regarding the misuse of Section 498A of the Indian Penal Code and advocated for balanced reforms alongside the implementation of appropriate procedural safeguards prior to any arrests under this section. Several rulings by the Supreme Court, particularly during the 2000s and 2010s, have recognized the potential for misuse of Section 498A and have issued directives to law enforcement agencies to prevent automatic arrests. These directives culminated in guidelines established through the *Arnesh Kumar* judgment (2014).

The Law Commission's 243rd Report recommends making Section 498A a compoundable offense with court approval, introducing safeguards within the Criminal Procedure Code (CrPC) for arrests, providing increased compensation, and strengthening women's cells in police stations. Despite these recommendations, enforcement remains inconsistent, with many police stations still resorting to immediate arrests without thorough investigation. While guidelines such as *Arnesh Kumar* and *Rajesh Sharma* exist to curb misuse, their inconsistent enforcement leads to wrongful arrests and undue legal hardship. The high rates of acquittals, early case closures, and ongoing trials highlight significant concerns regarding the misuse of the law. Section 498A is sometimes exploited as a tool for financial or emotional leverage. Law enforcement officers face challenges in balancing the protection of genuine victims with the risk of coercive practices. Affected Individuals and Families report experiencing psychological distress, damage to reputation, and financial burdens as a result of alleged misuse.

2.3 Supreme Court Stand on Misuse of 498-A

In the case of *Arnesh Kumar v. State of Bihar*⁴, the Supreme Court addressed procedures related to arrests in cases involving Section 498A, which pertains to cruelty against married women by spouses or in-laws.

The petitioner, Arnesh Kumar, was accused by his wife of demanding dowry and threatening to marry another woman. His application for anticipatory bail was denied both by the Sessions Court and the High Court. The Supreme Court intervened to address concerns about the misuse of Section 498A, which had gained notoriety for leading to automatic arrests without comprehensive investigation. The Court observed that the provision was often exploited as a tool for harassment, frequently resulting in the arrest of elderly relatives and women. It emphasized that arrests should not be made solely because an offense is cognizable and non-bailable. The judgment further noted that the conviction rate under Section 498A remains approximately 15%, despite over

³ Preeti Gupta & Anr vs State Of Jharkhand & Anr AIR 2010 SUPREME COURT 3363.

⁴(2014) 8 SCC 273.

90% of cases resulting in charge sheets. The Court issued guidelines requiring police to justify arrests under Section 41 of the Criminal Procedure Code (CrPC), including completing a checklist explaining the necessity of arrest. Magistrates must review this checklist and record their satisfaction before authorizing detention. If an arrest is not made, the reasons must be communicated to the Magistrate within two weeks. Additionally, a notice of appearance under Section 41A CrPC must be served within two weeks of case registration. Non-compliance with these guidelines by police or magistrates may lead to departmental action or proceedings for contempt of court. These directives apply not only to cases arising under Section 498A but also to all offenses punishable by imprisonment of up to seven years. The judgment has significantly contributed to reducing arbitrary arrests and is frequently cited in bail applications and reforms related to criminal procedure.

The Supreme Court's Arnesh Kumar (2014) ruling mandates that police conduct a preliminary inquiry and obtain magistrate approval before making arrests under certain sections, including 498A. The Supreme Court, in its consideration of the issue regarding the grant of anticipatory bail in cases involving offences under Section 498-A of the Indian Penal Code, first highlighted concerns regarding the misuse of this provision. It observed that section 498-A was introduced primarily to combat the harassment and cruelty faced by women at the hands of their husbands and relatives. This provision is cognizable and non-bailable, which has unfortunately led to its misuse as a tool of harassment rather than protection, often used by dissatisfied spouses. The ease of obtaining arrests under this section allows for situations where even elderly grandparents or relatives living abroad are detained, sometimes unnecessarily.

The Court referenced crime statistics published by the National Crime Records Bureau, noting that in 2012, 197,762 individuals were arrested for offences under Section 498-A, with women constituting approximately 47,951 of these arrests essentially women who are mothers or sisters of the accused. The data shows a charge sheet filing rate of 93.6%, but a conviction rate of only around 15%, indicating that many cases are likely to result in acquittal after trial.

