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Gender Bias in the Indian Criminal Justice System

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ABSTRACT

This paper examines the Indian legal system's emphasis on protecting women as a necessary response to historical and systemic gender inequalities. While acknowledging the importance of laws aimed at safeguarding women from domestic violence, sexual harassment, and discrimination, it also explores the unintended consequences these laws may have on men and individuals of diverse sexual orientations. The paper highlights how societal stereotypes and biases can influence legal interpretations, sometimes leading to gender imbalances. It advocates for a more inclusive legal framework that balances protection with fairness, ensuring justice and equity for all genders and sexual orientations.

Keywords: *Discrimination, Classification, Domestic violence, Sexual harassment, Gender bias, Justice.*

I. INTRODUCTION

The Indian criminal justice system aims to protect the rule of law and guarantee justice. The Supreme Court being the highest court in the country is in charge of upholding uniformity and interpreting the Constitution, in how laws are applied throughout the nation. The High Courts, which are entrusted with overseeing individual states or union territories, sit beneath the Supreme Court. They have appellate jurisdiction over lower courts and handle important criminal matters. High Courts can also grant writs to enforce other legal requirements and fundamental rights. Sessions Courts, which deal with major criminal matters, and Magistrate Courts, which handle less serious crimes and preliminary hearings, are examples of subordinate courts. Decisions made by the Sessions Court, which has district jurisdiction, may be challenged in the High Court.

The adversarial system of Indian law is applied by the judiciary, wherein the prosecution and defense present their cases to an unbiased judge or bench. By upholding the law, ensuring fair trials, and defending the rights of the accused and the victims, it makes sure that justice is done. As the guardian of the Constitution, the judiciary is essential to the functioning of the criminal

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justice system in India. It guarantees that the administration of justice is unbiased, fair, and compliant with the law.

The Supreme Court of India is ultimately in charge of interpreting the Constitution and checking that laws and executive orders adhere to its requirements. It is the last arbiter in criminal matters, and its rulings are final and enforceable throughout the nation. The Supreme Court uses judicial review and public interest lawsuits to protect fundamental rights as well. The integrity and efficacy of the criminal justice system in India are preserved by the judiciary's protection of individual rights, function as a check on the executive and legislative branches, and enforce the rule of law.

II. FAIR TRIAL IN JUSTICE SYSTEM

A fair trial is essential for the Indian criminal justice system, enshrined in the Constitution and aimed at ensuring justice and safeguarding the rights of both the accused and the victims. The concept of a fair trial is grounded in principles of due process, equality before the law, and impartiality, and it encompasses several key elements designed to uphold justice.⁴

Presumption of innocence: The presumption of innocence, which states that a person is presumed innocent unless and until they are proven guilty, is the cornerstone of a fair trial. This principle makes sure that the prosecution has the burden of proof, meaning they have to prove the defendant's guilt beyond a reasonable doubt.⁵

Right to Legal Representation: Every accused person has the right to have the attorney of their choice represent them. The state must offer legal aid if they are unable to pay for one. This privilege is essential to guaranteeing that the trial is handled properly and that the accused can put up a strong defence.

Public and Open Trials: Public trials are required, which contributes to the legal system's accountability and transparency. The transparency of judicial proceedings serves as a defence against capricious and unfair rulings.

Impartiality of the Judge: Justices must operate impartially and without prejudice. In order to ensure just verdicts, the Indian judiciary is set up to remain separate from the legislative and executive departments. In order to guarantee that decisions are made exclusively on the basis of the evidence that has been presented, any potential conflicts of interest must be declared and handled.

⁴ Mrs. Kalyani Baskar v. Mrs. M. S. Sampoonam, (2007) 2 SCC 258

⁵ Kali Ram v. State of H.P., [(1973) 2 SCC 808]

Adherence to Legal Procedures: Adherence to established legal procedures is necessary for fair trials, and this includes the right to appeal, the opportunity for cross-examination, and the appropriate presenting of evidence. These protocols guarantee that the trial is carried out in a way that upholds the law and safeguards the interests of each and every party.

