

# The impact of mandatory arrest policies in domestic violence areas

## Introduction

Domestic violence is a pervasive global issue, cutting across socioeconomic, cultural, and geographic boundaries. In response to the often inadequate handling of such cases by law enforcement, especially in the past, several jurisdictions introduced **mandatory arrest policies**. These policies require police officers to make an arrest when responding to a domestic violence call if there is probable cause to believe that abuse has occurred—regardless of the victim's wishes.

Mandatory arrest policies were introduced to increase accountability, protect victims, and deter future violence. However, their effectiveness and broader social consequences remain widely debated. This essay explores the **impact of mandatory arrest policies** in domestic violence situations, analyzing both their **benefits** and **drawbacks**, and offering insight into how they shape justice outcomes, victim safety, and law enforcement behavior.

## 1. The Rationale Behind Mandatory Arrest Policies

Historically, domestic violence was viewed as a private or family matter rather than a criminal offense. Police often hesitated to intervene or relied on victim cooperation to proceed with arrests. As a result, abusers frequently went unpunished, and victims were left vulnerable.

The **mandatory arrest model** emerged in the 1980s following studies like the **Minneapolis Domestic Violence Experiment (1984)**, which suggested that arrest could reduce repeat offenses in domestic violence cases. Advocates believed these policies would:

- Demonstrate zero tolerance for domestic violence,
- Remove decision-making burden from victims,
- Increase deterrence for perpetrators, and
- Encourage systemic accountability among law enforcement.

## 2. Positive Impacts of Mandatory Arrest Policies

### a. Improved Police Response and Accountability

Mandatory arrest laws standardized police responses, making domestic violence a matter of public concern and criminal law enforcement. Officers were no longer permitted to dismiss or downgrade such cases based on personal judgment. This led to:

- Increased arrest rates in domestic violence cases,
- Better documentation of abuse incidents,
- Greater law enforcement focus on violence within the home.

#### **b. Enhanced Victim Safety (Short-Term)**

Arrests remove the abuser from the scene, providing immediate physical protection to victims. For some, this created a critical window for safety planning or seeking shelter.

Mandatory arrests also:

- Reduced the risk of immediate retaliation,
- Sent a strong message to victims that the law is on their side,
- Validated victims' experiences and encouraged reporting.

#### **c. Increased Awareness and Deterrence**

As arrest became the norm in domestic violence cases, public awareness increased. Repeat offenders began to view domestic violence not as a private matter but as a crime, potentially altering behavior. Furthermore, police officers began to receive specialized training, further professionalizing the response.

### **3. Criticisms and Unintended Consequences**

While well-intentioned, mandatory arrest policies have also drawn substantial criticism from victims' advocates, scholars, and even law enforcement.

#### **a. Reduced Victim Autonomy**

By removing the victim's choice in whether or not to proceed with legal action, mandatory arrest policies can disempower the very people they aim to protect. Some victims may not want their partner arrested due to:

- Financial dependence,
- Childcare concerns,
- Fear of retaliation,
- Love or hope for reconciliation.

This can deter future reporting, making victims less likely to call the police during subsequent incidents.

## **b. Dual Arrests and Victim Criminalization**

Mandatory arrest laws have led to cases of **dual arrests**, where both the victim and perpetrator are taken into custody—especially in situations where self-defense is misunderstood. Women, particularly women of color, have been disproportionately impacted by such practices, leading to:

- Criminal records for victims,
- Distrust in the criminal justice system,
- Hesitancy to seek future help.

## **c. Racial and Class Disparities**

These policies have amplified concerns about over-policing in marginalized communities. In areas with systemic biases, mandatory arrests can:

- Lead to disproportionate arrests of minorities,
- Entrench distrust between the police and community,
- Fail to address root causes like poverty, trauma, or lack of resources.

## **d. Lack of Contextual Sensitivity**

Mandatory policies often lack nuance. They do not account for the complexities of intimate partner violence, including coercive control, cultural dynamics, or LGBTQ+ relationships. As a result, they may:

- Apply a one-size-fits-all model,
- Ignore victim voices and needs,
- Result in justice outcomes that are not trauma-informed.