Further, the Supreme Court made important observations regarding the arrest process itself stating that arresting an individual can cause humiliation, restrict freedom, and leave lasting scars. The Court observed that law enforcement authorities often consider arrest as a straightforward means of proceeding, but this practice should be exercised with greater caution. Despite clear legal guidance emphasizing restraint, there is an ongoing tendency among police to arrest first and inquire later, sometimes exploiting this power for personal or institutional gains. Such practices undermine public trust and reflect a colonial mindset that associates arrest with harassment rather than law enforcement.

In the judgment of *Rajesh Sharma (2017)*⁵ Supreme Court emphasize that Section 498A is sometimes misused for personal vendettas, which courts have acknowledged. In Rajesh Sharma Case submitted that Section 498A was enacted to address unreasonable demands made by some husbands and their families, which have, at times, led to cruelty towards women and even suicides. However, he acknowledged a growing trend to misuse this provision to include relatives such as parents of advanced age, minor children, siblings, grandparents, and uncles based on vague and exaggerated allegations, often without substantive evidence of physical or mental harm. Such misuse can sometimes result in the harassment and unjust arrest of innocent family members, including women and elderly individuals, thereby impeding the possibility of reconciliation and family reunification.

The Supreme Court had given the statistics from the Crime Records Bureau (CRB) in this case as follows:

1. According to the National Crime Record Bureau reports of 2005, there were a total of 58,319 cases reported under Section 498A of the IPC. During this period, 127,560 individuals were arrested, and 6,141 cases were declared false due to mistakes of fact or law. In 2009, with 89,546 reported cases, a total of 174,395 individuals were arrested, and 8,352 cases were declared false for similar reasons.
2. The 2012 Crime in India report by the National Crime Records Bureau indicates that, for that year, a total of 197,762 individuals across India were arrested under Section 498A of the IPC. Of these, approximately 25% or

⁵ Rajesh Sharma vs The State Of Uttar Pradesh, AIR 2017 Supreme Court 3869.

roughly 47,951 individuals were women, possibly including mothers or sisters of the husband. Notably, the rate of charge-sheet filing under Section 498A was exceptionally high at 93.6%, whereas the conviction rate was only 14.4%. At that time, there were 372,706 pending cases, with projections indicating that approximately 317,000 were likely to be acquitted.

3. The 2013 Crime in India report further highlights that, at the start of that year, 466,079 cases were pending. Out of these, only 7,258 resulted in convictions, while 38,165 cases were acquitted, and 8,218 cases were withdrawn. The conviction rate for cases filed under Section 498A IPC was approximately 15.6%.

Supreme Court stated that, aside from the husband, other family members are often summoned to police stations. In many cases, their arrest is not actually necessary; rather, such actions may be taken to satisfy the ego or anger of the complainant. Properly addressing these situations can help prevent unnecessary harm to innocent individuals. However, if Magistrates simply comply with police requests without thoroughly examining the circumstances, it can lead to adverse consequences, undermine the intent of the legislation, and hinder avenues for reconciliation. Differences of opinion within a family should not result in arrest and judicial detention, as these are not appropriate solutions. The primary goal of the legal system should always be to hold the guilty accountable while safeguarding the rights of the innocent.

Supreme Court suggests that in every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee.

In *Ghanshyam Soni v. State (Govt. of Nct of Delhi)* 4 June, 2025⁶, the Supreme Court expressed concern over the misuse of Section 498A and dowry laws, highlighting a concerning trend of leveraging these legal provisions to involve distant relatives through broad, unspecified allegations without concrete proof. The Court clarified that vague references to harassment or instigation by in-laws lacking specific dates, incidents, or supporting evidence do not justify criminal prosecution. It emphasized the importance of applying dowry harassment statutes judiciously to genuinely aid victims while also safeguarding against their misuse as tools for personal vendettas, which can inadvertently impact innocent family members.

In *Rajesh Chaddha v. State of Uttar Pradesh*⁷ (Supreme Court, May 13, 2025), the Court emphasized the importance of appropriate and responsible use of Section 498A of the Indian Penal Code (IPC) concerning cruelty, as well as Sections 3 and 4 of the Dowry Prohibition Act. The Court expressed concern over the rising trend where complainant wives unjustly involve extended family members such as elderly parents, distant relatives, or siblings living separately without specific allegations or credible evidence, thereby undermining the intent of these protective provisions.

The Bench highlighted that the term “cruelty” is often misused in matrimonial disputes, and cautioned that vague or omnibus allegations lacking specific dates, incidents, or corroboration cannot support criminal proceedings under Section 498A. The Court further observed that such broad accusations against the entire family diminish the credibility of the claims and lead to abusive litigation, rather than genuine pursuit of justice. Supreme Court clarified that Section 498A and associated dowry laws should be invoked with accuracy and responsibility, emphasizing the need for specific, credible, and material details in FIRs and prosecution records, rather than serving as instruments of personal vendetta or harassment against in-laws.

