Men's Rights in India: A Pitiable Condition

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Abstract

This article looks at two specific areas of Indian criminal law, the definition of sexual offenses and the provision on matrimonial cruelty. It argues that both areas maintain a gender-exclusive structure that the state's institutions have consistently flagged as inadequate but have never fixed. Section 63 of the Bharatiya Nyaya Sanhita limits rape to acts committed by men against women. The Law Commission of India (2000), the Parliamentary Standing Committee on Home Affairs, and the Justice J.S. Verma Committee all suggested revising this for greater gender neutrality, but reform has failed through five institutional attempts over more than two decades. Section 498A of the old Indian Penal Code, now Sections 85-86 of the BNS, and the Protection of Women from Domestic Violence Act, 2005, do not provide an equivalent remedy for men facing matrimonial cruelty. This imbalance has required the Supreme Court to correct it repeatedly through safeguards in cases like Arnesh Kumar v. State of Bihar and Rajesh Chaddha v. State of U.P. Evaluating both provisions against the classification standard in Article 14 and the protective exception in Article 15(3), the article finds the sexual offense law under-inclusive to the point of undermining its own purpose. Meanwhile, the cruelty provision remains constitutionally sound but structurally one-sided. Drawing on NCRB suicide data and a survey of gender-neutral rape law reforms in the United Kingdom, United States, and Canada, the article concludes with four specific recommendations for reform. None of these suggestions would weaken the protections available to women under Article 15(3).

Keywords: Gender-Neutral Rape Laws, Matrimonial Cruelty, Domestic Violence Act 2005, Men's Rights in India

Introduction

The Indian legal system places significant importance on protecting women from issues like rape and harassment, as well as maintaining their bodily dignity. In contrast, when it comes to crimes against men, the Indian legal system often overlooks these cases. Section 63 of the Bharatiya Nyaya Sanhita does not classify non-consensual sexual acts against men's will as rape.[1] Many laws in India focus solely on protecting women's dignity, leaving men vulnerable when they need legal protection. This has led to an unintended gender bias against men, suggesting that only men can be the offenders.

Article 15(3) of the Indian Constitution aims to protect women and children.[2] It allows for the creation of laws and policies that specifically safeguard these groups without being labeled as "discriminatory" by the courts. However, the laws concerning sexual offenses and marital cruelty are heavily biased against men. This is not an argument against protective measures under Article 15(3), nor does it suggest that violence against women is no longer a serious issue. Instead, it highlights specific laws that both Parliament and the judiciary have recognised as inadequate without addressing the existing gaps.

This article argues that the sexual offences law and the provisions related to matrimonial cruelty in India not only maintain a gender-biased structure but have also been identified as inadequate by various parliamentary committees and the judiciary. Reform is necessary to address these specific legal gaps without dismantling the constitutional framework for protective measures under Article 15(3). We will explore gender-specific definitions in the Bharatiya Nyaya Sanhita and the unimplemented recommendations from the Law Commission and two parliamentary committees. We will also examine the structure of marital cruelty law and evaluate both frameworks against the principles governing Articles 14 and 15.

Sexual Offence Laws

Section 63 of BNS defines rape as an act that only men commit against women.[3] It limits the definition of rape to women and completely excludes men, even if many aspects of the law apply

[1]Bharatiya Nyaya Sanhita, 2023, § 63 (India).
[2]India Const. art. 15, cl. 3.
[3]Bharatiya Nyaya Sanhita, 2023, § 63 (India); see also Indian Penal Code, 1860, § 375 (India) (predecessor provision, in substantially identical terms).

to them. It also suggests that women cannot commit rape, even if a woman forces a man into sexual acts. Section 10 does broaden the definition to include transgender individuals, but it doesn't change the law's binary structure.[4] In its 2000 report, the Law Commission recommended expanding the definition of rape in Section 375 of the Indian Penal Code (IPC) to include any non-consensual sexual penetration. It also suggested replacing "woman" with "any person" to ensure male victims receive equal legal protection.[5] Both recommendations aimed to make the law gender-neutral, but they were never put into practice.

The Criminal Law (Amendment) Bill, 2012, aimed to make sexual assault a gender-neutral crime by changing the term "rape" to "sexual assault."[6] This change meant either gender could be the offender or the victim. However, following the 2012 Delhi gang rape incident, the government replaced this bill with the Criminal Law (Amendment) Ordinance, 2013.[7]

The Parliamentary Standing Committee on Home Affairs, in its 167th Report submitted in 2013 on the Criminal Law (Amendment) Bill, 2012, went beyond the original bill.[8] It recommended that both the victim and the perpetrator of sexual offences be gender-neutral. This recommendation meant that a woman could also be charged with rape if she forced a man into sexual acts against his will. Women's groups opposed this suggestion, arguing that making the perpetrator gender-neutral would allow men to make counterclaims against women who report genuine assaults, discouraging women from coming forward.[9] This concern is valid, but it also highlights that Parliament's own committee recognised the need for a fully neutral law, only to be overridden by political pressure rather than any constitutional or evidence-based issues with the recommendation.

