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A CRITICAL ANALYSIS ON GENDER BIAS IN THE CRIMINAL JUSTICE SYSTEM

AUTHORED BY - VIJAY SRIRAM KS

Doctrinal and Analytical Study

The publication examines gender bias across the criminal justice process, including reporting, investigation, prosecution, trial, sentencing, imprisonment and rehabilitation. It also considers the position of women, men, transgender persons and other individuals whose experiences do not fit traditional gender assumptions.¹

The criminal justice system is expected to treat every person fairly, regardless of their gender or social background. In reality, however, gender can influence how a person is treated when they approach the police, courts or other legal institutions. Gender bias does not always appear as an obvious act of discrimination; sometimes it exists in the form of assumptions, attitudes and stereotypes. Women who report crimes may face questions about their character, behaviour, clothing, relationships or personal choices instead of receiving immediate support. Such attitudes can discourage victims from reporting offences and can make an already difficult experience even more painful. At the same time, men can also experience gender-based difficulties, particularly when they become victims of violence or are accused of offences involving women. Social expectations about masculinity may make it difficult for male victims to speak openly about their experiences or seek legal protection. Transgender persons and other gender minorities may face even greater barriers because the traditional criminal justice system is often built around fixed ideas of gender. Gender bias can therefore affect different people in different ways at different stages of the criminal justice process. It may begin with the registration of a complaint and continue through investigation, prosecution, trial, sentencing and imprisonment. The problem is not necessarily that the law itself is always discriminatory, but that the people applying the law may carry social attitudes into their professional decisions. A victim may be judged according to stereotypes, while an accused person may sometimes be viewed through assumptions about their gender rather than the evidence available against them. This creates a difficult balance between protecting genuine victims and preserving the

¹ Justice J.S. Verma Committee, Report of the Committee on Amendments to Criminal Law (Government of India, 2013).

fundamental rights of accused persons. Gender-specific laws are important where particular forms of violence arise from existing social inequalities and require special legal protection. However, such protection should not remove the principles of fairness, equality, presumption of innocence and fair trial. Gender justice should therefore not mean automatically favoring one gender over another. It should mean recognizing genuine disadvantages while ensuring that every person is treated with dignity and according to law. The Indian Constitution provides an important foundation for this approach through the principles of equality, non-discrimination, dignity and personal liberty. This study therefore examines how gender bias enters different stages of the Indian criminal justice system and how it affects victims, accused persons and other participants. Ultimately, the study seeks to understand whether India can build a criminal justice system that is sensitive to gender-based inequality while remaining fair, balanced and accessible to everyone.

ABSTRACT AND KEYWORDS

ABSTRACT

Gender bias in the criminal justice system is often discussed only in terms of discrimination against women. The issue is broader. A person may enter the system as a victim, accused, witness or offender, and gender-based assumptions may affect how that person is treated. This study therefore examines whether the Indian criminal justice system provides meaningful and equal justice while responding to different forms of gendered disadvantage.

The study follows the process from complaint and police investigation to prosecution, trial, sentencing, imprisonment and rehabilitation. It examines victim-blaming, stereotyping, credibility assessments, institutional discretion, delay and access to justice. It also considers male victims, male accused persons and transgender persons, while recognizing that women continue to face serious structural barriers in relation to sexual violence, domestic violence and other offences.

The research uses a doctrinal and analytical methodology based on constitutional provisions, legislation, judicial decisions, committee reports, academic literature and selected empirical studies. Particular attention is given to equality, dignity, personal liberty, fair procedure, the presumption of innocence and the contemporary criminal-law framework under the Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Sakshya Adhiniyam, 2023.

The study argues that gender justice cannot be reduced to a choice between complete gender neutrality and unrestricted gender-specific protection. Specific protection may be justified

where structural inequality is established, but such protection must not become a presumption of credibility or guilt. A gender-responsive system should therefore protect genuine victims while preserving due process and equal treatment before law.

KEYWORDS:

Gender Bias; Criminal Justice System; Gender Justice; Substantive Equality; Feminist Jurisprudence; Gender Stereotyping; Gender Neutrality; Victim Rights; Accused Rights; Criminal Law.²

TABLE OF CASES TABLE OF CASES – 7 IMPORTANT CASES

S. No.	Case Name	Year
1	Air India v. Nargesh Meerza	1981
2	Vishaka v. State of Rajasthan	1997
3	Anuj Garg v. Hotel Association of India	2008
4	Independent Thought v. Union of India	2017
5	Nipun Saxena v. Union of India	2018
6	Aparna Bhat v. State of Madhya Pradesh	2021
7	Joseph Shine v. Union of India	2018

These seven decisions are used selectively in the discussion because they directly support the publication's themes of equality, dignity, autonomy, stereotyping and victim protection.³

² Bharatiya Nyaya Sanhita, No. 45 of 2023; Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023; Bharatiya Sakshya Adhiniyam, No. 47 of 2023.

