EQUALITY UNDER THE INDIAN PENAL CODE - THE NEED FOR GENDER NEUTRALITY IN DEFINING OFFENCES

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Abstract: The deferential treatment of men in criminal law with respect to certain offences have been a subject matter for debate in recent times. The justification given by the feminists is the positive discrimination of women in criminal law due to several factors including, male dominance, superiority, lack of finances, and no family support etc. The fact still remains that men in India have no provision under law for cases of rape, sexual harassment, domestic violence etc. On the other hand giving special treatment to woman is not always a fall out of protective discrimination. It tends to over victimise the women and push them into a cloud of unwarranted social stigma and ostrasization. The propertisation of women, where her mind body and even chastity are considered to be chattels of men is reflected in our penal code. This paper intends to bring out the need for gender neutrality in defining offences. The paper will include the following areas:

- An analyses certain offences such as dowry death, cruelty, adultery, rape, voyeurism, sexual harassment etc. that are male centric offences- history and rationale.
- Woman as a perpetrator and a victim in rape law – theories and arguments
- The constitutional mandate – equality, positive discrimination and criminal law
- Gender neutrality across various jurisprudences- USA, England, European Union, South Africa- comparison with India
- Various law reforms in favour of gender equality including Justice Verma Committee report, 172nd Law Commission Report, Criminal Law Amendment Bill (2012), Criminal Law Amendment Act 2013, recent cases.
- Conclusion - the way forward for India, in the light of the social cultural and economic circumstances

Keywords: Gender neutrality, Indian Penal Code, Adultery, Rape, Cruelty.

Introduction: Gender neutrality ensures the inclusion of gender-less groups as well. Neutrality should be understood as neutrality in terms of the victim and also the perpetrator. Again 'gender' shouldn't be restricted to the binary concept of male and female body. We usually turn a blind eye to persons who do not fit in either of these categories- the transgender community.

Often, the meaning of gender equality in criminal law wrestles with difficult issues, such as whether gender equality requires protecting women who are vulnerable and marginalised section of the society from sexual coercion through enforcement of statutory rape laws[1]; whether gender equality requires acknowledging the biological differences that influence women's criminality, or ignoring them[2]; and whether gender equality requires preferential treatment of female offenders based on their family responsibilities, or gender neutral sentencing that imposes the same penalties on men and women[3]. There are a lot of conflicting theories in this regard. The feminist theories of female victimisation in sexual offences revolve around male dominance and superiority in an inherently patriarchal society. Johnson defines patriarchy as a social system in which men disproportionately occupy positions of power and authority, central norms and values are associated with manhood and masculinity (which in turn are defined in terms of dominance and control), and men are the primary focus of attention in most cultural spaces[4]. This can only be described as a narrow and disappointing way of thinking. It is

appalling that the discussion on the issue of sexual assault outside the male-on-female paradigm is negligible.

When an act becomes an offence it is becomes criminal due the fact that it is done against the society at large. Hence there is a need to analyse the arguments in favour of gender neutrality in criminal law and make necessary changes to remove and alter redundant archaic provisions and make it all inclusive or gender neutral. In this paper, the intention is to understand certain offences such as adultery, sexual assault and cruelty as defined under the IPC and analyse its history and rationale.

Adultery and Neutrality: Adultery in India is a criminal offence as per the Section 497 of the Indian Penal Code, 1860 (IPC). The object of the law is to inflict punishment on those who interferes with the sacred relation of marriage, and the legislature as well considers it to be an offence one who interferes in the sacred matrimonial home [5]. It is commonly accepted that it is the man who is the seducer and not the woman, and it is considered as an anti-social and illegal act by any peace loving and citizen of good morals, who would like any one to be indulged in such acts before their nose.[6] The issues revolving around adultery as a crime are twofold:

