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## GENDER-NEUTRAL DOMESTIC VIOLENCE LAWS: PROTECTING ALL VICTIMS

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### Abstract

Domestic violence is a pervasive issue that transcends gender, affecting individuals regardless of their identity. Traditional legal frameworks, however, have predominantly focused on female victims, often overlooking the experiences of male and LGBTQ+ survivors. This article examines the necessity of **gender-neutral domestic violence laws**, highlighting the historical evolution of gendered legal protections and the urgent need for inclusivity in legal frameworks.

The challenges faced by non-female victims, including **underreporting, legal disadvantages, and societal stigma**, are explored, emphasizing the importance of equitable recognition under the law. A comparative analysis of countries with **gender-neutral domestic violence statutes** demonstrates the benefits of inclusive legal protections, offering insights into best practices. Additionally, real-life case studies illustrate the impact of **gender biases in judicial proceedings** and the transformative potential of unbiased laws.

The role of **law enforcement and the judiciary** is critically examined, focusing on the need for **training and sensitization programs** to ensure impartial investigations and fair trials. The article concludes by proposing **policy reforms and legal amendments** aimed at fostering a truly **inclusive justice system**. By advocating for a gender-neutral approach, this article underscores the imperative of legal frameworks that protect all victims, ensuring justice is not contingent upon gender but on the **principle of equal protection under the law**.

**Keywords:** Gender neutral bias, Domestic abuse, legal reforms, victim support system, gender stereotypes.

### I. Introduction to domestic violence and need for gender neutrality :

Why should law have gender when the soul doesn't ?

This is what comes to my mind when I think about gender equality. In India, Ancient times were very tough for women and to uplift, support and protect them women centric provisions were enacted. which includes the existing domestic violence laws. Article 14

(fundamental right) of the Indian constitution states "Rule of Law" – The state shall not deny any person equality before law. When we take a look into practical application, it is not as it is, Sadly our society is quite biased. There is marginalisation between the communities and the special provisions were made in order to uplift them and to protect them from harm. For instance, when we talk about "**women**", Gender-specific provisions are made all around the world. And today, The time has changed and

thus the Gender – specific provisions related to domestic violence were more restrictive. The recent case of (**Atul subash vs state of uttar pradesh, 2024**)<sup>472</sup> gives rise to the concern of how the innocent and their family were affected due to the false allegation made under the gender specific provisions. And after reading this particular case i thought of writing this article cause why not ? It's time to promote Gender- Neutral domestic violence laws and take a further step towards Gender equality.

### 1.1 Definition of domestic violence(DV) :

Domestic violence is a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, psychological, or technological actions or threats of actions or other patterns of coercive behavior that influence another person within an intimate partner relationship. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone<sup>473</sup>.

Domestic relationship refers to the relationship between the two individuals who share the same household or who have lived in the same household and are related to one another by blood relations, marriage, adoption, family members, live – in relationships.

Domestic violence in India is a complex issue faced by many individuals, which results in fear, trauma, physical and mental illness to the victims. Domestic violence is caused due to social, historical, religious and cultural factors. Lack of education and dominating mindset of controlling one another within the relationship is also one of the main factors which leads to physical and mental abuse within the household. It can be faced by anyone

regardless of the age, gender, or sexual orientation.

There are several types of domestic violence that were face by individuals in the society and they are,

- physical abuse
- sexual violence
- verbal abuse

### Physical abuse :

It is one of the most notable forms of domestic violence. which leaves scar marks and injuries on the victim's body. Physical abuse includes hitting, beating, punching, or even using weapons to harm the individual. In most cases, victims of physical abuse suffer from long term physical and physiological health consequences.

### Sexual violence :

Sexual abuse is one of the form of domestic violence. and it includes rape, sexual assault, coercion, harassment, and martial rape. Particularly, martial rape is an quarrelsome issue as it is not reported by individuals very often due to societal taboos and legal ambiguity.

### Verbal abuse :

Verbal or emotional abuse is equivalent to physical abuse. It affects the victims self worth, self confidence, self esteem, and psychological mindset. These types of abuse were done through threats, manipulation, gaslighting, insults, and bullying to harm and destroy another person. One of the sad realities about verbal abuse is, it was faced by almost everyone in the society without any age variations.

