

A Case for Gender Neutrality in Indian Criminal Laws – Critical Perspectives

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Abstract

Gender is built through the process of socialization where women are taught to be passive and sensitive whereas men are encouraged to be active and emotionless. This varied socialization has imprints on legal system as well. This paper argues that despite the guaranteed equality before law the Indian criminal law does not recognize the equal stand of women in true letter and spirit. Further it posits that although India has well developed system for criminal justice administration, it has adopted very narrow definitions of crime which typecasts men in the role of offender and female in the role of victim for which there are no convincing reasons. The analysis begins to unravel the gendered construction of criminal laws and their violation of gender neutrality. The paper develops an idea that achieving gender neutral laws would implement the principle of equality in true letter and spirit. Ultimately, it suggests the need to redefine criminal laws by examining these laws and their gender specific loopholes in the light of gender neutral legislations.

Key Words: Gender neutrality; Equality; Women's rights; Offender.

Introduction

Does woman exist?

This is a preliminary point for a discussion of female criminality in the legislative regime, which has largely been focusing on females as victims and not as the perpetrators of crime. The existence of women in the laws has largely been victim oriented and the criminality is being reserved for men.

‘Have women existed in modernity independently of male fears and fantasies?’¹

Women are seen as incapable of committing the crime which is kept reserved for men. Females have traditionally been seen as being intrinsically law-abiding. Crime appears to be largely a male activity. Men are generally represented more frequently than women. Even in crimes which are traditionally linked with women, there are more males than females convicted.

As far as female criminals are concerned, such women are those who attempt to become more like ‘men’, those who compete or try to achieve acclaim within the masculine spheres of activity, or those who refuse to accept their ‘natural’ passivity.² Moreover, such women are more leniently treated by the criminal justice system and such chivalrous treatment arises from the fact that men generally have a protective attitude towards women. This chivalrous treatment stretches from police to the judge, and thus results in a under-conviction of female criminals.³

Statistical Discrepancy in the Male and Female Criminals

Most scholars agree that males commit more offences than females and their offences are more serious than those of females. The relation between gender and criminality is strong and is likely to remain so. While the relative increase in women’s crime involvement is significant, the participation remains far less than that of men.⁴

From 1.7 percent in 1971, it increased to 2.2 percent during 1981 and touched the figure of 3.4 percent during 1991; in the year 1997, female criminals involved in the total IPC crimes accounted for 5.1 percent. The latest available data of Crime in India 2014, published by National Crime Record Bureau (NCRB) observed that, a total of 37,90,812 persons were arrested by the police under various Indian Penal Code crimes out of which female persons arrested

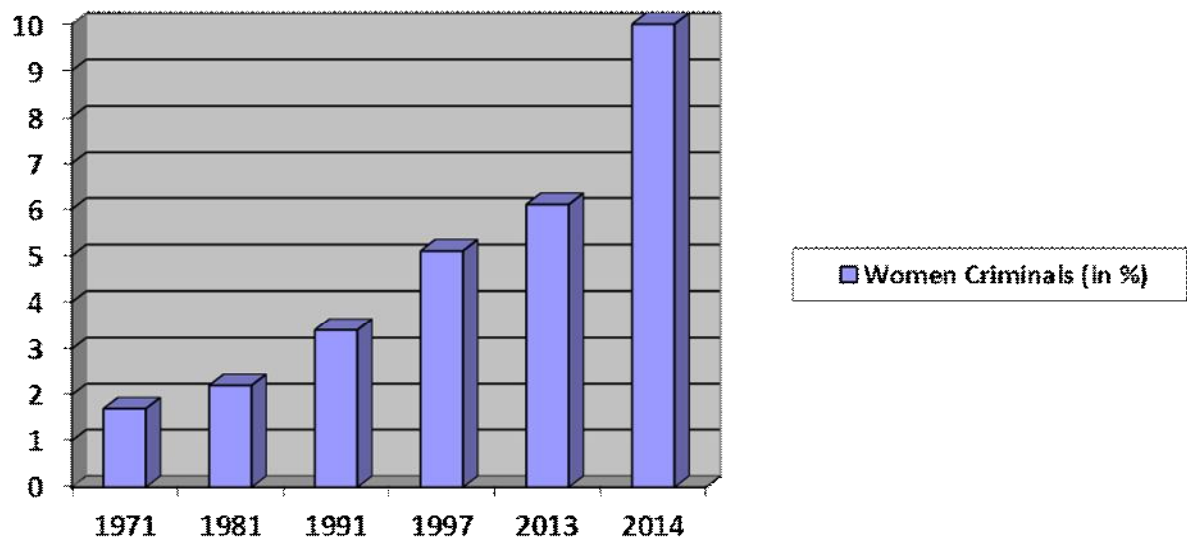
¹ Wayne Morrison. (1995). *Theoretical Criminology: From Modernity to Post-Modernism*.