## **4. Research and Evolving Perspectives**

Subsequent studies after the Minneapolis Experiment produced mixed results. For instance:

- In some jurisdictions, arrest reduced reoffending;
- In others, especially where offenders faced unemployment or had fewer support networks, arrests **increased** the likelihood of future violence.

These findings led several states in the U.S. and other countries to **reassess mandatory arrest policies**, replacing them with **pro-arrest or preferred-arrest models**, which allow officer discretion while still prioritizing victim safety.

## 5. Alternative and Complementary Approaches

Recognizing the limitations of mandatory arrest, many experts advocate for a more holistic approach to domestic violence intervention:

### a. Victim-Centered Policing

Empowering victims to have a say in arrest and prosecution decisions can lead to better long-term outcomes. This includes:

- Safety planning support,
- Trauma-informed interviews,
- Connecting victims with shelters, legal aid, and counseling.

### b. Restorative Justice Programs

In select cases, restorative justice offers a structured dialogue between victim and perpetrator, focusing on accountability and healing. While not suitable for all, it offers an alternative where traditional criminal processes may fail.

### c. Community-Based Interventions

Culturally responsive, community-driven programs may better support marginalized groups by addressing specific barriers like language, immigration status, or distrust of authorities.

### d. Integrated Court Systems

Specialized **domestic violence courts** can streamline legal processes, provide wraparound services, and ensure judges are trained in trauma and abuse dynamics.

Mandatory arrest policies in domestic violence cases were introduced to address serious systemic failures, and they succeeded in elevating the importance of domestic abuse within the criminal justice system. These policies improved police responsiveness and increased offender accountability. However, their **rigidity, failure to consider individual circumstances, and impact on marginalized populations** have exposed significant flaws.

Moving forward, a **balanced approach**—one that **respects victim autonomy, ensures protection, and applies discretion informed by context**—is essential. Policymakers and law enforcement must evolve beyond arrest-focused models to adopt **trauma-informed, culturally competent, and community-integrated strategies** to truly address the multifaceted nature of domestic violence.

Mandatory arrest policies significantly influence how law enforcement responds to domestic violence incidents by shifting discretion away from the officer and prioritizing the immediate removal of the alleged perpetrator to protect the victim. These policies are built on the idea that proactive enforcement can prevent further harm, establish clear accountability, and signal that domestic violence is a serious crime, not a private dispute.

## **1. Influence of Mandatory Arrest Policies on Law Enforcement Responses**

### **a. Proactive Policing**

Mandatory arrest removes ambiguity from the decision-making process. Officers are required to arrest the alleged abuser if there is probable cause. This:

- Reduces biases or hesitation in responding to domestic calls.
- Ensures immediate intervention to protect the victim.
- Standardizes responses across departments.

### **b. Documentation and Evidence-Based Practice**

Knowing that an arrest is mandatory often prompts better documentation—officers are more likely to:

- Record injuries or damage,
- Collect witness statements,
- Use body cams (where available) for evidence gathering.

### **c. Reduced Risk of Victim Retaliation**

Victims are not responsible for initiating or "pressing charges," thereby reducing the risk of retaliation for involving police.

### **d. Increased Arrest Rates and Legal Proceedings**

There's typically a rise in arrest and prosecution rates in jurisdictions with such policies, which can:

- Lead to a backlog in courts,
- Increase short-term victim safety,
- Occasionally deter future abuse—but evidence is mixed.

### **e. Potential Downsides**

- Victim autonomy is sometimes compromised (victims may not want arrest).

- Dual arrests may occur when officers cannot clearly identify the primary aggressor.
- May discourage victims from calling the police if arrest is guaranteed.

## 2. India's Take on Mandatory Arrest in Domestic Violence Cases

### a. Legal Framework in India

India does **not have a formal "mandatory arrest" policy** for domestic violence akin to some Western countries (like certain U.S. states). However, law enforcement action is governed by:

- **The Protection of Women from Domestic Violence Act, 2005 (PWDVA)** – a **civil law**, focusing on protection orders, residence rights, and monetary relief.
- **Indian Penal Code (IPC)** – criminal provisions such as:
  - **Section 498A**: Cruelty by husband or relatives.
  - **Section 323, 325**: Causing hurt or grievous hurt.
  - **Section 506**: Criminal intimidation.