*Achin Gupta v. State of Haryana & Anr. (2024 INSC 369)*⁸, heard by the Supreme Court on May 3, 2024.

The Supreme Court allowed the appeal filed by Achin Gupta, resulting in the quashing of the FIR and chargesheet under Sections 323, 406, 498A, and 506 of the Indian Penal Code registered in April 2021. The

⁶ In the Supreme Court of India Criminal Appellate Jurisdiction Criminal Appeal No. 2894 OF 2025 [Arising out of SLP (Crl.) No. 9709 of 2024].

⁷ In the Supreme Court Of India Criminal Appellate Jurisdiction Criminal Appeal No(S). of 2025 [Arising out of SLP (Crl.) Nos. 2353-2354 of 2019].

⁸ In the Supreme Court Of India Criminal Appellate Jurisdiction Criminal Appeal No. 2379 Of 2024 (Arising Out Of SLP (Crl.) No. 4912 Of 2022).

Court observed that the allegations were vague, omnibus, and lacked specific details, indicating that they appeared to be malicious retaliatory actions in response to matrimonial disputes and prior legal proceedings initiated by the husband. The Bench, comprising Justices Pardiwala and Misra, stressed that Section 498A cannot be applied in a mechanical manner or used as a tool for harassment against husbands through police actions. It clarified that charges under this section should only be filed when there is clear evidence of cruelty, coercion, or unlawful demands related to dowry. Additionally, the Court urged Parliament to review and consider amending the relevant provisions in the upcoming Bharatiya Nyaya Sanhita (Sections 85 and 86, which correspond to Section 498A) to prevent systemic misuse.

In *Sushila & Ors. v. State of Uttar Pradesh*⁹ (2025 INSC 505), the Supreme Court unanimously invalidated proceedings under Section 498A IPC and the Dowry Prohibition Act against the husband's relatives, as the alleged incident occurred on August 16, 2015 three years after an ex parte divorce decree in 2012 indicating that the matrimonial relationship had legally concluded by that time. The Bench, comprising Justices Sanjay Karol and Prashant Kumar Mishra, observed that Section 498A (and related dowry legislation) applies only during the subsistence of the marriage and cannot be invoked after divorce. Additionally, the complaint primarily contained generic, omnibus allegations lacking specific details or credible evidence that implicate the appellants individually. This was deemed a clear abuse of process and a vexatious proceeding motivated solely by kinship with the husband.

2.4 Misuse of Section 498-A Indian Penal Code, 1860 (Now Section 85 Of Bhartiya Nyaya Sahinta, 2023) in Matrimonial Cases

*Ruchira Goswami (2025)*¹⁰ highlights the 243rd Law Commission Report (2012) acknowledged concerns by citing various instances of misuse. It referenced the Supreme Court judgment in *Sushil Kumar v. Union of India* (2005), which criticized the filing of numerous 498A cases driven by personal vendettas and underscored the importance of legislative measures to prevent frivolous complaints. The report characterizes the misuse of this section as a form of “legal terrorism.” *Neena Rosey Kahlon and Jasleen Dua (2019)*¹¹ analyse the application of Section 498A, originally enacted to protect women from cruelty and dowry-related harassment, and explore instances where it has been misused as a tool for coercion. Their study is based on interviews with 190 respondents in Amritsar. The findings identify common triggers for such misuse, including interference from in-laws, authoritarian behaviours by wives, and financial disputes. The research discusses how, in certain cases, Section 498A of the Indian Penal Code has been exploited to harass husbands and their families. The researchers argue that Section 498A can inadvertently grant disproportionate influence to some women, leading to significant social and legal repercussions for accused men and their families.

Legal authorities, including the Supreme Court, have recognized issues related to the misuse of this provision, describing it as a powerful tool that can facilitate arbitrary arrests without comprehensive investigation. Data from the National Crime Records Bureau (NCRB) shows a conviction rate of approximately 15%, raising concerns about the prevalence of false or fabricated cases. This phenomenon may discourage genuine victims from seeking legal recourse due to fears of scepticism or retaliation.