III. GENDER BIAS IN CRIMINAL JUSTICE SYSTEM

India's female-oriented criminal laws have their roots in the colonial era and the post-independence era, when the nation underwent considerable legal reforms to combat discrimination and gender-based violence. To give women strong legal protection, laws like the Dowry Prohibition Act of 1961, The Protection of Women from Domestic Violence Act of 2005, and revisions to the Indian Penal Code (IPC) that include strict prohibitions against rape and sexual harassment were introduced. The harsh reality of gender-based violence and the social necessity to protect women from such crimes led to the enactment of these laws. They demonstrate a progressive movement's recognition and resolution of the particular difficulties encountered by women in a patriarchal culture.⁶

There have been accusations and charges of gender bias against men regarding the application and interpretation of these laws. For example, some women have criticized the usage of Section 498A of the IPC, which addresses cruelty to a wife by her husband and in-laws, as a means of settling personal scores. Due to the fact that this section is cognizable and non-bailable, it permits an instantaneous arrest without conducting a comprehensive investigation. As a result, men and their families have been subjected to harassment and legal issues based on unfounded allegations. Comparably, it has been claimed that occasionally, despite the Protection of Women from Domestic Violence Act's intention to shield women from abuse, it is sometimes used in ways that unfairly single out men⁷.

The way the legal system handles cases with female complainants also reflects a gendered perspective that frequently favors protecting women, sometimes at the price of making sure the accused is given a fair and impartial trial. In their passion to give women justice, courts might neglect the danger of false charges and the necessity for a sophisticated strategy that takes the possibility of law provisions being misused into account. As a result, there is a rising belief among men that the legal system is biased in favor of women, which perpetuates the idea of gender bias.⁸

⁶ Dr. Debashree Chakraborty and Ms. Upasana Ghosh, *Gender Justice and Law* (Nitya Publications, Bhopal, 2023)

⁷ Law Commission of India. "183rd Report on A Review of Section 498A of the IPC" (2003)

⁸ Menon and N.R. Madhava "*Criminal Justice India Series*" (Allied Publishers, Delhi, Volume 19, 2005)

IV. WOMEN FAVORING LAWS IN INDIA

India has demonstrated a greater commitment to gender equality and justice by making great progress in developing a legislative system that aims to protect and empower women. Indian society has always struggled with ingrained patriarchy, which frequently excluded women in a variety of contexts. In response, the Indian government passed a number of laws that support women and are intended to protect their rights and advance their general welfare. These laws cover a wide range of topics, such as property rights, protection against harassment and violence at work,⁹ marriage and family, and protection from these types of incidents.¹⁰

The Protection of Women from Domestic Violence Act, 2005

Although the Protection of Women from Domestic Violence Act of 2005 was intended to protect women from abuse in the home, it has also been abused. Using the provisions of this statute, some women have falsely filed charges against their spouses and in-laws, frequently as a means of enacting personal revenge or as leverage in marital conflicts. In addition to putting a burden on the judicial system, this abuse takes resources and focus away from actual victims of domestic abuse. Men and their families who may be wrongfully accused risk serious social and financial ramifications, such as reputational harm and legal costs.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

In order to shield Indian women from sexual harassment at work, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was passed. Nevertheless, some women abuse this Act in order to further their own goals or obtain unfair benefits. False allegations of harassment, for example, might be used as leverage in conflicts with coworkers or bosses, resulting in wrongful investigations and possible retaliatory measures against the accused. This misuse can also happen when someone fabricates accusations in an attempt to coerce monetary settlements or settlements of employment perks. In addition to damaging the accused's reputations and careers, such acts weaken the Act's efficacy by drawing attention and resources away from legitimate cases.