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[4]Bharatiya Nyaya Sanhita, 2023, § 10 (India) (defining "gender" to include transgender persons for general purposes under the Sanhita).
[5]Law Commission of India, 172nd Report on Review of Rape Laws, ¶¶ 3.1–3.3 (Mar. 2000) [hereinafter 172nd Report].
[6]The Criminal Law (Amendment) Bill, 2012, Bill No. 105 of 2012 (India).
[7]The Criminal Law (Amendment) Ordinance, 2013, No. 3 of 2013 (India).
[8]Department-Related Parliamentary Standing Committee on Home Affairs, 167th Report on The Criminal Law (Amendment) Bill, 2012, ¶¶ 9–12 (Feb. 2013) [hereinafter 167th Report].
[9]167th Report, supra note 8, ¶ 11 (recording the objections of women's rights organisations to perpetrator-neutral drafting).

The Nirbhaya gang rape case in December 2012 shifted the focus of this reform. The government established the Justice J.S. Verma Committee to suggest urgent changes to laws related to sexual offenses.[10] This Committee took a narrower approach than the Law Commission or the Parliamentary Standing Committee. It recommended gender neutrality only for victims of sexual offenses while still assuming the perpetrator is a man, except in cases of custodial abuse or significant power imbalance. This recommendation was eventually included in the Criminal Law (Amendment) Act, 2013.[11] However, even this narrower version was not accepted. The final Act retained the same binary definition, identifying men as offenders and women as victims. Thus, three bodies—the Law Commission, the Parliamentary Standing Committee, and the Verma Committee—each called for some level of gender neutrality, but the legislature chose not to adopt any of it.[12]

The matter did not end there. In July 2019, Dr K.T.S. Tulsi introduced a private member's bill in the Rajya Sabha to make sexual offence laws gender-neutral.[13] The bill aimed to replace “any man” and “any woman” with “any person” throughout the relevant sections of the Indian Penal Code, the Criminal Procedure Code, and the Indian Evidence Act. Like previous attempts, this bill also lapsed without a vote.

When Parliament finally replaced the Indian Penal Code with the Bharatiya Nyaya Sanhita in 2023, the Parliamentary Standing Committee on Home Affairs had another chance to address this gap, and it took it.[14] The Committee recommended the government reintroduce a gender-neutral provision like the old Section 377, noting that this would align with the government’s stated goal in the BNS to move toward gender-neutral offences. This recommendation was not included in the final version of the BNS.

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[10]Report of the Committee on Amendments to Criminal Law ¶¶ 28–30 (Jan. 23, 2013) [hereinafter Verma Committee Report].
[11]The Criminal Law (Amendment) Act, 2013, No. 13 of 2013, § 9 (India) (amending Indian Penal Code, 1860, § 375).
[12]172nd Report, supra note 5; 167th Report, supra note 8; Verma Committee Report, supra note 10.
[13]The Criminal Law (Amendment) Bill, 2019, Rajya Sabha Bill No. XVI of 2019 (India) (introduced by Dr. K.T.S. Tulsi, M.P., July 12, 2019).
[14]Department-Related Parliamentary Standing Committee on Home Affairs, 246th Report on The Bharatiya Nyaya Sanhita, 2023, ch. IV (Nov. 2023).

As a result, an adult man who is sexually assaulted, whether by a woman or another man outside of custody, has no legal recourse that reflects the seriousness of the offence. This is despite the Protection of Children from Sexual Offences Act, 2012, treating all children equally regardless of gender in cases of sexual assault.[15] The same Parliament that determined children do not need gender distinctions in this area has, on five occasions over two decades, failed to extend that same reasoning to adults.

Matrimonial Cruelty Laws

The second area where this bias is clear is in the law on matrimonial cruelty. Section 498A of the Indian Penal Code, now continued as Sections 85 and 86 of the BNS, makes cruelty by a husband or his relatives against his wife a crime.[16] This provision was introduced in 1983 to tackle the serious issues of dowry harassment and dowry deaths, and no one disputes that this problem is real. However, the law only covers one side. It assumes that cruelty in a marriage can only come from the husband's side towards the wife, without considering the opposite situation, regardless of how it might occur in individual cases.

