
SPECIAL LAWS VS GENERAL LAWS: CONSTITUTIONAL VALIDITY OF GENDER – SPECIFIC PROVISIONS IN CRIMINAL JUSTICE

Suraj Hanumant Bhalerao, LL.M., Savitribai Phule Pune University

ABSTRACT

The criminal justice system in India is an amalgamation of general laws applicable to all citizens and special laws crafted to address the vulnerabilities of specific groups, particularly women. Gender-specific provisions such as Sections 498A, 354, and 376 of the Indian Penal Code (IPC), along with special legislations like the Protection of Women from Domestic Violence Act, 2005, reflect a legislative intent to safeguard women from systemic abuse.

However, these laws have increasingly come under scrutiny for allegedly contravening the constitutional principles of equality and non-discrimination under Articles 14 and 15. This paper critically examines the constitutional validity of gender-specific provisions in criminal law by juxtaposing them with the doctrine of reasonable classification and the need for substantive equality. While the Indian Constitution permits positive discrimination in favour of women, there exists a fine line between protection and over-criminalization. Through judicial precedents and comparative legal analysis, the paper highlights how gender-neutral approaches are being debated in courts and academic forums alike. It further explores whether certain provisions, though well-intentioned, may be misused or perceived as biased, thereby impacting the rights of the accused and undermining the foundational principles of justice. The study concludes by advocating for a balanced and evidence-based reform in gender-specific criminal laws that aligns with constitutional values, respects the rights of all individuals, and ensures that justice is neither gender-blind nor gender-biased.

Keywords: Gender-specific laws, Constitutional validity, Criminal justice system, Article 14, Article 15, Equality before law

1. Introduction

The Indian criminal justice system is a complex matrix of general and special laws designed to maintain public order, prevent crime, and deliver justice. Within this framework, genderspecific provisions particularly those favoring women play a vital role in addressing the socio-cultural and systemic barriers that historically marginalize them. The enactment of provisions such as Section 498A (cruelty by husband or relatives), Section 354 (outraging the modesty of a woman), and Section 376 (rape) of the Indian Penal Code (IPC), along with special legislations like the Protection of Women from Domestic Violence Act, 2005 (PWDVA), reveals the State's intention to address crimes disproportionately affecting women.

However, these legal provisions raise significant constitutional questions. While the Constitution of India guarantees equality before law and prohibits discrimination on the grounds of sex under Articles 14 and 15, it also allows the State to make special provisions for women and children under Article 15(3). This inherent contradiction leads to a continuous debate over whether gender-specific laws conform to the fundamental principles of justice, equality, and non-discrimination or result in over-criminalization and reverse discrimination.

This paper explores the constitutional validity of gender-specific criminal laws in India, drawing on key judicial interpretations, comparative legal frameworks, and the concept of substantive equality. It also analyses the increasing call for gender neutrality in criminal law and the risks of misuse of gender-specific provisions, thereby emphasizing the need for a balanced and inclusive approach to legal reform.

2. General Laws and Special Laws: Conceptual Distinction

2.1 General Laws

General laws are laws that are universally applicable to all citizens regardless of gender, caste, religion, or social status. These include the Indian Penal Code, 1860¹; the Code of Criminal Procedure 1973²; and the Indian Evidence Act, 1872³. These laws are framed based on the principle of equality before law as enshrined in Article 14 of the Constitution.

¹ Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India)

² Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

³ Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).

2.2 Special Laws

Special laws are targeted legal instruments designed to protect vulnerable sections of society or to address specific socio-legal issues. Gender-specific laws fall within this category. The rationale is that formal equality (i.e., treating everyone the same) does not suffice when structural inequalities persist. Hence, special laws serve the goal of substantive equality by addressing disadvantages faced by women due to patriarchal norms and systemic oppression.³

3. Constitutional Framework: Articles 14 and 15

3.1 Article 14: Equality before Law

Article 14 guarantees that the State shall not deny to any person equality before the law or the equal protection of laws. This implies that every individual, regardless of their gender, is entitled to be treated equally in the eyes of the law.⁴

3.2 Article 15: Prohibition of Discrimination

Article 15(1) prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex, or place of birth. However, Article 15(3) empowers the State to make special provisions for women and children, thereby serving as a constitutional justification for gender-specific laws.⁵

4. Gender-Specific Provisions in Criminal Law

4.1 Section 498A, IPC (Cruelty by Husband or Relatives)

This section criminalizes cruelty to a woman by her husband or his relatives. While it was introduced to tackle the grave issue of dowry-related violence, concerns about its misuse have been raised consistently. The Supreme Court in *Rajesh Sharma v. State of U.P.* (2017) observed that the provision is sometimes misused and issued guidelines to prevent its abuse.⁷

³ Glanville Williams, *Learning the Law* 69 (Sweet & Maxwell 2014).

