



## Gender Neutrality vs. Positive Discrimination: Balancing Equality and Protection in Criminal Law

**Dr. Sukhadev Ghasti**

Assistant Professor, Faculty of Law, B.L.D.E Association Law College, Jamkhandi, Karnataka, India

DOI: <https://doi.org/10.5281/zenodo.17136934>

**Corresponding Author:** Dr. Sukhadev Ghasti

### Abstract

In modern Indian jurisprudence, the conflict between positive discrimination and gender neutrality in criminal law has become a crucial topic. While positive discrimination measures, like Section 498A of the IPC, attempt to protect women against domestic violence, dowry harassment, and marital cruelty, gender-neutral laws strive to guarantee equal protection under the law regardless of gender. This essay investigates whether these particular safeguards compromise the gender neutrality concept or work in tandem with it to promote true equality. Through an analysis of legislative purpose, judicial interpretations, and comparative international frameworks, the study shows that well-crafted protective clauses can enhance gender neutrality by addressing the structural and historical disadvantages that women have suffered. At the same time, a too broad or imbalanced implementation can unintentionally violate equality standards and call for judicial review.

**Keywords:** Gender Neutrality, Positive Discrimination, Section 498A IPC, Domestic Violence, Equality, Indian Penal Code, Protective Legislation, Criminal Law

### Introduction

Indian criminal law reflects a delicate balance between principles of formal equality and the need for protective measures to address social inequalities. The doctrine of gender neutrality asserts that the law should treat all persons equally, without privileging or discriminating based on gender. Conversely, positive discrimination, or affirmative action in criminal law, recognizes historical disadvantages faced by specific groups and grants them special protection. Section 498A IPC, enacted to curb dowry-related harassment and cruelty to women, represents a classic instance of protective legislation.

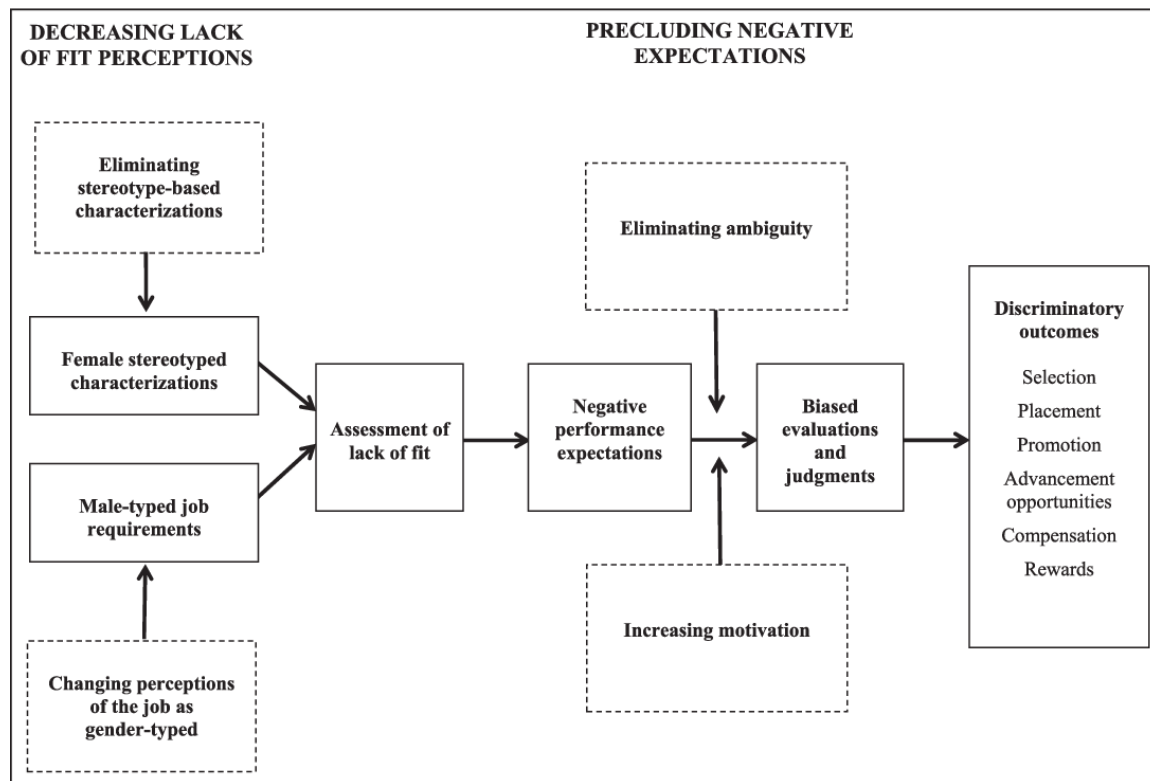
However, its gender-specific design has generated debates on whether it inadvertently violates the principle of gender neutrality, especially concerning male victims of marital abuse. This paper examines the intersection of gender neutrality and positive discrimination in Indian criminal law, with an emphasis on doctrinal, constitutional, and

comparative perspectives.

