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# Gender Bias in Indian Laws: Addressing the Overlooked

**Jenisa Gracias and Arshy Srivastav**

*Law Students, 2<sup>nd</sup> Year,  
KES' Shri. Jayantilal H. Patel Law College, Mumbai.*

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## ABSTRACT

*Historically, women were always treated secondary as men were given priority by most of the traditions and customs. Because of this patriarchal framework of the society woman hardly had any rights. To tackle this problem the lawmakers brought laws that would protect and improve the condition of women but they went one step further and passed gender-specific laws, making it harder for the male victims to get justice. During this time, the judiciary also became more active in defending women. However, by analyzing significant laws, it indicates that we have gone too far on the other extreme, given the evolution of laws to promote gender equality. Men and women both face discrimination, injustice and both can be the victims but currently there are few Indian laws which completely deny victimization of men and the laws present for women's protection lacks practicality. Gender equality was intended to be achieved by the laws designed to benefit women, but instead they are increasing the gender division. There is some sort of social backlash in society as a result of the gap between men and women and men's resentment over the perceived reduction in their rights, which makes them the targets of laws that favour women. Laws should treat all the genders equally.*

## KEYWORDS

*Gender-bias, discrimination, protection, victim, equality, Indian laws.*

## INTRODUCTION

### ***Gender Bias***

The word 'Bias' means a wrong or false perception or prejudice, which can be for or against a group of people. These perception is mostly based on stereotypes relating to characteristics like race, gender, caste etc. Gender Bias refers to treating people differently either in more or less favourable ways based on their gender.

Most of the time Gender bias occurs because of the beliefs that one gender is superior or inferior to the other, this leads to different treatment which is based only on stereotypes rather than real differences. Everyone is biased to a certain extent, but it doesn't mean that biasness is harmless. Any and every kind of biasness effects the society, it creates a division between people, it can also be a hindrance in people's life. Gender bias is frequently a form of unconscious or implicit bias. It takes place when someone unintentionally assign fixed attitudes and stereotypes to someone else. That is the reason why it is important to be aware of the happening of gender biasness in the society because often people don't even realize that they are treating people differently.

An example of gender biasness can be, employers preferring a male applicant more over a female applicant for a 'leader role' because of their prejudice that men are more dominant, whereas preferring a female applicant over a male for job requiring more empathy and sensitivity based on the stereotype that female are more sensitive in comparison of male.

### ***Difference between Gender Bias and Gender Discrimination***

People often use the terms gender bias and gender discrimination equivalently but they are not the same. Gender biasness happens when people unconsciously prefer one gender over another, they are not aware of their actions while doing so. But Gender discrimination is an intentional action where someone is treated unjustly because of their gender, while doing Gender discrimination people often are conscious of their actions towards the others. Gender biasness can be harder to identify in comparison to discrimination, as biasness is implicit whereas discrimination is often explicit. Even though gender bias and discrimination are different on few parameters, both contributes to the inequality present in society. To curb these issues, it is important to create awareness and take action on both individual and societal level.

### ***Importance of analyzing gender biasness in legal system***

Analyzing the gender biasness in a legal system is important because by analyzing we can create awareness among people which will induce people into being conscious of the disparities present in law. Laws are important part of societies, government make laws to punish the wrong-doer and protect the innocent, so any kind of biasness might lead to injustice. It is very important for everyone to be equal before the law, and to receive equal protection of laws.

### ***Why Equality is Important?***

Equality is not only important because it is essential in providing justice but it is also important for a harmonious society. If people are treated equally then they also lead to less social tension, the conflict will considerably reduce among male, female, communities etc. Equality is also important because it provides same opportunity to everyone, it will also help in economic development. Equality promotes peace in the societies.