### 1.2 Historical perspective on gendered domestic violence laws:

In historical perspective gender biased laws were created because of the social norms and circumstances. India is a country with rich culture and heritage and at the same time there is a strong patriarchal structure. There

<sup>472</sup> Atul Subhash Suicide Case: Allahabad HC Grants Anticipatory Bail to Nikita Singhania's Uncle," *The Times of India*, Dec. 17, 2024, <https://timesofindia.indiatimes.com/india/atul-subhash-suicide-case-allahabad-hc-grants-anticipatory-bail-to-nikita-singhanias-uncle/articleshow/116376569.cms>.

<sup>473</sup> <https://www.justice.gov/ovw/domestic-violence>



were many social evils that had been practiced against women. The practice of dowry, honour killing, female infanticide, sati were done against women without mercy. These practices were done only against women that gave rise to gender based violence. To prevent gender based offences, The gender biased laws were enacted but today the situation has changed. Social perspectives about men and women are one of the reasons for gender biased laws. There is an assumption that women are always a victim and men are always perpetrators, It is difficult for our society to imagine men as a victim and women as a perpetrator. These gender biased laws were misused by individuals and the innocents were affected because of it.

Section 63 of the BNS deals with rape that only recognises women as a victim of rape and not men. Thus male victims do not have any access to justice.

**Sexual harassment of women at workspace act, 2013.** It is a gender biased law that only focuses on the discrimination and offence against women and there are no similar laws for men. First of all we have to understand that men can also be victims and women can also be perpetrators.

The dowry prohibition act is one of the most misused acts, section 85 and section 86 of the BNS<sup>474</sup>, 2023 were misused more often. Many cases were filed under this provision of false accusation. Due to greed, vengeance, and other personal reasons the dowry prohibition act has been misused for years. The supreme court stated that the dowry prohibition act, 1961 was enacted to protect women from harmful dowry practice. But it has been misused against innocent individuals and their family. In the case of Arnesh kumar vs state of bihar (2014)<sup>475</sup> provision 85 of the BNS was misused.

Custody laws were influenced by patriarchal norms. In the cases of divorce

(section 13 of HMA<sup>476</sup> 1955) and separation. Fathers are the breadwinners and they can better provide for the children however gender roles begin to shift. Tender years doctrine is a legal principle that allows the mother to take the custody of the children during their tender years. Court naturally favours custody towards the mother and not men under this doctrine.

The offences which targeted women ( ie, gender based violence) gave rise to the gender based laws and now it has been misused lately.

### 1.3 Importance of inclusivity of legal protection :

Every individual should have access to justice regardless of gender. If there is no access to justice the individuals and communities will go vulnerable and uncontrollable. When people have equal access to legal protection they are empowered with legal rights. In this case male and female stereotypes have social roles and expectations. Indian constitution provides provisions that are for all the genders without any discrimination:

- Article 14 states equality before law or equal protection of law precepts of the gender, here equality before law, Where the state should not make any discrimination between the citizens that means all are equal in the eyes of law. Equal protection of laws gives the state the power to make positive discrimination in order to uplift and bring all the citizens on equal footing.
- Article 15(1) states state shall not discriminate against any citizen on the grounds of religion, race, caste, sex, place of birth or any of them. it does not stop the state from making special provisions for women.
- Article 16 provides equality of opportunity in matters of public employment or appointment for any office for all citizens. Article 16(2) states

<sup>474</sup> The Bharatiya Nyaya Sanhita, 2023

<sup>475</sup> 2014) 8 SCC 273 (India).

<sup>476</sup> The Hindu Marriage Act, 1955

no citizen shall, on the grounds only of religion, race, caste, sex, descent, place of birth, resident or any of them, be eligible for, or discriminated against in respect of, any employment or office under the state.

- Article 39(a) states that the citizens, men and women equally, have the right to an adequate means of livelihood. Sub clause (d) provides equal pay for equal work for both men and women.
- Article 42 enable provision for just and humane conditions for work and maternity relief

These constitutional provisions are provided for every citizen of India without any discrimination.

### 1.3.1 Crime has no gender and so what about the laws ?

Women do the same crime as men and therefore crime has no gender.

