



THE LEGAL BLIND SPOT: WHY MEN'S RIGHTS NEED ATTENTION

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INTRODUCTION

Domestic violence, physical and emotional abuse, and dowry threats have become pretty common allegations in the courts and in most of the cases, of the two parties, women are seen as the primary victims of the same and men are seen as the perpetrators. Through this, it can be contended, that this is the truth, and this is how people perceive it at first sight at least. Legal frameworks across the world, including India, have been primarily designed to protect women from the perpetrators, though this can be perceived as a good goal, wouldn't that be discriminatory in nature for the women? In reality, the sufferings of men are overlooked in most cases. Men are also victims of domestic violence, financial exploitation, false allegations, sexual harassment, and all. But why don't we have specific legislation for men, like what women have? The absence of gender-neutral law has created a legal vacuum where male victims have no possible immediate solutions, unlike women. This article argues that India needs comprehensive and specific legislation for men in particular which would address concerns like false allegations, physical and emotional abuse in marriage and within familial relationships, and sexual harassment.

SET UP OF DOMESTIC LAWS IN INDIA

Most of the domestic laws in India are set up in a way that women are the only victims and these casually overlook the practical aspect of men being in the position of a victim. For example, the Protection of Women from Domestic Violence Act, 2005 (PWDVA)¹ explicitly provides relief to women facing physical, emotional, or economic abuse in domestic relationships but does not extend the same protection to men. Why are the laws drafted from this perspective only? And why can't men be victims of abuse in a familial relationship? Though it can be argued in a way that, the crime against women is large in number and

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¹ Protection of Women from Domestic Violence Act 2005 (India)

occurrences of this have been high historically, this cannot be a legal explanation. Because the law must give equal protection to everyone, be they vulnerable or not, the law must address the issues of both communities. This analogy can be perfectly applied in this case. Though women are considered the most vulnerable groups, it cannot pave the way for men to lose their basic rights and always be considered to be perpetrators.

This is not only about the legal system, even in day-to-day life, even before any judicial proceeding starts to take place, the men involved will be accused. Even before any formal and legal conclusion society sees and treats him as an accused person. To be clearer, let's say there has been a stalking or outraging a woman's modesty case, to society in itself before the case starts and the proceedings take place, there is a stigma surrounding that, the man is the offender here, and women is the poor victim. Yeah, I do agree that this happens in most cases, but why is the notion of him being an innocent fellow and her falsely accusing him not an option even once considered? All these general opinions can be only changed with proper legislative measures. Once there is proper enforcement of laws with this respect and case laws accordingly, society will change the way it sees others.

NEED FOR GENDER-NEUTRAL LEGAL PROTECTIONS

With the Bhartiya Nyaya Sanhita (BNS)², Bhartiya Nagarik Suraksha Sanhita (BNSS)³, and Bhartiya Sakshya Adhinyam (BSA)⁴ replacing the Indian Penal Code (IPC)⁵, Code of Criminal Procedure (CrPC)⁶, and the Indian Evidence Act⁷, respectively, it is essential to examine how these laws apply to men and highlight the need for gender-neutral legal protections.

Section 85 of Bhartiya Nyaya Sanhita⁸, which was previously section 498A of the Indian Penal Code⁹, continues to highly punish the dowry harassment offenders, this remains highly in favour of women. Even after the Supreme Court noted the misuse of such law, where the men have been falsely accused which has led to several wrongful arrests, loss of employment, mental stress for men, and social stigma revolving around them, there have been no proper

² Bhartiya Nyaya Sanhita 2023 (India)

³ Bhartiya Nagarik Suraksha Sanhita 2023 (India)

⁴ Bhartiya Sakshya Adhinyam 2023 (India)

⁵ Indian Penal Code 1860 (India)

⁶ Code of Criminal Procedure 1973 (India)

⁷ Indian Evidence Act 1872 (India)

⁸ Bhartiya Nyaya Sanhita 2023 (India), s 85.

⁹ Indian Penal Code 1860 (India), s 498A.

amendments made. Similarly, workplace harassment of male employees by female co-workers and superior officials is pretty common.

Moreover, sexual harassment and rape being gender specific is nothing but snatching away the rights of men in a democratic society. Countries like the United States of America have improved this state a lot by providing more inclusive and gender-neutral laws for its citizens. In the case of India, men who experience sexual harassment, workplace harassment, or marital rape are not provided with any legal remedies. After all, they are not even provided with provisions to file a case.

Under the Justice Verma Committee which was in the year 2013, there was a recommendation made for gender-neutral laws. But the Indian government, at that point in stage did not implement any changes to this and made no efforts to make the laws more gender neutral.

Though there have been many cases of sexual harassment and rape for women has increased, the number of false allegations has increased a lot against men. If one does not like a man in particular, she can simply raise a complaint against the man. But this has a very startling impact on the men. This affects his social image as a whole. Also, when a woman faces sexual harassment or physical abuse, or rape, it is seen as a pitiful thing, but a man suffers from the same, it has been mostly subject to incidents of mockery and disbelief. And apart from all of these, the law, itself is not providing them with remedies and snatches their rights away.

