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Gender Equality In The Legal Field: A Critical Analysis Of Female-Centric Laws In India With Reference To The Newly Emerged Penal Laws Bns And Bnss 2023.

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Abstract

Gender equality is a fundamental requirement for a fair and balanced legal system. In India, legal reforms over the decades have primarily focused on protecting women from historical injustices and gender-based violence. However, in the process, several provisions have developed a tilt that tends to overlook the realities faced by men and other gender identities. This paper critically assesses the female-centric character of Indian laws in the context of the new Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. It further expands the scope to include civil laws, such as those dealing with maintenance and alimony, to highlight the continued gender imbalance and calls for a shift towards practical gender neutrality in lawmaking and judicial interpretation.

Key Words:- Gender Equality, Gender Neutrality, Indian Legal Reforms, BNS 2023, BNSS 2023, Civil Law, Gender Bias

Introduction

The idea of gender equality is strongly supported by the Indian Constitution through Articles 14, 15, and 21. These provide a legal foundation for equal treatment and protection from discrimination. Over time, laws addressing violence and inequality against women have rightly received attention, resulting in critical legal instruments like the Domestic Violence Act, 2005 and Section 498A IPC. Yet, questions persist about whether some of these laws unintentionally disadvantage men or reinforce outdated gender roles.

With the introduction of BNS and BNSS in 2023, there was hope for a modernized and more inclusive approach to criminal justice. However, many of the older structural biases remain intact. In addition, other legal domains- such as post-divorce maintenance and adultery- also reflect a historical inclination to favor women, which increasingly appears misaligned with contemporary gender dynamics.

Maintenance Laws and Gender Bias

One of the most contested areas in the discussion around gender neutrality is post-divorce maintenance. Previously governed by Section 125 of the Criminal Procedure Code (CrPC), this provision has now been replaced by Section 144 of the BNSS. The primary aim of this section remains the same- to offer financial support to a wife, children, or aged parents who cannot maintain themselves.

While the wording of Section 144 is technically gender-neutral, its implementation is not. In practice, maintenance is overwhelmingly granted to women, often without considering their educational qualifications or earning capacity. Men, regardless of their financial limitations, are expected to provide lifelong support in many cases. This approach not only contradicts the reality of dual-income households but also allows maintenance to be misused as a legal strategy in prolonged matrimonial dispute.

Under the Hindu Marriage Act, 1955, Sections 24 and 25 provide for interim and permanent alimony. Though both spouses can file claims, courts predominantly favor women. The underlying assumption that men are always the primary earners continues to influence judgments, despite the growing number of financially independent women. This creates a one-sided burden and raises serious questions about fairness.

Adultery and the Presumption of Male Guilt

Another example of outdated gender assumptions was Section 497 of the IPC, which criminalized adultery solely from the male perspective. A man could be prosecuted for engaging in a relationship with a married woman without her husband's permission, while the woman faced no legal consequences. This law treated women as passive, lacking agency, and essentially reduced them to the property of their husbands.

In *Joseph Shine v. Union of India* (2018), the Supreme Court struck down this section, stating that it violated constitutional values like equality, dignity, and personal liberty. The Court acknowledged the gender discrimination inherent in the law and recognized that criminal law should not reflect patriarchal notions. The judgment served as an important moment in moving toward gender-neutral legislation.

Historical Context of Gendered Legislation

Historically, laws like Section 498A IPC, the Domestic Violence Act, 2005, and the Sexual Harassment Act, 2013 were enacted to address systemic injustices faced by women. These laws played a significant role in advancing women's safety and rights. However, critiques have grown regarding the misuse of some provisions, especially Section 498A, where allegations have sometimes been made with malicious intent, leading to undue harassment of men and their families.

Gendered Nature of BNS and BNSS Provisions

Under the new Bharatiya Nyaya Sanhita (BNS), laws related to sexual offences, like Section 63 (rape), Section 69 (sexual intercourse by deceit), and Section 74 (sexual harassment), continue to describe women exclusively as victims. Despite evolving gender norms, the legal language and framework fail to acknowledge that men and transgender individuals can also be victims of sexual crimes.

Similarly, the BNSS's procedural changes under Section 179- which permits women to be questioned at their residence rather than at police stations- highlight continued preferential treatment. While this is framed as a protective measure, it introduces procedural inequality and reinforces stereotypes about female fragility.

Legal Precedents Emphasizing Gender Neutrality

Several landmark judgments by Indian courts have slowly started to challenge gendered legal assumptions:

Navtej Singh Johar v. Union of India (2018) struck down Section 377 and emphasized equal rights for all sexual orientations and gender identities.

NALSA v. Union of India (2014) formally recognized transgender persons as a third gender.

Joseph Shine v. Union of India (2018) addressed the issue of gender bias in adultery laws.

Lt. Col. Nitisha v. Union of India (2021) stressed the importance of substantive equality over mere formal equality.

Rajesh Sharma v. State of U.P. (2017) flagged misuse of Section 498A and issued preventive guidelines.

These rulings show that the judiciary is aware of the need for gender-neutral interpretations but stops short of insisting on corresponding changes in legislative frameworks.

Comparative International Models

Countries like the United Kingdom and Canada have already moved toward gender-neutral laws concerning sexual and domestic violence. The UK's Sexual Offences Act, 2003 and Canada's Criminal Code do not identify victims or offenders by gender, thereby offering equal legal recognition and protection across all identities. These models are increasingly seen as more appropriate for contemporary legal systems.

Conclusion

India's recent legal reforms under the BNS and BNSS have certainly modernized parts of the criminal justice system, yet they retain deep-rooted gender preferences. Laws dealing with maintenance, sexual violence, and procedural benefits continue to favor women, even as social conditions change and the concept of gender itself becomes more fluid. Moving forward, India must begin crafting laws that are inclusive in both language and application. Gender-neutral legal frameworks are not about denying historical injustices; they are about recognizing that justice must be person-specific- not stereotype-driven.

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