³ The seven cases below are selected from the case list contained in the supplied publication.

CHAPTER I – INTRODUCTION AND RESEARCH FRAMEWORK

1.1 Background and Significance of the Study

The criminal justice system is expected to give every person a fair opportunity to report an offence, receive a proper investigation, participate in proceedings and be judged according to law and evidence. In practice, social attitudes may influence how institutions understand victims, accused persons and witnesses. Gender bias therefore cannot be examined only by reading statutory language; it must also be examined through the way legal rules operate in real institutions.

Women have historically faced under-reporting, victim-blaming, insensitive investigation, social pressure and delays in cases involving sexual violence, domestic violence and harassment. The Justice

J.S. Verma Committee highlighted institutional problems in policing, investigation and prosecution after the 2012 Delhi gang-rape case. These concerns show that legal protection is only one part of justice; institutional response is equally important.

At the same time, a complete study of gender bias cannot stop with women as victims. Men may face social expectations concerning masculinity, male victims may hesitate to report certain offences, and accused persons may face stigma and serious consequences before a final decision. Transgender persons and other gender-minority persons may also experience gaps where legal categories do not reflect their lived realities.

The significance of this study lies in balancing two concerns that are often discussed separately: protection of persons who face structural gender disadvantage and protection of constitutional due process. Articles 14, 15 and 21 provide a framework of equality, non-discrimination, dignity and personal liberty. The research therefore treats gender justice as a question of institutional fairness rather than a simple comparison between men and women.⁴

1.2 REVIEW OF LITERATURE

1.2 REVIEW OF LITERATURE – FIVE SELECTED WORKS

1. Feminist Jurisprudence and Substantive Equality

The work of Shampa Dev and related feminist-jurisprudential scholarship helps explain why formal equality may not always produce equal outcomes. Feminist jurisprudence questions whether apparently neutral legal rules operate neutrally in a society where social and

⁴ Justice J.S. Verma Committee, Report of the Committee on Amendments to Criminal Law (Government of India, 2013).

institutional inequalities already exist. This approach is useful for criminal justice because identical treatment at the surface level may fail to address unequal barriers faced by different groups.

The same literature also warns against paternalism. A law designed to protect women may become problematic if women are treated as inherently weak or lacking agency. The present study therefore uses substantive equality as a framework that recognises structural disadvantage without turning gender into an automatic basis for credibility, responsibility or legal entitlement.

2. Feminist Criminology and Gendered Perceptions of Crime

Frances Heidensohn and Carol Smart challenged criminological approaches that treated male experience as the standard and gave insufficient attention to women's experiences of crime and punishment. Their work shows that assumptions about masculinity and femininity can influence how victimhood, offending and punishment are understood. This provides a foundation for studying the practical operation of gender assumptions within criminal justice institutions.

Indian discussions of female offending also show that gender bias can work through paternalism and moral judgment. Women may be treated as vulnerable in some settings but judged more harshly when their behaviour conflicts with traditional expectations of femininity. The literature therefore supports a broader understanding of bias as stereotyping rather than merely preference for one gender.⁵

1.2 REVIEW OF LITERATURE – CONTINUED

3. Gender Stereotyping in Courts

Tannvi and S Narayana examine gender stereotyping in Indian courts and draw attention to cultural and patriarchal expectations concerning respectable behaviour, compromise, sexual conduct and credibility. Such expectations may shift attention away from the alleged conduct and toward the character of the complainant. The literature is therefore relevant to the treatment of victims during adjudication.

The significance of this scholarship extends beyond sexual offences. A trial should assess evidence and law rather than decide whether a complainant behaves like an expected “good woman” or whether an accused person fits an expected image of masculinity. Gender-sensitive

⁵ Frances Heidensohn, *Women and Crime* (2nd edn, Macmillan 1996); Carol Smart, *Women, Crime and Criminology: A Feminist Critique* (Routledge & Kegan Paul 1976).

adjudication therefore requires both protection from stereotypes and fidelity to the evidentiary burden.

4. Gender Bias at the Police and Investigation Stage

Nirvikar Jassal's research connects police complaints with court records and examines how victim gender relates to justice delivery. The study is important because it treats justice as a chain of institutional decisions rather than a single courtroom event. The related research on all-women police stations also questions whether specialised institutions automatically improve outcomes in every setting.

The findings are relevant to the present study because institutional design must be assessed through actual consequences. A specialised unit may increase confidence for some complainants but may also create practical barriers or encourage counselling and reconciliation instead of prosecution in particular circumstances. The literature therefore supports outcome-based evaluation of reforms.