*Survase and Gharde (2025)*¹² analyze while Section 498A was enacted to safeguard women from cruelty, empirical data and judicial commentary indicate ongoing misuse, which can result in significant injustices. Current judicial guidelines and recommendations from the Law Commission are not always effectively enforced, sometimes leading to wrongful arrests and prolonged legal proceedings.

⁹ In the Supreme Court Of India Criminal Appellate Jurisdiction Criminal Appeal No. Of 2025 [Arising Out Of Slp (Crl.) No. 9218 Of 2024].

¹⁰ Ruchira Goswami (2025), “Where is the Data on the ‘Misuse’ of 498-A?”, Janta Weekly available at <https://janataweekly.org/where-is-the-data-on-the-misuse-of-498-a/> (last visited on July 15, 2025).

¹¹ Neena Rosey Kahlon and Jasleen Dua, “A Critical Analysis of the Misuse of an Anti-Dowry Law”, 8(2) Asian Review of Social Sciences (2019).

¹² Rohit Survase & Utpal Gharde “Effectiveness of Legal Provisions in Curbing Misuse of Section 498A IPC” 7(2) Indian Journal of Law and Legal Research (2025).

Deepika Narayan Bhardwaj (2021)¹³ analyzes data from the National Crime Records Bureau (NCRB) 2020. The report indicates that conviction rates under Section 498A range from 12% to 15%, which is relatively low compared to the number of cases filed. In 2020, a total of 111,549 cases were registered; only 18,967 cases proceeded to trial, resulting in 3,425 convictions (approximately 18%) and approximately 14,340 acquittals (around 76%). Additionally, data up to the end of 2022 shows that over 92% of cases remained pending, with only 12.6% of resolved cases resulting in convictions and 76.6% ending in acquittals. In 2020, police closed approximately 14.4% of cases as false before trial. Many cases involve arrests made without comprehensive preliminary investigation, often involving extended or unrelated family members, which can lead to procedural complications.

3.0 Pre-Nuptial Agreement a solution to curb misuse of 498-A of Indian Penal Code,1860

A prenuptial agreement can be beneficial in mitigating post-divorce instability. It may serve as a safeguard against false accusations under Section 498A of the Indian Penal Code and the Domestic Violence Act, thereby preventing potential misuse for coercion or blackmail. Additionally, it can help individuals avoid taking on their spouse's debt liabilities. The agreement can outline provisions for spousal support, including monthly maintenance, and establish rights related to remarriage and child custody and support. Furthermore, a prenuptial agreement can contribute to reducing the incidence of dowry-related issues by clearly specifying the gifts to be exchanged during the marriage, thus minimizing disputes over additional demands. It can also specify the amount of alimony payable to the spouse, ensuring clarity and fairness in financial arrangements.

3.1 Meaning of Pre-Nuptial Agreement

*A Law Firm (2023)*¹⁴ defines pre-nuptial agreement, also known as an ante-nuptial or pre-marital agreement, is a contractual arrangement entered into by parties prior to marriage or civil partnership. The terms of such agreements can vary but commonly include provisions regarding the division of property and spousal support in the event of divorce or separation.

*Kishan Dutt (2020)*¹⁵ defines Pre-nuptial agreements involve full disclosure of the financial circumstances of both parties intending to marry. These agreements often specify arrangements for alimony and support for any children in the event the marriage ends. Additionally, they may include predetermined arrangements concerning custodial rights in the case of dissolution or separation.

3.2 Pre-Nuptial Agreement in India an overview

*Dipak Kumar Jena (2022)*¹⁶ states India does not have a specific statute governing prenuptial agreement; such arrangements fall under the purview of the Indian Contract Act, 1872. The Christian Divorce Act of 1869 recognizes the validity of pre-marital agreements concerning the termination of marriage and the division of assets. The State of Goa, the only Indian state with a uniform civil code, permits the examination and enforceability of prenuptial agreements for land division and distribution. Similarly, the Special Marriage Act of 1954 accepts prenuptial agreements as legally binding documents, provided they are properly documented. However, aside from these specific examples, there is limited legislation explicitly governing marriage agreements. The most relevant legal framework for assessing the validity of prenuptial agreements in India is the Indian Contract Act of 1872.

¹³ Deepika Narayan Bhardwaj, "NCRB Report 2020 Crimes against Women, Cases Registered V/s False; Conviction vs Acquittal" Voice for Man India (2021) available at <https://voiceformenindia.com/ncrb-report-2020-crimes-against-women-cases-registered-v-s-false-conviction-vs-acquittal/> (last visited on 24th June,2025).

