

Gender Discriminatory Laws In India: A Critical Analysis

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ABSTRACT

Every society aspires to a criminal justice system that is fair, impartial, and transparent. Yet in India, disparities persist across lines of caste, class, and particularly gender. Sexism is not a new phenomenon; it is deeply rooted in stereotypes, patriarchal norms, and rigidly defined gender roles. While Indian laws have historically sought to protect women from violence and exploitation, they have simultaneously created blind spots in addressing male victimization. For instance, sexual offences under the Indian Penal Code are defined as crimes committed only against women, leaving men without remedies despite increasing reports of abuse against them. Similarly, provisions such as Section 498A IPC and the Protection of Women from Domestic Violence Act, though enacted with noble intentions, have often been misused, creating what some jurists describe as “legal terrorism.”

This paper critically analyzes gender-discriminatory laws in India by examining penal statutes, workplace harassment laws, and domestic violence provisions. It also highlights the disparity in sentencing practices where men are often punished more harshly for the same offences. By situating these issues within broader debates on equality, justice, and constitutional rights, the paper argues for the urgent need to reform laws through a gender-neutral lens. True justice requires acknowledging that crime is not gender-exclusive, and that victims and perpetrators can be men, women, or persons of any gender identity.

Keywords: Gender, Discrimination, Penal Laws, Equality, Justice, India

INTRODUCTION

Discrimination in the criminal justice system undermines the principle of equal protection under law. In India, gender disparities manifest not only in statutes but also in judicial practices, where men often face harsher scrutiny as accused or prisoners, while women are stereotypically perceived only as victims. Although women's incarceration rates are increasing globally, India's justice system has historically centered on male offenders, with limited recognition of men as victims of violence or harassment. This imbalance perpetuates stereotypes and impedes equitable justice. Criminological debates in the 1960s and 1970s—particularly feminist criminology—emphasized the need to study women's roles in crime and victimization. However, such frameworks often overlook the reverse dimension—namely, instances where men are subjected to discrimination within legal systems. For example, Indian penal provisions such as Section 375 IPC (rape), Section 498A IPC (cruelty by husband or relatives), and the Protection of Women from Domestic Violence Act, though intended to protect women, are often criticized for being misused or for failing to account for male victimization. As Carol Smart (1976) argued, neglecting female offenders reflected broader patterns of ignoring women's rights in society; similarly, neglecting male victims perpetuates systemic inequality. This paper argues that gender should not predetermine the categorization of victims and perpetrators. Rather, law must evolve toward gender-neutrality in defining crimes, providing remedies, and ensuring justice.

LITERATURE REVIEW

The literature on gender and law in India reflects diverse perspectives. Feminist scholarship has historically focused on women as victims of patriarchal oppression, with scholars such as Flavia Agnes (1999) emphasizing the importance of protective legislation for women. However, more recent studies, such as Kumar (2018), argue that overly women-centric laws risk perpetuating reverse discrimination against men. Internationally, Naffine (1990) has highlighted the inherent gender biases in legal systems, particularly in common law traditions, where laws often construct women as passive dependents. Comparative studies from the United Kingdom and United States show that

sentencing patterns frequently reflect stereotypes, with men receiving harsher penalties for similar crimes than women (Heidensohn, 2002).

In India, scholars such as Gautam Bhatia (2016) have criticized the judiciary's reluctance to recognize male victimization, particularly under sexual harassment laws. The Supreme Court's Vishaka Guidelines (1997) and the subsequent enactment of the POSH Act (2013) marked important milestones in women's rights jurisprudence, yet they remain gender-specific. Meanwhile, empirical research by NGOs like Save Indian Family Foundation indicates that misuse of provisions such as Section 498A IPC has become a growing concern, often leading to wrongful arrests and family breakdowns. This literature suggests that while legal reforms aimed at protecting women were historically necessary, there is now an urgent need to revisit these frameworks to incorporate gender neutrality and balance.

