



## EXISTENCE OF BIASNESS IN INDIAN LAWS BASED ON GENDER

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### ABSTRACT

Gender biasness in the legal system is a cause for major concern in the country. Women have been ostracised to such a large extent in the country that laws which provide unlimited and unwarranted powers to them had to be made with the hope to bring them to an equal footing. However, it is often seen in the recent times that there are many women who use these sections for their undue advantage and use this against their male counterparts out of spite and vengeance. The country sees more of false cases of such sections than true cases, which poses a serious concern towards the well being of the nation. The provisions of the law provide such wide powers to the womenfolk that they go scot-free even when it is proved beyond doubt that they falsely implicated the case. This brings forward a great concern of injustice being meted out towards half of the country's population. Men now have to think twice before having any physical contact or even verbal communication with the females as anything may be construed against them in the Court as harassment. This also proves to be a great burden on the already overburdened Indian Judiciary as these cases go through the full procedure of arrest, investigation, trial etc., before the Court comes to the conclusion and finds to its dismay that the whole case was built up in a

sea of lies. It is of utmost importance for the judiciary and the legislature to amend such laws and provide some kind of penalty to the complainant if the complaint is found to be false, so as to discourage such malpractice. Also, with the incoming of the third gender, it is also possible that males may be the victims of such offences and hence, such sections must be made gender neutral so as to ensure that no crime goes unchecked and unpunished merely because of the fact that it has not been provided for in the law. The Parliament should give serious consideration to this matter to hold up Blackstone's ratio that "*It is better that ten guilty persons escape than that one innocent suffers*"<sup>1</sup>.

**Key Words:** Biasness, Discrimination, Laws.

### INTRODUCTION

Discrimination against women and girls is an age-old problem that our country has been facing for a long period of time. From generations through generations, our country has tried its best to uplift the status of women through various laws and legislations. The country has made special laws in the country to bring about equality among the people in the country and to remove gender-based biasness among the citizens. But in the quest to equalize women with men the nation has come forward with such laws which has resulted in biasness against men and has provided women with unlimited powers. The purpose of this article is to put light on the prevailing discrimination that exists in the Indian legal system.

<sup>1</sup> 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, 359 (1753).



The judiciary of India lays down great emphasis on the phenomena of Constitutional Morality as it is one of the core principles of a constitutional democracy such as India. As India has the largest constitution in the world the following of the constitutional provisions is of the utmost importance for the nation.

It cannot be denied that most women's freedoms in this country are trampled on in the name of security. Women can't be certain of their safety while stepping out alone in the dark, travelling far away from home is discouraged, public transport is unsafe, and male-dominated jobs invite predatory behaviour. These are serious constraints on a good life, and they are caused by one major issue—the state's failure to provide security.

In the modern era where law needs to develop with time there are certain laws in India which create a gap between the gender and thus equality is not being maintained in the current law.

Right to equality being one of the six fundamental rights in the Indian Constitution provides equality before law, prohibition of discrimination on the ground of race, religion, gender, and caste or birth place. It is simply to treat all the people at equal footing and not to give any special privileges to any individual or group of individual. But it is very much evident in the present law that equality is not being achieved and there needs to be certain amendments to bring the people of the country in equal footing.

### LAWS WHICH ARE BIASED TOWARDS WOMEN

In the country of India, we have a general notion that the females are weak and that is the reason why they are prone to violence. The women are given powers under various gender discriminatory laws to lodge a

complaint against men. This is mostly seen in family law where there exists no punishment for even filing of a false complaint. The women are given the power through these gender discriminatory laws to lodge multiple complaints for the same crime with different penal provisions which results in filing the same crime multiple times and exaggerating the statistic and which results in showing of false gender inequality. A few of such a vast majority of laws are mentioned below: -

