



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

GENDER NEGLECT: SPOTLIGHT ON MEN'S RIGHTS AND VICTIMIZATION

AUTHORED BY - HARSHAA S

Abstract

This article examines the often-neglected issue of gender-based violence against men in India and highlights how current legislations have left men at a disadvantage by Analysing various legislative examples. It emphasizes the importance of the laws being gender neutral, which is essential to promoting equality without undermining the rights of any gender. The article explains the gender bias that is present in few laws and how it is high time to recognize the victimization of men. It elaborates on the probable reasons for under reporting of male victimization like social stigmas, stereotypes and risk of losing custody battles. Furthermore, the author makes a few suggestions upholds the principles of equality, fairness, and justice such as establishing helplines, awareness campaigns and educational programmes to encourage people to voice their experiences and seek assistance.

Introduction

Contemporary world is all about gender equality. Women are no longer considered mere objects of possession and are now being placed on the same pedestal as men. Some sociologists even go forward to claim that equality is the core principle of a modern society. Equality has become such an important concept that it has been enshrined as a fundamental right. Women-centric laws have been passed, playing a crucial role in bridging the gap between the men and women. However, this emphasis on protecting the interests of women and safeguarding their rights raises a significant question: In our efforts to protect and safeguard women, are we unintentionally leaving men vulnerable?

It cannot be dissented that women centric laws have been essential in addressing the injustices faced by women, but it appears that they have shifted the balance, leaving men at a disadvantage. This research in no way attempts to undermine the sufferings and the obstacles a woman faces but wishes to shed light upon how a victim is not always a woman and how one gender should never be inadvertently targeted to protect another gender. It is disheartening how few women misuse the rights conferred to them. This has become a double-edged sword: on

one side, the women who file a complaint are treated with levels of scepticism due to prevalent misuse, and on the other side, an innocent person may suffer the consequences of the “false allegation”. This is just one instance. This article discusses in elaborate the various crimes faced by men in India, the probable reasons why they remain unreported, the existing gender bias, and finally offers suggestions on how to tackle the issues.

Gender based violence and its forms

GBV or Gender based violence is a comprehensive word that is defined by the **European Commission** as “*violence directed against a person because of that person's gender, or violence that affects persons of a particular gender disproportionately.*”¹ The **United Nations** defines GBV as “*any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women whether occurring in public or private life*”². The term includes violence of physical, emotional, psychological, verbal and sexual nature.

In India, GBV is synonymously used with Violence Against Women for according to reports majority of the crimes have been committed by men against women. However, GBV refers to any type of violence "directed at an individual based on their gender. It is rooted in gender inequality, the abuse of power and harmful norms"³. Violence against Women is a subset of Gender based Violence that focuses on crimes committed specifically against women⁴. It is essential for the public and the policymakers to know the distinction between the terms for effective drafting of policies and to understand that men can also be victims of violence.

Gender-Based Violence is prevalent worldwide in the following forms:

- 1. Physical-** Domestic violence within the confines of one’s home by members of the family, Assault and Battery outside domestic confines, like at workplace, public utility places, schools, and colleges and threat of genital mutilation and castration.
- 2. Sexual-** Rape, Sexual assault in the forms of groping, molesting, eve-teasing, voyeurism, passing vulgar comments, child sexual abuse, and sexual trafficking.

¹ https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/what-gender-based-violence_en#:~:text=Gender%2Dbased%20violence%20is%20violence,of%20a%20particular%20gender%20disproportionately

² USPA, what is GBV? <https://www.usaforunfpa.org/what-is-gender-based-violence-gbv>

³ <https://www.unhcr.org/us/what-we-do/protect-human-rights/protection/gender-based-violence>

⁴ What is Gender-Based Violence? <https://www.wilsoncenter.org/what-gender-based-violence>

3. **Emotional abuse** in the form of verbal threats, insults, coercion, persistent stalking, and gaslighting.
4. **Cultural violence** in the forms of honour killing, child marriage, acts of crimes against members of LGBTQ+ community, female foeticide, and dowry-related abuses.
5. **Cyber Violence** includes cyberstalking, bullying, revenge porn, and online harassment in the form of sending death and rape threats.

This list is neither exhaustive nor exclusive. The violence may change its form as the society goes through significant changes and one form of violence can fall under multiple categories. So, it would be correct to point out that these forms are rather extensive.

