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Unequal Vows: Gender Bias in Marriage & Divorce Laws

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ABSTRACT

*Marriage and divorce laws, while often portrayed as gender-neutral, are deeply embedded with systemic biases that disproportionately affect women. This paper critically examines the legal frameworks governing marriage and divorce in India, highlighting the inherent gender disparities perpetuated through personal laws and judicial interpretation. Despite constitutional guarantees of equality, women often face discrimination in matters of alimony, custody, property rights, and the grounds available for divorce. For instance, while men may benefit from quicker legal redress and favorable financial outcomes, women are frequently left vulnerable—economically and socially—post-divorce. The multiplicity of personal laws governing different religions further complicates the issue, resulting in inconsistent protections and outcomes. Case laws such as *Sarla Mudgal v. Union of India* and *Shayara Bano v. Union of India* underscore the tension between personal laws and the right to gender equality. This study explores how patriarchal constructs continue to shape legal norms, despite judicial efforts to interpret laws progressively. It also proposes legal reforms aimed at ensuring that marriage and divorce laws align with the constitutional ethos of equality and justice. By spotlighting these imbalances, the paper seeks to contribute to the broader discourse on gender justice and legal accountability in family law.*

KEYWORDS

Gender, Marriage, Divorce, Inequality, Reform

INTRODUCTION

It is often difficult for society to acknowledge that men, too, can be victims of domestic violence, and that women can be the

aggressors. Yet, this reality exists and deserves recognition. Despite this, there are currently no legal provisions under Indian domestic violence laws that offer protection to men, leaving them without formal avenues for justice or support.

Recognizing that someone is being abused is never easy—especially when the abuse happens quietly, behind closed doors. For men in India, the silence is often even louder. Domestic violence against men remains vastly underreported, not because it doesn't happen, but because it's hard for many to believe it does. Deep-rooted stereotypes paint men as always strong, always in control—leaving little room to accept that they, too, can be vulnerable. Fear of not being taken seriously, the threat of false counter-allegations, immense societal and familial pressure to "man up," and even denial from the victims themselves all contribute to the silence. The cultural and emotional barriers that surround male victimhood prevent us, as a society, from truly acknowledging the pain and injustice many men silently endure.

WHAT IS THE DEFINITION OF DOMESTIC VIOLENCE AS PER INDIAN LAWS?

In simple terms, domestic violence refers to any form of abuse that happens within a home—often between partners or family members. Legally in India, it is defined under the Protection of Women from Domestic Violence Act, 2005, which describes domestic violence as any act, omission, or conduct that harms or threatens the physical, emotional, verbal, sexual, or economic well-being of a woman in a domestic relationship. The person who suffers this abuse is known as the victim, while the one who inflicts it is referred to as the perpetrator—or, in legal terms, the accused.

While the Act specifically protects women, the emotional and physical suffering caused by domestic abuse is not limited by gender. It is important to recognise that men can also be victims—yet they currently remain outside the protection of this law. The silence around male victimhood doesn't make the pain any less real; it only makes it harder to heal.

Domestic violence features centrally in much of the law, ranging from family law through to the law of torts. But when discussing the criminal justice system, the debate tends to be influenced by deeply ingrained cultural understandings—most notably the icon of the woman as the lone victim. This limited focus gives rise to a gender-discriminatory view of domestic violence, one in which men are nearly always in the role of perpetrator and never victim. But the issue is more complicated than that.

Women also exhibit violent behavior in relationships, and the causes can be equally complex ranging from economic pressure, educational or income differences between the partners, emotional problems such as jealousy or rage, efforts to exert control, or even alcohol or drug use. Nevertheless, male domestic abuse victims are still very much out of sight and out of mind in public life and policy.

A recent study in India found that over 50% of men reported experiencing domestic violence—whether emotional, verbal, or physical—at the hands of their spouse or partner. These are not just numbers; they reflect real people enduring real pain, often in silence. Unfortunately, because this form of suffering doesn't fit the conventional narrative, it remains hidden, unrecognised, and unsupported by existing laws.

