
PROTECTION OR PREJUDICE? A CRITICAL ANALYSIS OF GENDER BIAS IN DIVORCE

Deepika Gorai, Birla Global University

ABSTRACT

The paper critically examines whether the divorce and family laws of India, enacted to protect women, still serve the purpose to achieve that goal or have evolved into systems that occasionally disadvantage men. The security and welfare of women are given priority in laws such as Section 125 CrPC,¹ Sections 24 and 25 of the Hindu Marriage Act,² and the Domestic Violence Act.³ Issues encountered when examining recent rulings and real-life examples of divorced couples, where courts frequently grant maintenance to women without thoroughly examining men's earnings.⁴ These outdated laws are often out of balance because more women are working and splitting household expenses⁵. Since fairness should come from needs rather than gender, the report suggests making the regulations gender-neutral, gathering information before making choices, and treating both parties equally.⁶

¹ Code of Criminal Procedure 1973, section 125.

² Hindu Marriage Act 1955, sections 24–25.

³ The Protection of Women from Domestic Violence Act, 2005.

⁴ See example of *Rajnesh v Neha* (2020) 14 SCC 150 (guidelines for assessing true income in maintenance cases).

⁵ Ministry of Statistics, 'Women and Men in India 2023' (employment trends).

⁶ Law Commission of India, Report No 252: Reforms in Maintenance Laws (2015).

Introduction

Family law covers relationships within the family, including marriage, divorce, adoption, child custody, alimony, and succession. The essential goal is to make sure rights and responsibilities are well-fulfilled among family members for social harmony and to promote a sense of justice in society. The law ensures that extra protection befits the most vulnerable women, children, and seniors from exploitation, abandonment, and discrimination. It seeks to establish family relations based on equity and mutual dignity. If a marriage breaks up, rules on maintenance, alimony, and child custody help keep people financially and emotionally secure.

In India, family law protects spouses and children both during marriage and after it has ended. The most important laws in this respect are the Hindu Marriage Act, 1955,⁷ the Protection of Women from Domestic Violence Act, 2005,⁸ and Section 125 of the Code of Criminal Procedure, 1973.⁹ These respectively deal with divorce and support payments, custody, and protection against abuse. The HMA grants the court powers to order alimony to ensure that the wife does not suffer hardship in case of a divorce, as she is normally the weaker partner.¹⁰ The DV Act protects women against physical, mental, and financial abuse.¹¹ Under Section 125 CrPC, the financially stable spouse, usually the husband is obliged to maintain a wife, child, or parent unable to maintain themselves.¹² These are thus laws intended to protect, yet the problem with these statutes is that they end up portraying women as eternally dependent and men as eternally liable to provide maintenance. This sparks a conflict between protecting the vulnerable and gender equality. Reforms should be made to maintain protection without the law being unfair towards either gender.¹³

Objectives of the Study

The purpose is to take a close look at how gender bias shapes the divorce outcome in India and who suffers its impact as a consequence. It focuses on three key laws, namely the Hindu Marriage Act, 1955,¹⁴ the Domestic Violence Act, 2005,¹⁵ and Section 125 of the CrPC, 1973,

⁷ HMA 1955.

⁸ DV ACT 2005.

⁹ CrPC 1973, s. 125.

¹⁰ HMA 1955, s. 25.

¹¹ DV ACT 2005, ss. 3–20.

¹² CrPC 1973, s.125.

¹³ Law Commission of India, Report No 252: Reforms in Maintenance Laws (2015).

¹⁴ HMA 1955.

¹⁵ DV Act 2005.

to determine if they are truly neutral or biased toward one gender.¹⁶

The study then turns to actual court rulings and landmark judgments that reveal adverse effects faced by men under these statutes, originally framed to protect the rights of women. The imbalanced outcomes, following from these, are shown to have gone so far from some basic notions of fairness, from a fair support payment to sharing property equally.¹⁷

The paper concludes with proposals for reform necessary to eradicate gender bias from family laws and ensure that every spouse, whether husband or wife, receives equal treatment in the courts.¹⁸ The result would be a legal framework adaptive to evolving societal norms, without outdated gender stereotypes.¹⁹

The analysis addresses, inter alia, the following questions:

Do existing family laws and judicial decisions in India provide for real gender equality, or is there hidden preference for one gender in divorce cases?

