

Misuse Versus Underuse: A Socio-Legal analysis of Women Protection Laws in India

Neetu Singh^{1*}, Dr. Shaily Yadav²

¹ Research Scholar, Faculty of Law, Maharishi Arvind University, Jaipur, Rajasthan, India

² Supervisor, Faculty of Law, Maharishi Arvind University, Jaipur, Rajasthan, India

neetu14Singh0@gmail.com

Abstract: The discourse surrounding women protection laws in India has evolved from a focus on affirmative protection to debates over alleged misuse and underuse. While legislative efforts since the 1980s have aimed at safeguarding women against domestic violence, sexual harassment, and dowry-related offenses, public narratives increasingly question the implementation, fairness, and societal impact of these statutes. This article undertakes a socio-legal analysis of the competing claims of *misuse* and *underuse* of women protection laws in India, exploring legal frameworks, judicial attitudes, data trends, and socio-cultural realities. The research contends that both misuse and underuse co-exist due to systemic gaps in enforcement, lack of gender-sensitive adjudication, and social stigma that deters reporting. International comparisons reveal parallel challenges in balancing women's protection with procedural fairness. The article concludes by arguing for nuanced reforms grounded in empirical evidence, judicial guidance, and social education, while foreseeing future research avenues in gender justice.

Keywords: Women Protection Laws, Misuse, Underuse, Socio-Legal Analysis, Gender Justice, Domestic Violence, Sexual Harassment, Judicial Intervention

INTRODUCTION

Women protection laws in India have witnessed significant evolution over the past four decades, driven by both feminist activism and judicial activism. Legal enactments such as the *Protection of Women from Domestic Violence Act, 2005* (hereafter "DV Act"), provisions of the *Indian Penal Code, 1860* (IPC) targeting dowry and cruelty, and anti-sexual harassment reforms under the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* (POSH Act) were milestones in recognizing women's rights in the domestic and public spheres (Bathla, 1996; Baxi, 1986). These laws emerged in response to entrenched socio-cultural patriarchy that normalized violence against women. However, in the last two decades, public discourse has increasingly centred on allegations of *misuse* false or exaggerated complaints and *underuse* failure to report or address genuine grievances of these protective laws. Critics argue that certain provisions, particularly those pertaining to dowry and cruelty, are misused by spouses or relatives to harass men and their families, leading to wrongful arrests and prolonged litigation (Chowdhury, 2009; Srinivas, 2012). Conversely,

women's rights advocates emphasize that under-reporting of gender-based crimes remains a far greater concern, reflecting distrust in law enforcement and procedural delays (Indian National Crime Records Bureau [NCRB], 2020).

The debate on misuse versus underuse of women protection laws in India is embedded within a broader framework of socio-legal concepts that shape the understanding, interpretation, and implementation of gender justice. A nuanced appreciation of these related concepts is essential for developing a balanced analytical perspective.

One of the foundational concepts is **gender justice**, which refers to the equitable treatment of individuals irrespective of gender, while recognizing historical and structural disadvantages faced by women. Gender justice does not imply preferential treatment but seeks substantive equality, acknowledging that formal equality may be insufficient in societies marked by entrenched patriarchy. Women protection laws in India were enacted as instruments of corrective justice to address systemic discrimination, domestic violence, sexual harassment, and economic dependency. The debate on misuse must therefore be contextualized within the constitutional mandate under Articles 14, 15(3), and 21 of the Indian Constitution, which empower the State to enact special provisions for women.

Closely related is the concept of **protective discrimination** or **affirmative action**. Protective discrimination allows the State to enact gender-specific legislation to remedy historical injustices. Laws such as Section 498-A of the Indian Penal Code (now substantially incorporated under the Bharatiya Nyaya Sanhita) and the Protection of Women from Domestic Violence Act represent such affirmative measures. However, protective discrimination raises concerns regarding over-criminalization and reverse discrimination when safeguards are perceived to disadvantage the accused unfairly. The tension between empowerment and fairness forms the crux of the misuse debate.

Another important concept is **patriarchy and structural inequality**. Patriarchy refers to a social system where men hold primary power in political, economic, and familial institutions. Structural inequality manifests in limited access to education, employment, property rights, and social mobility for women. Underreporting of crimes against women is often attributed to patriarchal norms that stigmatize victims and normalize abuse. Thus, underuse of women protection laws is deeply rooted in social conditioning rather than merely legal inefficiency.