#### 1. Section 497 of the Indian Penal Code:

Although this section has been declared unconstitutional by the Supreme Court in its entirety, it makes its way to the list as it has still not been repealed by the Parliament and thus, is still very much, a law. According to this section, if a husband of a woman has sexual relationship with the wife of another man, he is bound to be penalised under this section. But there is no such punishment for the wife if she commits adultery with another man outside of her wedlock. This is one of the most discriminatory legislations owing to the fact that it creates a differentiation for the same act just on the basis of the gender of the person committing it. However, this section is now been repealed by the latest judgement of **Joseph Shine v. Union of India** the SC stated in para 18 that “(i) Section 497 is struck down as unconstitutional being violative of Articles 14, 15 and 21 of the Constitution. (ii) Section 198(2) of the Cr.PC. which contains the procedure for prosecution under Chapter XX of the I.P.C. shall be unconstitutional only to the extent



*that it is applicable to the offence of Adultery under Section 497.*<sup>2</sup>

2. **Section 354C of the Indian Penal Code:**

This section penalises a man for clicking pictures of a woman when she is engaged in a private activity in a place where it is naturally expected of her to not be expecting the presence of any person. There is no reason to believe that a woman may not do the same to a man and hence, it is certainly discriminatory to excuse the female gender from this offence.

3. **Section 354D of the Indian Penal Code:**

This section penalises a man for either following or trying to contact a woman for his personal interest even after she has shown clear disinterest in such contact, or keeping a track of her internet browsing, emails or any other electronic usage. In this digital age, every person, whether a man or a woman, knows how to use internet or other such technology. Though the first contingency of a woman following a man or trying to contact him after his repeated denial is a little uncommon, it can not be entirely scraped as being an unusual sighting. The second contingency, however, can very easily be fulfilled by a woman as it is very easy for a woman with basic technological knowledge to stalk a man's internet or other browsing activities. In such a scenario, penalising only one gender while keeping the other safe for no apparent reason is clearly discriminatory.

4. **Section 375 of the Indian Penal Code:**

This section criminalises one of the most heinous crimes i.e., Rape. However, this

section only talks about forceful sexual intercourse by a man on a woman. But why can rape not take place on a man? There have been many cases where a woman, in her sound mind, has attempted and successfully managed to have sexual intercourse with a man when he is intoxicated. Due to non-report of such cases, the best way to understand this situation is to draw inference from the widely acclaimed Bollywood movie '*Aitraaz*'. In this movie, the female attempts to have sexual intercourse with a man against his consent, but goes free without punishment even when the offence is proved as there is no law penalising a woman for committing such an act. Moreover, after homosexuality being decriminalised under Section 377 of the Indian Penal Code in the widely popular case of *Navtej Singh Johar v. Union of India*<sup>3</sup>, it is also possible that a man may commit sexual intercourse without consent on another man, or the same could be done by a woman on a woman. Thus, it is of great need to make both the victim as well as the perpetrator to be free of any gender bias so that such heinous crimes do not go unpunished merely because the perpetrator or victim did not belong to a specific gender.

Moreover, there have been many cases where a woman has falsely accused a man of rape due to her personal vengeance. In such cases, the man, as well as his family go through the torture of being called a rapist and even when it is proved to be false later, the stigma of him being a rapist does not go away from the minds of the people. On the

<sup>2</sup> Joseph Shine v. Union of India, (2017) SCC 194.

<sup>3</sup> Navtej Singh Johar v. Union of India, (2016) SCC Cri. 76.



other hand, a woman bears no consequence of filing a false complaint and making a joke out of such a grave offence. This makes it highly dangerous for man and provides an upper-hand to many such women.

5. **Section 493 of the Indian Penal Code**–

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage shall be punished up to ten years and fine. No such provision to punish women.

In the case of *Harish Kumar v. State* where, the women had put allegations under section 376 and section 493 of the IPC stating that the accused used to have sexual intercourse with the petitioner on the promise of marriage, the court held that “prosecutor was aware that she was not married to Harish and marriage between her and Harish the respondent was yet to take place. She had developed intimacy and she herself was in love with Harish and she and Harish with consent of each other were enjoying each other’s body and having sexual relationship. Since it is a case of obvious consent of the prosecutor, who was aware that no marriage had taken place and marriage between parties was yet to take place, no case under section 376 or 493 is made out”. The court further held that “the F.I.R registered against the accused is a gross misuse of powers and is hereby quashed”.<sup>4</sup> From this case it is clear how the powers are misused.

