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# **THE MISUSE OF LAW BY WOMEN IN INDIA: CONSTITUTIONALITY OF GENDER BIAS**

AUTHORED BY - BIBHUTI BHATTA & V VISHAL

## **ABSTRACT:**

Gender bias and discrimination persist as significant challenges in India, permeating societal structures and legal frameworks. While efforts to promote gender equality have been made, ingrained cultural norms and patriarchal attitudes continue to undermine progress. This paper examines instances where legal provisions intended to protect women's rights have been manipulated to their advantage, often at the expense of men's rights. Focusing on cases of domestic violence and dowry-related offenses, the paper explores the implications of such misuse on the legal system and societal dynamics. Drawing on constitutional provisions, legal precedents, and scholarly analysis, the paper evaluates the constitutionality of gender bias inherent in the misuse of laws by women and assesses the adequacy of existing legal safeguards. The central research question guiding this study is:

*How does the misuse of legal provisions by women in India impact the constitutional principles of gender equality and the integrity of the legal system?*

Additionally, the paper addresses the gap in laws regarding the rape of men, highlighting the absence of gender-neutral legislation and the challenges faced by male survivors of sexual assault. Through an analysis of societal attitudes, legal frameworks, and international perspectives, the paper underscores the need for comprehensive reforms to address gender bias and promote gender equality in India's legal system. The research method employed in this study primarily relies on the doctrinal approach, focusing on the analysis of legal principles, statutes, and judicial interpretations relevant to the misuse of legal provisions by women in India. Through a doctrinal examination, the study scrutinizes constitutional provisions, statutes such as the Indian Penal Code (IPC), and case law to evaluate the constitutionality of gender bias inherent in the misuse of laws. By delving into legal doctrines and precedents, the research assesses the adequacy of existing legal safeguards and identifies potential inconsistencies or gaps in the legal framework concerning gender equality. Ultimately, the paper advocates for a balanced approach that protects the rights of both women and men, fostering a more just and equitable society for all individuals.

**Keywords:** Gender, Sexual assault, societal attitudes, Misuse

## 1. INTRODUCTION

Gender bias remains a pervasive issue worldwide, permeating through societal structures and legal systems alike. Despite global efforts towards fostering gender equality, many countries, including India, continue to grapple with deeply confirmed discriminatory practices. In India, where cultural norms and traditional beliefs often intersect with legal frameworks, the manifestations of gender bias are particularly pronounced. While women are frequently victims of gender discrimination, it is crucial to acknowledge that the issue is multifaceted, and men also face challenges arising from societal expectations and legal provisions.

## 2. GENDER BIAS AND DISCRIMINATION

Gender bias refers to the unequal treatment or discrimination against individuals based on their gender. It manifests in various forms, such as unequal opportunities, stereotyping, and societal expectations, often favoring one gender over the other and perpetuating systemic inequalities.

In India, gender discrimination diffuses through various aspects of women's lives, spanning from familial structures to societal institutions. Despite constitutional guarantees of equality, cultural norms and patriarchal attitudes perpetuate gender bias across multiple spheres, including marriage, education, and employment. Women often encounter systemic barriers that hinder their access to opportunities and limit their agency.

## 3. INSTANCES OF MISUSE

### 3.1. DOMESTIC VIOLENCE

Domestic violence encompasses a pattern of abusive behavior in intimate relationships to gain power and control over a partner. It includes physical, sexual, emotional, economic, or psychological harm inflicted by a current or former partner. Domestic violence can result in physical injuries, emotional trauma, and long-term psychological effects on victims.

Domestic violence cases often witness the misuse of legal provisions, where women may file false complaints against their husbands or in-laws to gain an advantage in divorce or property disputes. Such actions not only violate the spirit of the law but also deny men their due rights. Understanding personal motivations is crucial not only for psychology and sociology but also for

various aspects of our daily lives, including relationships, career choices, and personal development. Women may misuse laws due to personal motives such as revenge, financial gain, or to gain an upper hand in legal disputes, including family or property matters.

In the case of *Dr. N.G. Dastane v. S Dastane* (1975 SCR 967), the Supreme Court held that although it is commonly assumed that the stronger party commits physical cruelty towards the weaker party, such as a husband toward his wife, both women and men are capable of causing mental cruelty towards their partners. This highlights the need to recognize that domestic violence is not solely perpetrated by one gender against the other.