¹⁴ "Prenuptial Agreement in India" (2024) available at <http://Indianlawportal.co.in/prenuptial-agreement-in-india> (last visited on July 11,2025).

¹⁵ Kishan Dutt "Pre-Nuptial Agreements: Enforceability and Case Laws" (2020), available at <http://Lawyersclubindia.com/articles/> (last visited on June 13,2025).

¹⁶ Dipak Kumar Jena, "Pre-Nuptial Agreements and Its Relevancy in Today's Indian Society" 49 Indian Bar Review (2022).

It has been observed that, in Hindu marriages, the judiciary tends to consider prenuptial agreements primarily in relation to property matters. While recognizing that Muslim marriages are fundamentally contractual, courts appear more receptive to accepting prenuptial agreements within this context. Nonetheless, such agreements are often subject to strict interpretation, with terms of the nikahnama being scrutinized closely, and any provisions deemed contrary to public policy being rejected.

*Kishan Dutt, Retired Judge (2020)*¹⁷ examines various Indian court judgments and concludes that, unlike in many Western countries, prenuptial agreements remain a cultural taboo in India. Their validity and constitutionality are uncertain, and no definitive legal rulings have been established to date. Based on existing case law, there is no landmark judgment affirming the validity of prenuptial agreements within Indian courts. To be enforceable, such agreements must qualify as valid contracts under the Indian Contract Act, 1872. They are considered legally binding only when entered into with the mutual and free consent of both parties. Additionally, the clauses outlined in the agreement should be fair and clearly articulated.

*Girija Gadre and Arti Bhargava (2014)*¹⁸ states that prenuptial agreements are neither valid nor legally enforceable under Indian marriage laws. However, under the Indian Contract Act, such agreements are recognized primarily through judicial proceedings. *Prince Raj, Jhalak Bhatia & Shanaya Singh (2025)*¹⁹ highlights the legality and enforceability of marriage contracts in India, particularly concerning pre-nuptial agreements, represent an evolving area of jurisprudence. Historically, Indian marriage laws have been governed by religious personal laws that primarily emphasize sacramental and customary requirements rather than contractual arrangements. However, the complexities of contemporary relationships such as increasing economic independence, inter-faith marriages, and international influences necessitate a re-evaluation of this approach.

*Naga Yogesh Chitturi et al. (2025)*²⁰ finds out that in India marriage is considered as sacrament and divorce is considered as probability. That is the reason why Indian couples doesn't go for prenuptial agreement before marriages. *'Nyaya Weekly' (2021)*²¹ state that prenuptial agreements are not enforceable in any Court in India, such agreements have persuasive values only. It is stated that under the Special Marriage Act of 1954, if a marriage is solemnized along with the proper registration of all the documents of declaration at Registrar office, the prenuptial agreements are considered as legally binding. *Annubhav Kumar Pandey (2017)*²² after going through different court judgments finds out that prenuptial agreement in India is a supporting document. Prenuptial agreements in India can be used to decrease the uncertainty relating to property division and other problems which occur during Divorce. *Anil Kumar Dubey (2019)*²³ concluded that it is advisable for the couples of Live-in-relationship to execute cohabitation agreement addressing the issues relevant for determination of particular interests or rights of the parties of live-in relationship and the Article also suggests that it would be expedient to bring a proper legislation or make a proper amendment of the Protection of Women from Domestic Violence Act, 2005 addressing the concern of concubine so that the interests of such women and children born out of such relationship can be protected.

*Barkha Kumari (2021)*²⁴ states that In India validity of prenuptial agreements has always been questioned but there are two exceptions where prenuptial agreements are valid in India. First one In Goa where marriages are

¹⁷ Prenuptial Agreement in India, available at [http:// Indian law portal.co.in/prenuptial agreement in India](http://Indianlawportal.co.in/prenuptial-agreement-in-india) (last visited on May 25,2025).

¹⁸ Girija Gadre, "Are Prenuptial Agreements Valid and Enforceable in India?" The Economics Times, October 13,2014.

¹⁹ Prince Raj, Jhalak Bhatia, et.al., "Pre-Nuptial Agreements in India: Examining the Legal Status of Marriage Contracts" 7(3) Indian Journal of Law and Legal Research (2025).

²⁰ Naga Yogesh Chitturi et. al., "Prenuptial Agreements in India its Validity and Enforcement" 7(1) Indian Journal of Law and Legal Research (2025).