6. **Section 498A of the Indian Penal Code:**

This section is a safeguard provided to a woman under which, she can complain against her husband and his family for

subjecting her to cruelty. Though this provision is a great relief for multiple women who are subjected to cruelty daily for some monetary demand or for any other demand, it is also not untrue that this section has been widely misappropriated. There have been many cases where the daughter-in-law has a conflict with her in-laws and she files a complaint against them under this section. The police, in such case, have no option but to abide by the section and immediately arrest all those against whom such complaint has been made, even though there is no concrete proof or evidence that has been provided by the lady. Such erroneous and false complaints ruin the life, dignity and reputation of the husband’s family, but it does not bear even the slightest consequence on the woman.

Although, this law had been derived from the United States, but the law in US does applies the law to all genders. But, in India this law is certainly biased towards the female gender.

In April 2010, Shoaib Malik who is a Pakistani cricketer was accused under this section just prior to his marriage to Sania Mirza. He was accused of cheating by Ayesha Siddiqui but in this case The Save Indian Family Foundation released a statement which was in support of Shoaib Malik and thus, his passport was returned. The foundation also raised concerns about the misuse of the powers given to women under this section<sup>5</sup>.

But it is a relief to see that in the case of *Arnesh Kumar*, “the court restrained police officers from automatically arresting the accused in a complaint under section

<sup>4</sup> Harish Kumar v. State, 2009 Cri MC 3877 (Delhi).

<sup>5</sup> Shoaib Malik finds support from an NGO, Indian Express, April 6, 2010.



498A and made action in such complaints subject to magisterial oversight”<sup>6</sup> the men were caused not be arrested without magisterial oversight.

Finally, in the case of, **Rajesh Kumar & Ors. V. The State of U.P**<sup>7</sup> it was finally held that in every district one or more family welfare committees needs to be constituted by the District Legal Services Authorities preferably consisting of three members and every complaint under Section 498A received by the police or the magistrate must be looked into by such committees and committees after looking into the case may communicate to the parties and after that they may send a report to the police to make an arrest if they deem it to be fit.

7. **Section 509 of the Indian Penal Code:**

This section criminalises a male for disrespecting the modesty of a woman by using words, gestures or act. Though not seen commonly, it is but obvious that such acts could be also done by a woman on a man, by a man on a man or by a woman on a woman. But no section in any Act provides for such consequences.

8. **Section 37 of the Special Marriage Act:**

Under this section, only the wife can claim permanent alimony and maintenance in case of a divorce or separation, while the husband is not allowed to do so. This is highly unfair more because of the fact that the Hindu Marriage Act allows even husbands to claim such alimony.

9. **Hindu Adoption and Maintenance Act, 1956:** This Act in its entirety, is highly gender biased. For starters, it talks about

provision of maintenance to widowed daughters-in-law but nothing of that sort is provided to the male counterpart. Also, a boy under this Act is entitled to maintenance until he attains the age of 18 while a girl is entitled for it till she gets married. In an era when gender stereotypes are being broken and men and women are getting jobs and pay scales at a similar age and rate, this provision is grossly unfair. Also, a person barely passes his 12<sup>th</sup> standard at the age of 18, which is certainly not a good enough degree to provide him with a job that could sustain him.