In *Rajesh Sharma & others v. State of Bihar* (2017) 3 SCC 821, the court laid down certain directions to prevent the misuse of Section 498-A of the Indian Penal Code (IPC). The court directed the establishment of a Family Welfare Committee in each district by the District Legal Services Authority to investigate cases of domestic violence reported under Section 498-A of the IPC for a month before making any arrest. The Committee comprises para-legal volunteers, social workers, and retired persons who are given basic training for this task. This intervention aims to prevent wrongful arrests and provide a fair and thorough investigation process before legal action is taken, addressing concerns about misuse of the law while ensuring justice for genuine victims of domestic violence.

### **3.2. DOWRY-RELATED OFFENSES**

Dowry refers to the transfer of money or assets after marriage from the bride's family to the groom's or his. Dowry-related offenses entail acts of harassment, cruelty, or violence inflicted upon the bride by her husband or in-laws for inadequate dowry payments. These offenses are criminalized in many countries, including India, where stringent laws aim to protect women from dowry-related abuse and ensure the equitable treatment of brides within marital relationships.

Dowry-related offenses are legally treated as criminal acts in India, with stringent provisions in place to address such abuses. However, there have been instances where women have misused these legal provisions by falsely accusing their spouses or in-laws of dowry harassment. Such misuse not only undermines the integrity of the legal framework designed to protect women but also poses significant challenges from a legal perspective. False accusations of dowry harassment can lead to wrongful convictions, tarnishing the reputation of the accused and perpetuating injustices within the legal system. Moreover, this misuse erodes public trust in the efficacy of

anti-dowry legislation, making it imperative for legal authorities to navigate these complexities effectively.

In India, dowry-related violence remains a pervasive issue, with approximately 21 women losing their lives every day due to this cultural practice. Despite legislative efforts dating back to 1961, it is Section 498A of the Indian Penal Code (IPC) enacted in 1983 that stands as the primary statute to address dowry harassment. However, this law, designed as a reactionary measure, has proven highly controversial and ineffective in combating dowry-related crimes against women. The law criminalizes cruelty toward wives, making dowry harassment a cognizable, non-bailable, and non-compoundable offense. Yet, its implementation has been fraught with challenges, including widespread misuse and wrongful incarceration of innocent individuals.

An alarming number of unlawful arrests have resulted from the misuse of Section 498A, putting innocent women and even men in the criminal court system. The law's flawed premise, where the victim's testimony is considered sufficient evidence for arrest, has resulted in cases where individuals with minimal or no involvement in dowry harassment have faced life imprisonment. For instance, individuals remotely connected to the victim, such as bedridden grandparents or sisters living abroad, have been unjustly incarcerated under this law. Furthermore, the law does not distinguish between different levels of involvement or take into account the nature of the relationship between the victim and the accused, which results in unfair sentencing and keeps inequalities in the legal system alive.

Efforts to address the misuse of Section 498A have been met with mixed reactions. While attempts such as introducing a nine-point checklist before arrests were made by the Supreme Court, concerns were raised regarding the neglect of genuine victims' experiences. Subsequent mandates, such as the formation of family welfare committees to investigate dowry harassment cases before arrest, faced criticism for potentially legitimizing stereotypes about women fabricating violence allegations. The withdrawal of these directives in 2017 highlighted the ongoing struggle to find a balance between protecting victims and preventing misuse of the law. Moving forward, amendments to Section 498A must prioritize protecting the rights of both victims and accused individuals. Proposals such as conducting investigations before arrests and considering the dynamics of relationships within families are crucial steps toward addressing the flaws in the current legislation while ensuring justice for all parties involved.

#### 4. CONSTITUTIONAL FRAMEWORK

While the Indian Constitution and legal framework seemingly uphold principles of gender equality, there exist visible instances where the legal apparatus may inadvertently perpetuate discriminatory practices against men. Despite the explicit provisions ensuring equal rights and opportunities for all citizens, men encounter systemic biases rooted in societal constructions of masculinity. The conventional societal norms dictate a rigid set of expectations for men, characterized by traits such as toughness, dominance, and emotional restraint, thereby marginalizing individuals who deviate from these norms. Consequently, this imposition of stereotypical gender roles engenders an environment where men who do not conform to these expectations face social ostracism and discriminatory treatment.