The concept of **criminalization and over-criminalization** also warrants discussion. Criminalization refers to the process of defining certain behaviours as offenses punishable by law. Critics argue that certain gender-protective provisions employ broad definitions and stringent arrest mechanisms, potentially leading to over-criminalization. Over-criminalization may burden the criminal justice system and create procedural hardships. Yet, from a feminist jurisprudential standpoint, strong penal provisions are often necessary to signal societal condemnation of gender-based violence.

Access to justice is another pivotal concept. It encompasses not merely the availability of legal remedies but also the ability of individuals to effectively utilize them. Barriers such as economic dependency, lack of legal literacy, social stigma, fear of retaliation, and procedural delays restrict women's access to justice. Underuse is frequently a consequence of these systemic obstacles. Legal awareness campaigns, institutional support systems, and simplified complaint mechanisms are essential to strengthen access.

The idea of **due process and fair trial rights** is central to the misuse discourse. The criminal justice system must balance victims' rights with the constitutional protections afforded to the accused. Presumption of innocence, protection against arbitrary arrest, and the right to a fair hearing are fundamental principles under Indian constitutional jurisprudence. Judicial guidelines aimed at preventing automatic arrests in matrimonial disputes reflect attempts to harmonize women's protection with procedural safeguards.

Victimology is another relevant concept. Victimology studies the psychological, social, and legal dimensions of victim experiences. Women facing domestic violence or sexual harassment often encounter secondary victimization within police stations and courts. Underuse may result from fear of humiliation or disbelief. Strengthening victim-centric approaches, such as one-stop crisis centres and gender-sensitive policing, addresses this concern.

The notion of **false complaints and malicious prosecution** forms part of the misuse debate. False complaints are allegations made with knowledge of their falsity, whereas malicious prosecution involves initiating legal proceedings without reasonable cause. While instances exist, empirical data suggest that acquittal does not necessarily equate to falsity; it may reflect evidentiary limitations. Therefore, distinguishing between false cases and cases ending in acquittal is essential for objective analysis.

Restorative justice is an emerging concept relevant to matrimonial and domestic disputes. Unlike retributive justice, restorative justice focuses on reconciliation, mediation, and repairing harm. Family courts and mediation centres often attempt negotiated settlements in domestic violence and cruelty cases. While restorative mechanisms can reduce adversarial conflict, they must not trivialize serious abuse.

The concept of **legal pluralism** also influences the functioning of women protection laws in India. Indian society operates under multiple normative systems—customary practices, religious laws, and statutory frameworks. Tensions between personal laws and secular criminal law sometimes affect reporting and adjudication. Social pressures from community institutions may discourage women from invoking statutory remedies.

Intersectionality further enriches the socio-legal analysis. Coined in feminist theory, intersectionality recognizes that women's experiences vary across caste, class, religion, region, disability, and sexual orientation. Marginalized women may face compounded barriers in accessing legal remedies. Underuse is often more pronounced among economically weaker and rural populations.

Another related concept is **legal consciousness**, which refers to how individuals perceive and engage with the law in everyday life. Women's perception of the law as either protective or intimidating influences their willingness to report abuse. Media portrayal of alleged misuse cases may shape public opinion and legal consciousness, sometimes deterring genuine complainants.

Data interpretation and evidentiary standards also play a role. High acquittal rates are frequently cited as evidence of misuse. However, acquittals may result from hostile witnesses, compromised investigations, or societal pressure. Therefore, empirical data must be analysed carefully to avoid conflating systemic weaknesses with deliberate misuse.

Finally, the broader principle of **rule of law** underpins the entire debate. The rule of law requires that laws be applied uniformly, transparently, and fairly. It demands accountability for false complaints while simultaneously ensuring that genuine victims are not denied protection. A socio-legal approach recognizes that legal norms operate within a social context; hence, reforms must address both institutional capacity and cultural attitudes.

In conclusion, the discourse on misuse versus underuse of women protection laws cannot be reduced to a binary conflict between men's rights and women's rights. It intersects with

constitutional values, feminist jurisprudence, victimology, access to justice, and procedural fairness. A balanced socio-legal understanding requires acknowledging the structural disadvantages faced by women while ensuring that the criminal justice system upholds fairness and credibility.

This article examines the socio-legal dimensions of misuse and underuse, situating the debate within India's legislative history, judicial interpretation, and lived social realities. By synthesizing academic literature, statistical data, and comparative international perspectives, the research aims to provide a balanced understanding of both phenomena and outline potential reforms for equitable gender justice.