² Martin Wasik. (1999). *Criminal Justice, Text and Materials*.

³ *supra* n. 1.

⁴ *supra* n. 1, at 387.

accounted for 10.2%, which marks an increase in the share of female criminality from 6.1% for the year 2013.⁵



(Fig. 1.0)

Source: *Prison Statistics in India, 2017* (National Crime Records Bureau)

However, males account for the vast majority of those arrested under the Indian Penal Code and Special and local laws. For example, out of 69,320 persons arrested for the offence of murder, only 4,061 were female arrestee.⁶ While a total of 8,36,976 male criminals were convicted under the Indian Penal Code, number of female criminals convicted is 21,406.⁷ The gender difference in officially recorded crime has been described as so sustained and so marked as to be perhaps the most significant feature in recorded crime.

⁵ National Crime Records Bureau, Ministry of Home Affairs. *Crime in India 2017*. Retrieved from , <http://ncrb.nic.in/StatPublications/CII/CII2014/Compendium%202014.pdf>

⁶ *Ibid.*

⁷ *Ibid.*

The Gender Gap in Legislative Treatment of Female Criminality

As a consequence of differential statistics for male and female criminals, the criminalization and penal involvement rate of men and women is substantially different; a much higher percentage of males than females are convicted under the law. But how does this problem arise?

The answer lies in the legislative framework for catching hold of criminals and their criminal prosecution. The very laws which are relied upon by judiciary in order to perform its job are such as to condition the minds of judges that female is to be 'protected', female is 'incapable' of committing heinous crimes, female criminal has to be 'adjusted' to her traditional role of being passive and feminine as crime is masculine affair, and female is to be punished for 'trespassing' her traditional role of nice lady.⁸

One will find innumerable laws for the protection of women but not for penalizing her. It reinforces the criminological theory put forth by biological and psychological school that female is in need of protection rather than in need of handcuffs. She is not 'worthy' of being given punishment because her crime is not serious enough to attract the resources of state. However, such chivalry is not conferred on every female criminal. Certain women do become threats by transcending their traditional role and they are not afforded chivalrous treatment.⁹

The efforts taken on the part of legislature for the protection of women are admired and are seen as the stepping stone towards gender equality enshrined under Article 14¹⁰ of the Constitution of India. However, such efforts tend to overlook the criminality of females and focus on her role as victim only.

Moreover, there are instances wherein the woman has taken advantage of the law that is aiding her and has unleashed some of the worst violence against men particularly in the family circles. Such invisibility of female criminality in such women-cum-victim oriented laws leads to uncomfortable attitude about female criminals and prolonged silence about male victims.

Thus, the beginning of gender impact is laws made by the legislature, which are heavily influenced by issues of gender to such an extent that even 'Gender'¹¹ is defined under Indian

⁸ Donald Nicolson, and Lois Bibbings. (2000). FEMINIST PERSPECTIVES ON CRIMINAL LAW.

⁹ *Id.* at pg10.

¹⁰ Article 14. *Equality before law.* - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

¹¹ 'Gender' refers to the socially constructed roles, expectations and definitions a given society considers appropriate for men and women, whereas 'Sex' refers to the biological and physiological characteristics that define men (and boys) and women (and girls).