## **CONSTITUTIONAL PROVISIONS RELATING TO EQUALITY**

### ***Constitution's role in promoting Equality in India***

The Constitution of India was enforced on 26th of January in the year 1950. It is one of the longest written constitution of the world. Role of the Constitution for promoting equality is very significant, as it provides a base for equality and non-discrimination in the country. Despite there being no specific use of the word "gender-neutral laws" in our constitution, there are various articles which fully support or are in favour of gender equality.

Constitution ensures equality by preserving individuals' fundamental right, keeping people away from discriminating each other's, also encouraging the government to take actions for the welfare of people. Various articles of Fundamental Rights, DPSP, fundamental duties etc. in constitution provides that everyone have equal opportunity. Every person is considered equal in the eyes of the constitution, i.e., no one is better or worse than anyone else in any way, and everyone is entitled to fair and equal treatment and equal opportunity. The Indian constitution itself, even in the preamble, states that India is a sovereign social is secular democratic republic that ensure justice equality and fraternity to its all citizen.

### ***Fundamental Rights***

Fundamental Rights are present in Part 3 of the Indian constitution. Fundamental rights are important as it talks about individual liberty, challenge the discriminatory practices and also sustain the equality of each individuals. If the Fundamental Right of any individual is violated, they can seek legal remedies in court, but it should be kept in mind that these rights are not absolute and they are subjected to reasonable restrictions. Articles 14-18 guarantee equality of an individual.

Article 14 speaks of equality before the law and equal protection of law, which means equality for all in eyes of law whatever class you belong or what religion you are. Article 15 forbids the discrimination of an individual on the basis of their religion, race, caste, sex or place of birth. Article 16 make sure that there is equal opportunity provided in public employment, banning discrimination on the reasons mentioned in article 15. Article 17 talks about the abolition of untouchability, to curb the sentiment of one caste being superior or inferior to others and makes it a punishable offence. Article 18 abolishes any kind of titles to ensure the equality of status among citizens. These Articles mostly focuses on equality but indirectly it supports the principles of gender neutrality, making sure no kind of biasness takes place.

### ***DPSP***

DPSP stands for Directive Principles of State Policy, are given in Part 4 of the Indian Constitution. It helps in guiding the government into making policies and taking actions which will result in overall development and uplifting of the society. DPSP cannot be enforced in the court, they act more as a moral compass for the government. DPSP aims to minimize the inequality present in income, status, facilities and opportunity provided; leading to a more impartial society.

Article 39, and its sub-clause advise for the equal distribution of resources require in maintaining a livelihood, and equal pay for equal work for all the genders. This article encourages equal representation and participation of male and female in the work field. Article 44 suggest the application of a Uniform Civil Code (UCC), which focuses on creating a common set of personal laws for all the citizens, irrespective of their gender and religion. This article has the ability to address the present gender biases in the personal laws.

## **ORIGIN OF GENDER BIAS LAWS**

Laws are often influenced by the societal norms of the country, performing the custom and traditional practices for many

centuries will lead to the practices being transformed into codified legal norms. In India there are various traditions and customs which have been followed from the ancient times. Often times these traditions or customs are the very main reason because of which difference between people are created, as these traditions generally place women and other marginalized communities on an inferior position than that of men. For instance, men have more privileged than women, women were always supposed to follow the custom no matter how rigid and unreasonable it was. Few examples of such laws that have historically favoured men are that of marriage, inheritance and property rights.

This patriarchal framework of society often times keep women in the vulnerable positions, to tackle this problem protective laws for women have been made. Example of such protective laws are Domestic Violence Act, 2005, and the Dowry Prohibition Act, 1961. While these laws are very important for the betterment of women, they also establish a 'gender-specific' definition of victim and perpetrator in people's mind. Many people do believe that women cannot be wrongdoers and men cannot be the victims of crimes such as rape. Because of these kinds of believes male and LGBTQ+ individuals who faced similar grievances remained unseen by the law.