Laws that favour women:

#### 1. Dowry death ( section 80 of BNS ) :

When you think about the dowry death, the vivid imagination that sparks in the mind is a woman being harassed and taunted for money within the 7 years of marriage and finally hanged to death within the four walls of the house.

Section 80 states that :

A death of a women caused by burns or bodily injury or any other abnormal circumstances .The death should be happen within the 7 years of marriage .The woman must be subjected to cruelty or harassment by her husband or any of his relatives in the name of dowry and in such cases the husband and his family members were punished and imprisoned shall be not less than 7 years but which may extend to imprisonment for life.

#### 2. Husband or relative of husband of a women subjecting her to cruelty ( section 85 of BNS ) :

Section 85 of the BNS states that if a married woman faces cruelty by her husband or by his family members shall be punishable with imprisonment for a term which may extend to three years and shall be liable to fine.

These two provisions of the BNS are non bailable, non compoundable, and cognizable offences. The guilty were made on husband or Inlaws though they might not, There is an assumption that if an married women died then the women is driven to suicide due to the dowry harassment. And so if an allegation is made under this section, and even if the allegation is false, there will be a trial and the husband is made guilty until proven innocent.

#### 3. Rape (section 63 of BNS) :

In this provision there is an assumption that you should be a men to rape and a women to get raped and therefore this section does not talk about the male rape victims. Moreover if the female is the perpetrator there is no option to seek justice. No one talks about men rape as much as they talk about the female rape.

There is a need to recognize and accept that men are raped too. They are also victims of both mental and physical abuse and so they too deserve protection as women do.

#### 4. Section 74 of the BNS states,

Assault or use of criminal force to women with intent to outrage her modesty. There is no such modesty for men under the BNS. There are a number of cases where the women bully, abuse and do domestic violence against men and they are unnoticeable.

These are some of the few example provisions that favor women and there are special provision that are made only for women ie, The maternity benefit act, 1961, The sexual harassment for women at work place<sup>477</sup>, Women's reservation bill, The dowry prohibition act, 1961, Medical termination of pregnancy act, 1971. But one must keep in mind that law should

<sup>477</sup> Sexual Harassment of Women at workspace (Prevention , Prohibition and Redressal) Act,2013.

not discriminate against anyone based on gender when the offences are done regardless of gender.

## **II. Challenges with gendered domestic violence laws :**

Gendered domestic violence laws aim to protect individuals from physical or mental abuse, perpetrated by a partner, family member, or cohabitant. These laws have several challenges which include, bias and stereotyping, underreporting, legal gaps, cultural and social barriers, and false accusation.

There is an assumption that men are always an perpetrator and women are always the victims. This results in no proper recognition, and adequate support for the male victims of domestic violence. But should have a broad mind to understand that men can be victims as well. Men victims are less likely to report domestic violence or abuse due to societal belief and norms, and concern of seeing them as weak. Several domestic violence laws were designed to protect women from abuse. whereas men and LGBTQ people were left unanswered because of the legal gap. Gender specific laws can be misused and there are a number of cases where the provisions favouring the gender were misused.

### **2.1 Underreporting by male victims :**

First of all we have to understand the concept of gender stereotypes. Men are considered unemotional, strong, natural leaders, breadwinners of the family. There is a popular phrase, " MEN DON'T CRY ", a stereotype that men should not show their feelings or emotions. and so, men can't cry, if they do so they are considered weak. In this case when a man faces domestic violence they tend to hide it rather than reporting it due to various reasons such as fear, embarrassment, and lack of support.

Imagine growing up in an environment where men are considered strong physically, unemotional because they don't share or

express their feelings with anyone. breadwinners, as they are considered as first and foremost people to take care of the family. protectors, one who looks after the society.

At this point, if men are trapped in an abusive relationship, they feel too ashamed to admit what is happening behind the closed door and four walls of the room. If they step forward, they might have the fear of people's opinion and questioning their own masculinity. It is real for many men to not to open up the truth and suffer in silence rather than explaining it. Society should create a space that allows men to come forward without the feeling of judgement. For men, admitting of being an victim of domestic violence can be a social suicide. The pressure of being "A man" can be intense, leaving them to hide their feelings from their closed ones because they might mock them that they aren't able to control their partner. Men may find it very difficult to talk about domestic violence that they faced in their own livelihood due to fear and social isolation especially when they live in a male dominated society. There are several support resources available for female victims when compared to male victims, here male victims were left with fewer options. This leads to lack of support for male victims who are facing domestic violence.