Even the Malimath Committee on Reforms of the Criminal Justice System noted issues with how this provision was being used in its 2003 report, long before the Supreme Court addressed the matter.[17] Over the next twenty years, the Supreme Court repeatedly intervened to correct the application of this law. In Sushil Kumar Sharma v. Union of India (2005), the Court upheld the law as constitutional but cautioned that it could turn into an instrument of "legal terrorism" if misused for personal disputes instead of dealing with real cruelty.[18] In Arnesh Kumar v. State of Bihar (2014), the Court discovered that police were automatically arresting accused individuals based solely on a complaint, and it instructed them to use a proper arrest checklist first.[19] In Rajesh Sharma v. State of U.P. (2017), the Court looked at NCRB data showing a conviction rate of around fifteen percent against many pending cases, and it ordered the creation of Family

[15]The Protection of Children from Sexual Offences Act, 2012, § 3 (India) (defining "penetrative sexual assault" without reference to the gender of the victim).
[16]Indian Penal Code, 1860, § 498A (India) (inserted by the Criminal Law (Second Amendment) Act, 1983); Bharatiya Nyaya Sanhita, 2023, §§ 85–86 (India).
[17]Committee on Reforms of Criminal Justice System, Ministry of Home Affairs, Government of India, Report, vol. I, at 191–93 (2003) [hereinafter Malimath Committee Report].
[18]*Sushil Kumar Sharma v. Union of India, (2005) 6 S.C.C. 281 (India)*.
[19]*Arnesh Kumar v. State of Bihar, (2014) 8 S.C.C. 273 (Iper centndia).*

Welfare Committees in every district to review complaints before any arrests happened.[20] This safeguard did not last long. In Social Action Forum for Manav Adhikar v. Union of India (2018), the Court removed the Family Welfare Committee system, stating that it exceeded what the Code of Criminal Procedure permitted. However, the Arnesh Kumar safeguards stayed in place.[21] As recently as 2025, in Rajesh Chaddha v. State of U.P., the Court strengthened the standards by ruling that vague complaints naming an entire family without specific details are not enough to support a conviction.[22]

It's important to note that a low conviction rate does not automatically mean that many complaints are false. Cases can end in acquittal for various reasons, including settlements between parties or the challenge of proving what happens inside a home. However, it is harder to justify that the Supreme Court has needed to step in five times over about a decade to address different issues with the same provision.[23] A law that requires such repeated corrections from the highest court clearly was not drafted with enough care for those accused under it.

This one-sidedness also appears in civil law. The Protection of Women from Domestic Violence Act, 2005, allows only women to seek court protection orders, residence orders, or maintenance as "aggrieved persons."[24] Men facing similar cruelty or abuse from their spouses have no equivalent civil remedy under this Act.

It is worth mentioning that the Supreme Court has not always hesitated to strike down one-sided laws. In Joseph Shine v. Union of India (2018), the Court annulled Section 497 of the Indian Penal Code, which made adultery a crime that only punished men while leaving women completely free from liability, even as abettors.[25] The Court found this to be obviously unfair and against Articles 14, 15, and 21. The Court's reasoning primarily focused on protecting the dignity and independence of women, who the old law treated almost like property belonging to their husbands. However, this resulted in the removal of a criminal liability that had affected men

[20] *Rajesh Sharma v. State of U.P., (2018) 10 S.C.C. 472 (India).*
[21] *Social Action Forum for Manav Adhikar v. Union of India, (2018) 10 S.C.C. 443 (India).*
[22] *Rajesh Chaddha v. State of U.P., 2025 SCC OnLine SC 1094 (India))*.
[23] *Arnesh Kumar*, (2014) 8 SCC 273; *Rajesh Chaddha*, 2025 SCC OnLine SC 1094.
[24] The Protection of Women from Domestic Violence Act, 2005, § 2(a) (India) (defining "aggrieved person" as "any woman").
[25] *Joseph Shine v. Union of India, (2019) 3 SCC 39 (India).*

alone for over a century. This indicates that the Court can identify and fix a gender-exclusive law once it stops serving its intended purpose, which applies to the two areas of law discussed above.

Testing the Laws Against Articles 14 and 15

Article 14 permits the state to classify people differently only if there is an intelligible differentia between the classes and that differentia has a rational nexus with the object the law seeks to achieve.[26] Article 15(3) carves out a particular exception to the general rule that special provisions can be made for women and children.[27] But this exception is meant to be in aid of women, not to exclude men forever from all forms of protection in respect of the same subject matter.