Section 125 of Code of Criminal Procedure

The Code of Criminal Procedure (CrPC) of India, Section 125, provides maintenance for parents, children, and spouses who are unable to support themselves. Nevertheless, some

⁹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013)

¹⁰ Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005)

women take improper use of this clause in order to obtain an unfair financial advantage in court. For example, women may file for maintenance under Section 125, often fabricating claims of necessity or hardship, in order to get higher alimony or financial assistance than is reasonably due. False allegations of financial instability may be made during divorce or separation proceedings in order to obtain a more favorable settlement or coerce the spouse into complying with other requests. Such maneuvers take resources away from individuals who actually require maintenance, in addition to placing an excessive financial burden on the accused.

Section 498A of Indian Penal Code, 1860

The Indian Penal Code, 1860's (IPC) Section 498A was created to shield women from abuse and harassment by their spouses and in-laws. Nevertheless, there have been a number of misuses of this clause. In order to resolve personal conflicts or obtain power in divorce processes, some women fabricate or overstate accusations under Section 498A, which can result in unjustified legal action against their spouses and in-laws. In order to coerce the accused into making concessions or paying monetary settlements, this misuse may entail faking instances of brutality or harassment. In addition to damaging the reputations of those charged, this misuse of the court system takes funds away from actual incidents of domestic abuse. To make matters more unfair, the court system may be expensive and emotionally taxing for people who have been wrongly accused. This misuse undermines the intended protection of Section 498A, making it difficult for real victims to receive the support and justice they need.

Provisions Regarding Rape in IPC

The provisions related to rape under IPC are meant to protect and deliver justice to those who have been sexually assaulted. Nevertheless, there are instances where people abuse these legal protections in an attempt to take advantage of the system for their own gain or to resolve conflicts. Sometimes, women would fabricate or overstate accusations of rape in order to get even, settle personal grudges, or have the upper hand in court situations like divorce or child custody battles. This misuse may be motivated by monetary gain, coercion, or an effort to harm the accused person's reputation. False accusations can result in serious legal consequences for the person who is wrongfully accused, such as an arrest, social disgrace, and protracted legal proceedings. The misuse of rape laws compromises the fairness of the legal system and takes funds away from actual victims who require assistance and protection from the law. It can also result in doubts regarding the veracity of rape accusations, which makes it harder for actual victims to get the support and justice they are entitled to. The judicial system is distorted by

this kind of manipulation, and the laws meant to confront and prevent sexual violence are rendered less effective.

V. IMPACT OF GENDER BIAS ON SOCIETY AND CULTURE

Gender bias, deeply rooted in societal and cultural frameworks, profoundly impacts both the social fabric and cultural norms of a society. In India, the legal system has made significant strides to address gender inequalities, often enacting laws that favour women to correct historical and systemic injustices. These laws, including those against dowry, domestic violence, and sexual harassment, aim to protect women and promote gender equality. However, while these legal protections are crucial for safeguarding women's rights, they also highlight the complexities of addressing gender bias within a deeply patriarchal context.¹¹

Women are given preference in some legal contexts in an effort to empower them and address long-standing inequalities in a society that has historically been dominated by men. However, putting so much emphasis on protection may have unforeseen effects, such the possibility of these rules being abused. False accusations under provisions such as Section 498A of the IPC, which shields women from domestic abuse, can have serious legal and social ramifications for the accuser, who is frequently a man. This misuse highlights the complex issues of striking a balance between legal safeguards and equality and fairness, as well as the ways in which these legal frameworks interact with deeply ingrained society values.¹² The impact of gender bias on society and culture is multifaceted, affecting not only individual lives but also broader social structures and cultural norms. Addressing this bias requires a comprehensive approach that includes legal reforms, cultural shifts, and increased awareness to create a more equitable and just society for all genders.¹³

VI. REVERSE GENDER BIAS

The term "reverse gender bias" describes circumstances in which laws and social norms that are strongly biased in favor of women subject men to discrimination. To address the systematic and historical disadvantages that women have suffered, the Indian legal system has passed a number of laws that are specifically focused on women. But occasionally, even well-meaning legal provisions have unexpected repercussions that result in discrimination against men. Such mishandling can have serious negative social and financial effects on the accused, including

¹¹ Klasen, Stephan, and Janneke Pieters. "Gender Bias in India: Causes, Mechanisms and Impacts." Courant Research Centre: Poverty, Equity and Growth 186 (2012).