5. Gender Neutrality, Criminal-Law Reform and Unrecognised Victims

Recent discussions on the Bharatiya Nyaya Sanhita, together with the Justice J.S. Verma Committee's reform framework, show the continuing need to connect substantive protection with institutional accountability. Scholarship also notes that male, transgender and other gender-minority victims may fall outside traditional legal assumptions. At the same time, gender-neutral reform cannot ignore structural violence faced by women.

The five selected bodies of literature together reveal a common issue: gender bias appears at multiple institutional stages and does not always operate in one direction. The present study builds on this literature by connecting theory, law and institutional practice within one five-chapter analysis of the criminal justice process.⁶

1.2 RESEARCH GAP, OBJECTIVES AND QUESTIONS

1.3 Research Gap

Existing literature is divided across particular stages and categories. Some studies focus on women's access to justice, others on gender stereotyping, female offending, police institutions or gender neutrality. Fewer studies connect reporting, investigation, prosecution, trial, sentencing and rehabilitation as one continuous criminal-justice chain. This publication

⁶ Nirvikar Jassal, "Does Victim Gender Matter for Justice Delivery? Police and Judicial Responses to Women's Cases in India" (2023) 117 American Political Science Review; Nirvikar Jassal, "Gender, Law Enforcement, and Access to Justice: Evidence from All-Women Police Stations in India" (2020) 114 American Political Science Review.

addresses that fragmentation through a system-wide approach.

A second gap concerns victims and accused persons. Studies of violence against women focus mainly on under-protection and victim-blaming, while discussions of neutrality often focus on male or transgender victims and accused persons. The present analysis places both concerns within the same constitutional framework while recognising that their experiences are not identical. Intersectional factors such as caste, class and economic dependence are also treated as relevant to access.

1.4 Research Objectives

- To understand the concept and forms of gender bias within the Indian criminal justice system.
- To examine gender bias at reporting, investigation, prosecution, trial, sentencing, imprisonment and rehabilitation stages.
- To analyse the constitutional and statutory framework relating to equality and gender justice.
- To examine the position of women, men, transgender persons and other individuals as victims, witnesses and accused persons.
- To identify institutional gaps and suggest reforms consistent with substantive equality and fair procedure.

Research Questions

The study asks where gender assumptions enter the criminal process, how they influence institutional decisions, whether current law sufficiently protects equality and dignity, and how the system can protect genuine victims while preserving the presumption of innocence and fair trial rights.⁷

1.5 METHODOLOGY AND LIMITATIONS

1.5 Research Methodology

The study adopts a doctrinal and analytical methodology. It examines constitutional provisions, criminal statutes, judicial decisions, committee reports, academic literature and relevant empirical research. No independent field survey, questionnaire or personal interview is undertaken.

Primary materials include the Constitution of India, the Bharatiya Nyaya Sanhita, 2023, the

⁷ The research-gap formulation consolidates the gaps identified in the supplied publication: institutional fragmentation, separate treatment of victims and accused persons, limited intersectional integration, outcome gaps in reforms and the need to reassess the contemporary criminal-law framework.

Bharatiya Nagarik Suraksha Sanhita, 2023, the Bharatiya Sakshya Adhiniyam, 2023, the Protection of Women from Domestic Violence Act, 2005, prison-related rules and policies, Supreme Court and High Court decisions, and recognised committee reports. Secondary materials include books, journal articles, legal commentaries and empirical studies.

The materials are analysed to identify the relationship between formal legal rules and their practical operation. Particular attention is given to equality, dignity, victim protection, evidence, fair procedure and the position of accused persons. International human-rights materials are treated only as supplementary benchmarks.

1.6 Limitations of the Study

- The study is doctrinal and analytical and does not contain independent field data.
- The principal focus is the Indian criminal justice system.
- Gendered experiences vary by offence, institution and social circumstances; the study does not treat all members of a gender as having identical experiences.
- Discussion of false or exaggerated allegations concerns legal and institutional implications and does not assume that complaints by women are generally false.
- The BNS, BNSS and BSA framework is still developing through interpretation and implementation.⁸

CHAPTER II – CONCEPTUAL, CONSTITUTIONAL AND LEGAL FRAMEWORK

2.1 Meaning and Nature of Gender Bias

Gender bias refers to assumptions, practices or institutional responses that treat a person differently because of gender, whether openly or indirectly. In criminal justice, bias can arise in reporting, credibility assessments, investigation, prosecution, adjudication, sentencing or prison administration. It may be favourable, unfavourable, protective, paternalistic or exclusionary, but in each form it can affect equal access to justice.

2.2 Formal Equality and Substantive Equality

Formal equality asks whether the same legal rule is applied to people in the same way. Substantive equality asks whether the legal and institutional structure actually responds to existing disadvantage. This distinction matters because identical procedures may not remove barriers produced by poverty, dependence, social stigma, violence or institutional insensitivity.