### **2.1.2 Underreporting by LGBTQ+ victims :**

Domestic violence is a pervasive issue that is faced by many individuals regardless of gender, sexual orientation, and backgrounds. LGBTQ+ individuals has a higher risk of facing domestic violence and that includes, physical, emotional, psychological, and sexual abuse. Despite the abuse the LGBTQ + people won't report the domestic violence that they are going through due to several reasons that includes, fear of discrimination: These individuals often face bias from law enforcement, health care providers and support services. The fear of discrimination is deeply rooted due to their past experiences of being treated badly and unfairly because of their gender identity, and sexual orientation. Many help sources are available for



heterosexual individuals, which makes them think that their painful experiences are not validated.

Imagine the LGBTQ+ person being dependent on the abuser for economic or financial support, in this situation it makes it difficult to voice out their struggles they are going through inside the four walls.

**Perpetration of violence:** One of the social implications that the LGBTQ victims are going through is not reporting the abuse. This made the perpetrator less likely to be accountable for their actions. This lack of accountability allows the abusers to continue harming the victims and potentially others.

The lack of support and recognition may lead to mental health issues, such as; depression, stress, social anxiety, and PTSD<sup>478</sup>. They might have the fear of discrimination and isolation which may lead to increased feelings of shame, guilt, and hopelessness among them. There are legal gaps that failed to protect the LGBTQ+ individuals.

## 2.2 Legal disadvantages and lack of recognition on non- female victims:

Non-female victims of domestic violence usually face disadvantages and lack of recognition due to the social and legal norms that primarily focus on the female victims, which leads to under-reporting.

In the case of *Sudesh Jhaku vs K.C. Jhaku*, 1996<sup>479</sup> where justice Jaspal Singh of the delhi high court said –

“Men who are sexually assaulted should have the same protection as female victims, and women who sexually assault men or other women should be as liable for conviction as conventional rapists. Considering rape as a sexual assault rather than as a special crime against women might do much to place rape law in a healthier perspective and to reduce the

mythical elements that have tended to make rape laws a means of reinforcing the status of women as sexual possessions<sup>480</sup>.”

Men and individuals of LGBTQ+ community experience sexual abuse or violence and when we take a look at the population, a significant proportion is left vulnerable without any proper legal support. This lack of support and recognition in the legal framework has made them underreport. Victims may feel that their painful experience may not validate. Is women the only one who goes through domestic violence? no, male and LGBTQ+ community members' voices were often silenced.

Domestic abuse against men can have substantial physical, emotional, and psychological repercussions, according to research. damage caused by physical aggression can range from scrapes and bruises to fractured bones and catastrophic brain damage. “Threats, intimidation, and verbal abuse against male victims are also possible, and these types of abuse can result in depression, anxiety, and (PTSD<sup>481</sup>).

Non-female domestic violence is generally the most ignored topic, despite the truth it has been thought of as a problem only faced by women. Stigma, lack of legal support prevents the men and LGBTQ+ community members from seeking assistance.

## 2.3 Laws on domestic violence that does not favour non-female victims:

Protection of women against Domestic violence act 2005:

“The Protection of Women against Domestic Violence Act, 2005 is a landmark legislation enacted by the Indian Parliament to protect women from domestic violence. The Act was introduced to provide legal protection and support to women who suffer from physical,

<sup>478</sup> PTSD - Post Traumatic Stress Disorder.

<sup>479</sup> <https://indiankanon.org/doc/1525708/>

<sup>480</sup> LHSS Collective, [Date of Publication], <https://lhsscollective.in/gender-neutral-rape-laws-in-india-limitations-of-the-bns/>

<sup>481</sup> “Dobash, R. Emerson, and Russell P. Dobash. *Violence Against Wives: A Case Against the Patriarchy*. New York: Free Press, 1979.”



sexual, verbal, emotional or economic abuse in their homes and relationships<sup>482</sup>.”