Legislative protections provided in India and are they gender neutral?

Various legislations have been passed to combat gender-based violence in India. Below is the analysis if whether the laws which were originally intended for protection of gender-based violence are gender neutral?

1. **Constitutional provisions-**

Constitution of India provides Right to Equality (Article 14) to every person and prohibits any form of discrimination based on religion, race, caste, sex or place of origin (Article 15). Article 21 of the constitution provides all persons with the right to life and personal liberty. The Supreme Court in **Maneka Gandhi v Union of India**⁵ held that “the right to life and personal liberty under Article 21 is not limited to mere animal existence but includes the right to live with dignity.” In **Sunil Batra v Delhi Administration**⁶ case, the inhumane treatment of the male prisoners was condemned and it was held that people retain their fundamental rights even behind the bars. Various other rights like right to marriage, right to safe working conditions, right to privacy and right to education have been brought under the umbrella of Article 21. Despite such rights being present, Article 14 and 21 are ridden with conflicts due to the protective provisions provided for women under Article 15(3). In **Joseph Shine v Union of India**⁷, Section 497 of the Indian Penal Code was challenged on the grounds that it focused on only gender i.e., only males were considered culprits. The judgement was instrumental in emphasizing equality and it decriminalized the provision on the grounds

⁵ 1978 AIR 597

⁶ 1980 AIR 1579

⁷ AIR 2018 SUPREME COURT 4898

that it was violative of Article 14, 15 and 21. These judgements summarises that how the legislations in attempt to protect the rights of one gender had unintentionally left the other gender at a disadvantage and how the judiciary has been critical in implementing gender equality.

2. Criminal laws on Rape

Prior to its replacement by the Bharatiya Nyaya Sanhita (BNS) in 2023, the Indian Penal Code was India's primary criminal statute. IPC had been criticised for its obsolete take on certain offences and it has been persisting since its inception in 1860. Researchers often blamed the societal construct for the bias in the laws as the society projected women as dependants and men as either protectors or perpetrators. The idea of men being viewed as victims was a far-fetched notion. Rape was defined in Section 375 of the IPC and now it has been defined under Section 63 of BNS, 2023. Section 375 provided 6 instances when a "man" is said to "commit" rape. After the Criminal Law amendment Act 2013, the definition included penetration of penis into mouth, urethra and anus and also included insertion of any other objects into vagina, urethra and anus. Section 376 laid down the punishment for the heinous crime but it was gender-specific in the sense that woman could only be considered a victim, not a perpetrator, and a man could not be considered a victim. The cases **Sudhesh Jhaku v KC Jhaku**⁸ and **Sakshi v Union of India**⁹ warranted for gender-neutral rape laws and following this the 172nd Report of the Law Commission of India recommended for a gender-neutral offence of "Sexual Assault" replacing "Rape"¹⁰. These recommendations were included in Criminal Law Amendment Bill, 2012, but before its inception, the nation was brought to a standstill by the Nirbhaya gang rape. Although the Verma Committee also recommended gender-neutral law, the widespread protests from the women across the nation, expressing concerns that it would put them at a disadvantage, led to the Government changing its stance on gender neutrality and instead pass the Criminal Law (Amendment) Act, 2013.¹¹

BNS now provides definition of Rape under Chapter V which is titled "Offences against woman and child". This explicitly explains that there is no provision in the legislation

⁸1996(38) DRJ22

⁹ 1999 CriLJ 5025

¹⁰ Law Commission of India, 172nd Report: Review of Rape Laws, New Delhi: Ministry of Law and Justice, Government of India (2000)

¹¹Criminal Law (Amendment) Act, 2013, No.13 of 2013 <https://www.indiacode.nic.in/handle/123456789/15357>

that penalises sexual violence against men. The only provision in IPC that did address the rape of an adult male was Section 377¹² but there is no similar provision in the new Criminal code. The drafters claim that new statute is gender-neutral in the sense that it has penalised the acts like Criminal force against women with intent to disrobe (Section 76)¹³ and Voyeurism (Section 77)¹⁴ irrespective of the gender of the person committing the crime. But lacuna arises as the statute still considers victims to be women only. The plight of the men regarding penalising sexual violence against them remain just that- A PLIGHT.