⁸ Bharatiya Nyaya Sanhita, No. 45 of 2023; Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023; Bharatiya Sakshya Adhiniyam, No. 47 of 2023.

The study therefore does not treat “same treatment” as the only measure of fairness. Specific protection may be justified where a group faces recognised structural disadvantage. At the same time, protection should not become a permanent assumption of weakness or credibility. Substantive equality requires both responsive protection and individualised legal decision-making.

2.3 Gender Stereotyping

Stereotyping occurs when institutions rely on assumed characteristics of men or women rather than the evidence and circumstances of the individual case. Examples include assumptions that women should behave modestly, that men should be physically dominant, or that a complainant’s conduct determines whether an allegation deserves belief. Such assumptions can distort investigation and adjudication.⁹

2.4 FEMINIST JURISPRUDENCE, CRIMINOLOGY AND INTERSECTIONALITY

2.4 Feminist Jurisprudence

Feminist jurisprudence asks how legal rules are shaped by social power and whether supposedly neutral rules reproduce existing inequality. In criminal justice, this perspective directs attention to under-reporting, victim-blaming, credibility assumptions and the institutional conditions that may prevent women from receiving equal protection. It also cautions against treating protective laws as sufficient without examining implementation.

2.5 Feminist Criminology

Feminist criminology expands the study of crime by examining gendered patterns of victimisation, offending and punishment. It challenges accounts that treat men as the default offenders and women as exceptional subjects. The approach is useful because it examines not only why crime occurs but also how institutions define, process and punish crime.

2.6 Intersectionality

Gender rarely operates alone. Caste, class, economic dependence, disability, age and social position can influence the ability to report an offence, obtain legal assistance and continue with proceedings. Two people of the same gender may therefore experience the criminal justice system differently because they occupy different social and economic positions.

2.7 Protective Discrimination and Paternalism

Protective measures may be necessary where evidence of structural disadvantage exists.

⁹ Constitution of India, arts 14, 15 and 21, as the basic constitutional framework for equality, non-discrimination, dignity and personal liberty.

However, protection can become paternalistic when institutions assume that women need control rather than equal agency. The challenge is to design protection that increases safety and access without restricting autonomy or creating automatic presumptions.

2.8 Gender-Responsive and Gender-Neutral Justice

Gender-responsive justice recognises that different groups may face different forms of disadvantage. Gender-neutral justice emphasises equal legal recognition regardless of gender. The study treats these as complementary goals rather than mutually exclusive choices: responsiveness addresses unequal starting conditions, while neutrality protects against arbitrary treatment of individuals.¹⁰

2.9 CONSTITUTIONAL GUARANTEES

2.9 Article 14 – Equality Before Law

Article 14 provides the central constitutional commitment to equality before law and equal protection of the laws. In the context of gender bias, the principle requires that distinctions based on gender have a legitimate legal basis and do not become arbitrary assumptions about individuals. The key question is therefore whether a distinction responds to a genuine constitutional objective or merely reflects stereotype.

2.10 Articles 15 and 16 – Non-Discrimination and Equality of Opportunity

Article 15 addresses discrimination on specified grounds and also permits constitutionally recognised protective measures. Article 16 concerns equality of opportunity in public employment. Together, these provisions reinforce the principle that gender cannot be used as an arbitrary ground of exclusion. They also explain why substantive equality may require appropriately designed measures to address structural disadvantage.

2.11 Article 21 – Dignity, Liberty and Fair Procedure

Article 21 protects life and personal liberty and has been interpreted through a wider framework of dignity and fair procedure. Criminal justice decisions affect liberty, reputation, bodily integrity and personal autonomy. Gender-sensitive justice must therefore ensure that victims are treated with dignity while accused persons receive a lawful and fair process.

2.12 Constitutional Balance

The constitutional framework does not require the legal system to choose between victims and accused persons. It requires justice to be administered through equality, dignity and fair

¹⁰ Frances Heidensohn, *Women and Crime* (2nd edn, Macmillan 1996); Carol Smart, *Women, Crime and Criminology: A Feminist Critique* (Routledge & Kegan Paul 1976).

procedure. The present study uses these principles as the common standard for evaluating gender-specific protection, neutrality, institutional discretion and evidentiary decision-making.¹¹

2.13 CONTEMPORARY CRIMINAL-LAW FRAMEWORK

2.13 Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita, 2023 forms the present substantive criminal-law framework that replaced the earlier Indian Penal Code structure. For gender justice, the relevant inquiry is how offences, defences, punishments and gender-specific protections are defined and interpreted within the new framework. The transition also creates a need to revisit assumptions developed under the earlier code.