## **GENDER BIAS IN FAMILY LAW**

### ***Family law***

Family law is formed by the codification of relevant portions of religious texts of the respective religion, to regulate the occurrence of personal events such as marriage, divorce, adoption, guardianship, maintenance etc. There are separate laws which governs Hindus, Muslims, Christian, and follower of other religion. In all over India there are only two states Uttarakhand and Goa where a Uniform Civil Code is applied, and all religion have a common law regarding marriages, divorces and adoption.

### ***Hindu Laws***

Historically, Hindu Law have demonstrated gender bias. Earlier according to Hindu Succession Act, 1956, daughters had limited to no right to inherit property from their paternal ancestor whereas sons were considered as an heir by birth. And according to Hindu Adoption and Maintenance Act, 1956, a married Hindu woman also lacked the right to adopt a child on her own, even with her husband's consent. These laws which created disparities between gender were soon amended, the Hindu Succession

Amendment Act, 2005 gave rights to the daughters to inherit the property and the Personal Laws Amendment Act, 2010, make sure that both women and men stand on the same level in the matter of adoption. Formerly maintenance after divorce were mostly given by men, it is only in recently that women have been held liable to provide maintenance to the ex-husband. Even the custody of the children is often given to the wife (female) and not the husband (male).

But there are still few differences which are present, for example, a single Hindu male cannot adopt a girl child, whereas a single Hindu female can adopt child of any gender.

### ***Muslim Laws***

The primary sources of Muslim laws are The Quran, Sunnah or Hadith (Traditions), The Ijma and, Qiyas. Most Muslim personal law is based on these primary sources, also called the formal sources of Muslim Law. Certain laws concerning marriage, divorce and inheritance of the Muslim law are said to be perpetuating gender bias and inequality. Muslim law allows men to have multiple spouses, whereas women are not allowed to do so. Earlier, in Muslim law marriage is considered as a contract, but men were allowed to divorce their wives unilaterally, this practice of triple talaq has been declared unconstitutional in 2017, following the consequences of Shayara Bano case. Women have the right to obtain the property, but they are only eligible to half the share of a male relative and only men are termed as legal heirs.

Strong presence of patriarchal mindset and the resistance towards any kind of reform or change is the main reasons why these unequal laws are still in existence.

### ***Christian and Parsi Laws***

Indian Christian and Parsi laws are quite fair as compared to many other personal laws at various points in time, but there too, there are instances of gender bias creeping in, particularly when it comes to inheritance and succession. These disparities are likely to be more pronounced among Parsis than under the laws currently applicable to them.

## **CRIMINAL LAWS AND GENDER DISCRIMINATION**

### ***Section 498A of Indian Penal Code***

Section 498A was included to the Indian Penal Code after the second amendment to the criminal code was approved in 1983. It was designed to shield married women from abuse of any kind by

their husbands or relatives. It includes behaviours that could lead to suicide, harassment for dowries, and conduct that threaten their bodily or mental health. In addition to physical violence, the paragraph recognizes that cruelty can also take the form of emotional and psychological abuse. Because there is no equivalent provision for males who experience cruelty from their wives or her family after marriage, it is evident that this law primarily protects women.

Section 498A has become an intense debate since many years because of its misuse by filing false cases against the husband or in-laws or relatives because of the internal fights between the couple or the family. This leads to harassment and wrongful arrest of an individual. Many women in the society use this law as a weapon rather than a shield. From 2011 to 2013, about 31,292 cases that were filed by women under Section 498A which alleged cruelty by husbands and in-laws were found to be false or mistake of fact or law after the police investigation was been done, said Minister of State for home affairs Haribhai Parathibhai Chaudhary in the Lok Sabha in March 2015. Supreme Court criticised this in 2024 as 'growing misuse' of IPC section 498A against husbands and their kin for 'personal vendetta'.

