
GENDER BIAS IN INDIAN CRIMINAL JURISPRUDENCE: ARE WOMEN GIVEN THE BENEFIT OF DOUBT TOO EASILY?

BY JATIN JAIN¹

*"The law must reflect the lived realities of all genders."*²

Introduction

Let's be honest gender dynamics in India are complicated. For centuries, Indian society has been deeply patriarchal, with women mostly occupying the role of caretakers and victims in societal narratives. But fast forward to today, and we're in a vastly different legal and social landscape. The Indian Constitution guarantees equality before the law for all citizens under Article 14. Still, when it comes to criminal law, a new debate is emerging: **are women being given too much leeway in the courtroom simply because of their gender?**

The core of this debate lies in how the Indian legal system, historically tilted to protect women from abuse and exploitation, sometimes swings so far that it might end up compromising justice for the other gender. This has given rise to discussions around gender-neutral laws, judicial objectivity, and whether the benefit of doubt is applied too generously when the accused is a woman. People often forget that justice is not about favoring one side. It's about ensuring fairness for all, regardless of gender. In the criminal justice system, where every word can determine a person's freedom or incarceration, even a small bias can lead to devastating consequences.

This article dives deep into the layers of this controversial issue exploring how gender bias manifests in criminal jurisprudence, how courts have interpreted such scenarios, and most importantly, whether women truly enjoy an undue advantage in India's criminal justice system.

Understanding Gender Bias Laws

To understand whether women are given the benefit of doubt too easily, we first need to grasp what gender bias actually means in the legal context. Gender bias refers to **prejudice or**

¹ The author is a law student at Maharashtra National Law University, Chhatrapati Sambhajanagar.

² *Justice D.Y. Chandrachud; Navtej Singh Johar v. Union of India* judgment, (2018) 10 SCC 1.

preferential treatment based on an individual's gender rather than on the merits of the

case. In law, this could translate into favoring women as victims and doubting their potential to commit crimes.

Historically, laws across the world, including in India, have treated women as vulnerable and in need of protection. This sentiment, while noble in intent, has sometimes morphed into a narrative where women are automatically seen as innocent or less capable of criminal intent. For instance, in criminal trials, a female accused may be seen through a lens of sympathy, motherhood, or societal burden, which could influence the outcome.

The Indian judiciary has, on several occasions, highlighted the need to maintain gender sensitivity. But where does one draw the line between being sensitive and being biased? That's the dilemma. When gender-sensitive laws like Section 85 (cruelty by husband or relatives of husband) were introduced, the intent was to safeguard women. But over time, the misuse of these provisions has led to an outcry from those who believe the laws are being used as weapons rather than shields.

In simple terms, gender bias in law is not always intentional. It can be systemic, embedded in the way laws are written, interpreted, and enforced. The real challenge lies in making sure that gender is taken into account only where it's truly relevant and not as a blanket defense or prosecution strategy.

Overview of Indian Criminal Jurisprudence

Indian criminal jurisprudence is fundamentally built on the trinity of statutes—THE Bharatiya Nyaya Sanhita, 2023 [BNS], the Bharatiya Nagrik Suraksha Sanhita, 2023 [BNSS] and the Bharatiya Sakshya Adhiniyam, 2023. In theory, these laws are meant to apply uniformly, ensuring that justice is neither compromised by gender nor influenced by social status. However, in practice, several provisions explicitly or implicitly introduce a gendered lens, thereby creating spaces where the law, although designed for neutrality, leans towards gender-specific assumptions.

A more persistent example of gender-specific criminalisation is **Section 74 BNS**,³ which criminalizes the assault or use of criminal force on a woman with the intent to outrage her

³ Bharatiya Nyaya Sanhita, 2023, § 74.

modesty. The term "modesty" has not been defined in the BNS, and judicial interpretations, most notably in *State of Punjab v. Major Singh*⁴ have emphasized that it is a quality inherently attributed to women. As a result, the application of this section is inherently restricted to female victims, thereby excluding men, transgender persons, and non-binary individuals from legal redress under this section, even if subjected to similar abuse.

The same gender specificity is more structurally entrenched in **Section 63 BNS**,⁵ which defines the offence of rape. Despite being amended several times, particularly after the,⁶ the provision continues to recognize only women as victims and men as perpetrators. While this framework was perhaps justified by statistical patterns and patriarchal structures, it also creates a legal blind spot for male and transgender victims, thus challenging the claim of gender neutrality in criminal law. Numerous scholars and activists have pointed out that this binary approach reflects a protective, paternalistic attitude of the state towards women, rather than a commitment to equal protection under law.⁷

Therefore, while Indian criminal jurisprudence espouses a formal equality before law under Article 14⁸ of the Constitution, in its application, there exists a normative tilt that favors women either through explicit legal protections or through the interpretative choices of the judiciary. This tilt although rooted in a desire to correct historical injustices and social vulnerabilities raises critical questions about the neutrality of the legal process. In effect, the gendered nature of criminal law in India challenges the idea of symmetrical justice and calls for an informed debate on whether benevolent discrimination in criminal law actually perpetuates stereotypes or serves a legitimate constitutional goal.

