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## Gender-Biased Punishments under IPC

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*India has been waging a long battle to preserve women's rights, and we must make sure that any increase in crime statistics is only attributable to the crimes themselves, not to the misuse of the laws intended to protect women's modesty. These pro-women laws and legislations have been justified for so long because of how women were treated in the culture of the past. It's crucial to acknowledge that times have changed and that everyone is treated equally under the Indian Constitution. We do not dispute the reality that women are the primary victims in the majority of cases, but this does not call for men to be treated with indifference because of the improper application of the laws that are already in place. In India, which has the world's longest-written constitution and is the largest democracy in the world, people uphold constitutional ideals including individual liberty, social justice, the rule of law, and fundamental equality, all of which are of the utmost significance. Gender-neutral laws have redefined gender-specific legislation by guaranteeing that everyone is protected equally and their rights are preserved regardless of gender. Given the rise in crimes of all types, the increase in the rate of such crimes, and the vulnerability of every member of society, it is fair and acceptable to have a law that is inclusive in nature and that recognizes the crime and the victim regardless of gender. Several feminist organizations and women activists have voiced strong resistance to the implementation of this gender-neutral legislation, arguing that doing so will divert attention away from the genuine female crime victims and onto the false allegations made against them. In addition, it was suggested that these regulations would not be able to achieve their intended objective of safeguarding both genders equally and would create more harm than good.*

**Keywords:** *gender-neutral laws, individual liberty, protecting women's modesty, fundamental equality.*

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## INTRODUCTION

Every person living in India is guaranteed the "Right to Equality" as one of their fundamental rights by the Indian Constitution Article 14<sup>1</sup>. But even after 76 years of independence, the question that stands before us is if our constitution is equipped with the laws that are necessary to provide equality. Equality is a word that is commonly used, and everyone keeps discussing how equality is a fundamental human right. The reality, however, is very different because prejudice continues to be one of the biggest issues in our nation. People face discrimination based on factors such as religion, colour, caste, and gender, among others. Certain Indian statutes and laws go counter to this idea of equality. In other words, gender disparity or bias exists in Indian law. We'll be explicitly discussing gender prejudices in the Indian Penal Code in this piece.

Indian Penal Code was first drafted and codified in 1860 by Lord Macaulay. However society, at that time, was male-dominated<sup>2</sup>. There were more restrictions on women as compared to today women had significantly less availability of financial, physical, and educational resources than men. It was often believed that women are more vulnerable to danger than men. Thus it was found an increased need for laws supporting women, to empower them. However, as the years have progressed, so have the expectations placed on the legal system. As a direct result of this, certain provisions of the Indian Penal Code have turned discriminatory toward men. Even though the Indian Constitution was written seven decades ago and guarantees equality to every person who lives in India, our legislators have not been able to amend the IPC to reflect the shifting demographics and social requirements of the masses. This is even though the Indian Constitution guarantees equality to every person who lives in India. Given the conditions of the time, the laws that were enacted at the time were completely appropriate; however, given the conditions of the twenty-first century, we need to modify the IPC to live up to those expectations.

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<sup>1</sup> Constitution of India 1950, art 14

<sup>2</sup> Sanskriti Srivastava, 'IS INDIAN PENAL CODE, 1860 GENDER BIASED?' (JLRJS) <<https://jlrs.com/is-indian-penal-code-1860-gender-biased>> accessed 03 February 2023

## HARASSMENT ON MEN

The Justice Verma Committee report of the year 2013 stated that 'Since the possibility of sexual assault on men, as well as homosexual, transgender and transsexual rape, is a reality, the provisions have to be cognizant of the same.' And because these problems are not thoroughly researched and analysed, men's sexual assault and abuse do not receive the attention they require. According to Indian ideology, real men cannot be abused or sexually assaulted is pervasive, which is largely to blame for how rarely such incidents are reported. Because of this, there aren't enough individuals who are aware of the crimes that women can do against males.

## ANALYSIS

**Punishment of offences committed within India (Section 2<sup>3</sup>):** Any person is subject to punishment under this Code and not under any other for every act or omission that is contrary to its provisions and that he commits within India, according to S.2 of the Indian Penal Code. This section establishes that the law does not differentiate between offenders and that everyone who commits an offence is subject to the code's penalties. But the assumption made is that "all violence comes from men" not only contributes to gender inequality in society but, the act also serves as a deterrent to the crimes committed by women.