This act covers a wide range of behaviours which includes, physical assault, emotional, economic, verbal abuse and sexual harassment. One of the key features of this act is it covers all women, irrespective of their marital status. That means this act protects women who are married and unmarried i.e., live in a relationship. One of the most significant features of this act is the appointment of protection officers, these officers assist the women who all are the victims of domestic violence and endure them with legal and support services. They help women to gain protection order, medical aid, counselling, and so refer them to other support services such as, shelter and medical assistance.

There is no act for men and LGBTQ+ community to protect them from the domestic violence.

### III. The concept of gender neutral laws:

Social perspective about men and women is one of the reasons for gender biased laws. There is an assumption that women are always a victim and men are always perpetrators. There are provisions that are made to protect women alone. For instance, Domestic violence act 2005 and Dowry prohibition act 1961. These laws have gender specific definitions for the term victimhood, and perpetration, which completely exclude men and LGBTQ+ individuals who face domestic violence and other injustice.

### Protection of Women under Domestic Violence

**act** : The sad part about this act is, It does not recognize men and LGBTQ+ individuals as a victim of domestic violence. Studies show that men and LGBTQ+ people do suffer from domestic abuse and harassment from their partners still there is no legal provisions under this act. Due to the lack of support they remain silent in most of the time and circumstances .

### Misuse of the Dowry Prohibition Act 1961 :

In India, The dowry prohibition act is one of the most misused acts. Section 85 – Husband and relative of husband of a woman subjecting her to cruelty and section 86 – cruelty defined, These two provisions of the BNS, 2023 were misused more often. Many cases filed under this provision are false accusations. Due to greed, vengeance, and other personal reasons the dowry prohibition act has been misused for years. The supreme court stated that the dowry prohibition act, 1961 was enacted to protect women from harmful dowry practice. But it has been misused against innocent individuals and their family. In the case of Arnesh Kumar vs State of Bihar, (2014) the provision 85 of the BNS was misused leading to wrongful arrest of a person without proper investigation.

**Custody and maintenance laws** : In divorce and separation, section 13 of HMA, 1955 states, Adultery, cruelty, desertion, conversion, mental disorder, venereal disease, renunciation, presumption of death, These are the general grounds of divorce and there are special grounds only for women and they are, bigamy, sodomy or bestiality, rape, maintenance decree, option of puberty. and divorce can be taken by mutual consent.

### Tender years doctrine :

Tender years doctrine is a legal principle that allows the mother to take the custody of the children during their tender years. Court naturally favours custody towards the mother under this doctrine.

### Under the Hindu minority and guardianship act 1956,

The children below the age of 5 years are made under the custody of the mother. Although father is considered the primary guardian of the children, the court has awarded the custody of the children to mothers in most cases. Especially when the child is too young.

Maintenance laws are actually gender neutral but while in applicability it is more beneficial to women than men. Maintenance laws are known

<sup>482</sup> “Walker, Lenore E. The Battered Woman Syndrome. New York: Springer Publishing Company, 2017”.

as alimony or spousal support. It is an idea that the husband has to support the wife financially and this came from the traditional point of view, where the husband is the primary earner and the wife is the one who takes care of the household child-rearing. In legal terms, maintenance laws were designed to ensure and support the divorced or separated wife. The amount of maintenance and duration of it depends on the income, length of the marriage, and wife's personal needs.

While the intention behind the gender specific laws were to protect and uplift women, these measures often fail to consider the complexity of individual experience and can unintentionally perpetuate discrimination against another gender. Gender neutral laws ensure to judge and protect everyone equally regardless of their gender. When the gender specific domestic laws were misused then there is a need for gender neutral laws<sup>483</sup>.

### 3.1 Definition and significance of gender neutrality in law:

Gender neutrality in law means that the legal provisions, rights, protections were written in a way that can be applicable to everyone without any gender discrimination. This ensures all the gender to have justice, services, and opportunities under the law.

#### 3.1.1 What is meant by gender neutrality?

Gender neutrality refers to the elimination of gender-based distinctions in language, policies, and legal provisions. Unlike the concept of biological sex, which categorises individuals as male, female, or intersex based on physical attributes, gender is a social construct that encompasses a spectrum of identities, including transgender, non-binary, and gender-fluid individuals. To better understand about gender neutrality first we must understand what gender exactly means, here is an definition given by WHO,<sup>484</sup>

Gender refers to the characteristics of women, men, girls and boys that are socially constructed. This includes norms, behaviours and roles associated with being a woman, man, girl or boy, as well as relationships with each other. As a social construct, gender varies from society to society and can change over time<sup>485</sup>.