Special Provisions For Women Under Criminal Law

Indian criminal law has incorporated several special provisions for women that aim to balance procedural fairness with humanitarian considerations. These legal exceptions found primarily in the Bharatiya Nyaya Sanhita, 2023 have evolved from the recognition of gendered vulnerabilities, structural disadvantages, and societal roles that place women, particularly under-trial or first-time offenders, at a unique intersection of crime and marginalization.

⁴ *State of Punjab v. Major Singh*, [AIR 1967 SC 63].

⁵ Bharatiya Nyaya Sanhita, 2023, § 63.

⁶ Justice Verma Committee, Report of the Committee on Amendments to Criminal Law (Jan. 23, 2013), <https://www.prindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>.

⁷ Shalu Nigam, *Women and Law in India: A Reader* (Oxford Univ. Press 2020).

⁸ India Const. art 14.

However, this framework, while protective in spirit, has also invited critiques of undermining the principle of equal criminal liability.

One of the most significant provisions in this context is **Section 480 of the BNSS**,⁹ which governs the granting of bail in non-bailable offences. The provision includes a specific reference to women, stating that even when reasonable grounds do not exist to believe that the accused has not committed a non-bailable offence, the court may direct that she be released on bail if she is a woman or a child. This discretion, framed as an act of leniency, assumes that women are less likely to abscond or endanger society—an assumption both paternalistic and empirically untested. In *State of Tamil Nadu v. Rajeshwari*,¹⁰ the court upheld this provision's application, emphasizing that women's incarceration should be a measure of last resort. However, this preferential treatment may also be critiqued as gendered infantilization, especially when it fails to distinguish between minor offences and those involving grave culpability.

Further, **Section 456 of the BNSS**¹¹ provides that if a woman sentenced to death is found to be pregnant, the High Court shall commute the sentence to life imprisonment. This provision reflects a deeper ethical and humanitarian concern punishing the unborn for the crimes of the mother is deemed morally impermissible. The Supreme Court, in *Ramakrishna v. State of Maharashtra*¹² held that the protection of fetal life is a constitutional obligation, and the courts must prioritize the right to life of the unborn child under Article 21. Nonetheless, critics argue that such commutation should not automatically be presumed to reflect innocence or diminished responsibility of the female offender, but rather should be seen as an exception grounded solely in the state's duty to protect non-offending third parties.

Judicial Trends Reflecting Gender Leniency

Judicial decisions in India reflect not just the text of the law but the interpretative values and social conscience of the judiciary. In the context of criminal jurisprudence, several rulings suggest that Indian courts have often demonstrated a pattern of gendered leniency, particularly towards women accused or involved in morally and legally complex situations. While these judgments are often justified on humanitarian or social justice grounds, they also underscore the presence of sympathy-driven reasoning, which in some instances overrides the neutrality of

⁹ Bharatiya Nagarik Suraksha Sanhita, 2023, § 480.

¹⁰ *State of Tamil Nadu v. Rajeshwari*, [(1999) SCC OnLine Mad 660].

¹¹ Bharatiya Nagarik Suraksha Sanhita, 2023, § 456.

¹² *Ramakrishna v. State of Maharashtra* [(1999) 5 SCC 709].

criminal adjudication.

A significant illustration of this approach is found in *State of Maharashtra v. Madhukar Narayan Mardikar*,¹³ where the Supreme Court held that even a woman of —easy virtue is entitled to privacy and bodily integrity. In that case, a police officer had attempted to sexually assault a woman who was alleged to be a sex worker. The Court's decision was a progressive assertion of women's dignity regardless of their social or sexual history. However, what remains notable is that the Court's moral condemnation of the male accused was reinforced by a heightened empathy for the female complainant, shaped largely by her gendered vulnerability rather than the strict evidentiary framework. The ruling, though landmark in affirming a woman's right to dignity, also reflected how moral expectations from women can influence judicial language and tone, subtly framing them more as victims than legal equals.

A more emotionally charged example is the *Aruna Shanbaug case*,¹⁴ where the Supreme Court dealt with the legality of passive euthanasia. Although the central issue in the case was not criminal liability, the Court's reasoning was infused with gendered sympathy. Aruna had been in a vegetative state for over 37 years following a brutal sexual assault. The Court's narration of facts and its refusal to allow euthanasia, despite the consent of the hospital staff who had cared for her, was underlined by a deep moral sentiment toward her status as a female victim of sexual violence. The judgment stopped short of legal reform but illuminated how gendered narratives influence judicial temperament, especially in cases where women are perceived as suffering victims in need of protection, even at the cost of their autonomy.