While arrests under **Section 498A IPC** were once routinely made, a *\*Supreme Court judgment in Arnesh Kumar v. State of Bihar (2014)* significantly changed the approach.

### b. The Arnesh Kumar Judgment: Moving Away from Automatic Arrest

The Court, concerned about misuse of 498A, ruled that **arrests should not be made automatically**. Instead:

- Police must **record reasons for arrest**.
- Magistrates must assess the **necessity of custody**.
- Arrests in 498A cases must follow **Section 41 CrPC** guidelines (arrest only if necessary for investigation, preventing further crime, etc.).

This effectively **discourages a mandatory arrest approach** and leans toward **procedural fairness and proportionality**.

## 3. India's Current Societal Construct: Challenges and Gaps

In India, mandatory arrest models are debated in light of cultural, legal, and enforcement challenges:

### a. Patriarchal Norms and Victim Reluctance

Many victims remain reluctant to approach police due to:

- Social stigma,
- Family pressure,
- Financial dependency,
- Threats of retaliation.

Mandatory arrest could either help (by removing burden from the victim) or backfire (by leading to backlash from family/community).

#### **b. Law Enforcement Sensitization**

Police in many areas still lack sensitivity training. Even with legal mandates, enforcement is uneven. Officers may:

- Try to mediate rather than act,
- Discourage formal complaints,
- Avoid arrest due to societal pressure.

#### **c. Underreporting and Civil-Nature of PWDVA**

Because the PWDVA is civil, police are often not the first responders unless IPC sections are invoked. Many survivors seek protection orders, not criminal action.

#### **d. Judicial and Legislative Balance**

India is currently trying to strike a balance:

- Avoiding over-criminalization,
- Protecting genuine victims,
- Encouraging police discretion guided by legal principles—not stereotypes or biases.

### **4. What Could Strengthen India's Response?**

- **Context-sensitive arrest protocols** that empower officers to act swiftly while preserving victim choice.
- **Training for police** in trauma-informed, gender-sensitive approaches.
- **Community policing models** to build trust in law enforcement.
- **Better collaboration between protection officers, courts, NGOs, and police.**

While mandatory arrest policies in many countries have professionalized law enforcement responses to domestic violence, they have also raised concerns around victim autonomy, systemic biases, and unintended consequences. India, in contrast, has adopted a **measured approach**, moving away from automatic arrests through judicial checks (like the *Arnesh Kumar* ruling), reflecting its complex societal and legal realities.

Rather than enforcing a blanket mandatory arrest policy, India is focusing on improving **institutional responsiveness**, **legal safeguards**, and **support structures**, with the goal of ensuring that both **justice and protection** are not compromised in domestic violence cases.

## **Potential Unintended Consequences of Mandatory Arrest Policies in Domestic Violence Cases in India**

*(With Reference to Landmark Supreme Court and High Court Judgments)*

While **mandatory arrest policies** aim to provide immediate protection and deterrence in domestic violence cases, their rigid or uncritical application in the Indian context can lead to a range of **unintended and often adverse consequences**. These arise from complex socio-cultural dynamics, evolving legal standards, and systemic constraints. The Indian judiciary has played a pivotal role in shaping a more balanced approach, particularly through key Supreme Court and High Court judgments.

### **1. Misuse of Legal Provisions – Particularly Section 498A IPC**

#### **Issue:**

Section 498A of the Indian Penal Code, intended to address cruelty by husbands and in-laws, has in many instances been misused. Earlier police practice often resulted in automatic arrests upon receiving complaints, without adequate investigation or verification.

#### **Unintended Consequences:**

- Arrest of elderly or uninvolved family members, such as parents or sisters-in-law.
- Disruption of marital reconciliation efforts due to premature arrests.
- Use of Section 498A as leverage in unrelated disputes, such as divorce or child custody.

#### **Landmark Judgment: *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273**

The Supreme Court ruled that automatic arrests under Section 498A were unconstitutional. It mandated that police officers must assess the necessity of arrest under Section 41 of the Criminal Procedure Code (CrPC) and that Magistrates must record satisfaction before authorizing detention.