HISTORICAL BACKGROUND

The legislative journey of women protection laws in India reflects shifting paradigms of gender justice. The first major shift occurred with the *Equal Remuneration Act, 1976*, which sought to eliminate gender discrimination in wages. However, it was not until the 1980s that criminal law reforms directly addressing violence against women gained momentum. The *Criminal Law (Second Amendment) Act, 1983* introduced Section 354 IPC to penalize assault on women with intent to outrage modesty, recognizing the need for gender-specific protection (Baxi, 1986).

In the 1980s and 1990s, activism against dowry deaths and bride burning catalysed further reforms. Sections 498A and 304B were inserted into the IPC in 1983 and 1986 respectively, criminalizing husband or in-law conduct that causes cruelty or death of a bride due to dowry demands. These provisions were hailed as progressive steps toward dismantling dowry-related violence (Bathla, 1996). Nonetheless, by the early 2000s, narratives of *misuse* began to surface contesting the broad and non-bailable nature of these sections, and claiming that frivolous accusations could lead to harassment of innocent individuals (Chowdhury, 2009).

Simultaneously, domestic violence gained legislative recognition beyond criminal law. The DV Act, 2005 marked a paradigm shift by introducing civil remedies for victims, including protection orders, residence rights, and maintenance. Feminist scholars praised this as a holistic approach that acknowledged the multifaceted nature of domestic abuse (Nair, 2005). Yet, implementation challenges such as lack of awareness, procedural delays, and limited shelter infrastructure tempered its promise. As the Act provided civil remedies separate from

criminal prosecution, confusion and inconsistent judicial responses sometimes frustrated women seeking adequate relief (Kapoor, 2007).

The POSH Act, 2013, influenced by global movements against workplace harassment, mandated internal complaint committees in workplaces to address sexual harassment complaints. Despite its significant contribution to workplace gender safety, data indicates that reporting and resolution rates are uneven, especially in informal sectors (Rao, 2015). At the same time, allegations of misuse especially in corporate and organizational contexts have been highlighted in media narratives, though empirical evidence remains sparse.

Thus, the historical trajectory of women protection laws in India embodies both legal innovation and persistent controversies. The ensuing sections analyse how *misuse* and *underuse* manifest within this historical and socio-legal matrix.

MISUSE AND UNDERUSE: DEFINITIONAL AND THEORETICAL PERSPECTIVES

At the core of debates on women protection laws are contrasting yet interconnected phenomena of *misuse* and *underuse*. Misuse refers to the alleged wrongful invocation of protective provisions to settle personal scores, extract vengeance, or harass the accused beyond legitimate legal ends (Srinivas, 2012). Critics argue that broad and vaguely defined legal terms, combined with automatic arrest provisions, provide opportunities for abuse of the law by aggrieved parties.

Underuse, on the other hand, denotes the failure of victims to access legal remedies due to socio-cultural barriers, lack of awareness, fear of stigma, or distrust in law enforcement and judicial processes (NCRB, 2020). Scholars emphasize that underuse is pervasive across domestic violence, sexual assault, and workplace harassment contexts, resulting in significant justice gaps.

The theoretical discourse also engages with feminist legal theory, which recognizes that legal reforms alone are insufficient without social transformation. Legal empowerment, community support mechanisms, and gender-sensitive policing are critical to mitigating both misuse and underuse.

JUDICIAL TRENDS AND CASE LAW ANALYSIS

Indian courts have frequently engaged with allegations of misuse. In several judgments, the Supreme Court and various High Courts have underscored the need for a cautious approach while registering FIRs and making arrests in cases involving Section 498A IPC (Agarwal v. State of MP, 2008). Judicial pronouncements have emphasized pre-screening of complaints to filter out vexatious allegations, and have encouraged mediation or family counselling where appropriate. However, the judiciary has also reiterated that curtailing women's access to justice cannot be justified under the garb of preventing misuse (State of Haryana v. Bhajan Lal, 2010).

With respect to the DV Act and the POSH Act, courts have actively interpreted provisions to strengthen enforcement while ensuring procedural fairness. For instance, High Courts have directed stringent timelines for internal committee inquiries under the POSH Act, and emphasized the issuance of protection orders in genuine domestic violence cases. Such jurisprudential evolution indicates a judicial effort to balance protection with rights of the accused, though challenges in uniform implementation persist.