Such leniency, while arguably necessary in addressing the historical marginalization of women, does raise questions about the equal application of criminal law. Scholars such as Prof. Nivedita Menon have argued that the legal system's treatment of women alternates between infantilization and idealization, neither of which affirms their status as equal citizens under the law.¹⁵ From a doctrinal perspective, Article 14's guarantee of equality before the law is challenged when female offenders are routinely treated with mitigating presumptions not available to men in similar circumstances.

Therefore, the pattern of judicial leniency towards women cannot be seen in isolation. It is situated within a broader legal culture that oscillates between **patriarchal protectionism** and

¹³ *State of Maharashtra v. Madhukar Narayan Mardikar* [(1991) 1 SCC 57].

¹⁴ *Aruna Ramchandra Shanbaug v. Union of India*, [(2011) 4 SCC 454].

¹⁵ Nivedita Menon, *Seeing Like a Feminist* (Zubaan 2012),

<http://103.203.175.90:81/fdScript/RootOfEBooks/E%20Book%20collection%20%202024/RARE%20BOOKS/Seeing%20Like%20a%20Feminist%20-Nivedita%20Menon.pdf>.

constitutional progressivism. As India moves towards legal reforms, especially with the introduction of the **Bharatiya Nagrik Suraksha Sanhita (2023)** to replace the CrPC, there arises a compelling need to re-examine these judicial trends and ask whether justice should be shaped by **individual culpability** or **collective gender narratives**.

Criticism & Counterarguments

The gender-specific protections and judicial leniency afforded to women in Indian criminal jurisprudence have not gone without criticism. A growing body of academic and activist discourse argues that such provisions, although historically rooted in corrective justice, now operate to undermine the principle of equality before law and perpetuate a reverse form of discrimination. Critics emphasize that these special legal treatments risk reinforcing **gender essentialism**, wherein women are invariably perceived as victims rather than autonomous legal subjects capable of criminal agency.

One of the most recurring critiques pertains to the misuse of **Section 85 of the BNS**,¹⁶ which criminalizes cruelty by a husband or his relatives. While the provision was initially introduced to address the alarming rise in dowry-related violence, it has since been criticized for its potential for misuse. In *Sushil Kumar Sharma v. Union of India*,¹⁷ the Supreme Court observed that *“the object of the provision is to strike at the roots of dowry menace, but by misuse of the provision a new legal terrorism can be unleashed*. Such observations reflect judicial awareness that gender-specific laws, when drafted or interpreted uncritically, can create new sites of injustice, particularly against men who are wrongly implicated without sufficient evidence.

Moreover, false allegations in cases of sexual offences have drawn the attention of legal scholars, particularly in light of the **Section 120 of the BSA**,¹⁸ which presumes absence of consent in certain rape cases. While the presumption is rebuttable, it creates a structural tilt in favor of the prosecutrix. In *Tukaram v. State of Maharashtra*,¹⁹ the Court’s controversial acquittal of the accused due to lack of credible evidence sparked public outrage, eventually leading to legislative reforms that favored survivors.

Another major concern arises in the context of **rape and sexual assault laws**, which remain

¹⁶ Bharatiya Nyaya Sanhita, 2023, § 85.

¹⁷ *Sushil Kumar Sharma v. Union of India* [(2005) 6 SCC 281].

¹⁸ Bharatiya Sakshya Adhiniyam, 2023, § 120.

¹⁹ *Tukaram v. State of Maharashtra* [AIR 1979 SC 185].

largely gender-specific. Under **Section 63 BNS**,²⁰ only a woman can be the victim, and only a man can be the perpetrator. This gendered framework disregards male and transgender victims, rendering them invisible within the legal system. Legal scholars like Anjana Bhatia and Arvind Narrain have pointed out that such laws reflect **heteronormative and patriarchal assumptions** about sexual violence, where male victimhood is either ridiculed or ignored, and women's participation in sexual aggression is not even conceived.²¹ This leaves the Indian legal system ill-equipped to respond to the full spectrum of sexual and gender-based violence.

These criticisms gain further traction when examined in light of the Article 14 and Article 15 of the Indian Constitution, which guarantee equality before the law and prohibit discrimination. Although **Article 15(3)**²² permits the state to make special provisions for women and children, the tension arises when such provisions become disproportionate or are not subjected to judicial scrutiny under the test of reasonable classification. In *Anuj Garg v. Hotel Association of India*,²³ the Supreme Court invalidated a provision of the Punjab Excise Act that prohibited women from being employed in establishments serving alcohol, holding that protective discrimination should not perpetuate outdated gender roles. The ruling underscored that gender-based legal distinctions must be both justifiable and non-stereotypical.