Everyone should understand that gender is different from sex, gender and sex are related to but different from gender identity. Gender identity refers to how an individual feels about themselves, how they deeply connect, internally feel about themselves which may or may not be similar to their sex at birth.

### 3.2 Significance of gender neutrality in law:

The significance of gender neutrality as follows :

1. Gender neutral laws eliminate gender stereotypes by removing gender specific terms and applying laws equally to every individual. For example, using the term spouse instead of husband and wife in legal provision ensures that the law treats all partners equally, regardless of their gender.
2. It allows individuals to be identified by their special and unique characteristics rather than defining them by their gender. By removing gender - based laws, we can create a more justifiable and equitable society.
3. Gender neutrality identifies and includes the diversity of gender, which includes : non-binary, gender-fluid, trans gender, and intersex people. Gender neutrality develops a place where all individuals can feel valued, accepted, and respected regardless of their identity.
4. Gender neutrality in law helps to destroy harmful gender stereotypes and perpetuate discrimination against gender. It creates a space where people

<sup>483</sup> Gender Neutral Laws in India

<sup>484</sup> World Health Organisation

<sup>485</sup> Gender, <https://www.who.int/health-topics/gender#tab=tab> (last visited Mar. 30, 2025).

will be judged by their merits and abilities rather than gender.

5. Gender neutrality in the workspace creates an environment where companies can create new policies that can promote equality and fairness for all individuals working in the industry regardless of their gender. It creates a more diverse, efficient and productive workspace.
6. Gender neutrality in education plays an important role in shaping society. By creating a spacious place where every student feels valid regardless of their gender and this environment should be created by the universities and schools.
7. Gender neutrality in law creates a safer place for all individuals, everyone should be treated equal before the eyes of law regardless of their gender.
8. Using gender neutral language in legal frameworks can create a better understanding and avoids assumptions about gender.

### 3.4 Comparative analysis of countries with gender neutral violence laws:

We should realise that harassment can happen to anyone despite their gender, age, sexuality. People don't talk much about the harassment that men and LGBTQ+ community individuals face in society.

Now let's take a look into the countries with gender neutral violence laws:

Various countries have gender neutral laws that support and treat men and women equally. Countries like, US, Japan, UK, Australia, etc., have gender neutral laws.

In the United States of America, federal law is based upon Title VII of the Civil Rights Act of 1964. An employee who faces sexual harassment can file a complaint at the Equal Employment Opportunity Commission if dissatisfied with the organizational inquiry of the case. In the United Kingdom, victims of sexual

harassment can file their complaints with the Equality and Human Rights Commission. The Sex Discrimination Act 1975 was amended in 2008 which required employers to protect their employees from customers, suppliers & others they encounter in the course of their work. In Australia, Sexual harassment is covered under the Sex Discrimination Act 1984. A person who faces sexual harassment can officially lodge a complaint at the Australian Human Rights Commission. In Japan, The Male-Female Equal Opportunity law was amended in 1999 and requires the organisation to take strict action against the harasser. If a victim is dissatisfied with the organisation's procedure, he/she can demand monetary compensation from the perpetrators as well as the company.<sup>486</sup>

### IV. Landmark Cases Highlighting Gender Biases:

#### 1. Vishaka v. State of Rajasthan (1997)

This case marked a turning point in addressing workplace sexual harassment in India. The Supreme Court, recognizing the lack of a specific law on the issue, established the **Vishaka Guidelines** to prevent and address sexual harassment at workplaces. The case stemmed from the gang rape of Bhanwari Devi, a social worker who was attacked for attempting to prevent child marriage. The ruling exposed gender biases within the legal system, which had failed to provide adequate protection for women in their workplaces. This case later contributed to the enactment of the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**.