*Excerpt:*

“No arrest should be made only because it is lawful for the police officer to do so.”

## **2. Undermining Victim Autonomy**

### **Issue:**

Mandatory arrest policies may undermine the autonomy and agency of victims, particularly women who may not wish for their partner’s immediate arrest due to social, financial, or emotional considerations.

### **Unintended Consequences:**

- Victims may avoid reporting abuse, fearing economic consequences, social stigma, or harm to children.
- Heightened emotional and psychological stress resulting from loss of control over the legal process.

### **Related Case: *Rajesh Sharma v. State of Uttar Pradesh*, (2017) 8 SCC 746**

The Court recommended the establishment of Family Welfare Committees (FWCs) to examine the veracity of complaints before any arrests were made. This was intended to prevent the misuse of legal provisions while maintaining the victim's protection.

### **Modified in: *Social Action Forum for Manav Adhikar v. Union of India*, (2018) 10 SCC 443**

The Supreme Court later held that courts could not mandate the creation of extrajudicial committees like FWCs. However, it reiterated the importance of safeguarding procedural fairness and balanced enforcement.

## **3. Risk of Dual Arrests and Victim Criminalization**

### **Issue:**

In cases involving mutual accusations or lack of clarity regarding the primary aggressor, law enforcement may arrest both parties, including the actual victim, to avoid accusations of bias or negligence.

### **Unintended Consequences:**

- Re-traumatization of victims through unjustified arrest and detention.
- Discouragement of future reporting of abuse.

While there is no single landmark case directly addressing this issue, several High Courts (such as those in Delhi and Bombay) have emphasized the importance of identifying the primary aggressor and exercising restraint in dual arrests.

#### **4. Erosion of Trust in the Legal System**

**Issue:**

Overzealous or uncritical application of arrest powers can cause victims and their families to lose faith in the justice system, especially when arrests occur without substantial cause.

**Unintended Consequences:**

- Victims and their families may avoid formal legal channels, resorting instead to informal or community-based dispute resolution.
- Delays and non-cooperation during legal proceedings due to fear or disillusionment.

**Related Case: *K.V. Prakash Babu v. State of Karnataka*, (2016) 12 SCC 654**

The Court warned against generalising all complaints under Section 498A as false. It emphasised the need for case-by-case assessment to preserve both justice and fairness.

#### **5. Overburdening the Criminal Justice System**

**Issue:**

A surge in arrests, many of which may not be substantiated, can overburden courts, jails, and police resources, leading to systemic delays and reduced attention to serious or repeat offenders.

**Unintended Consequences:**

- Diversion of police resources from high-risk cases.
- Delays in the adjudication of genuine domestic violence complaints.

The Supreme Court in *Arnesh Kumar* strongly cautioned against routine arrests that strain the criminal justice system without improving outcomes for victims.

#### **6. Disproportionate Impact on Marginalised Communities**

**Issue:**

Mandatory arrest provisions, if misused or poorly implemented, may disproportionately affect individuals from lower socio-economic or marginalised communities, where police action can be influenced by social hierarchies or prejudice.

**Unintended Consequences:**

- Reinforcement of caste, class, or gender-based discrimination.
- Use of domestic violence laws as instruments of harassment rather than protection.

Though not explicitly addressed in a single landmark judgment, various High Courts (e.g., Madras High Court) have acknowledged that law enforcement practices must consider the socio-cultural context and avoid mechanical application of arrest powers.

Mandatory arrest policies in domestic violence cases must be applied with caution in India's diverse legal and social landscape. While such policies are designed to protect victims, they may inadvertently lead to legal misuse, erosion of trust in justice mechanisms, and systemic overload if not implemented judiciously. Recognising this, the Indian judiciary has taken steps—particularly through the *Arnesh Kumar* ruling and its progeny—to ensure that arrests are based on necessity, supported by evidence, and not conducted as a matter of routine.

Rather than adopting a rigid mandatory arrest framework, India appears to be moving toward a model of **context-sensitive policing, judicial oversight, and victim-centred support**, which collectively uphold both justice and procedural fairness.