LAWS RELATING TO DOMESTIC VIOLENCE IN INDIA

There are several laws in India that deal directly with domestic violence, providing protection to women against such acts. The existing laws are as follows:

1. Section 80 of the Bharatiya Nyaya Sanhita (BNS)

In India, several laws have been put in place to protect women from domestic violence, especially when abuse escalates to dangerous or even fatal outcomes. One such provision is Section 80 of the Bharatiya Nyaya Sanhita (BNS), which deals with the tragic and deeply concerning issue of dowry deaths.

According to this law, if a woman dies due to burns, injuries, or under suspicious circumstances within seven years of her marriage, and it is proven that she was subjected to cruelty or harassment by her husband or his relatives for dowry before her death, then her death is classified as a *dowry death*. In such cases, the law presumes that the husband or the relative is responsible for her death.

The punishment is severe—a minimum of seven years in prison, which can extend to life imprisonment. This legal provision reflects the seriousness with which the Indian legal system treats violence related to dowry, recognising the grim reality faced by many women in their marital homes.

2. The Protection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act, 2005 was a watershed moment in Indian legal history, brought in to recognize and address the various types of abuse women can suffer at the

hands of their own kin—not only physical violence, but also emotional, verbal, sexual, and economic abuse.

This legislation was enacted to safeguard women in domestic relationships, whether they are wives, daughters, mothers, sisters, or live-in partners. It acknowledges that abuse does not necessarily leave marks—it can be the silent agony wrought by controlling behavior, constant belittling, threats, economic dependence, or even being tossed out of the house.

The Act gives power to women to pursue protection, residence orders, child custody, and maintenance without the need to apply for divorce or a legal separation. It also provides for swift relief from protection officers and magistrates, recognizing the fact that victims require the assistance of a quick rescue rather than a long-drawn-out court process.

Though the law was a giant leap towards acknowledging the truth women live with behind closed doors, it is also worth recalling that support networks and legal measures need to keep pace with covering all victims of domestic violence, not just female ones.

3. The Dowry Prohibition Act, 1961

The law treats the problem of dowry with utmost seriousness, acknowledging it to be an objectionable tradition which tends to subject families to unbearable pressure and risk the lives of women. Dowry, in this Act, is defined as any property or valuable thing which is transferred—or even agreed to be transferred—before, during, or after marriage, as a condition thereof.

To discourage such a practice, Section 3 of the Act stipulates severe punishments. If a person gives, receives, or even assists in the giving and taking of dowry, they can be sentenced to at least five years of imprisonment, besides a fine of at least ₹15,000, or the amount of dowry—whichever is greater.

This provision is an indicator of a strong stand taken by the legal system: that marriage must never be regarded as a transaction, and that no individual should ever be compelled to give or demand anything in the guise of tradition. It's a move towards safeguarding women's dignity and encouraging justice and equality in the marital relationship.

4. Section 498A of the Indian Penal Code (IPC) (Section 85 of the BNS (Bharatiya Nyaya Sanhita))

It is another very important law meant to safeguard women from cruelty in marriage. It specifically addresses the cruel treatment a woman can receive at the hands of her husband or his relatives.

Cruelty, as defined under this section, comprises any act that puts a woman's life or health in jeopardy, whether it's physical assault, psychological harassment, harassment, or threats.

This act gives women the authority to take legal recourse if they are exposed to cruelty in the form of mental or physical torture, usually followed by dowry demands. The accused shall be punishable with imprisonment for a term extending to three years and a fine upon conviction under this section.

Section 498A was meant to provide women with a legal recourse where the abuse is so great that it endangers her well-being or even her life. But the law has also come under criticism for abuse in certain situations, with calls for its balanced enforcement to ensure that it's applied evenly, without being misused to settle petty scores.

However, it continues to be a valuable weapon against domestic violence, seeking to provide women with legal support to escape dangerous situations, assert their rights, and prosecute the abuse to which they are subjected.