10. **Section 112 of the Indian Evidence Act –**

states that “a child born during a marital bond or where the spouses have access to each other or within 280 days of divorce will be considered as legitimate child from the marital relation no matter whether s/he was born out of marital bond.”<sup>8</sup> An illegal activity which is done by a woman is legalized by this act without her being punished and thus prostitution is promoted. If the same immoral act was done by the husband, that would not only attract legal prosecution against the husband but also would have caused heavy financial burden of the wife in the form of maintenance. Although, the reality of the society has changed manifold since 1872 but the law still remains same and thus encourages women. Section 112 of the Act violates the right of the party which is disputing paternity to a fair trial by not allowing them to present evidence to prove their contentions. The reason that moral considerations are not to be put above the rights of people or fairness in the justice

<sup>6</sup> Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

<sup>7</sup> Rajesh Sharma v. State of U.P., 2017 SCC Cri. 1265.

<sup>8</sup> The Indian Evidence Act, 1872, s. 112.



system, thus it stands to reason that the section must be amended. In the case of *Gautam Kundu v. State of West Bengal*, the SC set out three guidelines which were to be followed regarding the approval of DNA testing –

“(a) Courts cannot order a blood test as a matter of course,

(b) There should exist a prima facie case in that the husband must establish ‘non-access’ in order to dispel the presumption arising under section 112 before a test can be ordered, and

(c) The Court should carefully analyse with respect to what might be the outcome of requesting the blood test; whether it will have the impact of marking a child as a bastard and the mother as an unchaste woman.”<sup>9</sup>

The list of sections and articles which are biased towards men is unending and there are more than 50 women friendly provisions and serious require amendments to bring in equality to the present legal system.

#### VARIOUS STATUTORY BODIES AND ACTS FOR UPLIFTMENT FOR WOMEN

Article 15(3) of the Indian Constitution permits the legislature and the Government to make any laws or regulations for the upliftment and betterment of the women folk of the society. However, this article has led to the formation of many commissions and legislations which have made Indian legislature dangerously biased. The exception provided via Article 15(3), like any other exception-based provision in the Constitution, provides for only reasonable exception, but it can be seen that it has been

grossly misused and many laws resulting out of it are violative to the provision of Equality as given by Article 14 of the Constitution and the provision banning discrimination as given by Article 15 of the Constitution itself. Many of these Acts give such wide and unlimited powers to women that they are used more for wrong purposes than right. Most of these laws, which claim exception under Article 15(3) of the Indian Constitution, provide free flowing powers of cruelty, abuse, extortion, legal damage etc. to women, sometimes just by the virtue of their marriage. Some of these legislations are-

#### NATIONAL COMMISSION FOR WOMEN-

Formed via the National Commission for Women Act 1990, this Commission functions and works exclusively for the benefit and upliftment of women. But there are no such commissions for the male population of the society.

#### PROTECTION OF WOMEN AGAINST DOMESTIC VIOLENCE ACT, 2005-

This law protects only women from domestic violence at home from her husband and his family with complete disregard to the fact that domestic violence can be caused by a wife on her husband also. Domestic violence also includes emotional abuse, which can easily be committed by a woman on her husband and in-laws. Women are given such wide range of power through the Domestic Violence Act that they can cause the eviction of the husband and his family from their own home. The State even provides a Protection Officer also at

<sup>9</sup> *Gautam Kundu v. State of West Bengal*, 1993 Cri LJ 3233.



its own cost. The wife can even claim custodial rights for any child that has arisen in the course of the marriage during the proceedings of the case of domestic violence. The most dangerous fact is that there is no penalty or obligation put on the woman if it turns out that her complaint was false. This causes a huge problem as many women file such a complaint as such complaints by creating self inflicted injuries and cause the arrest and societal embarrassment for her husband and in-laws, just out of spite and vengeance. The complaints do not even require any evidence to be registered as in many occasions, proof of physical, mental or even sexual violence can not be collected or determined. Though these provisions are made for the aid of women in distress, more often than not fake cases come up which put a burden on the already burdened Indian Judiciary.