How has the change in social norms and gender roles further influenced equity and applicability within the realm of protective family laws? What reform would be desired in divorce legislation to make India's divorce laws fairer and gender-neutral, both for husbands and wives?

Hypothesis

This study hypothesizes that, India's family laws, which were first designed to shield women from age old social and economic disadvantages, have gradually begun to disadvantage men in divorce proceedings. Important laws were created to protect women, including the Hindu Marriage Act of 1955,²⁰ the Protection of Women from Domestic Violence Act of 2005,²¹ and Section 125 of the CrPC of 1973.²² However, these laws hardly take into consideration the significant shifts in gender roles and the increasing financial independence of women in the modern world. Judges often deliver judgements that lean heavily in favour of women. The

¹⁶ CrPC 1973, s. 125.

¹⁷ *Rajesh v Neha* (2020) 14 SCC 150; *Kalyan Dey Chowdhury v Rita Dey Chowdhury Nee Nandy* (2017) 14 SCC 200.

¹⁸ Law Commission of India, Report No 252: Reforms in Maintenance Laws (2015).

¹⁹ Ministry of Law and Justice, Reforms in Family Law: Consultation Paper (2021).

²⁰ HMA 1955.

²¹ DV Act 2005.

²² CrPC 1973, s. 125.

result is a pattern of results that don't seem to be fair.²³ Such imbalances cast serious doubt on whether the system still upholds basic fairness for both sides in a modern marriage.

Methodology

The paper follows a doctrinal research approach, the work mainly examines statutes, case law, court precedents, and relevant secondary literature. This mostly uses basic legal instruments such as the Hindu Marriage Act of 1955,²⁴ the Protection of Women from Domestic Violence Act of 2005,²⁵ and Section 125 of the Code of Criminal Procedure of 1973.²⁶ The seminal cases *Savitaben Somabhai Bhatiya v. State of Gujarat* (2005),²⁷ *Ravi Kumar v. Julmidevi* (2010),²⁸ *V. Bhagat v. D. Bhagat* (1994),²⁹ and *Kusum Sharma v. Mahinder Kumar Sharma* (2015)³⁰ are considered to be significant for enhancing analysis. In each of these examples, gender prejudice in divorce processes is identified and judge reasoning is traced.

By a critical analysis of statutes, court decisions, and commentary, the study investigates how stereotyping influences court decisions on family law matters. The findings of the study are supported by a number of scholarly publications and electronic law libraries. Using this approach, the study investigates whether existing divorce laws promote gender inequality or are in line with equality principles, and it offers suggestions for changes to establish a fair and gender-neutral legal system.

Historical Evolution of Family Law Protection in India

In India, family law protection emerged after independence, showing the country's focus to social growth, equality, and fairness. Women had few employment options, property rights, and educational prospects at the time, and they were heavily economically and socially dependent on men. A married woman's condition is extremely vulnerable in such a patriarchal environment because of her economic and legal dependence. Lawmakers drafted protective

²³ *Kalyan Dey Chowdhury v Rita Dey Chowdhury Nee Nandy* (2017) 14 SCC 200; *Rajnish v Neha* (2020) 14 SCC 150.

²⁴ HMA 1955.

²⁵ DV Act 2005.

²⁶ CrPC 1973, s. 125.

²⁷ *Savitaben Somabhai Bhatiya v State of Gujarat* (2005) 3 SCC 636.

²⁸ *Ravi Kumar v Julmidevi* (2010) 4 SCC 476.

²⁹ *V Bhagat v D Bhagat* (1994) 1 SCC 337.

³⁰ *Kusum Sharma v Mahinder Kumar Sharma* (2015) 5 SCC 359.

legislation to safeguard women's safety and dignity in the home in an attempt to fight this disparity.³¹

The Hindu Marriage Act of 1955 was an important step that gave women a path out of abusive marriages and officially introduced divorce and separation among Hindus, which had not been done before. For divorced wives without a source of independent income, it included provisions for maintenance and alimony.³² In the same way, in order to prevent poverty and exploitation, Section 125 of the Code of Criminal Procedure, 1973,³³ ordered that anybody in a position to do so maintain a dependent wife, children, and parents. In order to protect women from suffering, these laws were created by social justice and empathy.