Methodology

This Study employs a doctrinal research methodology, relying on a systematic review of statutes, judicial decisions, and secondary academic literature. Primary sources include the Indian Penal Code (1860), the Code of Criminal Procedure (1973), the Protection of Women from Domestic Violence Act (2005), and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013). Secondary sources include peer-reviewed articles, law commission reports, and comparative studies from international jurisdictions. Case law analysis draws upon landmark decisions of the Supreme Court and various High Courts, including **Vishaka v. State of Rajasthan** (1997), **Shiv Narayan Dhingra's observations on Section 498A IPC**, and **Vishnu Tiwari v. State of U.P.** The methodology ensures incorporation of both doctrinal analysis and critical perspectives, thereby enabling a comprehensive understanding of gender discriminatory laws in India.

Thematic Analysis

1. Penal Laws and Gender Discrimination

The Indian Penal Code (IPC) forms the backbone of criminal law in India. However, several of its provisions are gender-specific and contribute to unequal treatment. Section 375 of the IPC defines the offence of rape exclusively as a crime committed by a man against a woman, thereby excluding the possibility of male and transgender victims. This provision rests on the assumption that women are invariably victims of sexual violence, while men cannot be subjected to such harm.¹ Similarly, Section 498A IPC, which criminalizes cruelty by the husband or his relatives, was enacted to protect women from domestic violence and dowry-related harassment. While its intent was progressive, the provision is frequently criticized for being susceptible to misuse. The Supreme Court, in **Rajesh Sharma v. State of U.P.** (2017), acknowledged the growing trend of false complaints under Section 498A, leading to wrongful arrests and harassment of husbands and their families.² The absence of reciprocal legal protections for men and the lack of recognition of male victimization in domestic settings reflects the gendered bias of penal statutes.

2. The POSH Act, 2013

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, popularly known as the POSH Act, was enacted in response to the landmark judgment in **Vishaka v. State of Rajasthan** (1997).³ The Act provides comprehensive mechanisms for addressing sexual harassment at workplaces. However, its gender-specific formulation restricts its applicability to women employees alone, thereby excluding male and transgender persons who may also face harassment in professional settings.

This exclusion is inconsistent with global best practices, such as Title VII of the U.S. Civil Rights Act of 1964, which prohibits sexual harassment irrespective of the victim's gender. By framing harassment solely as a women's issue, the POSH Act perpetuates stereotypes and fails to acknowledge the diverse realities of workplace misconduct.

3. Domestic Violence and Gender Bias

The Protection of Women from Domestic Violence Act, 2005 (PWDVA), marked a significant step in addressing domestic abuse. The Act provides for protection orders, residence orders, and monetary

reliefs for women victims of domestic violence. While its objectives are laudable, the Act's gender-specific nature has been widely debated.⁴

Studies by NGOs such as Save Indian Family Foundation highlight that men also suffer from domestic abuse, including physical, emotional, and financial violence. However, the PWDVA does not extend protection to them. This selective approach undermines the principle of equality before law under Article 14 of the Constitution of India. Judicial pronouncements, such as **Hiral P. Harsora v. Kusum Narottamdas Harsora** (2016), have attempted to broaden the scope of the Act by striking down restrictive provisions. Yet, the statute remains fundamentally gender-specific.

4. Sentencing Disparities

Gender biases are also evident in judicial sentencing practices. Empirical studies show that women are often handed lighter sentences compared to men for similar offences.⁵ The rationale usually rests on the perception of women as primary caregivers or as less culpable offenders. This judicial leniency, although well-intentioned, undermines the principle of proportionality in sentencing. For example, in **State of Rajasthan v. Shri Chand** (2015), the court considered the accused woman's familial role as a mitigating factor, thereby reducing her sentence. Conversely, men rarely receive such consideration, reflecting the entrenched stereotypes about gender roles in family and society.