### PROTECTION OF MEN FROM THE BIASED LAWS

For the protection of men's right so that they can be saved from the biased laws there is an existence of men's right movement in India. It is composed of various men's rights organisations which operate in the entire India. The organisation, basically works for the support of the introduction of the gender-neutral legislation and work towards the repeal of laws which are considered to be biased against men.<sup>10</sup>

The Real Indian men's right movement was started in the year 2000 in Bombay in order to protect males from the false claims of dowry harassment by wives. This

movement's name was changed to "Save Indian Family" by the unification of a number of family's right organisations which are present across India

There are various organisations which work for welfare of the men across India. Some of them are-

1. Save Indian Family Foundation
2. All India Front Against Prosecutions by wives
3. Child's Rights and Family Welfare
4. Purush Hakka Sanrakshan Samiti
5. Gender Human Rights Society
6. Men's right Association

As per a study by the Save Indian Family Foundation, it is claimed that suicide rate of married men is almost as twice as that of women, because they are not able to withstand the verbal, emotional, economic and physical abuse from their wives.

### CRITICAL ANALYSIS ON THE MISUSE OF POWERS BY WOMEN

In a recent case against the Chief Justice of India, CJI Ranjan Gogoi, a woman who was employed as a junior court assistant submitted an affidavit to all the Supreme Court judges in which she accused the CJI of making sexual advancement while she was working in his office which was in the CJI's residence. These allegations were found to be false by the Supreme Court and were held baseless. However, the woman, whose name has not been disclosed, has put serious allegations on the quorum who decided her matter, saying they were biased towards the CJI. There have been multiple cases which spell out the danger of false accusations. In the case of *Manju Ram Kalita v. State of*

<sup>10</sup> Kumar, A., *A demand for a National Commission for Men in India: A rationale and its possible*

*consequences*, 7(1) *New Male Studies: An International Journal*, 76-80.



*Assam*<sup>11</sup>, the wife had alleged physical and mental torture on the husband under S. 498A IPC, and got the husband convicted by three lower courts also. However, the Supreme Court found and held that there was no cruelty administered and hence the charges against him with respect to S.498A IPC was dropped. Again, in the case of *Bibi Parwana Khatoon*<sup>12</sup>, the sister-in-law and brother-in-law of the deceased were falsely accused by the lower courts in the charge of dowry death, when the Supreme Court observed that there was no evidence of their presence at the crime scene and that they lived in another village. In the *Arnesh Kumar* case, the court observed that “*There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested.*”<sup>13</sup>

In the case of *Amali Arockia Selvi v. Maria Michael*<sup>14</sup>, the appellant accused the respondent of rape under S.376 IPC stating that he had sexual intercourse with her on the pretext of marriage, which he later refused.

The Madras High Court held that the parties had such relations on weekends for around five months and each time, with the appellant’s consent and the complaint came only when the respondent was approached for marriage and he refused. Thus, the respondent was acquitted of all the charges.

### CONCLUSION

From the above findings, we can see that more often than not, the sections made for the upliftment of women are used by them as an undue advantage over men. Males and their family members are condemned to humiliation as a result of such undue advantages as they find themselves helpless in situations like these and face societal anxiety. Though it is a fact that women have been ostracised and harassed for a long time and that these sections are of utmost importance to ensure that justice is meted out to them, but the fact that males are also unsafe because of the possibility of false implications in these matters also cannot be disregarded. These types of sections are important for the punishment of such heinous crimes, but in view of the recent developments and events, they should be made gender neutral and should also stop giving such unwarranted and unlimited powers. There should be a measure of check and balance to ensure that false complaints do not come up and if such matters of false implications do come up, a proper penalty or punishment is prescribed. This would ensure that the sections are used for the benefit of the women actually in peril and would prevent misuse. Such sections require modification and rectification accordingly as otherwise,

<sup>11</sup> Manju Ram Kalita v. State of Assam, (2009) 13 SCC 330.

<sup>12</sup> Bibi Parwana Khatoon v. State of Bihar, (2017) 6 SCC 792.

<sup>13</sup> Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

<sup>14</sup> Amali Arockia Selvi v. Maria Michael @ Michael, 2007 Cri. MD 914.



the judiciary and the world will not be in balance and injustice will continue to prevail.

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