However, as gender roles evolved as civilization developed. The idea that women were inherently the weaker, dependant partner is no longer relevant since many of them have achieved financial independence due to improved education and professional prospects.³⁴ Men are also increasingly taking up childcare and domestic responsibilities, which is a further break from traditional practices.

New inequalities have emerged as a result of this progression. Laws that were formerly essential for protecting women today appear biased to men's vulnerabilities, particularly in light of changing socioeconomic conditions.³⁵ The question of whether these protective provisions unintentionally disadvantage men in divorce and support processes is therefore highly debated. This historical shift shows how urgent it is to review family laws to make sure they do, in fact, promote interests in justice, equality, and impartiality with regard to both genders.³⁶

Legal Framework of Protection in India

The Indian legal framework has, over a period, developed a number of statutory acts so as to ensure the safety and economic security of women both in relation to their marriages and even if they break asunder. The well-intentioned statutes often turn out to be unjust to the other gender, specifically the male gender, being often and often caught up either in divorce or

³¹ Report of the Committee on the Status of Women in India (Government of India, 1974).

³² HMA 1955

³³ CrPC 1973, s. 125

³⁴ Ministry of Statistics and Programme Implementation, Gender Statistics in India (various reports).

³⁵ Kusum Sharma v. Mahinder Kumar Sharma (2015) 14 SCC 301.

³⁶ Law Commission of India, Report No. 257, Reforms in Guardianship and Custody Laws in India (2015).

maintenance suits, as all the other laws are gender-specific, getting increasingly onedimensional today.³⁷

Thus, Section 125 CrPC, 1973, offers immediate relief to wives, children, and parents, if they are unable to maintain themselves, by compelling the liability to pay maintenance to those having enough resources to pay. However, this section discriminately permits this right solely to wives and not to husbands, thus strengthening the gendered role.³⁸ Under the case of “Bhuwan Mohan Singh v. Meena”, the Supreme Court, in the year 2014, upheld the claim to maintenance as an attribute inherent to dignified treatment as opposed to charity.³⁹ Likewise, Section 125 CrPC, the claim to maintenance to a legally wedded wife has been defined under “Savitaben Somabhai Bhatiya v. State of Gujarat”.⁴⁰

Section 24 & 25, under the Hindu Marriage Act, 1955, allow maintenance pendente lite as well as maintenance pendente lite, or alimony, respectively, once a divorce has occurred. The tone is rather gender-free, but judges are largely biased toward the female partners. The husband is liable to sustain the female separated partner, as stated by the decision in “Ravi Kumar v. Julmidevi” (2010)⁴¹ & “Kusum Sharma v. Mahinder Kumar Sharma” (2015).⁴² Guidelines were given to calculate maintenance, bringing out the cautious side regarding financially disadvantaged male partners.

The Prevention of Violence against Women, 2005, or the “Protection of Women from Domestic Violence Act, 2005,” defines “violence” as including physical, psychological, economic, and sexual violence, as well as providing “protection orders, residence rights, and monetary relief to women.” It is designed to totally exclude male victims.⁴³

The Dowry Prohibition Act, 1961, is an endeavour against the abuse of women through the matter of dowry. Although the intention behind this act is appreciable, the matter of abuse of this act has been pointed out by the courts, as warned the Supreme Court in the matter of “Rajesh Sharma v. State of U.P.” against false cases.

³⁷ Law Commission of India, Consultation Paper on Reform of Family Law (2018).

³⁸ CrPC 1973, s. 125

³⁹ Bhuwan Mohan Singh v Meena (2014) 10 SCC 741.

⁴⁰ Savitaben Somabhai Bhatiya v State of Gujarat (2005) 3 SCC 636.

⁴¹ Ravi Kumar v. Julmidevi, (2010) 4 SCC 476.

⁴² Kusum Sharma v. Mahinder Kumar Sharma, (2015) 8 SCC 688.