Furthermore, within the context of legal responses to gender-based issues such as domestic violence and sexual harassment, there exists a systemic inclination to categorize men as default perpetrators. The prevalent association of masculinity with traits like aggression and assertiveness often leads to the presumption of culpability for men accused of such offenses, irrespective of individual circumstances. This predisposition towards presumptive guilt based on gender stereotypes can manifest within the criminal justice system, resulting in men being unfairly targeted and subjected to prejudicial treatment in legal proceedings.

Addressing these legal and societal challenges necessitates a multifaceted approach that encompasses both legal reforms and cultural shifts. Efforts to challenge entrenched masculine norms and stereotypes require strategic legal interventions aimed at fostering a more gender-neutral legal framework. These reforms should prioritize equitable treatment for all individuals, regardless of gender, and ensure that legal processes are devoid of biases and presumptions based on gender roles. Moreover, fostering dialogue and promoting awareness regarding the diverse manifestations of gender identity and expression are imperative steps towards fostering a legal environment that is truly inclusive and equitable for all genders.

While the Indian Constitution espouses principles of gender equality, confronting discriminatory practices against men within the legal sphere mandates a concerted effort to challenge entrenched gender norms and biases. India could get towards a legal system that protects the rights and dignity of every person, regardless of gender, by passing laws that strengthen justice and impartiality and encouraging public discourse targeted at destroying harmful preconceptions.

## 5. ADDRESSING THE GAP: LAWS REGARDING RAPE OF MEN

India's legal framework predominantly centers around protecting women from sexual violence. Provisions such as the Indian Penal Code (IPC) Section 375 define rape and related offenses, emphasizing the protection of female victims. However, this focus leaves male victims with limited legal avenues.

The Indian Penal Code (IPC) defines and describes the crime of rape in Section 375. According to this, a male is considered to have committed rape if he engages in sexual conduct with a woman in any of the following situations:

1. Against her will.
2. Without her consent.
3. With her consent, when her consent has been obtained by putting her in fear of death or of hurt.
4. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
5. The provision also specifies that sexual intercourse includes penetration of any bodily orifice, and that consent given under certain circumstances, such as intoxication or mental incapacity, is not valid.

According to Section 375, rape carries a sentence of at least seven years in jail, with the possibility of a life sentence, as well as a fine. In other cases, such as when the victim is a minor or when the rape causes death or significant harm, the sentence may be increased.

Rape is considered to have occurred under certain circumstances, such as when it is done against the woman's will or without her consent. Consent means the woman clearly agrees to participate in the sexual activity. However, if a woman does not physically resist, it does not mean she consents. There are also exceptions to this legislation, such as the fact that sexual actions performed on one's own spouse—as long as she is not under the age of fifteen—do not qualify as rape, nor do medical procedures.

The legal definition of rape in India, as outlined in Section 375 of the Indian Penal Code, is not gender-neutral and perpetuates discrimination against male rape survivors. By explicitly framing rape as an act committed by a man against a woman, the law fails to acknowledge that men can also be victims of sexual violence. This omission denies male survivors the legal recognition and

protection they deserve, contributing to the underreporting and invisibility of male rape cases.

Societal attitudes play a crucial role. The prevailing perception is that men cannot be victims of sexual assault, especially by women. This stereotype perpetuates the notion that men are always perpetrators and rarely victims. Consequently, male survivors often hesitate to report incidents due to fear of ridicule or disbelief.

*“Women cannot rape men.” “I have doubts whether a woman can commit rape; the reason is that a man has to be aroused sexually to be able to have sex with a woman. If a woman tells a man that he must have sex with her, it won’t work because the man will be so frightened and disorientated that he won’t really be able to do it. Under that circumstance, the man won’t be able to be in the proper physical mood to be able to have sex with the woman.”* (Madukwe 2013)

- Vanguard, a Nigerian newspaper

*“To presume that women can rape men is rather outrageous. While women can sexually harass men, they can't sexually assault them. There have been no such cases anywhere.”* (Divya A 2010)

- Flavia Agnes in The Times of India

*“It is physically impossible for a woman to rape a man. Arousal implies consent.”* - Dr. Anand Kumar, Department of Reproductive Biology, AIIMS, in an interview.

It seems hard to continue the case for gender-neutral rape legislation from the onset when national media, feminists, attorneys, and even doctors assert that a woman raping a male is not only an oddity but nearly unheard of.