1. Should it be decriminalised?
2. Should it be gender neutral?

With respect to the first question, ideally there shouldn't be state interference in the purely private sphere of marriage. It isn't answered in this article as it is not the primary focus. The second question can be understood by looking into the history of the provision. It is really interesting to note that the offence of "adultery" did not find its place in the first ever draft of the Indian Penal. The reasons for the same were that men of the upper class would never resort to court to settle their scores, and men from the lower class would never come to courts as they considered their wives mere 'menials'.[7] This shows that the offence of adultery initially was never included as a woman was not worth being considered as an individual with rights of her own but a household property who served him.[8] The decision to leave out adultery was rectified in the second draft. This was a draft is more acceptable in the sense that, though it made only the man the offender, it provided for trial of the both the man and the woman actors together, and the court could award a decree if divorce if found guilty [9]. This was however not accepted in the final draft and we have section 497 as it stands today. The reason given for this was that condition of women in India then was deplorable as they were subject to marry at an early age and had no independence in comparison to their contemporaries in England and France. This being the case, it was hard to punish these intrinsically unhappy women for infidelity [9]. It was also noted that this provision should be subject to change keeping in mind the educational and financial status of woman at the given point of time, this shows that though Macaulay inserted a provision for adultery it had to be changed given the social status of woman. It is explicit from the views of the authors of the Code that they have exempted the wife from the charge of adultery considering the philosophical perspective and the social fragility of a wife during the middle of the nineteenth century. There was a common tendency of polygamy and child marriage. The difference of ages between the spouses was even more than 40 years. The wives were treated as a property and they were thought as a product bought for procuring son. There were limited chances to education and for earnings for a woman [10]. This is not the case today, woman is no longer the property. She has a separate independent existence and hence the provision should be made gender neutral so as not to over victimise the woman actor and make her also liable. The wife of the husband actor should also be given an opportunity to file a complaint, thus making the provision victim gender neutral as well perpetrator gender neutral.

The need for gender neutrality in defining adultery was reflected in The Fifth Law Commission in its 42d Law Reports which suggested that Section 497 should not be removed from the penal code, but it recommended that both the man and the wife should be made guilty as there is no valid justification "for not treating the guilty pair alike" and also scaled down the maximum punishment from five years to two years as the existing punishment is "unreal and not call for in any circumstances" [11]. The Indian Penal Code (Amendment) Bill of 1978 also provided for amendment of the section 497, however it was not passed by the legislature. The Committee on Reforms of Criminal Justice System headed by Justice V.S. Malimath in the year 2003 suggested that the section 497 of Indian Penal Code should be amended

as to give effect that "*whosoever has sexual intercourse with the spouse of any other person is guilty of adultery…*"[11] The Committee viewed that as the very objective of the section is to preserve the sacred relationship of marriage, adultery is abhorred by the society so there is no justification that the wife who has sexual relationship with a man is not treated equally. This suggestion if accepted would make a man and a woman be treated equal as an adulterator.

The first important discussion regarding the constitutional validity of the section was held in the case of *Yusuf Abdul Aziz v The State of Bombay and Husseinbhoy Laljee*. [12] In this case, Section 497 of the Indian Penal Code was challenged to be *ultra vires* the Article 14 and 15 of the Constitution of India. The Court held that Sex is a sound classification and Article 15 (3) provides for the exceptions to the women and children and they disagreed that the section resulted in giving a licence to women to commit the offence of which punishment has been prohibited. In the case of *Sowmithri Vishnu v Union of India* [13] the Supreme Court held that the Section 497 is not violative of the Article 14 or Article 15 of the Indian Constitution on the grounds that: (1) Section 497 confers upon the husband the right to prosecute the adulterer but, it does not confer any right upon the wife to prosecute the woman with whom her husband has committed adultery. The Supreme Court considered this to be a policy of law, and while defining the offence of adultery if the offence is restricted to men is not violative of any constitutional provision[13]. (2) Section 497 does not confer any right on the wife to prosecute the husband who has committed adultery with another woman. The Court said that the law is that the wife who is involved in an extra-marital sexual relationship is not a author of a crime but is a victim and the legislature considers it to be offence against the sanctity of a matrimonial home, and the offence is generally considered to be committed by a man. The procedure of law and the definition itself speaks for who have the right to prosecute whom [13]. (3) Section 497 does not take in cases where the husband has sexual relations with an unmarried woman, with the result that husbands have, as it were, a free licence under the law to have extramarital relationship with unmarried women. The Court said that the law does not give freedom to men to have illicit relations with unmarried women, it only made a specific kind of extra-marital relation as an offence which it considered to be most seen and common. The husband can be booked under civil procedure by wife for separation. It is for the law makers to reform the penal law as per modern times and it doesn't offend Article 14 or 15 of the Constitution of India. In the case of *V. Revathi v Union of India* [14] the constitutional validity of S. 198(1) read with S. 198(2) of Criminal Procedure Code, 1973 that it only allows the husband of the adulteress to prosecute the adulterer but does not permit the wife of the adulterer to do so. The court said that the law does not allow either of the spouses to prosecute each other under criminal law; a husband is not permitted because the wife is not treated an offender in the eye of law.