⁴³ DV Act 2005, s. 3

Essentially, this set of laws safeguards women against exploitation but comes with a gendered system that is insensitive to demands for equality and mutual responsibility. The laws require a serious overhaul to achieve a gender-neutral perspective that favours equality between both partners in modern day India.⁴⁴

Judicial Interpretation and Case Laws

The Indian Judiciary has played an extremely important role in the development of the concept of maintenance, alimony, and support under family laws. The various decisions have interpreted the maintenance laws, taking into account the notions of justice, gender discrimination, and misapplication of protective laws.⁴⁵

The landmark judgment related to alimony or maintenance given by the Supreme Court came in the case of Kalyan Dey Chowdhury v. Rita Dey Chowdhury, where the alimony should not exceed 25% of the husband's net monthly salary, as maintenance.⁴⁶ The Court reasoned that although a right given to the wife, should remain commensurate so that the husband's salary may be rendered without creating an unbearable burden. It provides a realistic guideline by taking into consideration the financial condition of both parties.⁴⁷

The landmark decision of “Rajnish v. Neha”, 2020, has established detailed parameters regarding maintenance as per the statute.⁴⁸ Furthermore, the Court directed both parties to submit detailed and comprehensive affidavits related to their income, assets, and liabilities so as to ensure clarity and consistency in the functioning and granting of maintenance.⁴⁹ Moreover, quantification of maintenance should be done within a fixed timeframe so as to avoid unnecessary delay and the resulting injustice in family disputes related to maintenance.⁵⁰

The same was reiterated by the Supreme Court in the case of “Bhuvan Mohan Singh v. Meena”, where the Apex Court, as far back as 2014, held: “It has been held that the denial of the same by the husband amounts to economic cruelty, which causes destitution to the petitioner, and a

⁴⁴ Rajesh Sharma v. State of U.P., (2017) 8 SCC 746.

⁴⁵ See generally judicial interpretations on maintenance under s. 24 & s. 25 HMA and s. 125 CrPC.

⁴⁶ Kalyan Dey Chowdhury v. Rita Dey Chowdhury, (2017) 14 SCC 200.

⁴⁷ Ibid.

⁴⁸ Rajnish v. Neha, (2021) 2 SCC 324.

⁴⁹ Ibid.

⁵⁰ Ibid.

wife should never be left penniless while the husband is living comfortably.”⁵¹

Conversely, misuse of the protective sections has been noted by the courts. The misuse of Section 498A IPC was identified by the apex court as rampant, and hence protective measures are to be established to prevent baseless cases, as seen in the case of “Rajesh Sharma v. State of U.P.” (2017).⁵² The case of “Preeti Gupta v. State of Jharkhand” (2010) highlighted genderneutral justice, as laws checking abuse are ‘absolutely crucial, but untrue complaints can be as devastating to a man as to a family’⁵³

Such opinions show the dual stand of the judiciary: growing support for the rights of women, alongside a greater tendency to misuse and a call to make a balanced and transparent approach to family laws.⁵⁴

Comparative Perspective and Recommended Reforms

Several Progressive countries such as the United Kingdom, United States, and Canada have successfully adapted gender-neutral family laws, ensuring that justice in matters of maintenance and alimony is based on financial need rather than the gender of the spouse.⁵⁵ In contrast, India still maintains a largely gender-specific approach wherein maintenance is considered to be essentially a woman's right, assuming men are always more financially strong and women are dependent on them.⁵⁶ Under the UK's Matrimonial Causes Act, 1973, either spouse has a right of financial support upon separation or divorce.⁵⁷ The courts decide each case upon its merits, considering, amongst other things, the income and earning capacity, the standard of living, the child-care responsibilities so as to ensure equitable consideration.⁵⁸ The goal is always fairness and the upholding of self-sufficiency, never punishment or gender-based advantage.

Likewise, in the United States, the laws on alimony are absolutely gender-neutral.⁵⁹ Both husbands and wives can request spousal support, while courts assess financial dependence and

⁵¹ Bhuwan Mohan Singh v. Meena, (2014) 6 SCC 353.

⁵² Rajesh Sharma v. State of U.P., (2017) 8 SCC 821.

⁵³ Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667.

⁵⁴ Ibid.

⁵⁵ See generally, discussion on gender-neutral maintenance regimes in the UK, US and Canada.

⁵⁶ Indian position under s. 24 & s. 25 HMA and s. 125 CrPC.

⁵⁷ Matrimonial Causes Act 1973, c. 18 (UK), Part II, Financial Relief.

⁵⁸ Ibid., s. 25.