Cruelty Under Section 498A IPC (Now Section 85 of the Bharatiya Nyaya Sanhita)

LACK OF LEGAL PROTECTION FOR MALE VICTIMS

In the new Section 85 of the BNS, the definition and application of cruelty continue to be one-sided. It only sees women as victims, without ever considering the possibility of men being subjected to emotional, psychological, or even physical abuse within a marriage. This gender-specific description makes it impossible for male victims to access redressal under the same provision of law, resulting in a scenario where actual cases of cruelty against men are ignored or dismissed altogether.

The Rising Tide Of False Allegations

One of the most disputed consequences of this imbalance is the rising tide of cases involving false accusations of cruelty against men. These charges are frequently used tactically in the course of marital litigation—to bully a settlement, gain an advantage in custody litigation, or sully the reputation of the husband. Once an accusation has been brought, the law has a presumption of guilt, and the man and his family are frequently subjected to arrest and humiliation before there is even a proper investigation. This abuse not only harms lives and reputations but also waters down the efficacy of the law for women who are in genuine need of protection.

Legal Recourse Against False Allegations

For men caught in such dilemmas, the law does provide some limited but significant weapons. If a husband has proof that his wife has conspired against him—through creating false evidence or conspiring with others to lodge a false case—he can lodge a criminal case for conspiracy under Sections 120-A and 120-B of the Indian Penal Code (now Section 61 of the BNS). In such a case, the conspiracy itself may be a cause for divorce.

Section 13(1) (ia) of the Hindu Marriage Act, 1955, provides that either of the spouses can seek divorce on the basis of cruelty. Courts have held that a false charge of cruelty or criminal misconduct leveled by one spouse against the other amounts to mental cruelty and may be a valid reason for the dissolution of the marriage. In different instances, divorce has been granted to husbands if they were capable of establishing that the cruelty endured by them, especially in the guise of false legal allegations, rendered it impossible to sustain the marital relationship.

Although the initial objective of Section 498A and its replacement, Section 85 of BNS, was to protect vulnerable women, the lack of recognition of the fact that men too are victims of cruelty has led to a one-sided and mostly unfair enforcement of the law. Not only do male victims remain unprotected, but it also sets the stage for legal abuse. A rethinking of such legislation is desperately required—one that tips the scales of justice by identifying cruelty as a human concern and not one limited to gender.

GENDER-BIASED LAWS

The existing legal system with respect to domestic violence and laws on maintenance is predisposed to treating women only as victims and men as the offenders, and this causes a gross imbalance. There are no such laws that explicitly identify men as victims of domestic violence or penalize women

responsible as culprits in such a case. This gender bias can also be seen in divorce cases, where the law usually obliges a husband to maintain a wife who cannot take care of herself. There is no matching legal provision that obliges an independent wife to maintain a husband if he is economically dependent.

This disproportion in the legal system relies on a gender perspective that is outmoded, one which fails to consider the consideration that men too are victims of domestic violence or financial hardship. Law must evolve and be more equitable and inclusive, granting legal protection to male victims of domestic violence and ensuring that support services—such as shelters,

counseling, and legal aid—are available to men and women. The law must be modified to fit the reality of modern relationships, in that abuse and economic dependency are not gender-specific.

Section 125 in the Code of Criminal Procedure, 1973 Now Section 144 of Bharatiya Nagarik Suraksha Sanhita (BNSS)

This part of the law aims to make sure that individuals who are capable of supporting their family do not abandon their duties. It particularly deals with the support of wives, children, and parents who cannot support themselves economically.

Under the law, if one has the resources but is adamant about not supporting his wife, legitimate children, or aged parents who are relying on them, the court can order them to pay a monthly amount for their upkeep. It is not merely an ethical requirement but a legal one that is designed to protect the welfare of the dependent who is placing his or her hopes on others.