There has been a huge change in the Indian society; women are no longer considered to be the chattel of her husband. The law as it stands today violates the Indian Constitution that includes equal justice for every citizen of India and would not discriminate on the grounds of sex. The "special provision" clause under Article 15 (3) for women cannot be extended so as to create arbitrary discretion for such discrimination by the legislature, as in the case of adultery.

Rape/Sexual Assault and Neutrality: Following the enactment of the Criminal Law (Amendment) Act, 2013, the definition of rape is no longer restricted to cases of penile-vaginal penetration, but also includes the penetration of the vagina, mouth, urethra, anus, or any part of the body of a woman by a man using any object or part of his body. However, it remains gender specific. In other words, the IPC presupposes the victim of a rape to be a woman and the perpetrator to be a man, and does not view instances of sexual assault on the body of a male or a transgender person, or where the perpetrator is a female or a transgender person, as constituting an act of rape.

The issue of gender neutrality in rape law was first raised in the Delhi High Court in *Sudesh Jhaku v KC Jhaku* [15]. The Court was required to determine whether the pre-2013 definition of rape could be interpreted to include non-penetrative sexual acts. However, the court went beyond its mandate to opine on the issue of gender neutrality as well. Subsequently, the 172nd Report of the Law Commission of India recommended that the offence of rape be substituted by a completely gender-neutral offence of

"sexual assault" [16]. Interestingly, one of the key reasons for the Commission to make this suggestion was a sizeable increase in the number of instances of sexual assault against young boys that could not have been considered as acts of rape under the unamended definition. This concern, however, no longer holds much relevance after the Protection of Children from Sexual Offences Act, 2012 (POCSO), which aims to protect children from cases of sexual assault, harassment, and pornography when perpetrated by a man. The recommendations of the Law Commission never translated into a legislative amendment up until 2012, when the Criminal Law (Amendment) Bill, 2012 proposed a completely gender-neutral definition of rape. Before this 2012 Bill could be passed, the nation was rocked the *Nirbaya* gang rape. As a consequence of the outrage that followed, the legislature constituted the JVC to look into amending the criminal law in order to provide for quicker trials and enhanced punishment for committing sexual assaults of an extreme nature against women [17]. Unlike the 2012 Bill, the JVC Report recommended that the offence of "rape" be retained, and not be substituted by the offence of "sexual assault", as it was widely understood as an expression of society's strong moral condemnation. The Committee also recommended that the offence be made gender neutral; however, this was to be done only from the perspective of the victim. While the JVC Report is admirably detailed, it does not contain an account of the reasons behind this recommendation. Despite being well received, the recommendation of partial gender neutrality did not result in the desired change. In a rather perplexing reversal, the legislature promulgated the Criminal Law (Amendment) Ordinance, 2013 [18] to adopt a completely gender neutral definition of rape. In the next Parliamentary session, the legislature enacted the Criminal Law (Amendment) Act, 2013 to supplant the ordinance, and reverted to the gender-specific definition of rape that is presently in effect. [19]

Rape as A Violation of Body Autonomy: Unfortunately, judicial opinions on Indian rape law reflect a rather traditional understanding, where rape is not only viewed as an assault on the body of a woman, but also her modesty, chastity, and honour. This view stands on patriarchal bedrock, and undermines the sufficiency of arguments based on the victim's individual autonomy and bodily integrity [20]. In *Rafiq v State of UP* [21] it was stated that: *when a woman is ravished [in rape,] what is inflicted is not merely physical injury, but the deep sense of some deathless shame."... Rape for a woman is deathless shame and must be dealt with as the gravest crime against human dignity.* In *Bharwada Hirjibhai v State of Gujarat,* the court stated that when a woman is raped, she is likely to be ostracized by society, her own family, relatives, and friends, and that she would be overpowered by a feeling of shame on account of the upbringing in a tradition-bound society where by and large sex is taboo, amongst other social consequences evidencing of a loss of respect in society [22]. This characterisation of woman is a property based approach. Where the chastity of a woman is considered to be a valuable treasure to any man. However, continuous reliance on this property-based approach creates a distinction between an honourable victim of rape and a dishonourable one, who does not fulfil this criterion, the directions to this effect, while the testimony of the former is considered reliable, the latter's narration of an act of rape is often looked down on with suspicion. Accordingly, instead of relying on the honour and chastity of a victim, a sounder alternative is to view an act of rape solely as a violation of the victim's bodily integrity; a simple denial of his or her sexual autonomy. Thus body autonomy should be given more importance than protecting the chastity of woman. It is an invasion of privacy of body and it shouldn't be stretched to an extent that a woman is victimised and re- victimised and over victimised, which is the trend set by the judiciary.