According to the law commission's report, Sec. 498-A is a provision that is frequently abused in the Indian judicial system; the Supreme Court has referred to it as a "legal terrorism." The main reason for this abuse is that, this law is not gender neutral. In recent years, women have been abusing these rules by making false accusations against their husbands and in-laws in an attempt to exact revenge on them and to deflate their social status. The NCRB Report 2020 states that about 1,11,549 cases were filed under section 498-A IPC, out of which 5,520 cases were found to be false and 16,151 cases were either false or was said to be a mistake of fact or law or it was because of insufficiency of evidence etc.

### ***Section 375 of Indian Penal Code***

"The unlawful carnal knowledge of a woman by a man forcibly and against her will" is how the Black Laws Dictionary defines rape. The definition in India goes beyond that specific act to encompass any foreign object that enters the mouth, urethra, anus, or vagina without the woman's consent. This implies that, regardless of the situation, rape still occurs when a woman is forced, deceived, drunk, or not in a sound mental state. There is a clear mention in this law that a rape offender is always a man and victim is always a woman. Section 375 of IPC defines Rape as a cognizable offence



but sadly there are no rape laws for men. Rape is a general term considered by the society where we think that it is always committed by men against women. It is conceptualized that woman is always a rape victim and men is always the predator and Section 375 of IPC defines rape but sadly only for women. There is a stereotype in the law as well as the society that men cannot be raped by a woman. According to NCRB report 2021, India lodged average 86 rapes daily, 49 offences against women per hour. In India, the Rape law only defines women as a victim and there is absence of any kind of law that states rape of a male by a male or rape of a male by a woman. Infact, even Bharatiya Nyaya Sanhita (BNS) has no section dealing with rape of men. The Bharatiya Nyaya Sanhita, which will soon be put into effect, does not contain Section 377 or any other section that addresses rape of men and transgender people. This is made clear by the reported suicide of a 23-year-old man in the Gorakhpur district of Uttar Pradesh, hours after he was gang-raped by four men. Male rape victims confront a legal gap where no fresh cases can be recorded because of punitive legislation, according to Supreme Court attorney Nipun Saxena. These victims have no legal redress because the BNS has no provisions that could address such offenses. A PUCL Karnataka survey claims that transgender women and men are equally vulnerable to sexual assault. Of male college students, 10.5% had experienced rape, and another 10.5% had been the target of an attempted rape, according to the survey. In a different survey, the Centers for Disease Control and Prevention reported that 67.4% of women had experienced sexual assault. The National Crime Bureau (NCRB) reports that approximately 74% of rape cases under Section 376 of the Indian Penal Code which were filed were false. 40% of the rape cases from these were filed against the boy because the girl's family did not want to get the couple married.

### ***Section 354A of Indian Penal Code***

Under Section 354A of the Indian Penal Code (IPC), sexual harassment is punishable and has provisions for unwanted physical contact, asking for sexual favors, showing pornography against a woman's will, and making sexual comments. In India, there are no particular legal provisions that allow adult male victims of sexual harassment to defend themselves and hold wrongdoers accountable. There was an incident in India, where when a male went to report the harassment case, the Superintendent of Police (SP) remarked him that “Ladki chhed rahi hai toh chhid jao na!” (If a girl’s teasing you, why don’t you just be happily teased). In India, men's sexual harassment is a serious issue, yet it is rarely discussed or recorded. In 1981, the People's Union of Civil Liberties made the following statement

regarding Tihar, according to G Pramod Kumar: "When a young boy enters, the prisoners have been known to have bid a price for the boy." The cost is expressed in "bidis," soap, or charas. Prisoners have frequently been split up into camps, and the groups have fought over who gets to receive the newcomer. A research by the National Commission for Women in 2022, discovered that 3,000 incidences of sexual assault on men were reported and 1.4% of Indian men reported were victim of sexual harassment.

### ***Section 354B of Indian Penal Code***

Section 354B of the Indian Penal Code (IPC) says that assault or the use of unlawful force towards a woman with the intention of undressing her or to force her to be nude is punishable. When it comes to Section 354B, it favours women whereas even male faces sexual assault and molestation. It is a huge problem in India. According to report, every year more than 3500 men suicide in India due to increase in number of molestation cases in India. Also, many cases turn out to be false. 30,000 cases of molestation were filed against men in the year 2013-2014 and 75% of the cases out of them were false according to the data given by National Crime Records Bureau Delhi.