3. **Misuse of Section 498A (Now Section 85 of BNS)**

Section 498A of the Indian Penal Code provided protection for married women against cruelty inflicted by the husband or his family, specifically in dowry demand cases. This provision had been significant in providing various women who had suffered from abuse and mistreatment demanding dowry with legal protection and had served as a deterrent against such abuse. This section is now replaced by Section 85 of BNS with Section 86 defining cruelty. Both the repealed and the current provisions clearly outline that the men are considered the assailants while only the women could be considered the victims. This has led to multiple instances where women have misused this section by filing trivial and frivolous complaints. Few women use this section to retaliate against the family of the husband in case of divorce proceedings, aiming to tarnish their reputation and bring humiliation. When an innocent man suffers such humiliation due to the exhaustive legal proceedings, it causes significant strain on his mental health and also the court expenses take a toll on his finances. The emotional turmoil caused by a wrongful conviction leads to the person losing faith in the justice system and it would be an indication of failure of judiciary in upholding equality. Here are few instances where such misuse was addressed:

- **Achin Gupta v State of Haryana**¹⁵ - In this recent case, the bench expressed its concern over misuse of the Section 498A to retaliate against husband and his family and held that “If a person is made to face a criminal trial on some general

¹² Unnatural Offences, Indian Penal Code, § 377, Act No.45 of 1860, India Code (1860)

¹³ Section 76 of THE BHARATIYA NYAYA SANHITA, 2023, NO. 45 OF 2023
https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf

¹⁴ Section 77 of THE BHARATIYA NYAYA SANHITA, 2023, NO. 45 OF 2023
https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf

¹⁵ 2024 INSC 369

and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of the process of the court. The court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out, prima facie, whether there is any grain of truth in the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge, more particularly when a prosecution arises from a matrimonial dispute”.

- **Preeti Gupta v. State of Jharkhand**¹⁶- The court observed that most of the complaints are filed in the heat of the moment over trivial issues and held that “*At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases*”.
- The Calcutta High Court expressed concerns that this section is sometimes employed as a tool for what it termed "legal terrorism" in the guise of seeking justice¹⁷.
- **Social Action Forum for Manav Adhikar v. Union of India**¹⁸ - The verdict focused on the importance of balance between protecting women from the crime and defending the rights of accused.

Therefore, it is essential to maintain a balance between legitimate victims and safeguard the rights of the convicts by applying principles of equality, fairness and justice.

4. Domestic Violence

Indian society has been highly patriarchal in nature and hence men are expected to assert dominance over women. This also leads to the assumption that only men are the aggressors who resort to violence against their partners. Intimate partner violence has always been gender specific which has left abused husbands at a disadvantage. Aside from Section 498A of the now repealed Indian Penal Code, a separate legislation called Protection of Women from Domestic Violence (DV) Act, 2005 exists for the protection

¹⁶ 2010 CRI. L. J. 4303

¹⁷ <https://economictimes.indiatimes.com/news/india/anti-dowry-ipc-section-498a-is-being-misused-as-a-tool-to-unleash-legal-terrorism-calcutta>

[hc/articleshow/102986776.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst](https://www.whiteblacklegal.co.in/article/show/102986776.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

¹⁸ AIR 2018 SUPREME COURT 4273

of women from domestic violence. Domestic violence under this act in Section 3 includes physical abuse, sexual abuse, verbal and emotional abuse and also economic abuse¹⁹. Though the scope of the definition is broad, the narrow definition of “aggrieved person” raises questions. It includes “any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent”²⁰. Though the definition of “respondent” has been broadened to include both male and non-male relatives of the women²¹, it does not make the act itself gender neutral. The word “aggrieved person” clearly represents only women thereby leaving no protection for men abused by partners. An attempt was made in 2017 in the case **Mohammed Zakir vs Smt Shabana**²² against the conflicted definition where the Justice Anand Byrareddy held that a petition file by a husband against his wife under the Act can be entertained. But he withdrew his order after the Supreme Court intervened and called it “patently erroneous”. Likewise, recently in 2023, A single judge bench of Justice Jasmeet Singh in its order while issuing notice to the husband held, “Prima facie it seems in view of Section 2(a), the protection of the Act is not available to a male member of the family, and more particularly the husband.”

5. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act)

Sexual harassment at workplace is a form of sex discrimination which negatively affects the working environment, undermines gender equality at work, creates unfair practices in employment, and adversely impacts the dignity and well-being of workers.²³

This offence has also been only associated with one gender due to society’s perception and lack of reported cases by the other gender. In India specifically, after the rape and murder of a NGO worker in her workplace, various NGOs and social activists under the banner of Vishakha filed Public Interest Litigations advocating for the need of separate legislation and a safe workplace environment. The Supreme Court in **Vishakha v State of Rajasthan**²⁴, provided guidelines that a workplace must adhere

¹⁹ Section 3 of The Protection of Women from Domestic Violence Act, 2005

²⁰ Section 2(a) of The Protection of Women from Domestic Violence Act, 2005

²¹ Hiral P. Harsora and Ors v. Kusum Narottamdas Harsora and Ors (2016) 10 SCC 165

²² CRIMINAL PETITION No.2351 OF 2017

²³ Definition of Sexual Harassment at Workplace <https://www.ilo.org/media/439791/download>

²⁴ AIR 1997 SUPREME COURT 3011

to while handling such harassment complaints till a legislation is enacted by the Parliament. A decade and few years later, the Parliament finally enacted a legislation called Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 to safeguard women from any form of Sexual Harassment at workplace. As the name clearly states, it is a legislation to protect women. Making this legislation gender neutral seems to be a far cry because the judiciary thinks it will dilute the very purpose for which the law was enacted²⁵. The court also in the same case explained how the act has been enacted according to Article 15(3) of the Constitution which affirms protective discrimination for the benefit of women and children. This judgment is another example of how two fundamental rights (Article 14 and Article 15(3)) are in conflict with one another. But it is high time the judiciary sees the need for protection of men from workplace harassment because the malleability of the judiciary will be under question if it does not adapt with the changes in the society. A recent LinkedIn post by the men's rights activist, Deepika Bhardwaj, describes how an organisation decided to suppress a harassment complaint by a male and only investigated it after a social media outrage²⁶.

Statistics And The Probable Reasons For The Under Reporting Of Crimes

It does not come as a surprise that challenges faced by men in India are not kept in equal pedestal as that of women. But in reality, men are equally affected by crimes. In Haryana, a study was conducted and funded by the Indian Council of Medical Research which disclosed that out of sample size of 1000 married men, 515 men (51.5%) were subjected to Intimate Partner Violence²⁷. Emotional violence was the most common form of domestic violence (51.6%) followed by physical abuse (6%). In the same study, it was found that nearly 98% of the Indian men had suffered domestic violence at least once in their life. This is not an isolated study. In a study conducted by Save Family Foundation among 1650 husbands aged between 15-49 years, economic violence against husband were held to be the most common (32.8%), followed by emotional violence (22.2%), by physical (25.2%) and sexual violence (17.7%)²⁸.

²⁵ Binu Tamta & Another Vs High Court of Delhi & Ors, 2013 SCC ONLINE SC 1164

²⁶ <https://hr.economictimes.indiatimes.com/news/workplace-4-0/is-it-high-time-the-posh-act-should-address-mens-concerns-too/108189260>

²⁷ Jagbir Singh Malik & Anuradha Nadda, *A Cross-sectional Study of Gender-Based Violence Against Men in the Rural Area of Haryana, India*, 44 *Indian J. Cmty. Med.* 35, 35-38 (2019).

DOI: 10.4103/ijcm.IJCM_222_18

²⁸ S. Sarkar, R. Dsouza & A. Dasgupta, *Domestic Violence Against Men: A Study Report by Save Family Foundation* (Save Family Foundation 2007).

Sexual Harassment is the best example of a gender-based violence with associated with women. Just because something is not talked about openly does not essentially diminish its reality. Yes, men undergoing sexual harassment is not a MYTH. According to an estimate over 27% had been sexually victimised²⁹. Among the 527 males polled by Economic Times for the Synovate study, 19% said they had been sexually harassed and 38% of the respondents believed that men are equally prone to sexual harassment as women in today's workplaces³⁰. A similar study was conducted in 2013 by Viacom 18 which discovered that over 43% of male workers were victims of sexual harassment by their colleagues. Sexual harassment was not only contained to actual assault, it also took the form of online abuse. The PEW research statistics in 2014 disclosed that 13% of men between ages 18-24 have experienced sexual harassment online.