If we take this test in relation to the sexual offence law, the object of the law is protection of people from sexual violence. To exclude adult men from the definition of rape altogether does not serve that object; it defeats it, for it leaves an entire class of victims without any real remedy. This is made all the more difficult to justify when it becomes clear that the state's own Law Commission and two separate parliamentary committees have all highlighted this gap and recommended fixing it, and here we are, twenty-five years later, and it is not fixed.

The same test applied to the provision on matrimonial cruelty gives rather a different result. The classification itself, of protecting wives from dowry-related atrocities, still has a rational relation to a real and serious problem, so the provision is not unconstitutional in the way the rape law is. The real problem is that there is no parallel remedy on the other side and that the provision has repeatedly compelled the Supreme Court to erect safeguards for the accused that should have been in the statute in the first place. Here the gap is not in the classification but in the total lack of any parallel protection in the other direction.

The Data Gap

Government data reveals that men are not entirely unaffected by stress related to marriage and family life. According to the National Crime Records Bureau's report on Accidental Deaths and Suicides in India, married men have accounted for a significantly higher number of suicides than

[26] *State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75 (India*
[27] India Const. art. 15, cl. 3.

married women in recent years. A substantial portion of suicides linked to family or marriage issues involves men.[28] These figures require careful interpretation. Suicide usually results from multiple factors, and the NCRB's broad categories do not fully explain what drives someone to take that step. However, despite this caution, the scale of the numbers indicates a considerable number of men struggling with issues tied to marriage and family conflicts. Currently, there is no support system in place for them like the one available for women, which includes helplines, one-stop crisis centres, and a special national commission.

Comparative Position

India stands out among similar countries for keeping its rape law entirely gender specific. The United Kingdom made its rape law gender neutral in 1994.[29] The United States revised its federal definition of rape to be gender neutral in 2012.[30] Canada implemented this change to its Criminal Code as early as 1983.[31] In each of these countries, this shift is generally viewed as a way to help male victims come forward without reducing protection for women. India's own Law Commission suggested a similar change in 2000, but the country has yet to adopt a reform that other jurisdictions made decades ago.

Recommendations

Firstly, Section 63 of the Bharatiya Nyaya Sanhita should be re-drafted in the manner suggested by the Law Commission in 2000, so that the offence includes non-consensual sexual acts against any person, but retains the existing protections that are available only to women in cases of custodial abuse or unequal power.

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[28]National Crime Records Bureau, Ministry of Home Affairs, Accidental Deaths & Suicides in India 2022, tbl. 2.9 (2023); National Crime Records Bureau, Accidental Deaths & Suicides in India 2023, tbl. 2.6 (2024).

[29]Criminal Justice and Public Order Act 1994, c. 33, § 142 (UK) (amending the Sexual Offences Act 1956 to adopt a gender-neutral definition of rape).

[30]Press Release, Federal Bureau of Investigation, FBI Releases Updated Definition of Rape (Jan. 6, 2012) https://archives.fbi.gov/archives/news/pressrel/press-releases/attorney-general-eric-holder-announces-revisions-to-the-uniform-crime-reports-definition-of-rape.

[31]Criminal Law Amendment Act, 1980-81-82-83, S.C. 1980-83, c. 125 (Can.) (replacing the offence of rape with gender-neutral sexual assault offences).

Secondly, the safeguards that the Supreme Court has had to build up over the years for accused persons under Section 498A/BNS 85-86, from the Arnesh Kumar arrest checklist to the specificity requirement laid down in Rajesh Chaddha, should be written directly into the law itself, so that they do not depend on case-by-case judicial correction.

Third, the government needs to set up an appropriate system for collecting accurate data on male victims of sexual assault and domestic cruelty, because the almost complete lack of such data is part of the reason that this issue is so easily ignored.

Fourth, any movement towards gender neutral drafting should be accompanied by a clear statement that it is not intended to weaken the protection available to women, precisely the concern that has stalled reform since 2013.

Conclusion

Article 15(3) was introduced in the Constitution to address a real imbalance, and there is nothing in this article to indicate that it should be removed or diluted. The narrower point is that two specific areas of Indian law, the definition of sexual offences and the working of the matrimonial cruelty provision, have not kept pace with what the state's own institutions have repeatedly said needs to change. Twenty-five years after the Law Commission recommended it, two parliamentary committees pointed to the same gap, and five rounds of Supreme Court intervention to fix the one-sidedness of the cruelty law, the least that can be said is that Parliament owes both men and women a law that actually reflects the problems it claims to solve.