The Two Arguments against Gender Neutral Rape Laws: At the macro level, sexual offences have long been seen as a male-only crime. This is, in part, because of pervasive gender-role stereotypes about women as nurturing, caretaking, individuals, who are incapable of such a crime. However, the major reason for the under-awareness of female-perpetrated sexual offences may be said to be the sheer volume and imbalance of sexual offences involving males as the offenders [23].

The first argument against gender neutrality in rape law is that, unlike with women, there are no official statistics to evidence that non-females are raped in India or that women can rape another person. This argument draws support from an underlying belief that "'it is still men who are raping and women who are being raped'" and that "gender neutral rape laws do not reflect the reality of rape[24]." It also

furthers the historically supported understanding that "rape is 'a conscious process of intimidation by which all men keep all women in a state of fear'"[25]. Indeed, after the constitution of the JVC, a plethora of feminist groups had suggested that a gender-neutral definition of rape implies "that women can commit sexual assault against men for which there is no empirical evidence at all" [26]. A few others were more conscious, stating that "nearly 97% of the survivors of rape or sexual assault are women"[26], or that there have been a "negligible number of cases where women have been the perpetrators."[26] All these arguments stem from the notion that in an act of rape there are specific gender roles associated with the perpetrator and the victim. This creates a perception wherein a male perpetrator is not only a man, but someone who demonstrates masculine aggression, and a female victim is associated with a sense of passive feminine subordination. Therefore, in addition to belonging to specific genders, rape victims and perpetrators are expected to behave in accordance with their gendered roles for any sexual assault to constitute rape. [27] At first, the said tendency appears harmless. However, over time, it creates a situation where if either participant to an act of rape does not conform to his or her role, then one finds it difficult to recognize the incident as an act of rape or attach blameworthiness to the perpetrator. [28] This factors act as mitigating factors while taking the evidence. For instance consent aspect in case of rape of prostitute.

Again an absence of statistics does not lead to the conclusion that there are no cases of female-male rape at all. One, in the context of male victims, there is an anti-masculinity stigma attached to any form of sexual assault, discouraging them from reporting an incident of victimization. [29] In *People* v. *Yates* [30], the reason for the underreporting of male rape was discussed. It was said that "heterosexual male victims may feel that their sexual orientation is called into question and homosexual male victims fear that their sexual preference may be revealed." As with most other sexual crimes, since there is a stigma attached to male same-sex rape,[31] men rarely report the crime and are rarely involved in subsequent prosecution efforts.

There is also an argument that it is biologically impossible for a female to rape a male.[32] This was based under the traditional definition accorded to rape to constitute a penile vaginal penetration. The argument was that such a penetration can be acquired only if there is an erection and ejaculation. The claim that a male cannot be raped by a female was rejected by the Court of Appeals of New York in the case of *People* v. *Liberta*,[33] wherein the Court rejected the argument *in toto*. It said that the claim was 'simply wrong'. In effect, the Court opined that even though forcible sexual assaults by females upon males are undoubtedly less common and vastly imbalanced with respect to forcible sexual assaults by males upon females, this numerical disparity cannot by itself make the gender discrimination justified [25]. Sarrel and Masters, in their study of eleven males sexually assaulted by females said that, "Men or boys have responded sexually to female assault or abuse even though the males' emotional state during the molestations has been overwhelmingly negative – embarrassment, humiliation, anxiety, fear, anger, or even terror."[25] These physical responses may be confused by the victim as indications of pleasure or unrecognised consent. Furthermore, getting the victim to ejaculate is a tactic which most sex offenders use. In the case of male offenders, if the victim ejaculates, the victim himself may be bewildered by his physiological reaction to the act of rape, and, therefore, fail to report the act in fear that his sexuality may become suspect.

