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## A ONE-SIDED SHIELD: THE NEED FOR GENDER-NEUTRAL PROTECTION IN INDIAN LAWS

~ *Mahek Zubeariya*

### Abstract

The regulation of domestic violence and gender-based cruelty is one of the most sensitive areas of law, which is essential for ensuring justice and dignity to the citizens. Indian laws, responding to historical and systematic discrimination, established women-centric legislation. Laws like Section 498A of the Indian Penal Code and the Protection of Women from Domestic Violence Act, 2005 (PWDVA), were established as a strong protective shield. However, there are rising concerns about the misuse of these laws for personal gain. Judicial observations suggest this shield has become one-sided, and the laws fail to recognize and protect men who face domestic cruelty or harassment.

This paper argues for an urgent shift from Gender-specific Laws to Gender-Neutral Protection. It critically analyses the existing women-centric laws for their potential misuse and examines the statutory silence towards men victims. This research shows the need for necessary legislative reforms, through judicial pronouncements and comparative legal analysis. The objective is to demonstrate how justice ensures fairness and equality by protecting all citizens from abuse, irrespective of gender, thereby replacing the 'one-sided shield' with a uniform protective framework.

### INTRODUCTION:

The core principle of the Indian legal system is the guarantee of equality for all citizens. Yet, achieving this equality often requires correcting historical imbalance. After independence, lawmakers recognized that women had an unequal status in a male-dominated society. To address

this, the Constitution introduced Article 15(3), which gives special power to the state to make 'special provisions' to protect women. This led to the creation of strong women-centric laws. These laws have worked as a vital protective shield for women. However, society has changed, and these protective laws create several imbalances. The Hon'ble Supreme Court itself has repeatedly warned about the gross misuse and weaponization of these statutes. The current framework is based on the outdated idea that violence is always one-sided, where men are always the criminals and women are always the victims.

This paper argues that these laws are fundamentally imbalanced and must be reformed to be gender-neutral. It will first analyze the historical and constitutional foundation of women-centric laws. Next, it will critically examine the statutory language of such laws to demonstrate the inherent gender bias and legal gap it creates for male victims. To achieve true equality, the legal "shield" must protect any person; man or woman, who faces violence, cruelty, or harassment.

## **THE FOUNDATION OF WOMEN-CENTRIC LAWS**

- **The Historical Background**

The laws we have today were a direct response to the social reality of India right after independence. Lawmakers confronted a society where women had a deeply unequal and low status. This wasn't just a vague idea; it was a fact of life.

For most women, life was completely controlled by men. Many were illiterate, as they were rarely allowed or encouraged to go to school. This lack of education directly caused economic helplessness. With no way to earn their own money, women had zero financial freedom. They were forced to depend on their fathers, and after marriage, on their husbands. On top of this, they were often denied the right to own or inherit property. Furthermore, the biggest problem was that violence inside the home was not seen as a crime. It was considered a "private family matter" between a husband and a wife.

This reality created the powerful and unshakeable idea that women were the "weaker sex." They were seen as a group that was always vulnerable, always oppressed, and always in need of being "protected" by the law. The belief that women are a helpless class of citizens became the entire

foundation for the protective laws written later. The lawmakers felt they had a moral duty to create special and powerful laws to protect this vulnerable group.

- **The Constitutional Shield: Article 15(3)**

When the leaders of newly independent India recognised this social issue, their first and biggest answer was the Constitution of India. The Constitution promises "equality for all" in Article 14. But this created a difficult question: How can you treat everyone "equally" when one group (women) is starting the race so far behind. The lawmakers knew that if you "treat everyone the same," the strong would stay strong, and the weak would stay weak.

To resolve this issue, they added a special and powerful clause in Article 15(3) of the Indian Constitution. This article specifically allows the State to make "Special provisions for women and children". This clause is the most important legal foundation for every women-centric laws in India. It is the legal tool that made the protective "shield" possible.

- **A Legal Weapon Against Dowry Death Crisis**

During the 1970s and 80s, India faced a horrifying crisis of "dowry deaths." Young brides were being harassed, tortured, and even murdered by their in-laws over dowry demands. The existing laws were failing because this abuse was seen as a "private family matter," and police rarely interfered. In response to massive public outrage, Parliament had to act. They passed the Criminal Law (Second Amendment) Act in 1983. This was a turning point. It introduced two powerful new tools:

Section 498A (IPC): This made "cruelty" by a husband or his relatives a specific punishable crime by imprisonment.

Section 113A (Evidence Act): It allowed courts to presume the husband's family was responsible if a wife died by suicide within seven years of marriage due to cruelty.

This law was a major turning point. It created the first strong criminal shield for women, intentionally built to be one-sided against a crime that was viewed the same way.