**Rape (Section 375<sup>4</sup>):** Under section 375 of the Indian Penal Code rape is defined, where it states that the rape victim must be a woman and the offender have to be a man. Indian Penal Code doesn't consider that a male can be a victim of an offence like rape. There is no doubt that a woman is fully capable of committing rape. According to the findings of one study, 16.1% of the 222 Indian men who took part in the study had been coerced into engaging in sexual activities. Even though there has not been as much research conducted on male rape as there has been on female rape, men are nonetheless victims of sexual assault, and the prevalence of male rape is higher than is commonly believed. Unquestionably, countries that have rape laws

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<sup>3</sup> Indian Penal Code 1860, s 2

<sup>4</sup> Indian Penal Code 1860, s 375

that are not specific to either men or women have been found to have the lowest rates of rape.<sup>5</sup>

Despite the prevalent notion that rape victims are almost always female, the World Health Organisation (WHO) estimates that 12–16% of men around the world are victims of rape and have a history of sexual abuse during childhood. Moreover, the publications acknowledged that the overwhelming majority of the data came from industrialised nations. On the other hand, our nation does not have any official statistics or data regarding the prevalence of specific types of sexual assaults committed against male victims. By the requirements of the POCSO<sup>6</sup> any assault on a child in India, whether done against a boy or a girl, is classified as a sexual assault on a minor. More disturbing for us is the fact that the absence of such information demonstrates not just India's lack of initiative in safeguarding the rights of males, but also the ignorance of both the government and society regarding the prevalence of such crimes in general. This is very distressing, how when a man is accused of raping a woman and a complaint is made against him, our culture and our legal system are typically more concerned with the evidence that will help the man be found not guilty than they are with the evidence that will help establish the man's guilt. This is because the former is more likely to result in the man being exonerated. By the recommendation made by the Justice Verma Committee, the Criminal Law Ordinance has been revised to incorporate gender-neutral offences. The regrettable removal of the Ordinance was brought about by the Criminal Law (Amendment) Act of 2013.

All of these facts demonstrate that it is essential to recognise and comprehend that males are rape victims, physical abuse, and violence, and that they are entitled to the same level of protection from such heinous crimes as women. Furthermore, it is also imperative to acknowledge that males are entitled to the same level of protection from such heinous crimes as women. In the case of *Sakshi v Union of India*<sup>7</sup>, it has been established that there is a need

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<sup>5</sup> Harsh Kumar, 'Gender Biased Laws In India' (*LegalserviceIndia*) <<https://www.legalserviceindia.com/legal/article-3358-gender-biased-laws-in-india.html>> accessed 03 February 2023

<sup>6</sup> Protection of Children from Sexual Offences Act 2012

<sup>7</sup> *Sakshi v Union Of India* (2004) SCR 723

for expansion and amendment in the rape laws, i.e. section 375 of the Indian Penal Code.

**Assault or criminal force to a woman with intent to outrage her modesty (Section 354<sup>8</sup>):**

Assault or other unlawful force can offend a woman's modesty, according to this Section of the Criminal Code. However, a man's modesty is not protected by such legislation. Women can intimidate men and get away with it because the rules of the country do not shield them from such an act. In the case of *Girdhar Gopal v State*<sup>9</sup>, the court made a ruling and provided a broad interpretation of section 354 of the Indian Penal Code. The court ruled that any man or woman who would have the intent to commit the offences under section 354 of the Indian Penal Code will be held liable. The court also provided a broad interpretation of section 354 of the Indian Penal Code. In other words, it is possible for a woman, just like it is possible for a man, to violate the modesty of a woman by using unlawful force or by engaging in an assault with the requisite level of knowledge and intent. According to a main argument that was stated in this case, the Indian Penal Code, of 1860 has not been focused on producing legislation that defines and also penalises any act of using criminal force or attack done by a man or woman to any "male" with the purpose to "outrage his modesty".<sup>10</sup>

**Husband or relative of the husband of a woman subjecting her to cruelty (Section 498A<sup>11</sup>):**

Violence can be any kind of abuse by one person to another and it can be in any setting whether in a household or a domestic setting, such as marriage or cohabitation. According to reports, one in five women in India experiences some type of domestic abuse, which contributes to the high prevalence of domestic violence in the nation. Violence committed within a marriage or relationship typically causes the victim considerably more harm and suffering than what is evident in the form of wounds and scars. However we fail to acknowledge the fact that assault can happen to not only women but men too, but because there is no acknowledgement of the fact that an assault victim can be men, people don't report it. Even in a recent report by Amit

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<sup>8</sup> Indian Penal Code 1860, s 354

<sup>9</sup> *Girdhar Gopal v State* (1953) CriLJ 964

<sup>10</sup> Astha Satsangi, 'Gender biased Criminal Law in India' (*Lawcian*, 19 August 2020)

<<https://www.lawcian.com/post/gender-biased-criminal-law-in-india>> accessed 03 February 2023

<sup>11</sup> Indian Penal Code 1860, s 498A

Gupta, he states that there is a huge amount of men who face domestic violence and as a result, they commit suicide but it failed to be officially reported. In the report, he further mentions that domestic violence committed against women is mostly by their mothers.