2.14 Bharatiya Nagarik Suraksha Sanhita, 2023

The Bharatiya Nagarik Suraksha Sanhita, 2023 provides the contemporary procedural framework for criminal investigations and trials. Gender bias may therefore appear not only in substantive offences but in registration, investigation, arrest, bail, prosecution and procedural compliance. The practical operation of procedural safeguards is as important as the formal wording of the statute.

2.15 Bharatiya Sakshya Adhiniyam, 2023

The Bharatiya Sakshya Adhiniyam, 2023 governs evidentiary principles in the contemporary framework. Evidence is central to the gender-bias debate because credibility may be influenced by stereotypes about sexual history, conduct, masculinity or femininity. Evidence law must therefore be applied through relevance, reliability and lawful procedure rather than social expectation.

2.16 Gender-Specific Protective Laws

India also has special laws designed to address particular forms of gendered harm, including domestic violence and other offences affecting women. Such laws respond to structural problems, but their operation must remain consistent with constitutional principles. Protection is meaningful when it improves safety and access to remedies without displacing the requirement that individual allegations be examined on evidence.¹²

¹¹ Constitution of India, arts 14, 15 and 21.

¹² Bharatiya Nyaya Sanhita, No. 45 of 2023; Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023; Bharatiya Sakshya Adhiniyam, No. 47 of 2023; Protection of Women from Domestic Violence Act, 2005.

2.17 IMPORTANT JUDICIAL DEVELOPMENTS

Air India v. Nargesh Meerza

The decision is an important early example of judicial scrutiny of gender-based employment conditions. Its continuing relevance to the present topic is the recognition that institutional rules cannot be justified merely by traditional assumptions about women's roles.

Vishaka v. State of Rajasthan

The case is a landmark constitutional response to workplace sexual harassment. It linked gender justice with dignity, equality and institutional duties, showing that courts may require protective norms where existing law is inadequate.

Anuj Garg v. Hotel Association of India

The Court examined a protective restriction on women's employment and rejected the idea that protection can rest on stereotypes about women's vulnerability. The decision is relevant to the distinction between genuine protective discrimination and paternalism.

Independent Thought v. Union of India

The judgment reflects the constitutional importance of protecting bodily integrity and dignity in the context of sexual offences and marriage. It is relevant to the study because criminal-law categories must remain consistent with constitutional rights.

Nipun Saxena v. Union of India

The case is significant for protection of survivors of sexual offences and the treatment of information that may identify them. It demonstrates that procedural justice includes dignity and privacy, not only punishment of offenders.

Aparna Bhat v. State of Madhya Pradesh

The decision addressed gender stereotypes in judicial reasoning and cautioned against approaches that treat women through social assumptions about compromise or expected conduct. It is directly relevant to the problem of stereotyping in adjudication.

Joseph Shine v. Union of India

The case is significant for personal autonomy and equality within marriage. It rejects legal assumptions that treat women as subordinate or as the property of men, and therefore strengthens the constitutional foundation for gender-equal criminal law.¹³

¹³ The seven decisions listed here are selected for their relevance to equality, dignity, stereotyping, victim protection and autonomy in the supplied publication.

CHAPTER III – GENDER BIAS IN POLICE, INVESTIGATION AND PROSECUTION

3.1 Complaint Registration and FIRs

The first institutional contact often shapes the rest of a criminal case. A complaint that is not promptly recorded, or is treated as a private family dispute, may delay evidence collection and discourage the complainant from pursuing the matter. Gender bias may enter through assumptions about sexual morality, domestic roles, family honour or the expected behaviour of men and women.

For women complainants, barriers may arise from fear, social pressure, economic dependence and insensitive treatment. For male or transgender complainants, the difficulty may arise from the belief that certain forms of violence cannot happen to them or should not be reported. The common requirement is institutional responsiveness to the facts rather than a pre-set view of who can be a victim.

3.2 Police Discretion and Investigation

Police officers exercise discretion in recording information, interviewing witnesses, collecting evidence, selecting investigative priorities and communicating with victims. Discretion is unavoidable, but unchecked discretion can reproduce social stereotypes. Investigation should therefore focus on relevant facts, preserve evidence, document reasons for procedural decisions and avoid conclusions based on gendered assumptions.

Insensitive investigation can also create secondary victimisation. Repeated questioning, intrusive comments or unnecessary publicity may make complainants feel that the system itself is another source of harm. At the same time, an investigation must not become one-sided. Evidence concerning the accused must be collected and tested objectively so that the procedure remains fair.¹⁴

3.3 STEREOTYPING, SPECIALISED INSTITUTIONS AND ACCESS TO JUSTICE

3.3 Victim Credibility and Gender Stereotypes

Police credibility assessments may be affected by assumptions about how a “real” victim should behave. Delay in reporting, continued contact with an accused person, emotional responses or lack of visible injury may be interpreted through stereotype rather than circumstance. Such indicators are not substitutes for evidence. The same principle applies to

¹⁴ Justice J.S. Verma Committee, Report of the Committee on Amendments to Criminal Law (Government of India, 2013).

male victims whose masculinity may wrongly be treated as inconsistent with vulnerability.