Penal Code as, *'The pronoun "he" and its derivatives are used of any person, whether male or female.'*¹²

In order to find out such chivalrous treatment of female criminals in the legislative regime for criminal justice, the analysis of certain widely used laws against 'male' criminals must be made.

Rape

"Sexual Assault is not just a 'Woman's issue'. Women are not only the victims, but are perpetrators as well. Men are not only the perpetrators but victims as well."

Violence by women does prevail in our society but is often neglected due to its very nature of being associated with less 'believed' female criminality.¹³ Sexual violence against women is treated differently in any given society from that committed by women, and is rather unrecognized by legislature. The same is evident in the legislative framework for the offence of rape. The provision which deals with such offence tends to assume that females can only be the victim of such crime and not the perpetrator.

The origin of the word "rape" is from the Latin word, "*rapere*" which means "to snatch, grab or take away".¹⁴ It includes compromising with a person's dignity, respect and sexual autonomy and it nowhere limits the possibility of a male being a rape victim.¹⁵

The Indian Penal Code, 1860 which comprises the substantial criminal law in India defines rape under section 375. A bare reading of the section makes the position clear that rape can be committed only by a man.¹⁶ A woman cannot be said to have an intention to commit rape.¹⁷

The main components of this highly gender-specific definition are :

- A **man** is said to commit rape.
- Sexual intercourse **with a woman** against her will or without her consent.

¹² Section 8, The Indian Penal Code, 1860.

¹³ Rosemary Gartner and Bill McCarthy. (1988) *The Oxford Handbook Of Gender, Sex, And Crime*.

¹⁴ Priya M. Menon (2013, February 16). Lacking Support, Male Rape Victims Stay Silent. *The Times of India*. Retrieved from <http://timesofindia.indiatimes.com/city/chennai/Lacking-support-male-rape-victims-stay-silent/articleshow/18524668.cms>

¹⁵ Sukriti Bhatnagar. Indian Lawyers Forum. *A Case For Male Rape Victims In India*. Retrieved from https://indianlawyersforum.com/article/a-case-for-male-rape-victims-in-india/#_ftn4 (July 10, 2019)

¹⁶ State of Rajasthan v. Hemraj, 2009 (12) SCC 403.

¹⁷ *Ibid.*

Thus, section 375 of the Indian Penal Code does not include males as rape survivors. A male survivor can only hope to find justice through Section 377, country's controversial anti-sodomy law, if he is assaulted by a male attacker. It must be noted that section 377 of IPC uses the term 'person' to denote the perpetrator of unnatural offence which may, thus, include female as perpetrator. However, keeping in the mind the offence's essential ingredient of carnal intercourse for which 'penetration' is considered sufficient, the exact scope of the provision remains in the dark.

Apart from the definitional aspects, the gender impact is also visible in burden of proof in rape cases. Section 114A, the Indian Evidence Act, 1872, shifts the presumption of innocence to that of guilty person if the *woman* in her evidence testifies that she did not consent in such a situation of rape. The chivalrous treatment given here to woman involves the underlying assumption that woman cannot become criminal in such cases and can only be the victim.

Taking note of the deficiencies in the definition of rape, the Supreme Court in 1998 referred the matter to the Law Commission of India for its consideration. The Law Commission suggested comprehensive amendments to the definition of 'rape'.¹⁸

It was recommended that the definition of rape under section 375 be dispensed with altogether, and replaced with a definition of 'Sexual Assault', which would be comprehensive enough to cover instances of male rape, digital rape and the like. It was noted by the commission that, not only women but young boys are also increasingly subjected to forced sexual assaults.¹⁹

In *State v. Prahlad*,²⁰ the court directed legislature to "*have a re-look at the definition of Rape so as to specifically include the instances of Digital Rape/ Male Rape/ Anal Rape and make the offence Gender Neutral or to formulate a separate exhaustive legislation covering all categories of sexual assault similar to the Legislations that exist in Scotland, Ireland, Australia, Victoria (Sexual Assault Act) and the United States*".²¹

Victim surveys of British and America males have shown that three to eight per cent of males reported at least one adulthood incidence of sexual assault in their lifetimes with at least five to ten per cent of all rape victims being male. While the majority of these crimes are committed by

¹⁸Law Commission of India. (2000). *Review of Rape Laws*, (172nd Report of Law Commission of India). New Delhi, India. Retrieved from <http://www.lawcommissionofindia.nic.in/rapelaws.htm>.