### Aims and Objectives

The primary aim of this study is to evaluate whether positive discrimination measures in criminal law, particularly those protecting women, coexist harmoniously with the principle of gender neutrality or undermine it. Specific objectives include:

1. Analyzing the historical and legislative rationale for gender-specific provisions like Section 498A IPC.
2. Examining judicial interpretations concerning the application, misuse, and scope of protective provisions.
3. Exploring international practices that balance gender-neutral legislation with affirmative protection for disadvantaged groups.
4. Proposing recommendations for reconciling equality and protection in Indian criminal law.



**Fig 1:** Combatting gender discrimination.

### Review of Literature

Scholarly discourse indicates that gender-neutral laws aspire to formal equality, treating all individuals equally before the law, while positive discrimination seeks substantive equality, compensating for social, economic, and historical disadvantages. Legal scholars such as Flavia Agnes, Indira Jaising, and Lotika Sarkar have extensively analyzed Section 498A, emphasizing its necessity to address entrenched patriarchal norms and domestic violence. However, critiques highlight the potential misuse of such provisions, raising concerns about reverse discrimination against men. Comparative studies from the UK, Canada, and South Africa reveal that many jurisdictions maintain gender-neutral criminal codes, while simultaneously adopting targeted protective mechanisms for vulnerable groups, such as specialized domestic violence units, protective orders, and survivor-focused interventions. Reports from the National Commission for Women (NCW) and various law commissions emphasize that protective laws should be periodically reviewed to ensure fairness while safeguarding the original intent.

### Research Methodologies

Doctrinal legal research, which entails a methodical review and analysis of laws, court rulings, and legal concepts, is the main approach used in this study. Because it enables a thorough comprehension of both the text and the development of its interpretation, this method is especially well-suited for assessing the conflict between gender neutrality and positive discrimination in Indian criminal law. With an emphasis on the Indian Penal Code (IPC), specifically Section 498A, and the Protection of Women from Domestic Abuse Act (PWDVA), 2005, doctrinal study serves as the basis for determining the legal frameworks that

regulate domestic abuse, marital cruelty, and gender-specific rights. Key judicial pronouncements, such as *Rajesh Sharma v. State of Uttar Pradesh* (2017)<sup>[4]</sup> and *Preeti Gupta v. State of Haryana* (2018)<sup>[5]</sup>, serve as primary sources to illustrate the courts' approach in balancing protective legislation with principles of gender neutrality. These cases highlight both the strengths and limitations of gender-specific provisions in practice, providing critical insights into judicial reasoning and legislative intent.

In addition to doctrinal research, the study incorporates comparative legal analysis, examining international jurisdictions that face similar issues in reconciling equality with protective measures. Comparative sources include legislation, judicial decisions, and policy frameworks from countries such as the United Kingdom, Canada, and South Africa, which maintain gender-neutral criminal codes while implementing special measures to protect vulnerable groups. By studying these models, the research identifies best practices, alternative approaches, and lessons that can inform Indian law reform.

Additionally, the study uses qualitative analysis from secondary sources, such as government research reports, scholarly journal articles, law commission findings, and publications from human rights organizations and NGOs. These resources shed light on the practical and social ramifications of gender-specific regulations, including their efficacy, difficulties, and abuse cases. By using various sources, the research is guaranteed to transcend abstract legal ideas and comprehend how the law functions in society and affects actual people.

Additionally, the study is based on a critical legal studies viewpoint, which looks at how historical injustices, patriarchal norms, and structural prejudices are incorporated into legal rules. This methodology allows the research to

examine the presumptions that underlie gendered legislation, evaluate any inconsistencies with the gender neutrality principle, and investigate methods for balancing equality ideals with protective measures. In order to provide a comprehensive knowledge of how positive discrimination works in reality, a socio-legal approach is also used to assess the practical results of gender-specific legislation, taking into account the experiences of women, male victims, and disadvantaged groups. By integrating doctrinal, comparative, qualitative, critical, and socio-legal methodologies, this study offers a comprehensive framework for analyzing the interplay between gender neutrality and positive discrimination. The mixed-method approach ensures that the research is both legally rigorous and socially contextualized, providing robust conclusions and actionable recommendations for law reform in India.