3.4 Women Police Stations and Help Desks

Specialised police stations and help desks are intended to make reporting more accessible. Their value depends on how they function in practice. Jassal's research on all-women police stations indicates that institutional specialisation does not automatically produce better justice outcomes. In some situations, additional travel burdens or a preference for counselling and reconciliation may create unintended effects.

3.5 Counselling, Mediation and Reconciliation

Counselling can be helpful where the complainant freely seeks it and where reconciliation is legally and factually appropriate. It becomes problematic when it is used to discourage a victim from pursuing a lawful complaint or when social expectations of maintaining family relationships override safety and autonomy. The decision to continue criminal proceedings must remain tied to law and the circumstances of the case.

3.6 Intersectionality and Institutional Access

Economic dependence, caste, location and access to transport or legal assistance can affect whether a person is able to approach a police station and continue with the case. Gender-responsive administration therefore requires attention to practical barriers, not merely formal equality.¹⁵

3.7 PROSECUTION AND INSTITUTIONAL ACCOUNTABILITY

3.7 Prosecutorial Discretion

Prosecutors influence how a case is presented, which evidence is relied upon and how legal issues are framed. Gender bias can arise when prosecutors dismiss a complainant as unreliable because of stereotype, or when they treat an allegation as sufficient without carefully testing the evidence. The proper approach is to protect the public interest through a fair and reasoned assessment of the case.

3.8 Witness Handling and Case Preparation

Witnesses should receive clear information, respectful communication and adequate protection from unnecessary pressure. Poor case preparation may increase delays, repeated adjournments and inconsistencies that are then unfairly attributed to the victim. The system should distinguish between genuine contradictions and the ordinary effects of trauma, fear or passage of time,

¹⁵ Nirvikar Jassal, "Gender, Law Enforcement, and Access to Justice: Evidence from All-Women Police Stations in India" (2020) 114 American Political Science Review.

while still preserving evidentiary scrutiny.

3.9 Institutional Accountability

Gender-sensitive policies are meaningful only when institutions are accountable for implementation. Record-keeping, supervision, complaint mechanisms and reasoned decision-making help reduce the space for arbitrary treatment. Training should not simply teach officers to “believe women” or “doubt allegations”; it should teach them to identify relevant facts, avoid stereotypes and comply with law.

3.10 Fairness to Accused Persons

The accused person is also part of the justice process. Arrest, public disclosure, social stigma and loss of employment or family relationships may occur before guilt is established. Investigation and prosecution must therefore remain independent of gender-based assumptions and must not replace proof with moral judgment.¹⁶

3.11 CRITICAL ASSESSMENT OF THE POLICE AND PROSECUTION STAGE

The police and prosecution stages reveal why legal reform cannot be assessed only by counting protective statutes. The practical question is whether a person can enter the system, be heard respectfully, receive an impartial investigation and have relevant evidence preserved. A system may have strong laws and still produce weak justice if institutional practices discourage reporting or fail to investigate properly.

Gender bias can also arise from institutional efficiency concerns. Officers may prefer quick compromise, classify matters according to familiar social categories or give greater attention to cases they regard as serious. These practices can produce unequal outcomes when gendered expectations influence which complaints are treated as credible or urgent.

The solution is not to remove all specialised mechanisms. Specialised assistance may be necessary where a group faces known barriers. The stronger approach is to combine special access with transparent standards: prompt registration, documented investigative steps, evidence-based decision-making, protection from intimidation and meaningful supervision.

A balanced framework must also recognise the position of the accused. Safeguards against unlawful arrest, coercion, fabricated evidence and prejudicial publicity are not obstacles to victim protection. They are part of the constitutional structure within which criminal justice must operate. Institutional fairness is therefore the connecting principle between victim rights

¹⁶ Constitution of India, arts 14 and 21; Justice J.S. Verma Committee, Report of the Committee on Amendments to Criminal Law (Government of India, 2013).

and accused rights.¹⁷

CHAPTER IV – GENDER BIAS IN TRIAL, SENTENCING, IMPRISONMENT AND REHABILITATION

4.1 Evidence and Credibility

The trial stage requires the court to decide whether the prosecution has proved the case according to law. Gender bias may enter when credibility is assessed through social stereotypes. A complainant's clothing, previous relationships, marital status or manner of speaking should not become substitutes for legal analysis. At the same time, protection of a complainant does not remove the accused's right to challenge evidence through lawful procedure.

4.2 Rape Myths and Victim-Blaming

Rape myths are common social beliefs about how a genuine victim should behave. Courts and lawyers must avoid reasoning based on these myths. Delay in reporting, silence, fear, continued association or lack of physical resistance cannot by themselves determine truth. The proper focus is the totality of the admissible evidence and the applicable law.