²¹ The Nyaaya Weekly "Prenuptial Agreement Valid or Not"(2022) available at <http://www.nyaaya.org/nyaayaweekly/prenuptial-agreements-enforceable-or-not> (last visited on May 12,2025).

²² Abhinav Kumar Pandey, "All you Need to know About Pre-Nuptial Agreement in India" (2017), I Pleader available at <http://blog.ipleaders.in/pre-nuptial> (last visited on July 26,2025).

²³ Anil Kumar Dubey, "Live-in-Relationship in India: The Socio-Legal Perspective and Judicial Approach" 46 (3) Indian Bar Review (2019).

²⁴ Barkha Kumari, "Indians are enquiring about Pre- Marital Agreement" Deccan Herald, November 19,2021.

governed by the Portuguese civil Code of 1867, not by the Indian family Laws and secondly any marriage solemnized under the Special Marriage Act of 1954 along with proper registration of all the documents of declaration at the office of Registrar. Section 40 of The Divorce Act, 1869 applicable to dissolution of Christian marriages specifically provides the District Courts may look into the existence of prenuptial agreements and refer to terms contained wherein while passing a decree on settlement of property under Divorce.

Currently, Indian courts generally do not recognize pre-nuptial agreements as legally binding, primarily on grounds that such agreements may be considered against public policy under statutes like the Hindu Marriage Act, Muslim Personal Law, and other relevant legislation. Nonetheless, principles derived from the Indian Contract Act, 1872, provide a potential framework for their enforcement, provided that the agreement meets the fundamental contractual requirements of free consent, lawful object, and absence of coercion or fraud. If a pre-nuptial agreement satisfies these criteria, it can exert persuasive influence in matrimonial disputes, especially those relating to financial arrangements, property division, and alimony. Courts have, in some instances, acknowledged these agreements as guiding documents rather than outright binding contracts. A significant concern hindering their acceptance is the perception that pre-nuptial agreements undermine the sanctity of marriage by premeditating its dissolution.

3.3 Court Views on Pre-Nuptial Agreement in India

In *Sh. Chhatter Pal & Ors. vs State & Anr.* on 16 May, 2023²⁵ a notable ruling, Judge Harish Kumar of the Delhi Family Court at Patiala House recommended making prenuptial agreements mandatory in India. This suggestion was made while granting a no-fault divorce under Section 13B of the Hindu Marriage Act to a couple involved in a seven-year legal dispute.

The court highlighted that requiring prenups, entered into after appropriate counselling, could help prevent legal-induced mental distress during divorce proceedings. It also observed that many matrimonial cases involve exaggerated or fabricated allegations aimed at satisfying legal criteria for divorce, thereby placing additional strain on the judicial system. Judge Kumar noted that denying divorce in such cases could prolong the suffering of those involved and would be inconsistent with the objectives of the Family Court Act, which seeks to resolve disputes amicably. The ruling further proposed that any breaches of prenuptial agreements should be reported, emphasizing that ignoring such breaches could weaken future legal claims.

The Indian Express (2023)²⁶ report about this Chhatter Pal's Case states that a Family Court judgment in Delhi, while ruling this long-pending divorce case, recommended considering the mandatory implementation of prenuptial agreements in conjunction with counselling. The court highlighted that such measures could serve to prevent mental cruelty and facilitate the resolution of marital disputes. Additionally, it emphasized that prenups could enable couples to better understand potential risks prior to marriage.

Rebecca (2023)²⁷ states in Mumbai in 2023, a Family Court determined that, while prenuptial agreements are not legally binding, they can assist the court in understanding the intentions of both parties during divorce proceedings.

The landmark ruling came in *Maya Gopinathan v. Anoop SB*²⁸, the Court reaffirmed that 'Stridhan' is the exclusive property of the woman, with no control or ownership rights conferred upon the husband. Even in cases of financial hardship, the husband has a moral obligation to return the stridhan. The Court highlighted that documentary proof of acquisition is not mandatory in civil proceedings; the standard of proof relies on a preponderance of probabilities rather than the stricter criteria used in criminal trials.

²⁵ Neutral Citation no. 2023:DHC:3396.

²⁶ Express News Service, "'Make Prenuptial Agreement Compulsory': Delhi Family Court as It Grants Divorce to Couple", The Indian Express, November 1, 2023.

²⁷ Rebecca Samervel, "Prenup not Valid in India but Indicate Intent: Court", Times of India Oct 9, 2023.

²⁸ Civil Appeal No. of 2024 [Arising out of SLP (Civil) No. 13398/2022], decided on April 24, 2024.