- **Filling the Gaps: From Punishment to Protection**

The creation of Section 498A under IPC was a major step, but it is criminal law. Its main goal is to punish the abuser with imprisonment. This created a big loophole in the law. Many women needed immediate safety and protection, not just to imprison their abusers.

To fix this problem, Parliament passed a new law, "The Protection of Women from Domestic Violence Act (PWDVA)" in 2005. It was a civil law entirely focused on protection, not punishment. The PWDVA gave women a way to go to court quickly and get "protection orders". These orders could stop the abuser from coming near them. It also guaranteed them the "right to reside" in the shared home, so they couldn't be instantly thrown out onto the street. This act covered all types of abuse, including physical, mental, emotional, and financial harm.

This 2005 Act completed the "shield." Women now had a strong, powerful criminal law (498A) for punishment and a fast civil law (PWDVA) for immediate protection.

## **ANALYSIS OF THE ONE-SIDED LEGAL FRAMEWORK**

The previous section has already showed the historical and constitutional basis for why these women-centric laws were created. This section will now critically analyze the statutory language of these laws. By examining the precise language, we can easily demonstrate how the legal framework creates a "one-sided shield" that is, by its very design, gender specific.

- **Laws on Domestic Life and Cruelty**

**Section 498A (IPC):** This criminal law was created to stop dowry harassment, but its language is explicitly gender specific. It only recognizes the "wife" as the potential victim and the "husband or any relative of the husband" as the potential accused. This wording makes it legally impossible for a husband who is a victim of cruelty from his wife or her family to use this powerful law.

**The PWDVA, 2005:** The problem is clear in the title itself: "Protection of Women from Domestic Violence Act." The law defines the "aggrieved person" who can file a case here is a

"woman." Therefore, a man (whether a husband, live-in partner, or brother) who is being abused at home is barred from using this fast-track law to get a protection order.

- **Laws on Sexual Offenses and Harassment**

**Section 375 (IPC):** The legal definition of "rape" is not gender neutral. It explicitly states that a "man" is the perpetrator and a "woman" is the victim. Under this law, a man cannot be a legal victim of rape, nor can a woman be charged as the primary perpetrator.

**Section 354 (IPC):** This law criminalizes the act of "outraging the modesty" of a "woman." The related, newer sections on stalking (354D) and voyeurism (354C) also specifically define the victim as a "woman." No equivalent, specific law exists to protect men from similar acts.

**The POSH Act, 2013:** The "Sexual Harassment of Women at Workplace Act" creates a mandatory legal process (the Internal Complaints Committee, or ICC) only for an "aggrieved woman." A male employee who faces sexual harassment has no access to this powerful statutory mechanism.

- **Civil and Family Laws**

**Section 125 (CrPC):** This law on maintenance places the primary legal obligation on the husband to pay maintenance. The debate here is that this duty is often enforced even if the wife is well-educated and capable of earning, while an unemployed or disabled husband has no clear, equivalent right to claim maintenance from his high-earning wife.

**Child Custody:** While the "welfare of the child" is the main goal, courts often rely on the "Tender Years Doctrine." This is a long-standing presumption that a young child (especially under five) is best cared for by the mother. This creates an immediate bias that fathers must legally overcome, even if they are the more suitable guardian.

**Section 112 (Evidence Act):** This law creates a "conclusive proof" of paternity for a child born during a valid marriage. The only way a husband can challenge this is to prove "non-access" (that he had no possibility of intercourse). This standard is so high that it can override even a DNA test, placing a heavy and often unfair burden of proof on the man.

### **THE IMBALANCE: MISUSE AND LACK OF EQUAL PROTECTION**

While these protective laws were meant to protect, their one-sided nature has created a severe imbalance. The main problem is that these laws can be "weaponized." They are often used not as a "shield" for protection, but as a "sword" for personal revenge, to force a money settlement, or to get an advantage in a divorce.

When a false case is filed under Section 498A, Section 375(Rape), or the POSH Act, the man is often presumed guilty until proven innocent. The consequences are immediate and terrible:

- The person faces the threat of being arrested.
- Reputation is often ruined at work and within their community.
- The Accused person is forced into a long, expensive, and stressful legal fight just to prove they are innocent.

This kind of misuse is a direct violation of a man's fundamental rights. It violates his **Right to Liberty (Article 21)** when he is arrested without a proper investigation. It also violates his **Right to Equality (Article 14)**, as the law is not protecting him in the same way it protects others. He is denied the legal tools to defend himself or to hold his accuser accountable for a false case.

In short, the law has created a system where one gender has powerful legal weapons, while the other gender has no "shield" and no good defence. This profound imbalance is the single strongest argument for why India urgently needs to move to gender-neutral laws.