¹² Ibid

¹³ Klasen, Stephan, and Janneke Pieters. "Gender Bias in India: Causes, Mechanisms and Impacts." Courant Research Centre: Poverty, Equity and Growth 186 (2012).

harm to their reputation and increased legal expenses. Similar to this, regulations pertaining to divorce and child custody frequently favor women while occasionally ignoring the rights and contributions of the father. Furthermore, because of societal conventions that portray men as aggressors and women as victims, males rarely receive help or acknowledgement when they become victims of domestic abuse or sexual harassment. This gender bias not only perpetuates injustice against men but also undermines the principle of equality before the law, calling for a more balanced and equitable approach in addressing gender issues within the legal framework.¹⁴

(A) How the Problem of Gender and Sexual Bias in Favour of Women Can be Countered

Addressing the issue of gender and sexual bias in favour of women, particularly in the context of Indian laws, requires a multi-faceted approach aimed at achieving true equality while ensuring that both men's and women's issues are fairly addressed. While Indian legal frameworks, such as the Protection of Women from Domestic Violence Act, 2005, and various provisions related to sexual harassment and gender-based violence, are crucial for safeguarding women's rights, their application sometimes inadvertently perpetuates gender biases. To counteract these biases and promote a more balanced approach, several strategies can be implemented.

Firstly, legal reforms and amendments are essential to ensure that gender-biased laws do not inadvertently disadvantage men. This involves revisiting and amending existing legislation to prevent misuse and ensure that all cases are handled equitably. Similarly, reforms in family laws, including those related to divorce and custody, should be evaluated to ensure that they do not disproportionately favour one gender over the other. Implementing provisions that ensure a balanced approach to both men and women's rights in the legal system can help mitigate biases and promote fairness.¹⁵

Secondly, promoting gender-neutral policies in both legal and societal frameworks is crucial. Gender-neutral policies in the workplace, educational institutions, and social services can help eliminate stereotypes and ensure that individuals are treated based on their merit and needs rather than their gender. For instance, offering equal parental leave to both mothers and fathers can challenge traditional gender roles and support shared responsibilities in child-rearing.

¹⁴ Misuse of Women Centric Laws, available at <https://www.legalserviceindia.com/legal/article-14860-misuse-of-women-centric-laws.html#:~:text=The%20misuse%20of%20these%20laws,and%20damage%20to%20one's%20reputation> (Last visited on July 27, 2024)

¹⁵ *Ibid*

Similarly, creating gender-neutral criteria for promotions and job roles can help in eliminating workplace bias and ensure equal opportunities for all.

Thirdly, enhancing awareness and education about gender issues is vital. Public awareness campaigns and educational programs should focus on challenging stereotypes and promoting understanding of both men's and women's issues. Educational initiatives that highlight the complexities of gender dynamics and the potential for bias in legal and societal systems can foster more empathetic and informed attitudes. Schools, colleges, and workplaces should incorporate gender sensitivity training and discussions on gender equality to prepare individuals to engage with these issues constructively.

Support systems and resources for all victims of gender bias should be strengthened. This includes providing comprehensive support services for both men and women who face discrimination or violence. Men who are victims of domestic violence or false accusations should have access to legal aid, counselling, and support networks that are as robust as those available to women. Ensuring that support systems are inclusive and address the needs of all genders can help in creating a more balanced approach to gender issues.¹⁶ Encouraging balanced media representation can play a significant role in countering gender bias. Media outlets should strive to present diverse and accurate portrayals of both men and women, highlighting their roles as both victims and perpetrators of bias. Positive and nuanced representations of all genders can challenge stereotypes and contribute to more equitable societal attitudes. Media campaigns should also focus on educating the public about the complexities of gender dynamics and the importance of balanced legal protections.