Findings and Discussion

The analysis highlights the persistence of gendered assumptions in Indian criminal law. Statutes such as Section 375 and Section 498A IPC, along with gender-specific laws like the POSH Act and PWDVA, reflect a one-sided view of gender relations. While these laws were historically necessary to address systemic oppression of women, their contemporary application often leads to reverse discrimination. Furthermore, judicial sentencing practices reinforce stereotypes by treating women more leniently while imposing harsher penalties on men. Such disparities undermine both substantive and procedural fairness, violating constitutional mandates of equality and non-discrimination. Comparative perspectives from jurisdictions such as the U.S. and U.K. demonstrate that gender-neutral laws not only expand protections but also enhance the legitimacy of the legal system. Therefore, there is an urgent need to recalibrate Indian criminal law to reflect evolving gender realities.

Limitations and Future Scope

While this study critically examines gender-discriminatory laws in India, especially the ways in which men encounter bias under penal laws, domestic violence statutes, and workplace harassment provisions, it is not without limitations. The scope of the analysis is primarily doctrinal and relies heavily on statutory interpretation, judicial precedents, and secondary sources. This means that the lived realities of affected individuals are only indirectly captured. A more empirical exploration—through surveys, interviews with male victims, consultations with legal practitioners, and engagement with policymakers—would add depth and nuance to the present work.

Future research may extend beyond the Indian legal system to include a comparative study of jurisdictions such as Canada, South Africa, or the United Kingdom, where gender-neutral frameworks in domestic violence or workplace harassment laws have been attempted. Such comparative insights could provide valuable guidance for reform in India. Moreover, the intersection of gender with caste, class, and sexuality deserves greater academic attention, as discrimination is rarely experienced in isolation. By broadening the scope in this direction, scholars and policymakers will be better equipped to design inclusive frameworks that ensure justice for all, irrespective of gender identity or social background.

CONCLUSION AND SUGGESTIONS

The Constitution of India ensures liberty, equality, and equal protection of rights to all citizens, yet gender-discriminatory laws continue to undermine these principles. The analysis presented in this paper demonstrates how statutory provisions, judicial interpretations, and institutional practices often tilt in favor of women while overlooking men's vulnerabilities. This is particularly evident in

the operation of Section 498A IPC, the Domestic Violence Act, and the POSH Act, which, though well-intentioned, have sometimes been misused to the detriment of innocent men and their families. What emerges clearly is that lawmaking should not be guided by rigid gender stereotypes. Victims and perpetrators cannot be pre-judged based on gender. As Indian society evolves in the 21st century, the legal framework must also evolve to reflect gender neutrality. This does not mean diluting protections available to women; rather, it means extending safeguards to all individuals, including men and transgender persons, in recognition of the reality that exploitation and violence can be inflicted by and upon any gender.

To move in this direction, reforms must be undertaken with caution and balance. Special protections for women should be retained where they remain essential, but equal remedies must also be created for men facing harassment or violence. Legal literacy campaigns, gender-sensitization of the judiciary, and robust mechanisms for screening false cases should complement these reforms. Ultimately, the credibility of India's justice system rests upon its ability to uphold fairness and impartiality for every citizen. Laws should be a shield for the vulnerable, not a weapon for exploitation.

Gender discriminatory laws in India reflect the tension between protective legislation for women and the broader principle of equality before law. While such laws were originally enacted to redress historical oppression, their continued gender-specific formulation now creates new forms of injustice. A balanced approach requires moving towards gender-neutral statutes that recognize all individuals as potential victims or perpetrators. Key recommendations include:

1. Amending Section 375 IPC to recognize male and transgender victims of sexual assault.
2. Reforming Section 498A IPC to include safeguards against misuse and to incorporate protections for men.
3. Making the POSH Act gender-neutral in line with international standards.
4. Extending the PWDVA to cover all victims of domestic violence irrespective of gender.
5. Developing sentencing guidelines that prevent gender-based disparities.

Such reforms would strengthen the criminal justice system by ensuring that justice is blind to gender, upholding the constitutional mandate of equality, and enhancing the credibility of the legal system.

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