⁴ INDIA CODE, Article 14 – Constitution of India, https://www.indiacode.nic.in/handle/123456789/15096?view_type=browse&sam_handle=123456789/1362 (last visited Aug. 3, 2025).

⁵ MINISTRY OF LAW & JUSTICE, LEGISLATIVE DEPARTMENT, Article 15 – Constitution of India, <https://legislative.gov.in/sites/default/files/coi-article-15.pdf> (last visited Aug. 7, 2025). ⁷ *Rajesh Sharma v. State of U.P.*, (2017) 8 SCC 7

4.2 Section 354, IPC (Outraging the Modesty of a Woman)

This section protects women against acts intended to insult their modesty. However, the term “modesty” is vague and subjective, potentially undermining the universality and fairness of the law.⁶

4.3 Section 376, IPC (Rape)

The offence of rape is defined exclusively in the context of a woman victim and male perpetrator. While it is a much-needed protective provision, critics argue that its gendered framing excludes male and transgender victims.⁷

4.4 The Protection of Women from Domestic Violence Act, 2005

PWDVA offers civil remedies such as protection orders and maintenance to women facing domestic abuse. Although it is civil in nature, it often intersects with criminal procedures. Critics have questioned why the same rights are not extended to male or LGBTQ+ victims of domestic violence.⁸

5. Reasonable Classification and Substantive Equality

The doctrine of reasonable classification under Article 14 permits the State to make laws targeting specific classes of people, provided the classification is:

- Based on an intelligible differentia, and
- That differentia has a rational nexus with the object sought to be achieved.

In *State of West Bengal v. Anwar Ali Sarkar* (1952), the Supreme Court laid the foundation for this doctrine. Gender-specific laws, such as Section 498A, satisfy the first prong by classifying based on gender and the second by attempting to address violence against women.⁹

⁶ Indian Penal Code, 1860, § 354, No. 45, Acts of Parliament, 1860 (India).

⁷ Indian Penal Code, 1860, § 376, No. 45, Acts of Parliament, 1860 (India).

⁸ Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

⁹ D.D. Basu, *Constitution of India* 218–20 (2010)

Substantive equality, in contrast to formal equality, focuses on outcomes and systemic fairness. It recognizes that unequal starting points must be accounted for to ensure genuine Equality. Hence, special laws for women are constitutionally justifiable under the doctrine of substantive equality.¹⁰

6. Judicial Responses to Gender-Specific Laws

Judicial interpretation plays a pivotal role in shaping the constitutionality and application of gender-specific laws. The Indian judiciary has adopted a dynamic and evolving stance, often balancing the need for gender justice with the principles of equality and non-discrimination. Key judicial pronouncements reflect the Court's nuanced approach to both uphold protective measures for women and prevent misuse or overreach.

6.1 Vishaka v. State of Rajasthan (1997)¹¹

In the absence of domestic legislation on sexual harassment at the workplace, the Supreme Court laid down the Vishaka Guidelines, recognizing the right of women to work with dignity as part of their fundamental rights under Articles 14, 15, and 21. The Court justified special measures to protect women at work by invoking Article 15(3), acknowledging that certain gender-specific provisions are essential to secure substantive equality. This judgment became the foundation for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

6.2 Independent Thought v. Union of India (2017)¹²

The Court read down Exception 2 to Section 375 IPC, which exempted marital rape of wives aged between 15 and 18. This progressive step emphasized that the dignity and bodily integrity of minor girls cannot be compromised due to marital status. While the decision was confined to child brides, it opened a broader constitutional dialogue about the gendered limitations in criminal law and paved the way for debates on marital rape as a whole.

¹⁰ D.D. Basu, Constitution of India 226–27 (2010).

¹¹ Vishaka v. State of Rajasthan, AIR 1997 SC 3011

¹² Independent Thought v. Union of India, (2017) 10 SCC 800

6.3 Joseph Shine v. Union of India (2018)¹³

Section 497 IPC, which criminalized adultery only for men, was struck down as unconstitutional for violating Articles 14, 15, and 21. The Court held that the law was rooted in patriarchal assumptions that treated women as property of their husbands. The judgment marked a significant shift in gender jurisprudence by rejecting protective discrimination that undermined autonomy and equality, and instead emphasized equal agency for women.

7. Gender Neutrality: Emerging Trends and Challenges

The demand for gender-neutral laws, particularly in offences like sexual harassment, rape, and domestic violence, is gaining momentum. Several countries, including Canada and the United Kingdom, have adopted gender-neutral criminal laws.