¹⁹ *Ibid.*

²⁰ *State v. Prahlad*, Session Case No. 49/11, FIR No. 155/11 (Jan. 17, 2012) Retrieved from <http://nlrd.org/wp-content/uploads/2012/02/Digital-Rape-St.-Vs.-Pahlad-.pdf>

²¹ *Ibid.*

male offenders, an estimated six to fifteen per cent of these sexual assaults can involve female perpetrators.²²

There is growing recognition of male victimization and gender neutral laws in various countries such as: Canada, all Australian States, Finland, England and Wales, the Republic of Ireland, and the vast majority of States within the United States.²³ In 2012, the FBI's Uniform Crime Report (UCR) Summary Reporting System (SRS) changed the definition of "Forcible rape" which was unchanged since 1927 and included only forcible male penile penetration of a female vagina.

The new definition is: "*The penetrations, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.*"²⁴

On the lines of such efforts, the need of the hour for Indian legislature, therefore, is to enact an effective law, to ensure that all victims of rape, regardless of gender, get justice, and all perpetrators of rape, irrespective of their gender, are punished.²⁵

Domestic Violence

Domestic violence is perceived in gender-specific way and men are assumed as perpetrators of it. Moreover, a male victim is often being ignored and discriminated against by police who believe that women cannot do such wrong. Mention the words domestic violence, and, to most people, they conjure up an image of a man beating his wife or female partner at home.²⁶

The Protection of Women from Domestic Violence Act²⁷, 2005, as the name itself suggests, was enacted to shield women from being abused in the confines of their homes. But it is increasingly being used by devious women with criminal tendencies to torment their husbands and in-laws.

²² Perera, A. (2013, March 12). Why A Gender Neutral Rape Law is not Anti-Women. *The First post*. Retrieved from http://www.firstpost.com/living/why-a-gender-neutral-anti-rape-law-isnt-anti-women57065.html?utm_source=ref_article

²³ Philip Rumney. (2007). In Defence of Gender Neutrality Within Rape. *Seattle Journal of Social Justice*, Vol. 6, 481.

²⁴ The United States Department of Justice (2012). *An Updated Definition of Rape*. (The United States Department of Justice report) Retrieved from <https://www.justice.gov/opa/blog/updated-definition-rape>

²⁵ *supra* n. 15

²⁶ Radhika Das. (2007, June 8). Is The Law Biased Against Men?. *The Times of India*. Retrieved from <http://timesofindia.indiatimes.com/life-style/relationships/man-woman/Relationships-are-built-on-love-and-power/artideshow/1966367.cms> (July 13, 2019)

²⁷ Hereinafter called as "the Act".

The main purpose of the Act is to protect woman and only woman from domestic violence. From the bare reading of the definitions of the Act we can see that the term “aggrieved person”²⁸ includes only women and the term “respondent”²⁹ means any adult male person, meaning thereby that only men can be an aggressor and can be prosecuted but not the woman. The Act assumes that only women are victims. As per this law, only a woman can file a complaint against a man.

The term ‘domestic violence’ has been defined under section 3 of the Act as any act, omission or commission or conduct of the respondent which causes any injury, whether mental or physical, harassment, or the effect of threatening the aggrieved person.

The Act has been challenged for excluding men from bringing domestic violence claims. The constitutional validity of the Act was challenged before the Delhi High Court in *Aruna Parmod Shah v. Union of India*³⁰ on the ground that it is unconstitutionally gender-specific. However, the Court upheld the Act, stating:

The argument that the Act is ultra vires the Constitution of India because it accords protection only to women and not to men is, therefore, wholly devoid of any merit. We do not rule out the possibility of a man becoming the victim of domestic violence, but such cases would be few and far between, thus not requiring or justifying the protection of Parliament.