4.3 Cross-Examination and Secondary Victimization

Cross-examination is necessary to test evidence, but the process should not become a source of humiliation. Irrelevant attacks on character or dignity may discourage reporting and distort the fact-finding process. The challenge is to preserve an accused person's right to test the prosecution case while preventing questions that rest only on gender stereotypes or irrelevant moral judgment.¹⁸

4.4 JUDICIAL STEREOTYPING AND DELAY

4.4 Judicial Stereotyping

Judicial reasoning should be based on law, facts and evidence, not assumptions concerning gender roles. Inappropriate comments about marriage, compromise, modesty or expected behaviour may weaken confidence in the justice system. The importance of Aparna Bhat lies in its emphasis that courts should avoid stereotypes while dealing with women and sexual-offence allegations.

¹⁷ Nirvikar Jassal, "Does Victim Gender Matter for Justice Delivery? Police and Judicial Responses to Women's Cases in India" (2023) 117 American Political Science Review.

¹⁸ Nipun Saxena v. Union of India, (2018), on protection of survivors and limits concerning disclosure of identifying information, as selected in the supplied publication.

4.5 Delay in Criminal Proceedings

Delay affects victims and accused persons differently but seriously. A victim may face repeated appearances, social pressure and emotional strain, while an accused person may live for years under the uncertainty of proceedings. Delays can also weaken evidence and reduce confidence in outcomes. Gender-sensitive justice therefore includes timely procedure, not merely stronger substantive offences.

4.6 Presumption of Innocence and Fair Trial

The presumption of innocence remains central to criminal adjudication. A serious allegation deserves a serious investigation, but seriousness does not eliminate the requirement of proof. The court must protect complainants from humiliation and also ensure that the accused is not convicted because of moral condemnation or social pressure.

4.7 False, Exaggerated and Strategically Motivated Allegations

The legal system may encounter allegations that are false, exaggerated or strategically motivated, but such possibilities should be handled through evidence rather than generalisations about any gender. The appropriate institutional response is careful investigation, reasoned prosecution and a trial that tests competing accounts. The existence of some false complaints cannot justify treating genuine complaints as inherently doubtful.¹⁹

4.8 SENTENCING AND IMPRISONMENT

4.8 Gender and Sentencing

Sentencing decisions may be influenced by social assumptions concerning motherhood, dependency, masculinity, family responsibility, or vulnerability. Some consideration of individual circumstances is legitimate when law permits it, but the decision should not rest on a stereotyped idea that women are naturally less blameworthy or men are naturally more dangerous.

4.9 Female and Male Offenders

Female offenders may be judged through the lens of expected femininity, while male offenders may encounter assumptions that aggression is natural to men. Both forms of stereotyping can affect perceptions of culpability and rehabilitation. A fair system should focus on the offence, evidence, statutory framework and relevant individual circumstances.

4.10 Women Prisoners and Prison Conditions

Women prisoners may have specific needs relating to health, safety, pregnancy, childcare and

¹⁹ Aparna Bhat v. State of Madhya Pradesh (2021), as discussed in the supplied publication for the issue of gender stereotyping in judicial reasoning.

social dependence. These needs require institutional accommodation, but the objective should be dignity and lawful treatment rather than paternalistic control. The same principle extends to prisoners whose gender identity or social circumstances place them at particular risk.

4.11 Transgender Persons in Prisons

Transgender prisoners may face safety, placement and access-to-services concerns when prison systems are organized around a rigid male-female model. The focus should be individual safety, dignity and lawful treatment. Institutional policies should avoid automatic placement based solely on stereotype and should provide mechanisms to address particular risks.²⁰

4.12 LEGAL AID, MOTHERHOOD, ECONOMIC DEPENDENCE AND REHABILITATION

4.12 Legal Aid and Access to Justice

Access to justice depends on more than the existence of courts. Legal representation, information, transport, language, documentation and financial capacity can determine whether a person can pursue a case effectively. Gender bias becomes more severe when institutions assume that a person can continue litigation without considering practical constraints.

4.13 Motherhood and Economic Dependence

Motherhood and economic dependence may affect the ability of a victim to leave a violent environment or participate in repeated proceedings. These factors should not be used to pressure a person into reconciliation, but they may be relevant to the design of support, shelter, legal assistance and rehabilitation.

4.14 Rehabilitation and Reintegration

Criminal justice should not end at conviction. Rehabilitation and reintegration help reduce repeated offending and restore lawful social participation. Gender-responsive rehabilitation may include education, counselling, family support, employment assistance and protection from violence. The programme should be based on individual needs rather than assumptions about gender.