Also, when a false case is charged, it might be very easy to say that, if there is no mistake on his part, he is not going to get any sentence or fine. But it does not end there.

1. He is facing false allegation.
2. The long court trials and proceedings affect his time and work culture.
3. With a criminal trial going on, he will not be seen as the same person as he was seen already.
4. Though the judgment is in favour of him, there is still going to be a social stigma attached to him.
5. The psychological aspect of the man is not assessed here; he might be under serious emotional pressure.

6. The burden of proving innocence is often higher on his part. Though he did not make any mistake, the burden of proving the innocence lies on him in most cases.

Concerning dowry cases and false allegations, *Arnesh Kumar v the State of Bihar* is a landmark judgment, popularly known as the *Arnesh Kumar Guidelines*¹⁰, for which the judgement was passed in the year, 2014 by the Supreme Court of India. It was, in this case, the Supreme Court noted that anti-dowry laws are used inappropriately by some women to harass their husband and their family of her husband with ill intentions.

THE CONSEQUENCES OF OVERLOOKED MEN'S RIGHTS

These are some of the crucial issues which underscore the need for gender-neutral laws. While the purpose of the women's laws is absolutely important, it is also important to attend to the concerns of men. In many cases, the misapplication and exploitation of women-related laws lead to severe impacts and consequences for men. False Accusations, under laws like the Protection of Women from Domestic Violence Act, 2005¹¹ and Section 85 of the *Bhartiya Nyaya Sanhita*¹² have become a pretty common act. Apart from the false accusation part, from the judicial perspective, this also wastes the time of the Hon'ble Court.

As stated earlier, if a man even though is falsely accused, society suddenly presumes that the man is guilty of the offense, and this is similar in the case of police officials also, there are a lot of cases where the police officials will be biased from the right beginning. In certain cases related to this matter, the officials might register cases even without the preliminary investigation because of the emotional factor. Here, where women have a wide range of laws protecting them, man is left with no option to hold a stand or exercise their rights. Men do not have access to any sort of shield to protect themselves from False accusations and claim compensation for the mental trauma they suffered from such an allegation.

While the women who suffered from any sort of harassment maybe mental or sexual, have access to rehabilitation, men do not even have access to that. After the Nirbhaya rape case, the center introduced the One-Stop center for women victims, but for men, we do not even have provisions for sexual harassment. The absence of dedicated men's support groups, rehabilitation centers, and gender-neutral legal protections has created a significant gap in

¹⁰ *Arnesh Kumar v State of Bihar* (2014) 8 SCC 273.

¹¹ Protection of Women from Domestic Violence Act 2005 (India).

¹² *Bhartiya Nyaya Sanhita* 2023 (India), s 85.

India's justice system. This has left the male victims vulnerable and they are provided with no remedies. Another pressing issue that males face is the mental health crisis, facing prolonged legal battles, false accusations, and financial exploitation has led them to a high risk of depression, and anxiety and even may lead them to commit suicide.

One of the other concerns faced by men, and fathers is the child custody battles. Again, even while determining the custody of a child, it is extremely difficult for the father to get custody of the child. The legal frameworks and social attitudes generally often portray the father as a lesser image than the mother, supporting that, in most Indian custody-related disputes mother is always given preference over the father. This is also discriminatory for the men. There has been always an automatic preference for the mother over the father.

Though The Hindu Minority and Guardianship Act, 1956 regards the father as the primary guardian under section 6(a)¹³, for any child who is of the age below 5 years, the mother becomes the primary guardian of the child. In many cases, even if the father is in a better position to take care of the child, the custody of the child will be given to the mother, on a general presumption that this is the moral one. Connecting this with cruelty and domestic violence in marriage, there are chances that the female may initiate false accusations against the male to gain custody of their child. Also, once he is accused, the system treats, him as if he is guilty until he is proven innocent, and considering that this is a long and tedious process, the man might lose the opportunity to gain custody of the child. Hence with this respect, even the custodial laws should be made more gender-neutral. In this case, the ultimate goal should focus on the best interest of the child, rather than sticking to outdated gender roles in parenting.

CONCLUSION

Analysing all of this we can now, how the current legal system is biased towards women and has left men with no proper provisions to render justice for their sufferings. Though females are indeed more vulnerable to offences like harassment and abuse, Indian laws should not disregard the fact that men also face similar issues. This system deprives them of the constitutional right which is the right to equality, which is a fundamental right. Fundamental rights should be subject to only a few exceptions, here for men have been excluded all these times. It is high time we address this issue. Men should have access to the provisions as much as a woman has the right to justice. There should be necessary amendments passed in personal

¹³ Hindu Minority and Guardianship Act 1956 (India), s 6(a).

laws in India and also, and they should also have effective remedies under the law with respect to crimes like harassment, and abuse. Either the provisions should be included in the existing acts like POCSO¹⁴ or there should be separate legislations made with this respect and it should effectively reduce the injustice done to men all these whiles. India is a democratic country everyone has equal rights and remedies men in this society should also be provided with these rights.

¹⁴ Protection of Children from Sexual Offences Act 2012 (India).