The Court further held that the gender-specific nature of the Act was a reasonable classification in view of the object and purpose of the Act, and thus, it was constitutional.

Similarly, the Madhya Pradesh High Court in *Ajay Kant v. Smt. Alka Sharma*³¹ stated:

It is clear by the definition of respondent that for obtaining any relief under this Act an application can be filed or a proceeding can be initiated against only adult male person and on such application or under such proceeding, aforementioned protection order can be passed. Obviously those orders will also be passed only against the adult male person.

²⁸ Sec.2 Definition, (a) “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

²⁹ Sec.2 Definition, (q) “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act.

³⁰ *Aruna Parmod Shah v. Union of India*, (2008) 102 D.R.J. 543.

³¹ *Ajay Kant v. Smt. Alka Sharma*, (2008) Crim. L.J. 264.

It must be noted that the Act was designed and passed to address the gap between the guarantee of the Constitution of equal rights and the problems faced in existing laws. The true spirit of any legislation, however, is recognized only through its effective implementation.³² The Act has given an undue advantage to the women and it is the most lethal weapon which women can use against men to extort, exploit, and threaten men community just like terrorism. The Act has provisions like right to residence regardless of legal right on the property, maintenance. The provision in law makes the law easily vulnerable to misuse. Statistics have shown that only 2% of all the cases have resulted in conviction and 98% of the cases are deemed fake and there is no provision for punishment in the Act if a fake case is lodged by women.³³

No data has ever been provided to justify laws like the Domestic Violence Act and the cruel and unusual procedures therein. On what basis, has the Domestic Violence Act neglected domestic Violence against male members in the family and domestic Violence initiated by female members, has never been established which violates the democratic process of passing any law.³⁴

The proponents of the Act would argue that the basis for the Act was respect for human rights of the individuals concerned in a domestic relationship. But legislature must not confer rights on one section of the citizenry by removing the fundamental and human rights from another section of the citizenry. This is exactly what the Act accomplishes. It should be crime based and not gender based.³⁵

Sexual Harassment

‘Sexual harassment’, the term is by default synonymous with the ‘sexual harassment of women by men’. The sexual harassment of men by women largely remains a hush affair in our country. But just because society refuses to acknowledge it, doesn’t mean that it does not happen.³⁶ There have been cases of men being victims to sexual harassment in the reel and real-life workplaces in the past. But why is the topic still not taken seriously?

³² Videv. (2009, October 21) Press Release : *Urgent Need to replace PWDVA and Such Laws with Gender Neutral Laws*. Retrieved from <http://menrightsindia.net/2009/10/press-release-urgent-need-to-replace.html>

³³ Nitish Banka. Misuse of Domestic Violence Act. *Lexspeak Legal*. Retrieved from <http://lexspeak.in/2013/06/misuse-of-domestic-violence-act/>

³⁴ *Supra* note 32.

³⁵ *Ibid.*

³⁶ Aditi Anand. (2015, April 27). Sexual Harrasment of Male a Reality but Remains a Taboo. *Indian Express*. Retrived from <http://indianexpress.com/article/india/sexual-harassment-of-male-a-reality-but-remains-a-taboo/>

That's probably because though many agree that subjecting men to involuntary groping and touching is certainly not a laughable matter, many are still used to see men as the harassers rather than the harassed.

The first ever reported case of male sexual harassment was in the United States in 1995, when a female supervisor at Dominoes pinched the male manager's butt. The manager was paid \$237,000 in damages. In India, the biggest reason why such cases are usually not reported is "social ridicule" and because male victim feels that he would not be believed due to India's social beliefs.³⁷

When women's groups lobbied for a stronger law they did not have gender neutrality in mind. They merely wanted to tighten laws on sexual assault. According to them, it is only men who touch women with sexual intent and without consent and must be punished. Violence is a male problem. Women are only violent in self-defense.³⁸

The same theme is reflected in the law related to sexual harassment in India, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which is an Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. The Act confines the scope of aggrieved person³⁹ to that of women only and though it uses the expression 'person' for the respondent⁴⁰ or the perpetrator of crime, one does not find any such case being dragged into the court of law.