#### 2. Mary Roy v. State of Kerala (1986)<sup>487</sup>

This case brought to light gender discrimination in inheritance laws,

<sup>486</sup> <https://economictimes.indiatimes.com/special-report/govt-laws-on-sexual-harassment-in-various-countries/articleshow/6389535.cms?from=mdr>

<sup>487</sup> AIR 1986 SC 1011

specifically under the **Travancore Christian Succession Act**, which denied daughters an equal share in ancestral property. The Supreme Court ruled in favor of Mary Roy, ensuring that Christian women in Kerala would be entitled to equal inheritance rights under the **Indian Succession Act, 1925**. The judgment challenged long-standing patriarchal traditions that limited women's financial independence and perpetuated gender disparities in property rights.

3. **Air India v. Nargesh Meerza (1981)**<sup>488</sup>

The Supreme Court overturned discriminatory employment regulations imposed by Air India, which required female flight attendants to retire upon marriage, pregnancy, or at the age of 35, while their male counterparts enjoyed extended tenure and greater job security. The court deemed these conditions **arbitrary, unconstitutional, and violative of Article 14 (Right to Equality)**, recognizing them as clear instances of gender bias in employment policies.

4. **Laxmi v. Union of India (2013)**<sup>489</sup>

This case addressed the issue of **acid attacks**, a form of gender-based violence primarily targeting women. Laxmi, an acid attack survivor, filed a PIL demanding stricter regulations on the sale of acid. The Supreme Court acknowledged the gendered nature of such attacks, which were often acts of revenge against women for rejecting advances. The ruling resulted in stricter controls on acid sales and increased compensation for survivors, revealing deficiencies in the legal system's ability to protect women from such targeted violence.

5. **Anuj Garg v. Hotel Association of India (2007)**<sup>490</sup>

This case challenged a colonial-era law that barred women from working in establishments serving alcohol. The Supreme Court struck down the provision, stating that **protective discrimination should not reinforce gender stereotypes**. The judgment emphasized that women should have the autonomy to choose their professions without state-imposed restrictions based on outdated gender norms.

6. **Joseph Shine v. Union of India (2018)**<sup>491</sup>

This landmark ruling resulted in the decriminalization of **adultery** under **Section 497 of the Indian Penal Code**, a provision that treated women as the property of their husbands. In the **Bharatiya Nyaya Sanhita (BNS), 2023**, which replaces the IPC, **adultery is not a criminal offense**. The law does not reintroduce any provision similar to Section 497 IPC in the BNS. However, adultery can still be a ground for divorce under personal laws. Previously, only men could be punished for adultery, while women were viewed as passive participants without legal agency. The Supreme Court held that the law violated **Article 14 (Right to Equality) and Article 21 (Right to Personal Liberty)**, reinforcing how legal frameworks often perpetuate gender biases instead of dismantling them.

7. **Shayara Bano v. Union of India (2017)**<sup>492</sup>

This case led to the abolition of **Triple Talaq (Talaq-e-Biddat)**, a practice that allowed Muslim men to unilaterally divorce their wives by saying "talaq" three times. Shayara Bano, who was arbitrarily divorced through this practice,

<sup>488</sup> AIR 1981 SC 1829

<sup>489</sup> 2014 SCC 4 427

<sup>490</sup> (2008) 3 SCC 1 (India)

<sup>491</sup> (2019) 3 SCC 39 (India).

<sup>492</sup> (2017) 9 SCC 1 (India).



challenged it for being discriminatory and unjust. The Supreme Court ruled **Triple Talaq unconstitutional**, stating that it violated women's fundamental rights and perpetuated gender bias in personal laws. This judgment paved the way for the **Muslim Women (Protection of Rights on Marriage) Act, 2019**, which provided greater legal safeguards for Muslim women.

#### 4.1 Role of Judiciary in Gender Sensitization

##### 4.1.1 Judicial Training Programs

- The **Judicial Academy of India** conducts regular training sessions for judges on gender rights, discrimination laws, and the psychological impact of gender violence.
- Special focus is given to landmark judgments such as:
  - **Vishaka v. State of Rajasthan (1997)** – Established sexual harassment guidelines and led to the creation of the **POSH<sup>493</sup> Act, 2013**.
  - **Laxmi v. Union of India (2014)** – Focused on acid attack victims' rehabilitation, compensation, and preventive measures.
  - **Shayara Bano v. Union of India (2017)** – Declared triple talaq unconstitutional, reinforcing gender rights.