Fostering dialogue and collaboration among policymakers, activists, and community leaders is crucial. Creating platforms for open discussions about gender biases and their impact can help in developing more effective strategies to address these issues. Collaborative efforts that involve diverse perspectives can lead to more comprehensive and balanced solutions that address the needs of all individuals affected by gender bias. Countering the problem of gender and sexual bias in favour of women involves a combination of legal reforms, gender-neutral policies, increased awareness, robust support systems, balanced media representation, and collaborative dialogue. By implementing these strategies, it is possible to create a more equitable and just society where both men and women are protected from discrimination and where their rights and needs are addressed fairly.

¹⁶ *Ibid*

VII. CONCLUSION AND SUGGESTIONS

The Indian legal system's focus on protecting women represents a significant and necessary effort to address the deep-seated historical and systemic gender inequalities that have long marginalized women. This emphasis has resulted in the creation of several crucial laws and policies designed to safeguard women from domestic violence, sexual harassment, and discrimination, reflecting a commitment to improving their social and legal status. However, while these measures are vital, they can sometimes inadvertently lead to imbalances in how justice is administered across different genders and sexual orientations. The legal focus on women's protection can, in some cases, result in gender and sexual orientation biases that affect men and individuals of diverse sexual orientations.

For instance, laws that are designed to protect women might inadvertently disadvantage men in cases where false accusations or biases occur, particularly in domestic violence or family disputes. Similarly, individuals of diverse sexual orientations may find themselves inadequately protected or supported, as legal frameworks and societal attitudes may not fully address their unique challenges. Societal stereotypes also play a role in perpetuating biases, as traditional views on gender roles and sexuality can influence both the interpretation and implementation of laws.

To advance towards genuine equality, it is essential to balance the protection of women with measures that ensure fairness and equity for all individuals. This involves recognizing and addressing the ways in which current laws and policies may inadvertently perpetuate bias, and striving to create a more inclusive legal framework. Such an approach would involve revising laws to ensure they are equitable and do not disproportionately favour one gender or orientation over another. It also requires addressing societal stereotypes and improving support systems to cater to the needs of all marginalized groups, ensuring that everyone has access to justice and support without bias. By doing so, the legal system can uphold its commitment to equality and provide a fair and just environment for all individuals.

Legal Reforms and Balancing Protections: Legal reforms should aim to create a balanced approach that protects both men and women from discrimination and abuse. This involves revisiting existing laws to address potential biases and ensuring that new legislation considers the needs of all genders and sexual orientations. For example, ensuring that laws related to domestic violence, sexual harassment, and family disputes are fair and just for both men and women, and incorporating gender-neutral language and provisions.

Comprehensive Anti-Discrimination Policies: Implementing and enforcing anti-

discrimination policies that cover all genders and sexual orientations can help create a more inclusive environment. This includes revising workplace policies, educational institutions' regulations, and social services to ensure they do not perpetuate bias and are supportive of diverse identities.

Public Awareness and Education: Promoting gender and sexual orientation sensitivity through public awareness campaigns and educational programs is essential. These initiatives should aim to challenge stereotypes, educate people about the complexities of gender and sexual orientation issues, and foster a culture of respect and understanding.

Strengthening Support Systems: Enhancing support systems for all individuals affected by gender and sexual orientation bias is crucial. This includes providing accessible legal aid, counselling, and support services for both men and women, as well as individuals from the LGBTQ+ community. Ensuring that these support systems are inclusive and effectively address the needs of all individuals can help mitigate the impact of bias.

Encouraging Media Responsibility: Media plays a significant role in shaping societal attitudes and perceptions. Encouraging responsible media representation that portrays diverse gender identities and sexual orientations fairly can help challenge stereotypes and promote a more inclusive society.