### ***Section 354D of Indian Penal Code***

Stalking is defined in Section 354D's first subsection. According to this, a guy may be accused of stalking if he engages in any of the following behaviours:

- i. **Follows a lady:** This entails physically pursuing a lady, following her about, or physically monitoring her.
- ii. **Numerous Contacts or Attempts to Contact:** The male makes numerous attempts to get in touch with the woman. Calls, messages, and other forms of contact can be used for this.

The stalking law only stands for female and not male. According to a report there is a stalking case every 55 minutes in India and still it is not seen criminal enough. Cyber law expert and Supreme Court lawyer Karnika Seth had said that she gets four to five cases of cyberstalking everyday out of which she had seen that 75% of the victims were women but now she observed that the ratio of male and female in the cyberstalking cases is 50:50. This means that there are so many males who face stalking but still they don't have a stalking law for them.

### ***Section 497 of Indian Penal Code***

Section 497 of the Indian Penal Code (IPC) defines adultery, where it criminalizes a man for having sexual intercourse with someone else's wife without the ma's consent or convenience. Whereas same does not applies to the Woman and it gives unequal voice to the partner. Even the Supreme Court of India had stated that Adultery law is biased against men.

### ***Domestic Violence Act, 2005***

The protection against domestic violence is limited to women, and the Act has not acknowledged the reality that men can also become victims of this crime in cases of marital conflict. India ranks third in the world for wife beatings of husbands, according to UN crime data. The Domestic Violence Act of 2005 reads in Section 3(2). It only discusses women; if a man is a victim, he will have no recourse. That harasses, hurts, injures, or puts the victim in danger in order to force her or anyone connected to her to comply with any illegal demand for a dowry or other property or valuable security.

### ***Sexual Harassment of Women at Work Act, 2013 (POSH)***

The POSH Act contains provisions that interpret gender biasness, since its main concern is sexual harassment faced by women at work but not men. The act allows for a more expansive interpretation because it does not specifically exclude men or LGBTQ+ people. The Act's breadth would be strengthened and everyone's workplaces would be safer if it were amended to specifically include protections for men and LGBTQ+ employees. According to 2010 Economic Times-Synovate Survey, out of 527 men surveyed in several metros of the country, 51% claimed that they had faced sexual harassment at work.

### ***Marital Rape in India***

Domestic violence in India is a deep-seated issue, and it has only worsened in recent years. The National Crime Records Bureau's (NCRB) 'Crime in India' report for 2019 states that approximately 70% of Indian women are victims of domestic violence. One of the forms of this domestic violence is Marital rape. Marital rape, forcing your spouse into sex without consent, is an unfair but not rare method to humiliate and disenfranchise women. India is among only 36 nations where marital rape still remains uncriminalized. Although numerous legal amendments have been made in criminal law for women's protection, the non-criminalization of marital rape in India devalues the dignity and

human rights of women. The codification of rape as defined in Section 375 of the Indian Penal Code encompasses all manner of sexual assault by way of non-consensual intercourse with a woman. Non-Criminalization of marital rape in India flows from Exception 2 to Section 375. However, Exception 2 to Section 375 excludes sexual intercourse without consent between a husband and a wife over the age of fifteen years from the offence of "rape" under Section 375 and consequently provides immunity to such acts from prosecution. According to existing law, a wife is assumed to give ongoing consent to engage in sex with her husband once she has entered into marital relations. The idea of marital rape in India is the very essence of what we can term as an "implied consent". When a man marries a woman here, both are understood to have agreed for sexual intercourse and it cannot be otherwise.