The trial, sentencing and prison stages therefore demonstrate that equality is an ongoing institutional obligation. Gender bias may appear in the language of judgments, the treatment of witnesses, the length of proceedings, conditions of imprisonment or the opportunities available after release.²¹

²⁰ The supplied publication identifies prison conditions, legal aid, rehabilitation and the position of transgender persons as areas requiring gender-sensitive analysis.

²¹ The supplied publication identifies legal aid, motherhood, economic dependence, prison conditions and

CHAPTER V – GENDER NEUTRALITY, FINDINGS AND RECOMMENDATIONS

5.1 Male Victims and Unrecognized Victims

A gender-just criminal justice system should recognize that men can experience violence and that social expectations may discourage them from reporting it. Male victims of sexual or domestic violence may face disbelief because masculinity is associated with physical strength or self-protection. The problem is not solved by assuming that men and women experience violence in the same way; it is addressed by ensuring that victimhood is determined by facts rather than stereotype.

5.2 Transgender and Gender-Minority Victims

Transgender persons and others who do not fit traditional categories may experience gaps in reporting, documentation, protection and support. Legal institutions need procedures that recognise dignity and identity while retaining clear standards for evidence and proof. Inclusion is therefore both a substantive equality concern and an administrative design issue.

5.3 Limits of Complete Gender Neutrality

Complete neutrality may appear attractive because it promises identical rules for everyone, but it may leave structural disadvantages unaddressed. Women continue to face particular forms of gender-based violence and institutional barriers. The stronger constitutional approach is differentiated protection where justified, combined with equal procedural safeguards for every individual accused or victim.

5.4 Alleged Misuse of Protective Laws

Claims of misuse should be analysed case by case. A legal system can recognise the possibility of false, exaggerated or strategic allegations without turning that possibility into a general assumption about women complainants. The proper safeguard is evidentiary scrutiny, reasoned investigation and fair trial, not a presumption that one class of complainants is unreliable.²²

5.5 MAJOR FINDINGS AND RECOMMENDATIONS

5.5 Major Findings

- Gender bias can enter at every stage of criminal justice rather than at a single point.
- Women may face victim-blaming, under-reporting, institutional insensitivity and delays.

rehabilitation as linked components of access to justice.

²² Joseph Shine v. Union of India (2018), on autonomy, equality and rejection of legal assumptions that treat women as subordinate within marriage.

- Men, transgender persons and other groups may face legal gaps, social stereotypes or recognition problems as victims.
- Accused persons may be affected by pre-trial stigma and gendered assumptions before guilt is established.
- Specialised institutions can help, but their effectiveness depends on implementation and outcomes.
- Substantive equality provides a more balanced framework than absolute neutrality or absolute gender specificity.

5.6 Recommendations

- Ensure prompt and respectful registration of complaints and document reasons for significant investigative decisions.
- Provide regular training on gender stereotyping, evidence-based investigation and victim dignity.
- Strengthen supervision, complaint mechanisms and accountability for police and prosecutorial decisions.
- Protect the privacy and dignity of victims while preserving lawful defense rights and fair cross-examination.
- Improve legal aid, witness support, timely hearings and practical assistance for persons facing economic or social barriers.
- Develop inclusive procedures for male, transgender and other victims without weakening protections addressing structural violence against women.
- Review prison and rehabilitation systems through individual needs, dignity, safety and reintegration rather than gender stereotypes.²³

5.7 CONCLUSION AND SELECTED REFERENCES

5.7 Conclusion

Gender bias in the criminal justice system is not limited to one law, one institution or one gender. It can appear when a complaint is first received, when evidence is collected, when credibility is assessed, when cases are prosecuted, when courts reason about conduct, and when prisoners are treated after conviction. The problem is therefore institutional as well as doctrinal. The analysis also shows why the debate should not be framed as women versus men. Women

²³ Justice J.S. Verma Committee, Report of the Committee on Amendments to Criminal Law (Government of India, 2013); the recommendations also synthesise the gaps identified in the supplied publication.

may need specific protection because of structural forms of violence and inequality, while men, transgender persons and other individuals may face legal or social barriers that remain under-recognised. The constitutional objective is to combine protection from structural disadvantage with equal dignity, evidence-based decision-making and fair procedure.

A gender-responsive criminal justice system should therefore avoid two extremes: ignoring structural gender inequality and allowing gender stereotypes to replace individualised legal analysis. Substantive equality provides a useful framework because it permits justified protection while preserving the presumption of innocence, procedural fairness and equal respect for every person.

The continuing development of the BNS, BNSS and BSA creates an opportunity to apply these principles across contemporary criminal justice. The final measure of reform should not be only the number of protective provisions enacted, but whether people can enter the system safely, receive impartial investigation, participate with dignity and obtain decisions based on law and evidence.

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²⁴ The references are drawn from the source publication supplied for editing and retained in condensed form.