Section 377 and Sexual Assault: One may argue that instances of non-consensual same-sex sexual violence can be prosecuted under other provisions such as Section 377 of the IPC, which criminalizes voluntary carnal intercourse against the order of nature as an unnatural offence. But there is a difference in these two sections. It is not an accurate legal basis to criminalize sexual assaults violating a person's bodily integrity, as doing so creates an artificial distinction between sexual assaults that are heterosexual in nature and those that are not.[34] Again it is disheartening to note that voluntary sexual male on male intercourse is defined as carnal and unnatural and clubbed with male on male rape under s. 377. Furthermore, sexual assault under 376 has a minimum punished of 7 years and maximum of life. Whereas under section 377 there is no minimum punishment prescribed. Generally a minimum punishment is prescribed in cases where the crime is of a heinous nature. [35]

The Way Forward: Gender neutrality has vastly been regarded as a coercive mechanism whereby scholars shift the attention from female victims of rape. However, it must be noted that the object of gender neutrality in sexual assault and rape law is very different and has a reasonable, independent standing. A change towards gender neutral laws brings forth the notion that the laws are not analysed in gender specific terms, but rather, gives emphasis to the act, irrespective of the gender of the perpetrator or the victim [36]. Across dozens of jurisdictions, gender-neutral reforms have been adopted as part of a wider law reform agenda in an attempt to reflect a more modern understanding of the purpose of rape law—the protection of sexual autonomy from the harm of non-consensual penetrative sex acts.[25] Thus the focus should be in protecting body autonomy of a person, irrespective of the gender of the perpetrator or the victim and therefore the law in India should be amended as per the recommendations of JVC committee.

Cruelty and Gender Neutrality: With the rise in modernisation, education, financial security and the new found independence the radical feminist has made 498A a weapon in her hands. Many a hapless husbands and in laws have become victims of their vengeful daughter-in-laws. Most cases where Sec 498A is invoked turn out to be false (as repeatedly accepted by High Courts and Supreme Court in India) as they are mere blackmail attempts by the wife (or her close relatives) when faced with a strained marriage. In most cases 498A complaint is followed by the demand of huge amount of money (extortion) to settle the case out of the court. [37]

Annually about 75000 dowry harassment cases are filed in India. According to National Crime Reports Bureau data, more than 80% people arrested under dowry law cases have turned out to be innocent. Suicide rates of married men in India are higher than females and their proportion increases with their age. For males in the age group of 30 to 40 suicide rate is 508 per 100000 persons; for women it is 220. The suicide rates among men in the age group of 45 to 59 are 1812 per 100000 persons and among women, it is 550. It shows that more husbands are compelled to commit suicide because of unbearable harassment, mental torture, disturbed family life, financial pressure etc. [38]

While the law provides legal measures to ensure cruelty in a matrimonial house goes punished, here again, the woman is considered the stereotype victim and the man the ever dominant male aggressor. Though it may be argued that the man in an Indian household even today is the head of the family, and thus automatically acquires a position of dominance, the statistics show the blatant misuse of the provision. Most of the time this section is used as a mechanism to harass torture and coerce the husband and is relatives into giving alimony or custody of child. The wife under the Indian law has several remedies against matrimonial cruelty. S304 B (dowry death), S498 A (cruelty), the Domestic violence Act, Section 125 of the Crpc are some to name a few. The husband on the other hand always presumed as the perpetrator in a domestic relationship, has no avenue for cruelty under any law, against his wife for ensuring penal sanction or obtaining a civil remedy. This is discrimination in its true essence. The only possible remedy is divorce where cruelty is a regarded as a ground for divorce in their respective personal law. The misuse of these provisions especially 498A and the Domestic violence Act, has been reviewed by the Supreme Court time and again in several cases. The Law Commission has also brought out recommendations, all of which will be discussed below. In spite of which, no measure has been taken by the parliament to ensure neutrality and curb this misuse. Commenting upon the situation in our country, Hon'ble Apex Court in *Shushil Kumar Sharma Vs. Union of India* [39] has observed that by misuse of the provision a New Legal Terrorism can be unleashed.