Female abusers must do something severe and obvious before they will be held accountable as perpetrators. Males must be abused in more severe and obvious ways before they are taken seriously as victims. In order to be "counted" as the victim of sexual assault, some authority, a law enforcement officer must hear the story, believe, and report on it in somehow.

Thus law tends to paint a visual picture of harassment that is distinctly female even though male elders are victimized roughly as often as women.

³⁷ Kritika Kapoor. (2012, September 15). Men too are Victims of Sexual Harassment. *Times of India*. Retrieved from <http://timesofindia.indiatimes.com/life-style/relationships/man-woman/Men-too-are-victims-of-sexual-harassment/articleshow/16336627.cms>

³⁸ Loree Cook-Daniels. Female Perpetrators and Male Victims of Sexual Assault: Why They are so Invisible. *Jstor*. <http://www.jstor.org/stable/pdf/223502.pdf>

³⁹ "Aggrieved woman" means.- (a) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent; (b) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

⁴⁰ "Respondent" means a person against whom the aggrieved woman has made a complaint under section 9.

The predominant apprehension amongst most of the male victims is the fact that the powers provided by the law can be used lethally by ill-willed women to destroy careers and hard-earned reputation. A lot of men are scared of what can happen if women resort to abusing this power and using the law in malicious ways. Given that there are several instances of misuse of women-friendly provisions in criminal law, especially in cases of souring marital relationships, men fear that the same applies to anti-sexual harassment laws. However, the truth is the changing mindset of law enforcement authorities and our own legal knowledge can minimize or eliminate misuse of anti-sexual harassment laws completely.⁴¹

Cruelty

*“By misuse of the provision (IPC 498A or anti-dowry law) a new legal terrorism can be unleashed. The provision is intended to be used a shield and not an assassin’s weapon”.*⁴²

Cruelty is an abstract concept and there is no specific definition or explanation given by any jurist. Cruelty can be of different forms such as mental, physical, direct or indirect, intended or unintended. Section 498 A is the most notorious and most abused section of Indian Penal Code, 1860. The section reads as, Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Law originally meant to protect from the dowry menace is being misused by urban ill-intentioned, unscrupulous women and their families as “an assassin’s weapon”. The provision was enacted to protect women from dowry harassment and to deliver justice to the true victims. Unfortunately, unscrupulous women are misusing this law as a legal extortion weapon to victimize families legally. Just a single written complaint by a woman, irrespective of its authenticity, is enough to arrest the husband and in-laws and whoever she has named in her complaint. The innocent families are presumed guilty and are brutally threatened by the protectors of law and forced to settle the case by paying the woman demands, which are exorbitantly large and may also include ancestral property. Very often, such cases continue in the courts for years, which prolong the suffering of the innocent families.⁴³ The police, civil society,

⁴¹ Dear Indian Men, Calm Down ! Women Can’t Misuse Anti-Sexual Harassment Laws at Workplaces. (2015, March 2) *First Post*. Retrieved from <http://www.firstpost.com/living/dear-indian-men-calm-down-women-cant-misuse-anti-sexual-harassment-laws-at-workplaces-2130451.html> (July 14, 2019)

⁴² Sushil Kumar Sharma v. Union of India, (2005) 6 SCC 281.

⁴³ Domestic violence act of india is Against Men !!, 498a.org, <http://www.498a.org/domesticViolence.htm> (July 14, 2019)

politicians and even judges of the High Courts and Supreme Court have offered these arguments of the 'misuse' of laws vehemently.

The Supreme Court in *Arnesh Kumar v. State of Bihar*⁴⁴ cautioned the police officers not to arrest accused unnecessarily and Magistrate not to authorize detention casually and mechanically. The case arose from an appeal preferred by husband who apprehended his arrest in a case under Section 498-A of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961. While dealing with the case, the Court thought it fit to record the rampant abuse of 498-A of the IPC. *Per Chandramauli Prasad J,*

“There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision.”