##### 4.1.2. Fast-Track Courts for Gender-Related Cases

- Special **Fast-Track Courts (FTCs)** have been established to expedite cases related to gender violence, rape, and harassment.
- Dedicated **Protection of Children from Sexual Offences (POCSO) courts** handle

cases involving minors with sensitivity and confidentiality.

##### 4.1.3. Gender-Sensitive Judgments

- Judges are encouraged to deliver gender-sensitive judgments that promote equality and justice by considering the social and psychological impact of gender discrimination.
- Courts have emphasized rehabilitative measures, victim compensation schemes, and preventive steps to curb gender-based violence.

#### V. Necessity for Gender-Neutral Legal Frameworks<sup>494</sup>:

The patriarchal structure prevailing in India often reinforces the notion of male dominance, promoting rigid stereotypes of masculinity. Indian males who endure sexual abuse are frequently silenced by societal pressures stemming from fear of ridicule, loss of social standing, and cultural stigma. Consequently, sexual crimes against men are often disregarded or perceived as improbable.

However, increased access to education and information has empowered individuals to break free from these cultural constraints. Growing awareness has encouraged victims of sexual violence, irrespective of gender, to voice their experiences and seek justice without fear of social repercussions.

Empirical evidence indicates that sexual harassment against men is not as rare as perceived. A 2010 Economic Times-Synovate survey revealed that 19% of the 527 men surveyed reported instances of sexual harassment. Similarly, a Viacom 18 study in 2013 disclosed that approximately 43% of male corporate employees encountered workplace harassment.

According to the **(NCRB)**<sup>495</sup> data, since 2009, over 175 men have been abducted for illicit

<sup>493</sup> Prevention of Sexual Harassment against women, 2013

<sup>494</sup> <https://www.iurisjura.com/post/critical-analysis-on-gender-inequality-in-the-criminal-justice-system-in-india>

<sup>495</sup> National Crime Record Bureau

sexual purposes, while 995 men have been coerced into marriage during the same period. These alarming statistics underscore the urgent need for a legal framework that safeguards all genders.

## VI. Suggestions for Strengthening Gender Sensitization:

- Compulsory Gender Training Modules:** Integrate mandatory gender sensitization programs for law enforcement personnel, judicial officers, and public prosecutors to ensure a comprehensive understanding of gender dynamics.
- Increasing Female Representation:** Enhance the recruitment of female police officers and judges to ensure a balanced gender perspective in law enforcement and judicial decision-making.
- Public Awareness Campaigns:** Conduct educational campaigns to inform citizens about gender-specific rights and empower victims to seek justice without fear.
- Partnerships with NGOs:** Collaborate with organizations specializing in gender equality to improve training content and support services for victims.
- Technological Integration:** Utilize digital platforms to facilitate seamless reporting, investigation, and counseling for survivors of gender-based violence.
- Mentorship Programs:** Introduce mentorship initiatives where experienced officials mentor junior officers in adopting gender-sensitive practices.
- Performance Monitoring Frameworks:** Implement evaluation metrics to assess the effectiveness of gender sensitization programs across law enforcement agencies and judicial bodies.

## Conclusion: Towards Inclusive and Effective Legal Protections

### Recap of the Need for Gender-Neutral Domestic Violence Laws

The existing legal framework has historically been centered around female victims, overlooking the plight of male and LGBTQ+ individuals facing domestic violence. While protection for women remains paramount, gender-neutral laws are imperative to ensure that all individuals – regardless of gender – are safeguarded against domestic abuse, harassment, and violence. Inclusive legal frameworks recognize the complexities of modern family structures and the evolving social landscape.

### Future Directions for Legal Reforms and Policy Changes

- Amendments in Existing Statutes:** Incorporating gender-neutral terminology into laws such as the **Protection of Women from Domestic Violence Act, 2005**, and the **Criminal Law (Amendment) Act** would provide comprehensive coverage for all victims.
- Introduction of Specialized Courts:** Establishing dedicated courts to hear gender-based violence cases may ensure expedited justice and greater sensitivity to victim concerns.
- Expanded Legal Definitions:** Revising the definition of 'domestic violence' to include emotional abuse, economic violence, and digital harassment would reflect contemporary realities.
- Enhanced Legal Aid Programs:** Increasing access to legal resources and ensuring victims of all genders are provided representation without discrimination.

## 6.1 Conclusion