Arguments in Favor:

- Male and LGBTQ+ victims are excluded under gender-specific laws.
- Equality under Article 14 demands uniform protection.
- Presumption of guilt against men in certain cases undermines due process.

Arguments Against:

- Gender neutrality may dilute protections for women.
- Women still face disproportionate violence, necessitating specific laws.
- The structural inequality that women face cannot be overlooked in pursuit of symmetry.

The Law Commission of India in its 172nd Report (2000) and 243rd Report (2012) also deliberated on gender neutrality but stopped short of recommending a universal framework.¹⁴

¹³ Joseph Shine v. Union of India, (2019) 3 SCC 39

¹⁴ Law Commission of India, 172nd Report on Review of Rape Laws

8. The Problem of Misuse and Over-Criminalization

While the purpose of gender-specific laws is to ensure protection and justice, misuse can result in:

- Harassment of the accused without sufficient evidence.
- Prolonged trials and social stigma.
- Undermining genuine cases due to overuse or false allegations.

Several studies, including data from the National Crime Records Bureau (NCRB), reveal that a significant percentage of cases under Section 498A result in acquittals. However, misuse cannot be a ground for striking down such provisions unless it renders the law arbitrary or discriminatory in itself.

9. Comparative Legal Analysis

India's approach to gender-specific laws is not isolated but part of a global legal discourse. Various jurisdictions have evolved distinct approaches—some adopting gender-neutral language and others continuing with gendered statutes tailored to address historical injustices. Comparative analysis helps contextualize the Indian debate on whether special laws for women undermine or promote constitutional equality.

9.1 United Kingdom

The UK's criminal justice system has adopted gender-neutral legislation for sexual and domestic offences. The Sexual Offences Act, 2003 provides a broad definition of rape, recognizing both male and female victims. Domestic abuse laws also extend protection irrespective of gender, focusing instead on the nature of the abuse and the relationship between the parties. The Domestic Abuse Act, 2021 includes economic abuse and coercive control and provides civil and criminal remedies to all victims, regardless of sex.

9.2 Canada

Canada's Criminal Code is gender-neutral and protects all citizens equally from sexual assault, harassment, and domestic violence. The country emphasizes consent-based sexual offences and recognizes abuse within all types of relationships.

Canadian law avoids gendered definitions, and courts have adopted an intersectional understanding of victimization, taking into account race, gender identity, and social marginalization.

9.3 United States

Most U.S. states maintain gender-neutral statutes in areas of sexual assault and domestic violence. The Violence Against Women Act (VAWA), though named for women, extends protections to male, transgender, and non-binary individuals. However, implementation is often shaped by prevailing social norms, and disparities in reporting and access to justice still persist.

9.4 Australia

Australian jurisdictions, such as New South Wales and Victoria, have explicitly genderneutral laws on sexual assault and domestic violence. Programs for male victims and rehabilitation for female offenders exist, reflecting a more balanced criminal policy. Australia also emphasizes trauma-informed judicial processes to avoid secondary victimization.

9.5 Lessons for India

Inclusivity: Other jurisdictions recognize that men, LGBTQ+, and non-binary persons can also be victims and perpetrators of abuse, pushing for inclusive statutory definitions.

- **Evidence-based reforms:** International systems often rely on empirical data before drafting laws, ensuring that legal interventions are tailored and not reactionary.
- **Procedural fairness:** Safeguards against misuse are embedded in investigative processes rather than through dilution of protective statutes.

10. Reform Proposals

10.1 Safeguards against Misuse

- Mandatory pre-investigation screening in cases under Section 498A.
- Penalizing false or malicious complaints.

10.2 Gender-Inclusive Definitions

- Reframe IPC provisions like Section 375 to include male and transgender victims.
- Amend PWDVA to cover all domestic abuse victims irrespective of gender.

10.3 Public Awareness and Legal Literacy

- Promote awareness of rights among all genders.
- Train judiciary and law enforcement on gender sensitivity and neutrality.

10.4 Constitutional Scrutiny and Oversight

- Regularly review gender-specific laws to ensure they comply with Articles 14, 15, and 21.
- Introduce sunset clauses in special laws to mandate periodic reevaluation.

11. Conclusion

The constitutional validity of gender-specific provisions in criminal law must be assessed through the dual lens of equality and justice. While such provisions serve a vital protective function, they must also withstand scrutiny under Articles 14 and 15. The Indian legal framework must strike a careful balance between acknowledging systemic discrimination against women and upholding the rights of the accused, regardless of gender.

A shift towards gender neutrality must not ignore the unique vulnerabilities women face in Indian society. Therefore, reform must be rooted in empirical evidence, constitutional values, and an inclusive understanding of justice. Legal systems must evolve to be neither genderblind nor gender-biased, but gender-sensitive and constitutionally sound.

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