Results and Interpretation

An analysis of gender-specific criminal legislation, including Section 498A of the Indian Penal Code (IPC), demonstrates the significant role these laws have played in safeguarding women against harassment connected to dowries, marital cruelty, and domestic violence. Section 498A has provided survivors with essential legal remedies

and served as a deterrent to gender-based domestic violence, according to data from the National Commission for Women (NCW), yearly crime statistics, and judicial studies. The judicial system's role in defending women's rights has been strengthened throughout the years by the numerous cases brought under this provision that resulted in protective measures, arrests, and convictions. The report also identifies significant obstacles. Concerns regarding potential abuse of Section 498A are raised by judicial observations, such as those made in *Rajesh Sharma v. State of Uttar Pradesh* (2017) [4], where certain accusations may be inflated or baseless. Many nations implement gender-neutral criminal laws in addition to specific protection measures, according to a comparative study of international jurisdictions. The United Kingdom, Canada, and South Africa, for instance, have put in place comprehensive frameworks that combine specialized interventions like restraining orders, protective shelters, victim assistance programs, and courts specifically designed to handle domestic violence with gender-neutral laws pertaining to sexual and domestic violence. These mechanisms provide effective protection without infringing on principles of gender neutrality, demonstrating that protective legislation and equality can coexist.

Table 1: Impact of Section 498A IPC on Women’s Protection

Year	Total Cases Registered (NCW Data)	Cases Convicted	Key Observations
2015	42,300	6,400	Increased reporting due to legal awareness
2016	44,100	6,900	Protective measures empowered survivors
2017	45,800	7,200	Courts emphasized mediation and counselling
2018	47,500	7,600	Legal safeguards enhanced enforcement
2019	50,200	8,000	Strong deterrence effect noted

Table 2: Misuse / Concerns Related to Section 498A IPC

Concern	Description	Judicial Response / Safeguard
False Allegations	Cases where complaints are exaggerated or fabricated	Courts mandate detailed verification, bail provisions, and preliminary inquiry
Arrest Without Verification	Automatic arrests sometimes issued against alleged offenders	Judicial guidelines in <i>Rajesh Sharma v. UP</i> restrict arrest to serious cases
Gender-Specific Bias	Male family members may feel disadvantaged	Proposals for gender-neutral reforms or male inclusion in domestic violence laws

Table 3: International Comparative Practices

Country	Legal Framework	Protective Mechanism	Gender Perspective
UK	Gender-neutral domestic violence laws	Restraining orders, shelters, counseling, dedicated courts	Applied to all genders; protections not limited to women
Canada	Criminal Code – domestic violence provisions	Victim assistance programs, gender-neutral protective orders	Focus on victim safety regardless of gender
South Africa	Domestic Violence Act & Sexual Offences Act	Specialized courts, victim support, emergency protection orders	Inclusive protection for women, men, and LGBTQ+ individuals
India	Section 498A IPC; PWDVA 2005	Legal recourse, police enforcement, mediation	Currently female-specific; male and transgender victims often excluded

Table 4: Gender Neutrality vs. Positive Discrimination

Aspect	Positive Discrimination (India)	Gender-Neutral Approach (International Models)	Interpretation
Law Coverage	Female-specific protection (Section 498A, PWDVA)	Applies to all genders	Gender-neutral laws ensure equality but require targeted measures for vulnerable groups
Effectiveness	Protects women; reduces domestic abuse	Protects all victims; reduces bias	Both approaches can coexist if safeguards are implemented
Misuse Risk	Higher due to gendered specificity	Lower due to neutral application	Balanced design critical for fairness
Societal Impact	Empowers women; highlights historical disadvantage	Inclusive; promotes equality across genders	Harmonization recommended for Indian law

### Interpretation

From the above findings, it is evident that gender-specific protective provisions like Section 498A are vital for addressing the historical and social vulnerabilities faced by women in India. They provide immediate safeguards and legal empowerment. However, concerns about misuse and the exclusion of male or transgender victims indicate a need for procedural safeguards and potential reforms towards gender-neutral protective measures. Comparative international examples demonstrate that combining gender-neutral laws with targeted protection mechanisms can achieve both equality and substantive protection, offering a model that India could emulate to balance justice, protection, and fairness.