### **STEPS TO REORIENT INDIAN LEGAL SYSTEM**

The Indian judicial system has progressed considerably in protecting justice, rights, and equality. Nevertheless, judicial stereotyping, gender bias, and statutory provisions lacunae continue to impact the system. To progress towards an even more justiciable system that guarantees equal rights and equal opportunities for everyone, it is necessary to confront these challenges head-on and set a course ahead. Some of the means through which advancement can take place towards a more complete and equitable legal system are:

#### ***Sensitizing the Judiciary***

Efforts can be made towards sensitizing judges and legal personnel to their biases and challenging them. Training courses and seminars could be conducted with the aim of generating awareness of gender stereotypes and unconscious bias, and how these influence the administration of justice. By creating a sensitive and tolerant culture, the judiciary would be able to address gender bias in an anticipatory manner and accord equal and fair treatment to all.

#### ***Improving Legal Education***

Legal schools and institutions need to incorporate courses on intersectionality and gender studies into their curriculum. Offering full legal education that incorporates the study of gender will enable students to gain an in-depth knowledge of gender equality and become champions of change.

## CONCLUSION

Gender bias is still a serious concern in Indian laws; it is an issue that also derives from deeply rooted social norms and historical inequalities. However, despite having made some strides in addressing gender discrimination through various legal initiatives and constitutional guarantees, there are many laws that either perpetuate patriarchal structures or fail to extend the full protection of laws to all genders. An in-depth analysis of such laws highlights deficiencies in legal protections as well as inequalities in their execution, which too often amounts to injustice.

One of the most striking features of gender-biased laws is their historical basis, where provisions of law were created mainly to shield women and not to empower them as equal citizens. Although the protective strategy sought to protect women from exploitation, it ended up perpetuating stereotypes that consider them weaker and dependent. For instance, legislation such as Section 497 of the IPC (Adultery Law), which has now been repealed by the Supreme Court, viewed women as passive actors in extramarital relationships, and not as independent individuals. We can also see gender discrimination in sexual offenses and domestic violence laws. An important law for safeguarding women against violence, The Protection of Women from Domestic Violence Act, 2005 does not acknowledge male or LGBTQ+ victims of domestic violence, which leaves them with hardly any legal options to get justice. Similarly, various sexual harassment and rape laws are mostly drafted by keeping women in mind only as a victim and men as a perpetrator, not vice versa. It promotes the stereotype that men and transgender people cannot become victims of sexual offenses. Such unilateral legal practice affects the justice delivery system at times, often leading to the abuse of laws and false charges, which further polarize gender issues in legal discourse.

Gender disparity in Indian legislation is also reflected in the marriage, divorce, and guardianship laws, in which personal laws often tend to treat men more favourably, especially in issues regarding maintenance, child custody, and alimony. Although Hindu, Muslim, Christian and Parsi personal laws have legal regulations for marriage and divorce, they are gender-interpreted often to the detriment of women. The advocacy of a Uniform Civil Code (UCC) aims to eradicate such biases, but the act of implementing one is a contentious issue politically and socially. Likewise, women's inheritance and property rights, while legally empowered over the years, continue to be challenged in implementation because of social resistance. The legal provisions such as the POSH Act, 2013 have also played an important role

in protecting women's rights in workplaces despite this, their implementation is uneven, particularly in the unorganized sectors where most women are employed.

To fight the gender discrimination in Indian legislation, it is required to adapt a more multifaceted or multi-layered approach. There should be legal reforms aimed at making protective legislation neutral, keeping in mind that any individual, whether it be, men and women, as well as LGBTQ+ people, can be victims of crimes and injustices. Enhancing the implementation apparatus, increasing sensitivity training for law enforcement and judiciary, and raising awareness among the populace can close the distance between legal provisions and actual gender justice. The legislation must be progressive, gender-neutral, and empowering instead of protective. Real justice can be achieved when legal systems are equitable, unbiased, and attuned to modern-day social realities and provide equal opportunities and protection for all individuals, irrespective of gender.

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