Finally on the topic of false cases, the National Crime Bureau Report of 2016 recorded 24,620 false cases filed by women out of which 6745 cases were against husbands and 2839 of rape³¹. The cases only increased in 2018 to 24716 false cases with nearly 9505 cases related to cruelty by husband and 2875 related to rape³².

The following statistics though provide an insight on how the violence against men is as heinous as that against women, it is agreeable that is **not comprehensive as reports** filed by women. The lack of better and comprehensive statistics is due to the under reporting of crimes against men. The under reporting could be due to the following reasons:

- **Fear of gender stereotyping-** Men refuse to report abuse because they are stereotyped to be strong and self-reliant and to report an abuse would leave them vulnerable. Vulnerability among men is always considered weak or unmanly which results in men refusing victimization.
- **Perception that domestic abuse or sexual harassment is a gendered crime-** The misconception that domestic abuse or sexual abuse is only perpetrated by men has led to the belief that men cannot be the victims. The legislation is also to blame here

²⁹ **K.C. Basile & S.G. Smith**, *Sexual Violence Victimization of Women: Prevalence, Characteristics, and the Role of Public Health and Prevention*, 5 **Am. J. Lifestyle Med.** 407, 407–17 (2011).

DOI: 10.1177/1559827611409512.

³⁰Economic Times, Even Men aren't safe from Sexual Harassment at Workplace :Survey, Economic Times(Aug 4,2010) <https://economictimes.indiatimes.com/special-report/even-men-arent-safe-from-sexual-harassment-at-workplace-survey/articleshow/6389438.cms?from=mdr>

³¹National Crime Records Bureau, Crime in India 2016 Statistics, Scribd (2016), <https://www.scribd.com/document/366003023/NCRB-Report-on-Crime-in-India-2016-PDF>

³² National Crime Records Bureau, Crime in India 2018 Statistics, Scribd (2018), <https://www.ncrb.gov.in/en/crime-india-2018>

because they are predominantly women centric as discussed in the article which has left men at a disadvantage.

- **The Professional agencies** who are tasked with helping the male victims also treat them with mockery and ridicule due to the societal stigma on how a man should act. Such insensitive comments would only make the matters worse because men would remain silent and isolated and finally lose faith in the justice system.
- **Fear of losing custody of children-** In the statistics section of this article, it has been reported how women file fake cases against their husbands. Men fail to report violence because they fear it would render them “weak” or “incapable” in the eyes of law and would subsequently lose the custody battle. The perception that only females are associated with nurturing causes a gender bias which leads to women-oriented judgements in such cases.
- **Internalized shame-** The failure to live up to gender norms and stereotypes lead to men internalizing shame and they blame themselves for victimization. This creates self-depriving thoughts and questioning one’s masculinity and self-worth. Such internalized shame leads to severe mental health issues like anxiety, depression and suicidal thoughts.

Suggestions

A deep dive on men’s rights and their crises helps us understand how essential it is to bring about change. The primary suggestion from the author is to make the laws gender neutral. The author further likes to emphasize that **making the laws gender neutral does not undermine the experiences of women as victims or dilute the purpose for which the legislation was enacted.** It merely makes an attempt to shed light on the violence experienced by men and destroy the social constructs against them. It provides them with necessary resources to combat such offences and helps in restoring faith in the principles of equality, fairness and justice.

Few other suggestions include establishing helplines and awareness programmes for male gender-based violence victims, educate students in schools and colleges about consent and how anyone could be a victim irrespective of gender, encourage men to come forward and seek help, provide non-judgemental and welcoming platform for men to speak about their experiences and advocate on the need to destroy stereotypes and gender-based notion.

Conclusion

It could be inferred from the article that it is essential to acknowledge that men could also be victims of gender-based violence and it is the duty of the society and the State provide with safeguards and protections against the same. The author for one last time emphasizes on gender neutral legislation for holistic growth of an equitable society and how it uplifts the right of equality that is conferred in the Constitution. It is essential to know that providing protection to one gender while leaving the other gender in the dark perpetuates inequality and leads to losing of faith in the justice system and how collective response it required to bring about change.