The government is yet to correct things, even after so many court recommendations. But to make it worse, it has become more complicated, as cases are filed with allegations of gang rape on male family members, unnatural sex on husband, and attempt to murder on all. These allegations, technically, assure the arrest of the accused.

In case of *Jasbir Kaur v. State of Haryana*⁴⁵ the Punjab and Haryana High court observed *“It is known that an estranged wife will go to any extent to rope in as many relatives of the husband as possible in a desperate effort to salvage whatever remains of an estranged marriage.”*

The main reason behind the blatant misuse of the anti-dowry law is that it is cognizable, non-compoundable and non-bailable. The entire case hinges on the statement or allegations made by the wife. A single oral complaint can land the husband's family in jail. No investigation or warrant is needed before police arrest the husband or his family, or begin proceedings. It is non-bailable; the accused must appeal before the court to seek bail. It is not compoundable: the complaint cannot be withdrawn. Worst of all, there is no punishment against the petitioner if the

⁴⁴ *Arnesh Kumar v. State of Bihar*, AIR 2014 SC 2756.

⁴⁵ *Jasbir Kaur v. State of Haryana*, (1990)2 Rec Cri R 243.

complaint is proved false. Moreover, the police do not require any proof before arrest, thus it takes away a basic human right.⁴⁶

The frequent misuse of Section 498A even made the government consider an amendment to the law that would allow compromise and settlement between a husband and wife at the onset of trial in dowry harassment cases.⁴⁷

Conclusion

“Law must be honest to itself. Is it not true that some judges count the number of fatal wounds. Some the nature of the weapon used, others count the corpses or the degree of horror and yet others look into the site or sex of the offender.”

- Per Krishna Iyer, J. in *Rajendra Prasad v. State of U.P.*⁴⁸

India is home to a number of female criminals, a group that is often ignored in a country that is still battling with comprehending gender equality. India reportedly has eleven females on the Interpol list of most wanted criminals. The maximum number of crime committed by female has been recorded in Maharashtra, Uttar Pradesh, Rajasthan, Gujarat and West Bengal.⁴⁹ The country knows the names of Indrani Mukherjee (Murderer of own daughter), Anjali Makan (The female don), Shashikala Ramesh Patankar (Baby Patankar), Santokben Sarmanbhai Jadeja (The struggling gangster), Monica Maurice (fake currency racketeer).

Despite the *de facto* existence of female criminality, it has been common practice to talk about the invisibility of women in the criminal justice system. Given the law's authoritative social status, criminal law acts as a powerful ideological tool in the process of educating society as to the norms of appropriate femininity and masculinity. It may even help shape the thoughts and actions of women and men, if not construct their very beings. The present Indian criminal law tends to portray women as passive victims only whose autonomy is effaced by the focus on the

⁴⁶ Marry Shades of Grey!. (2009, 15 May) *Deccan Herald*. Retrieved from <http://www.deccanherald.com/content/2615/marry-shades-grey.html>

⁴⁷ Diljeet Titus. (2015, September 11) A Perversion of Gender Rights. *The Hindu Business Line*. Retrieved from <http://www.Thehindubusinessline.Com/Opinion/A-Perversion-Of-Gender-Rights/Article7642261.Ece>

⁴⁸ *Rajendra Prasad v. State of U.P.*, AIR 1979 SC 916.

⁴⁹ Most Wanted : The Mafia Queens of India. (2015, June 25). *SIFY*. <http://www.sify.com/news/most-wanted-the-mafia-queens-of-india-news-national-pgzlXiaahjgf.html>

perspective of male defendants. For example, law related to sexual violence including rape, domestic violence and sexual harassment assumes female victim and male perpetrator of crime.

Law must recognize that as victims of male violence and sexual violation and as perpetrator of crime themselves, women may act with as much agency, autonomy and rationality as men. It must recognize that fairness and justice demand equal treatment. Although men and women differ in many important respects, special treatment of women carries significant risks.