The Supreme Court's 2024 ruling reaffirming a woman's unequivocal rights over her stridhan, including property gifted to her before, during, or after marriage, has notably renewed interest in prenuptial agreements and marital property rights.

Swarupa (2024)²⁹ states "stridhan" judgment has renewed discussions regarding prenuptial agreements, emphasizing the importance of empowering women and acknowledging their contributions to asset accumulation. Although the judiciary has not officially endorsed prenuptial agreements, the ruling has sparked increased public debate on the subject.

This judgment has encouraged legal professionals and couples to reconsider the importance of prenuptial agreements as a means to explicitly define ownership, responsibilities, and financial arrangements within marriage. While such agreements are not yet broadly enforceable under Indian law, increased clarity regarding stridhan rights may influence future legislative developments or judicial interpretations.

Dara Lakshmi Narayana (2024) Supreme Court Case has renewed discussions regarding the legal recognition of prenuptial agreements in India.

The Supreme Court recognized an increasing instance of the misapplication of Section 498A, which was originally enacted to safeguard women from cruelty within marriage. The Supreme Court characterized the misuse of 498-A as a form of "legal harassment," where broad and vague allegations are employed to intimidate and exert undue pressure on husbands and their families.

In the case of *Dara Lakshmi Narayana v. State of Telangana*³⁰, the Supreme Court quashed a dowry harassment FIR, observing that it was filed as a retaliatory response to a divorce petition and lacked specific or credible allegations. The Court highlighted the importance of scrutinizing complaints, particularly when they appear retaliatory or are unsupported by concrete evidence. It also recommended that Parliament revisit Sections 85 and 86 of the BNS prior to their implementation, emphasizing the necessity to address "pragmatic realities" and to prevent potential misuse.

In recent years, there has been a notable increase in matrimonial disputes across the country. This trend has been accompanied by rising discord and a tendency to employ provisions such as Section 498A of the IPC as a means of personal vendetta, the judgment observed. *Business Standard* (2024)³¹ in its report states that the Supreme Court highlighted in *Dara Lakshmi Narayan (2024)* that such misuse not only results in false allegations but also encourages coercive tactics by wives and their families. The recent tragic suicide of Bengaluru-based tech professional Atul Subhash underscores the potential risks associated with the improper use of these laws. Subhash, originally from Uttar Pradesh, took his own life in his Bengaluru residence on Monday, leaving behind a 24-page suicide note and a 90-minute video in which he accused his wife and her family of severe harassment. The case has renewed discussions regarding the legal recognition of prenuptial agreements in India, which presently have limited enforceability under Indian family law.

4.0 Pre-Nuptial Agreement significance in false dowry cases

The inclusion of a prenuptial agreement can help clarify the terms related to dowry gifts provided during marriage, thereby contributing to the prevention of dowry-related issues. Additionally, a prenuptial agreement serves to protect the rights of both the husband and wife. In 2015, Maneka Gandhi, then serving as the Minister for Women and Child Development, advised D.V. Sadananda Gowda, the Minister for Law and Justice in 2015, to consider making prenuptial agreements mandatory prior to marriage. Her recommendation was based on concerns that many women from lower socio-economic backgrounds often face prolonged disputes over alimony and the division of property and assets during divorce proceedings. The prenuptial agreements could help prevent misunderstandings and potential exploitation between couples, thereby reducing the likelihood of

²⁹ Swarupa Tripathy, "SC's Stridhan Ruling Reignites Debate: Should Prenuptial Agreements Become the Norm In India?" The Indian Express May 14, 2024.

³⁰ (Arising out of Special Leave Petition (Criminal) No.16239 of 2024).

³¹ "SC Flags Misuse of Cruelty Laws Amid Bengaluru Techie's Death by Suicide", Business Standard December 11, 2024.

disputes escalating into lengthy court battles. *Debi Prasad Dehl (2021)*³² suggested that at the time of marriage a joint declaration should be signed by both husband and wife that they have not taken dowry in marriage. It will help in future litigation between the parties as a shield to protect against misuse of dowry laws.

*Amrita Ghosh and Pratyusha Kar (2019)*³³ stated premarital agreements, when applied appropriately, can serve as beneficial instruments for spouses. Pre-Nuptial Agreement stipulating compensation for established instances of marital cruelty or abuse by either spouse may serve as an important safeguard against domestic violence and misuse of dowry laws.