However, it would be erroneous to ignore the counterarguments offered in defense of such provisions. Proponents of gender-sensitive jurisprudence argue that India's social context, marked by deep-rooted patriarchy and systemic violence against women, demands laws that offer affirmative protection.

Need For Gender-Neutral Reforms & Conclusion

As Indian society gradually evolves toward a more inclusive understanding of gender, the demand for reforming criminal law to reflect **gender-neutral principles** has become increasingly urgent. Presently, several key provisions, including those dealing with rape under **Section 63 BNS**, domestic violence under the **Protection of Women from Domestic Violence Act, 2005**, and workplace harassment under the **POSH Act (2013)**, are explicitly gendered, often presuming women as sole victims. However, this approach risks excluding male and transgender victims who are equally vulnerable to sexual violence, intimate partner abuse, and

²⁰ Bharatiya Nyaya Sanhita, 2023, § 63.

²¹ Bhatia, Anjana. *Gendered Bodies of Law*, Sage Publications, 2021.

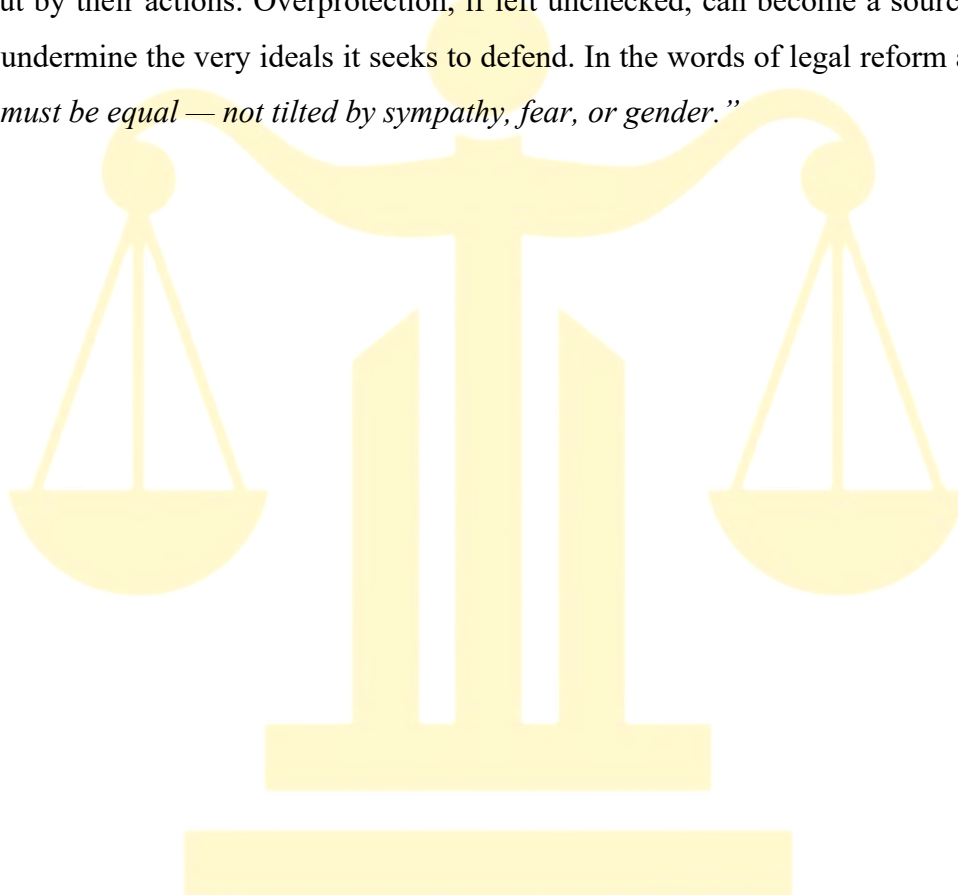
²² India Const. art. 15.

²³ *Anuj Garg v. Hotel Association of India* [(2008) 3 SCC 1],

harassment. Such asymmetry not only offends the constitutional commitment to equality under Article 14, but also fails to capture the diverse realities of victimhood and perpetration.

Various Law Commission reports, including the *172nd (2000)* and *273rd (2017) Reports*, have highlighted the need for gender-neutral rape laws, especially in cases involving same- sex assault or female-on-male abuse. Equality in law does not imply erasing the unique challenges women face but ensuring that justice mechanisms remain accessible to all.

Ultimately, the goal of criminal jurisprudence should be to uphold fairness without creating reverse discrimination. As the Indian legal system matures, there is a pressing need to transition from gender protectionism to gender neutrality, where individuals are judged not by their gender but by their actions. Overprotection, if left unchecked, can become a source of legal bias and undermine the very ideals it seeks to defend. In the words of legal reform advocates, *“Justice must be equal — not tilted by sympathy, fear, or gender.”*



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