If the individual does not comply with the order of the court to make the payments as and when due, he or she may be sent to prison for one month or until he or she pays what he or she owes. This is a key provision that reminds everyone that caring for one's family is not discretionary, and defaulting in such responsibilities will lead to prosecution.

Child Custody and Gender Bias

In child custody cases, the law favors mothers and makes it difficult for fathers to obtain custody or even frequent visitation. Mothers are thought to be naturally better caregivers, but this is not always the case in all circumstances. This prejudice tends to place fathers at a disadvantage when they are in family courts.

CASE LAW

In the case of *Rajnish v. Neha & Anr.*¹ is an important ruling by the Supreme Court of India regarding maintenance under Section 125 of the Criminal Procedure Code (CrPC). This case explored the question of maintenance and the process to be adopted while calculating maintenance under family law, especially in cases of 'husband and wife'.

Facts of the Case:

Here, the husband, Rajnish, had appealed against the order of the lower courts that had ordered maintenance to his wife, Neha, under Section 125 CrPC. The husband challenged the quantum

¹ (2021) 2 SCC 324.

of maintenance granted and contended that the wife had not furnished complete details about her income and assets.

Key Issues:

The central issues in the case were:

- Whether the maintenance granted to the wife was appropriate and fair.
- The procedure to determine the maintenance amount, considering the income, assets, and lifestyle of the parties.
- The requirement for a disclosure of income by both parties, especially when a party claims the inability to pay maintenance.
- Whether the trial courts failed to consider the ****income disclosure**** in detail, leading to a possible error in the judgment.

Supreme Court's Decision:

The Supreme Court laid down important guidelines and principles for dealing with maintenance under Section 125 CrPC:

1. Disclosure of Income

The Court stressed the need for complete disclosure of income by both the husband and wife. The application for maintenance should not be determined in a vacuum; both parties must furnish information regarding their financial position, such as bank statements, income tax returns, and other documents, for an equitable determination.

2. Guidelines for Determining Maintenance:

The Court further explained that the courts should consider the parties' standard of living prior to the dispute, in addition to the financial ability of the person obliged to pay for maintenance. It stressed that the order of maintenance should be enough to enable the wife to maintain reasonable comfort and dignity.

The Court laid down a formula for calculating maintenance, suggesting that courts take a holistic view of all the circumstances before arriving at a decision.

3. Effect of Non-Disclosure or Concealment of Income:

The Court explained that if either or especially the husband suppresses income or assets, it may result in a modified or enhanced order of maintenance to secure the wife's rightful entitlement. Non-disclosure may be a critical consideration to

determine the amount of maintenance.

4. Interim Maintenance:

The interim maintenance needs to be determined speedily, particularly in cases where the wife cannot support herself. The Court noted that tardiness in passing orders for interim maintenance inflicts severe financial inconvenience on the wife, which frustrates the aim of the provision.

Importance of the Judgment

This ruling is relevant in following how maintenance laws should act on a gender-neutral basis. The Court concentrated on fairness in the maintenance process, ensuring that both spouses provide their income and assets for a fair determination.

Impact on Men

Although this discussion mainly revolved around the wife asking for maintenance it also brought into perspective the need to protect men from abuse of maintenance claims. The Court's focus on the disclosure of earnings helps to avert spurious or unwarranted maintenance claims being made by either side.

Guidelines Given in the Case

The Court laid down some important guidelines for future cases involving maintenance under Section 125:

- Full disclosure of income and assets by both parties.
- Interim maintenance should be decided within a reasonable time.
- Courts should consider the standard of living the wife was accustomed to, and the husband's ability to pay.

CONCLUSION

In the case of *Rajnesh v. Neha*, it is a step towards making a more balanced decision in fixing maintenance and fair treatment of both sides in the process. It emphasizes the need for transparency and accountability in maintenance proceedings by focusing on gender neutrality and averted exploitation by either side.

This case also impacts men who are being falsely claimed for maintenance, since the ruling emphasizes that maintenance must be premised on proper financial disclosure and must reflect the actual earning potential of the liable party.