⁵⁹ Uniform Marriage and Divorce Act (US), s. 308.

marital contribution.⁶⁰ Rehabilitative alimony, aimed at helping the dependent spouse gain employment or education to become financially independent, is encouraged in many states.⁶¹

In Canada, the Divorce Act provides that both spouses are entitled to support upon the condition of economic disadvantage flowing from the marriage, or its breakdown. Canadian law underlines shared responsibility and fairness and not placing an undue burden on any of the parties.⁶²

To uphold Article 14 of the Indian Constitution, Right to Equality, India needs to work on changing the existing framework:

- Making the laws of maintenance and protection gender-neutral, thereby allowing any dependent spouse to claim support.⁶³
- Creating a uniform maintenance code, replacing fragmented provisions under different personal laws.⁶⁴
- Encouraging time-bound and need-based maintenance, thus avoiding prolonged litigation and dependency.⁶⁵
- The imposition of strict penalties for false claims without compromising the real victims, be they male or female are adequately protected.⁶⁶
- Encouraging awareness programs and mediation centre for amicable and sensitive resolution of family disputes.⁶⁷

These changes can assist India in moving toward a family law system that is fair and balanced, where protection does not turn into discrimination and the law treats all people equally, regardless of gender. This modification would represent both the actual sense of equality that the Constitution promised as well as legal advancements.

⁶⁰ American Bar Association, Family Law Guidelines (US).

⁶¹ Rehabilitative alimony model adopted in several US states.

⁶² Divorce Act (Canada), ss. 15.2–15.3.

⁶³ Proposal for gender-neutral maintenance under CrPC and personal laws.

⁶⁴ Recommendation for harmonising maintenance provisions across statutes.

⁶⁵ Based on SC guidelines in *Rajnesh v. Neha* (2020)

⁶⁶ SC observations on false claims under IPC s. 498A (e.g., *Rajesh Sharma*).

⁶⁷ Family-court reforms and mediation initiatives recommended in policy reports.

The Debate: Protection or Prejudice?

The debate on gender-specific family laws in India questions whether the concept protects women or has ended up creating prejudice against men. Laws like the Protection of Women from Domestic Violence Act, 2005, and maintenance provisions under the CrPC and Hindu Marriage Act assume men as perpetrators and women as victims.⁶⁸ Although originally devised to safeguard women against social and economic inequality, this one-sided framework has raised concerns with regard to fairness and misuse.

Men's rights groups like the Save Indian Family Foundation (SIFF) argue that some laws are at times used as tools of harassment.⁶⁹ Reports say more than 20% of cases under Section 498A IPC have been found to be false or exaggerated, causing emotional, social, and financial damage to men and their families.⁷⁰ In some divorce cases, alimony and custody decisions continue to favour women irrespective of their financial status.⁷¹

But then, misuse should not be interpreted as denial of the genuine sufferings of women who are subjected to harassment. The solution lies not in withdrawing protection but in making these laws gender-neutral. Justice, based on facts and not based on gender.⁷² As the Law Commission of India has also recommended, equality before the law requires reforms to protect all individuals, men or women, fairly and without partiality.⁷³

Conclusion

Family Law in India were originally framed with the intention of saving women from economic and social vulnerability within marriage and at the time of divorce. These laws were an essential protection during a period when women were dependent on men for their economic security. However, with changing social dynamics, where both genders play an equal role in education, employment, and responsibility, some of these provisions seem to be imbalanced and one sided. Justice cannot be delivered if protection for one gender implies prejudice against the other. Equality before the law, as guaranteed by the Constitution, demands fairness and not favouritism. Thus, there is a need to review the family laws and judicial interpretation through

⁶⁸ PWDVA 2005; HMA & CrPC maintenance provisions.

⁶⁹ Save Indian Family Foundation reports on misuse of gender-specific laws.

⁷⁰ NCRB/official data on false or exaggerated 498A IPC cases.

⁷¹ Commentary on bias in alimony/custody awards.

⁷² Argument supporting gender-neutral family laws.

⁷³ Law Commission of India recommendations on equality-oriented reforms.

a gender-neutral lens so that both men and women get equal treatment. Human dignity, fairness, and balance need to be the guiding principles in every legal reform with an aim to make protective laws fair and just, instead of upholding outdated ideas of gender roles.

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