There are five main objections to gender-neutral rape laws in India raised by rape laws worldwide: 1. Men cannot be raped by women 2. Men are not raped by women 3. The effects of rape are not the same for men. 4. Power is a factor in rape. 5. Laws against gender-neutral rape will have unexpected repercussions.

Rape, a crime commonly associated with female victims, obscures the silent struggle of male survivors in society. The prevalent myths and stereotypes deny the vulnerability of men to sexual assault, perpetuating silence and hindering justice. In our society's narrative, male strength equates to invulnerability, dismissing the possibility of male victimization. Additionally, the misconception that men always desire sex oversimplifies complex dynamics of consent, coercion, and trauma, further silencing survivors. This societal silence is reinforced by the false belief that men are less susceptible to trauma, deterring many from seeking help or justice due to fear of

stigma. Furthermore, India's legal framework lacks gender neutrality, leaving male survivors without adequate legal recourse, while international progress in recognizing male rape victims remains limited. Challenging these stereotypes requires concerted efforts in education, advocacy, and legal reform.

The National Intimate Partner and Sexual Violence Survey (2010) is a telephone survey that measures the magnitude of sexual and other violence among adult men and women in the United States. It finds that 1 in 71 men (1.4%) have been raped once in their lifetime. It should be mentioned that the corresponding figure for women is 1 in 5 (20%). While the figure for women is much higher, the figure for men is by no means negligible (It is an estimated 1.5 million men). The figure for men includes oral or anal penetration by a male using his penis. It also includes anal penetration by a male or female using their fingers or an object.

Notably, compared to 12% of female victims, 28% of male rape victims suffered assault when they were 10 years old or younger.

“The consequences of rape for a woman are far-reaching. She has to battle social stigma, social mindset. While fixing marriages, nobody asks a man if he is a virgin.” (TNN 2012) - Flavia Agnes.

This perspective is related to the notions that men do not mind having non-consensual sex and that, in the end, it is of no significance if men are raped because no one within the community is going to judge them. On the other hand, studies reveal that men do mind. NISVS (2010) finds higher prevalence of frequent headaches, chronic pain, difficulty sleeping, activity limitations, and poor perception of their own physical and mental health in men who have been victims of rape, stalking, or physical violence by an intimate partner. Masters (1986) finds that men who have been raped by women face sexual dysfunction and disorder and are unable to respond physically to a female partner of choice even two years after the attack. The men had lost their “sense of personal dignity and confidence in [their] masculinity.”

Carpenter (2009, citing Mezey, 1987) finds that the “male coping strategy characterized by denial and control renders them more prone to later psychiatric problems and reduces the likelihood of seeking help.” Perhaps rape does not affect men and women in identical ways; it does, however, affect men adversely.

The Bharatiya Nyaya Sanhita (BNS) Bill of 2023, designed to replace the Indian Penal Code (IPC), has ignited controversy by omitting Section 377, which previously criminalized non-consensual sex among adults of all genders and orientations. This omission poses significant concerns regarding the absence of legal protection against sexual violence for men, transgender individuals, and animals. Without a specific provision addressing sexual offenses against these groups, the law creates a dangerous gap in safeguarding their rights. While the Protection of Children from Sexual Offences (POCSO) Act offers some protection, it does not extend to adult males and transgender individuals. Therefore, there is an urgent need for the BNS Bill to introduce gender-neutral provisions that encompass all individuals facing sexual violence, ensuring equitable legal protection irrespective of gender identity or orientation. Moreover, addressing patriarchal norms that perpetuate differential treatment based on gender is essential for fostering a more inclusive and just society.

## 6. CONCLUSION

The examination of gender bias and the misuse of legal provisions in India reveals complex challenges that demand nuanced solutions. While legal frameworks exist to protect women's rights, instances of misuse highlight the need for a balanced approach that safeguards the rights of all individuals, regardless of gender. Addressing entrenched societal norms and stereotypes is essential to fostering a legal environment that is truly inclusive and equitable. Moreover, efforts to bridge gaps in legislation, such as the absence of gender-neutral laws regarding rape, underscore the importance of comprehensive reforms. By promoting awareness, advocating for legal changes, and challenging discriminatory practices, India can move towards a more just and equitable society for all its citizens.

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