*Nikhil Rampal (2023)*³⁴ states according to an analysis of data from the National Crime Records Bureau (NCRB) conducted by the Ministry of Statistics and Programme Implementation (MoSPI), approximately one in three reported crimes against women from 2016 to 2021 involved allegations of cruelty by the woman's husband and/or his relatives. The findings, published in MoSPI's 'Women and Men in India 2022' indicate that cruelty by husbands and their relatives is the most frequently reported form of violence against women in India. Over the six-year period from 2016 to 2021, there were nearly 2.28 million reported crimes against women in India. Of these, approximately 700,000 cases, or 30 percent, were reported under Section 498A of the Indian Penal Code (IPC). The MoSPI report further reveals that, in each year of the study period, cases registered under Section 498A surpassed all other categories of crimes against women, exceeding reports of rape and sexual harassment.

*Vineet Upadhyay (2025)*³⁵ states between 2021 and 2025, a total of 9,950 cases under IPC Section 498A were heard across five of Delhi's seven district courts. Out of these, only 23 resulted in convictions, reflecting a conviction rate of approximately 0.2%. Additionally, 47% of these cases were quashed by the Delhi High Court. According to National Crime Records Bureau (NCRB) data from 2018, the national conviction rate for IPC 498A cases was 13%, making it one of the lowest conviction rates among all IPC categories that year. Nearly half of these cases are quashed, raising concerns about potential misuse for financial advantage or personal vendettas. Establishing a legally recognized prenuptial agreement detailing asset transfers, maintenance obligations, and dowry arrangements prior to marriage could serve as an effective deterrent. Such agreements would clarify financial expectations, reduce ambiguity and false dowry claims, and encourage judicial scrutiny in related disputes. Currently, India lacks a comprehensive framework for enforceable prenuptial agreements, with enforceability recognized only in Goa under specific personal laws and broader reforms still underway. Incorporating procedural safeguards such as independent legal counsel, judicial review for fairness, transparent disclosure, and reforms to make Section 498A more equitable and gender-neutral could significantly reduce misuse and better protect all parties involved in matrimonial matters.

5.0 Conclusion

Legal frameworks addressing dowry, such as Section 498A of the Indian Penal Code (now Section 86 under the BNS Act) and the Dowry Prohibition Act, were enacted to combat the significant social issue of cruelty and harassment related to dowry. However, over time, authorities including the Supreme Court have issued repeated cautions regarding the misuse of these laws, noting that they are sometimes employed as tools for harassment, financial extortion, or personal vendettas. Such misuse can involve broad allegations that entangle extended families and lead to prolonged legal proceedings without substantial evidence. The implications include lengthy trials, reputational damage, emotional distress, and undue pressure to settle disputes, despite low conviction rates (0.2% in Delhi and 15% nationally). Notable cases, such as the Supreme Court's decision to quash a 26-year-old case³⁶ based on vague and unsupported accusations, underscore the need for reforms. While these laws

³² Debi Prasad Dhal, "Cruelty Against Husband (With Special Reference to Section 498 A IPC)" 48(1&2), Indian Bar Review) 2021.

³³ Amrita Ghosh and Pratyusha Kar "Prenuptial Agreement in India: An Analysis of Law and Society" 12 (2) NUJS Law Review (2019).

³⁴ Nikhil Rampal, "Cruelty by Husbands and their Relatives makes up One-Third of Crimes against Women in India: MoSPI" The Print March 26, 2023.

³⁵ Vineet Upadhyay, "Debate Over 498A Misuse Grows Louder" Times of India June 15, 2025.

³⁶ Rajesh Chaddha vs. State of Uttar Pradesh, In the Supreme Court Of India Criminal Appellate Jurisdiction Criminal Appeal No(S). of 2025 [Arising out of SLP (Crl.) Nos. 2353-2354 of 2019].

are vital instruments for protecting genuine victims of abuse, it is equally important to implement structural and procedural safeguards to prevent their misuse and ensure justice is upheld. In addition, although not legally binding in India, prenuptial agreements can serve as a proactive approach to clarify expectations regarding gifts and dowry-related provisions. Sworn affidavits and asset inventories can also provide documentation that may deter frivolous claims and serve as evidence in cases of misuse. By integrating preventive measures like prenuptial agreements with broader systemic reforms such as streamlining judicial processes, penalizing misuse, and promoting alternative dispute resolution methods, India can better preserve the integrity of dowry-related laws while protecting against abuse and ensuring justice for all parties involved.