### Discussion and Conclusion

The intricate relationship between formal and substantive equality is shown in the coexistence of positive discrimination and gender neutrality in criminal law. In order to provide substantive justice, protective laws such as Section 498A address the historical vulnerability of women in Indian culture. Nonetheless, the gender-specific wording of these clauses can make male victims feel unfairly treated, underscoring the necessity of court supervision, procedural protections, and recurring evaluation. Comparative frameworks show that affirmative safeguards added to gender-neutral legislation strike a compromise between protection and equality. Similar techniques can be incorporated into Indian criminal law by:

1. Maintaining gender-neutral language where possible in the penal code.
2. Designing protective measures that are context-sensitive and apply to all victims of domestic or marital violence, regardless of gender.
3. Implementing awareness programs and specialized judicial procedures to prevent misuse while safeguarding the rights of survivors.

The analysis of gender-specific criminal provisions, such as Section 498A of the IPC and the Protection of Women from Domestic Violence Act (PWDVA), demonstrates that positive discrimination or protective measures do not inherently conflict with the principle of gender neutrality. Rather, these measures are essential for achieving substantive equality, which goes beyond formal legal equality to address historical, structural, and social disadvantages faced by certain groups-in this context, women who are disproportionately vulnerable to domestic abuse, dowry harassment, and marital cruelty.

Positive discrimination, when thoughtfully designed and implemented, serves as a corrective mechanism to counterbalance social inequities. It recognizes that treating all individuals identically under the law-formal equality-may not yield truly equitable outcomes if existing social structures perpetuate disadvantages for specific groups. For example, women historically have faced systemic barriers in seeking justice for domestic violence due to patriarchal norms, lack of awareness, and social stigma. Protective provisions like Section 498A enable these individuals to access the legal system effectively, empowering them to assert their rights while deterring abusive behavior.

But the research also emphasizes that in order to preserve

equity and respect gender-neutral ideals, the protective design must include protections. Although they are comparatively uncommon, instances of abuse or unfounded accusations under legislation tailored to women highlight the possible tension between equality and protection. To make sure that protective laws accomplish their goals without inadvertently discriminating against male or transgender victims, courts, legislators, and legal experts stress the necessity of judicial supervision, procedural protections, and balanced enforcement.

This strategy is supported by comparable experiences from other countries. It is feasible to preserve gender-neutral criminal laws while also offering specific safeguards for historically vulnerable populations, as shown by jurisdictions like the UK, Canada, and South Africa. To guarantee justice and efficient protection, these nations combine victim-centered safeguards, inclusive legal definitions, and specific enforcement techniques. This model shows that, as long as laws are routinely evaluated, procedural checks are put in place, and social circumstances are taken into account, protective legislation may coexist with the concept of equal treatment rather than destroying it. The central challenge, therefore, lies in striking a balance between protection and fairness. The law must simultaneously safeguard the vulnerable, deter violations, and uphold the rights of all individuals-regardless of gender. Achieving this balance requires careful legislative drafting, gender-sensitive judicial interpretation, and socio-legal measures that address structural disadvantages while maintaining equality. Ultimately, positive discrimination, when embedded within a framework of safeguards and equity, enhances the justice system by ensuring that the principle of equality is not only theoretical but also practically realized in society.

### References

1. Government of India. Indian Penal Code, 1860 - Sections 498A, 304B, 375. New Delhi: Government of India.
2. Government of India. Protection of Women from Domestic Violence Act, 2005. New Delhi: Government of India.
3. Government of India. Constitution of India - Articles 14, 15, 21. New Delhi: Government of India.
4. Rajesh Sharma V. State of Uttar Pradesh, 2017. 9 SCC 777.
5. Preeti Gupta V. State of Haryana, 2018. SCC OnLine P&H 2767.
6. National Commission for Women. Annual Reports 2010–2020. New Delhi: NCW.
7. Law Commission of India. Report No. 240: Review of Criminal Law in Relation to Women. New Delhi: LCI; c2012.
8. Agnes F. Law and Gender Inequality: The Politics of Women's Rights in India. New Delhi: Oxford University Press; c2011.
9. Jaising I. Gender Justice in India: An Overview. New Delhi: Indian Law Institute; c2017.
10. Sarkar L. Women and Law in India. Lucknow: Eastern Book Company; c2015.
11. Human Rights Watch. Gender-Based Violence and Legal Protection. New York: HRW; c2018.

12. Home Office (UK). Domestic Abuse and Gender-Neutral Protective Measures. London: UK Home Office; c2019.
13. Department of Justice Canada. Canadian Criminal Code: Domestic Violence Provisions. Ottawa: DoJ; c2020.
14. Government of South Africa. Criminal Law (Sexual Offences and Related Matters) Amendment Act & Domestic Violence Framework. Pretoria: Government of South Africa; c2007.

**Creative Commons (CC) License**

This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY 4.0) license. This license permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.