The Criminal law Amendment Act, 1983 inserted section 498A (Chapter XX-A) relating to cruelty by husband or relatives of husbands to combat social evil of dowry and matrimonial atrocities against married women. [40] By the same Act section 113-A has been added to the Indian Evidence Act to raise presumption regarding abetment of suicide by married woman. The main objective of section 498-A of I.P.C is to protect a woman who is being harassed by her husband or relatives of husband.

S. 498 A - Husband or relative of husband of a woman subjecting her to cruelty. Whoever being the husband or the relative of the husband of a woman, subjects her to cruelty shall be

punished with imprisonment for a term, which may extend to three years and shall also be liable to a fine. Explanation – for the purpose of this section, "cruelty" means:

a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demands for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Sec. 113-A, Presumption as to dowry death- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation- For the purpose of this section 'dowry death' shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860).

The object for which section 498A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting Criminal Law (Second Amendment) Act No. 46 of 1983. *As clearly stated therein the increase in number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some of cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, which constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure,1973 (in short 'the Cr.P.C') and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in- law's and relatives. The avowed object is to combat the menace of dowry death and cruelty.*

Sec. 498-A can only be invoked by a wife, a daughter-in-law or their relatives. This section is non-bailable (which means one has to appear in court and get bail from the judge), non-compoundable (the complaint cannot be withdrawn) and cognizable (arrests can be made without investigation or warrants). So far as the Indian Penal Code is concerned, Sec. 498-A of IPC was introduced wherein if a woman was subjected to cruelty by her husband or his relative(s), he/they could be convicted under this penal provision. The law underwent further change with the introduction of S. 304-B in the Penal Code.
In 1996, the Law Commission of India in its 154th Report recommended the inclusion of Sec. 498-A under the list of compoundable offences. The recommendation of the Law Commission in the 154th Report was reiterated in the 177th Report in 2001. Furthermore, in 2003, to add meat to its argument to make the provision compoundable, Dr. Justice V.S. Malimath Committee Report or the Committee on Reforms of Criminal Justice System noted that there is a "general complaint" that Sec 498-A IPC is subject to gross misuse. It used this as justification to suggest an amendment to the provision, but provided no data to indicate how frequently the section was being misused. In 2012, the 237th Report of the Law Commission, headed by Justice PV Reddi, had once again recommended to the government that Sec. 498-A be made a compoundable offence. The latest 243rd Report of the Law Commission which specifically dealt with Sec. 498-A strongly recommended that the offence remain non-bailable, however reiterated that it should be made compoundable as recommended by the Commission in its previous reports including the 237th Report. This was as a result of the case *Preeti Gupta Vs. State of Jharkhand*, [41] where in the Supreme Court laid down specific guidelines to ensure that arrest of the accused and procedures there in are relaxed. In 2013, the Supreme Court in the case of *K. Srinivas Rao vs D.A. Deepa* [42] had also re-opened the discussion on whether offences under Sec. 498-A be made compoundable or bailable. The ruling stated that, *"...though offence punishable under Sec.498-A... is not compoundable, in appropriate cases if the parties are willing and if it appears to the criminal court that there exist elements of settlement, it should direct the parties to explore the possibility of settlement through mediation."*

In a recent Supreme Court case, *Rajesh Sharma and Ors.* v *State of UP and Anr* [43], detailed guidelines with respect to arrest and granting bail was laid down to reduce the rampant misuse of the section and

provide some recourse to the men who are subject to emotional and physical torture of false allegations just for the purpose of revenge or ;getting back at them'.

Thus it is clear that there is a clear misuse of this provision leading to discrimination of husbands and his relatives. Hence it is suggested that this provision is either repealed or more gender neutral provision is formulated to give redressal mechanisms to the husband also under penal and civil law.

Conclusion: The penal laws were drafted more than two centuries ago, and it is high time that these are rectified in order inculcate a more modern and contemporary attitude towards individuals irrespective of their gender. A crime should be defined as an action against the state and gender shouldn't be an aspect that influences the definition of a crime. Woman and man are independent individuals with their own rights and one is not the property of the other. Patriarchism and over- victimisation, unnecessary stigmatisation, and over protection will only result in inequality and sexism. The law as it stands today violates the Indian Constitution that includes equal justice for every citizen of India and would not discriminate on the grounds of sex. The "special provision" clause under Article 15 (3) for women cannot be extended so as to create arbitrary discretion for such discrimination by the legislature.

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