According to Section 498A, if it is shown that a married woman has been subjected to cruelty or harassment from her husband or a family of her husband, the husband or those relatives will be penalised with up to three years in prison as well as a fine. The most significant problem with this provision is that it is regularly exploited by married women to gratify their grudges. In the case of *Sushil Kumar Sharma v Union of India*<sup>12</sup>, the Supreme Court of India made the observation that suits filed under section 498A are being brought more out of personal animosity than for valid reasons. This indicates how women have severely misused and manipulated this provision for their benefit<sup>13</sup>.

This trend was noticed and reversed by the Court in *Sarita v Ramchandran*<sup>14</sup>, and as a result, The Law Commission and The Parliament were requested to consider this and make this offence bailable and non-cognizable. However, several women's rights activists and organisations object to this development, claiming that it would eventually serve the interests of the actual accused and offer them a chance to avoid conviction. However, a more optimistic and pragmatic perspective should be taken to understand and view this development as a means that gives all the males an equal opportunity to defend themselves and to avoid falling prey to the unfair complaints made by the women. In its purest form, justice means to defend the weaker and to make sure that the accused has a fair opportunity to defend and demonstrate his or her innocence.

This provision is biased against men and does not defend the legal rights of men because it exclusively protects women from violence committed by their husbands and other members of their families, but says nothing about the abuse that men face at the hands of their spouses. Even

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<sup>12</sup> *Sushil Kumar Sharma v Union of India* Writ Petition (Civil) 141/2005

<sup>13</sup> Abhishek Kumar, 'Gender Biases In The India Penal Code' (*Desi Kaanoon*, 23 May 2020)

<<https://desikaanoon.in/gender-biases-in-the-india-penal-code/>> accessed 03 February 2023

<sup>14</sup> *Saritha v R. Ramachandra* (2002) (6) ALD 31

though under personal law cruelty can be a ground for divorce for either men or women, this particular clause is extremely biased against males because it does not acknowledge the cruelty that has been committed against them. It is necessary to conduct an analysis of the law in light of this consideration and to make any necessary modifications.

**Dowry death (Section 304B<sup>15</sup>):** A woman being tortured and pestered for money before being hanged inside her home instantly comes to mind when the phrase "Dowry Death" is mentioned. Feminists claim that paying dowry is to blame for every unnatural or untimely death of a married Indian woman. In addition, the feminist exaggeration of dowry harassment and bride slaughter creates the idea that Indian men abuse their wives in an alarmingly frequent manner to acquire money and property. This might be true in most cases in India however there are some cases where the male is not liable for their spouse's death. Regarding this, Section 113B<sup>16</sup> of the Indian Evidence Act presumes that a male is to blame for a woman's death if he subjected the woman to cruelty or harassment just before she passed away. Even though the husband and family members did not commit the crime, it indicates their culpability.

## CONCLUSION

What is crucial is that these crimes must be reported thoroughly for them to be recognised. We must foster an atmosphere where the plight of such guys can be heard without fear of mockery. The only way to improve the reporting and registering of such offences is through the creation and implementation of a gender-neutral law. Redefining rape and classifying sexual assault according to the severity of the harm they cause is both necessary, as is providing a full definition for each. Last but not least, a system that prioritises one form of rape over others in the name of safeguarding women is futile. To create a culture against rape, women, men, and people of other genders must band together and speak with one voice.

## RECOMMENDATION

Legally, we must make sure that all genders are treated as equals and that gender-neutral

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<sup>15</sup> Indian Penal Code 1860, s 304B

<sup>16</sup> Indian Evidence Act 1872, s 113B

language is used in our legislation. The idea that only one sex is the perpetrator and the other is the miserable victim shouldn't be the foundation of laws. Strict procedures should be put in place to deal with false complainants who put innocent individuals through immense misery. As citizens, we must respect people of the other sex, foster gender sensitivity in everyone, and recognise that elevating one group does not necessarily require marginalising another. It would be very hypocritical of us to declare equality to be a fundamental right whilst simultaneously depriving males of it through such harmful regulations. Because women have achieved tremendous accomplishments and are not currently falling behind, the strongly established modern myth of "Abala Nari" is untrue.