INTERNATIONAL PERSPECTIVES

Comparative socio-legal studies reveal that the paradox of protection laws being *misused* or *underused* is not unique to India. In the United States, Title IX and workplace sexual harassment statutes have faced debates over due process for the accused, prompting rule changes to ensure procedural safeguards (Doe v. University of Michigan, 1988). Similarly, in the United Kingdom, the *Domestic Violence, Crime and Victims Act, 2004* underwent revisions to address concerns about evidentiary standards and reporting barriers.

International human rights frameworks, including the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), emphasize state obligations to protect women from violence while safeguarding fair trial rights. The United Nations' *World Health Organization* reports on gender-based violence underscore underreporting as a global challenge, often rooted in cultural norms and institutional mistrust. These global insights suggest that socio-legal strategies must balance protective objectives with procedural safeguards and address structural impediments to reporting.

CONCLUSION

The socio-legal terrain of women protection laws in India is characterized by complex intersections of legislative intent, societal attitudes, judicial interpretation, and practical enforcement. Misuse and underuse emerge as two sides of the same coin misuse often cited in public discourse reflects anxieties about procedural fairness, while underuse underscores systemic failures to enable real access to justice for victims. Rather than privileging one narrative over the other, policy and legal reform must recognize that both phenomena stem from deeper structural and institutional gaps.

Substantive reforms require data-driven policy making, gender-sensitive law enforcement, improved legal literacy, and robust support systems for victims. Judicial guidelines that promote balanced adjudication, alongside accountability mechanisms to deter frivolous complaints, can help mitigate misuse without discouraging genuine reporting. Ultimately, the pursuit of gender justice depends on a calibrated approach that affirms women's rights while upholding principles of fairness and rule of law.

FUTURE SCOPE

Future research should undertake longitudinal empirical studies on case outcomes under women protection laws, disaggregated by region, socio-economic background, and case type. There is scope for qualitative research capturing victims lived experiences of seeking justice, and comparative studies that evaluate best practices from global jurisdictions. Policy research can also examine the impact of alternative dispute resolution mechanisms, community-based interventions, and technology-enabled access to legal remedies. Additionally, interdisciplinary scholarship incorporating sociology, psychology, and law can enrich understanding of the social realities shaping misuse and underuse dynamics.

References

1. Baxi, U. (1986). *The crisis of the Indian legal system: Public law and legal theory*. Vikas Publishing House.
2. Bathla, S. (1996). Violence against women: A legal doctrine. *Indian Journal of Social Work*, 57(3), 341–353.
3. Chowdhury, S. (2009). Misuse of 498A: A critical examination. *Journal of Indian Law and Society*, 1(2), 26–42.

4. Agarwal v. State of M.P., AIR 2008 SC 1294.
5. State of Haryana v. Bhajan Lal, (2010) 10 SCC 191.
6. Nair, P. (2005). Domestic violence law in India: A critical analysis. *Indian Journal of Gender Studies*, 12(1), 45–69.
7. Kapoor, A. (2007). Implementing the DV Act: Challenges and perspectives. *Legal Studies Review*, 4(3), 89–107.
8. Srinivas, S. (2012). Gender justice and criminal law reforms in India. *Law and Society Journal*, 15(4), 211–235.
9. Rao, M. (2015). Workplace harassment and the POSH Act: Early findings. *Indian Journal of Industrial Relations*, 50(1), 59–79.
10. Indian National Crime Records Bureau. (2020). *Crime in India*.
11. Doe v. University of Michigan, 721 F.Supp. 852 (1988).
12. United Nations. (1979). *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*.
13. World Health Organization. (2013). *Global and regional estimates of violence against women*.
14. Balakrishnan, R. (2018). Gendered narratives and law: Media representations of women protection laws. *Media & Law Journal*, 7(2), 79–101.
15. Singh, P. (2020). Procedural fairness in gender crime trials. *Journal of Criminal Law & Policy*, 14(1), 33–56.
16. Verma, K., & Joshi, D. (2022). Legal literacy and access to justice for survivors of domestic violence. *Indian Journal of Legal Studies*, 9(1), 112–136.
17. Mehta, S. (2023). Under-reporting of gender-based violence: A socio-legal inquiry. *Human Rights Review*, 24(4), 401–428.
18. Kaur, J., & Patel, N. (2024). Re-examining POSH implementation in India: Policy insights. *Journal of Workplace Law*, 19(3), 247–269.