## **JUDICIAL ACKNOWLEDGMENT OF THE MISUSE**

The problems of misuse are not just a theory; they are a well-documented reality that the Indian judiciary has been forced to confront. The Supreme Court of India has expressed deep concern over the "weaponization" of these protective laws in many judgments.

### **1. Judicial Warnings on “Legal Terrorism”**

The most prominent example of misuse is Section 498A. The Supreme Court has repeatedly expressed its concern, noting that this law, which was designed as a "shield" for women, is often being used as a "weapon."

The Court has pointed out that because the offense is cognizable (meaning police can arrest without a warrant) and non-bailable (meaning getting bail is very difficult), it gives immense power to the person filing the complaint. This power is easily misused.

In several judgments like *Sushil Kumar Sharma v. Union of India, 2005*, the Court has used the extremely strong term "legal terrorism" to describe this situation. The main concern raised by the courts is the common tactic of filing a complaint that names not just the husband but also his entire family. This often includes aged parents, married sisters living in other cities, and distant relatives. This "roping in" of the whole family is seen to put maximum pressure on the husband to settle personal or financial scores, which is a complete abuse of the law's original purpose.

### **2. The Arnesh Kumar Guidelines:**

This misuse became so widespread that police were "automatically arresting" the husband and his family as soon as a 498A complaint was filed.

This led to the landmark judgment in *Arnesh Kumar v. State of Bihar (2014)*. The Supreme Court stepped in and created a set of strict guidelines. It forbade the police from making automatic arrests in these cases. The Court ordered that police must first conduct a preliminary investigation and be satisfied that an arrest is truly necessary.

This judgment is the single biggest proof that the system itself (the judiciary) recognized that the law was being grossly misused. The Court had to create a "check and balance" to stop this weaponization of the law.

### **THE LEGAL VACUUM: NO PROTECTION TO MALE VICTIMS**

The second major problem with the one-sided laws is the "legal vacuum", which means there is absolutely no protection for male victims. The law, by focusing only on the "woman" as the victim, makes the male victim legally invisible. This creates a huge remedy gap.

A woman who is a victim of domestic abuse has two powerful, specific tools: the PWDVA for fast protection and Section 498A for criminal punishment.

A man who is a victim of the exact same abuse has zero specific tools. He cannot use PWDVA. He cannot use Section 498A.

His only real option is to file divorce on the grounds of "cruelty," which is a slow, civil process. It does not offer him immediate protection and does not punish the abuser. This "remedy gap" extends to other laws like the POSH Act (workplace harassment) and Section 354 (stalking), where men are not recognized as legal victims. This is a clear failure of equal protection.

### **IS THE SHIELD STILL NECESSARY?**

It is important to address the main arguments against this paper's thesis. Critics of gender-neutral laws argue that these protective "shields" are still desperately necessary.

They point to the National Crime Records Bureau (NCRB) data, which consistently shows that most victims of domestic violence, rape, and dowry-related crimes are women. The numbers are not even close. The fear is that if these laws are made gender-neutral, they will be misused in reverse. A powerful husband, for example, could use a "gender-neutral" PWDVA or Section 498A to file a false case against his weaker wife, thereby silencing her and defeating the very purpose the law was created for.

The argument against gender-neutral laws is straightforward: it is argued that while male victims do exist, their number is much smaller than the number of female victims. They fear that making the law gender-neutral would remove necessary, vital protection from far more women than it would help men, potentially making the legal system worse for the majority of victims.

However, this paper argues that the question is not about the number of victims, but about the fundamental constitutional right to equal protection and recognition for every citizen who faces abuse, regardless of the statistic.

## **CONCLUSION**

This research paper began by acknowledging that India's protective, women-centric laws were established for necessary historical reasons, serving as a vital shield to correct centuries of deep-rooted discrimination. However, the analysis has clearly demonstrated that this well-intentioned, one-sided legal structure is now seriously unbalanced. The current system fails on two critical fronts: first, the Supreme Court has acknowledged that these powerful laws are susceptible to misuse, sometimes wrongly used as a "weapon" against the accused; second, the gender-specific structure creates a legal vacuum that leaves male victims completely invisible and without any clear legal pathway for protection or remedy. Ultimately, this current framework fails to uphold the constitutional promise of equal protection for all citizens.

The path forward is not to weaken the protection currently afforded to women, but to extend that security universally. To solve the problems of the "one-sided shield," India must reform its key statutes to become gender neutral. This requires replacing gender-specific language with the word "person," ensuring that the law's shield protects any person—man or woman—who faces violence, cruelty, or harassment. This legislative reform is essential to achieve true equality and ensure that the legal system provides justice, recognition, and safety to every citizen, regardless of their gender.

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