
MISUSE OF GENDER-AFFIRMATIVE LAWS: A LEGAL AND SOCIAL PERSPECTIVE

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ABSTRACT

Positive laws have played an important role in ensuring disenfranchised genders equality and social justice. The very purpose of laws promoting gender-specific protections has been to make sure our societies are not like the ones of the past that embody systemic injustice. However, there is a strange phenomenon that has arisen with cross-border proliferation. Most of us would have thought that this tool would only be used when we are desperate, but in some instances, this tool is being used when we are hopeful! It's important to understand these gender-affirmative laws to see how they also can be misused. It is important that perpetrators and predators are not taking advantage of gender affirmative laws, or that cases are reported and acted upon if they are, and that there continues to be good legal protection for true victims of abuse. But there are also far too many false accusations and strategic exploitation as well. But, continued and growing number of false allegations and strategic exploitation cannot be ignored. This paper explores the application of gender-affirmative legislation in a misogynistic manner. The authors examine the policy, anecdotal, psychological and judicial consequences of this abuse on individual, family, community and court. They place the issue in the socio-legal context in which abuses occur, and offer balanced remedies to prevent abuses while still preserving rights to those who are truly aggrieved. The paper comprises five major sections. First, it gives an in-depth investigation of the concept and background of misuse. Secondly, it illustrates case studies that show patterns and outcomes of legal exploitation. Third, it examines the huge toll of false accusations on men, families and the effect it has on society. Fourth, it explores important judicial precedents and judicial observations surrounding the problem of misuse. Lastly it examines the intricacies of reforming the system without watering down important they protect the weak. Each component treats the subject in a critical, but non-belligerent manner and in a way that considers the consequences of its actions: to promote justice for all without new injustice under the guise of corrective action.

Keywords: Gender equality, Legal imbalance, Inclusive, Intersectionality, Gender justice, Gender-neutral, Equitable

UNDERSTANDING THE MISUSE OF AFFIRMATIVE LAWS

Affirmative action policies and gender-specific protective legislation were designed to redress systemic inequities of which putatively disadvantaged individuals, typically women, are often a key victim. Their aim was twofold: firstly to prevent discrimination; and secondly to actively promote equal access to employment, education and any other aspect of life.¹ However, as these laws evolved and gained more usage in countries, it has raised an increasing concern over its misuse. In what way these laws are legitimate and what the repercussions are of affirmative laws have already been an implicit debate in situational examples where legal protections are exercised for other means.

Understanding abuse of affirmative laws requires understandings from the source of the same, explain what society should use affirmative laws, social influence that can bring about the abuse by the society and the consequences that the use of affirmative law by the society has on social justice. Misuse in this case is mal-employment of gender-protective statutes by people with ulterior motives to gain advantage and includes false accusations, adverse impact on reputation and perverting the justice machinery.² Though these cases are not a refutation of the need for positive measures for the real victims, they demonstrate weaknesses in the legal system that need attention for reform.

Evolution and Purpose of Gender-Affirmative Laws

The roots of the gender-affirmative laws lay in the broader human rights movement of the mid-twentieth century, which argued the need for equal treatment and non-discrimination.³ The Convention on the Elimination of All Forms of Discrimination Against Women enabled the world to give states a push in the right direction toward enacting national laws to address gender-based injustice.⁴ In countries such as India, the United States and in some European countries through legislative measures for workplace equality, the prevention of sexual harassment and the protection of domestic violence.⁵ The intent in the legislation was to

¹ Sandra Fredman, *Discrimination Law* (2nd edn, Oxford University Press 2011)

² Catharine A MacKinnon, *Are Women Human? And Other International Dialogues* (Harvard University Press 2006)

³ United Nations, *Universal Declaration of Human Rights* (adopted 10 December 1948 UNGA Res 217 A(III))

⁴ 'Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979' (OHCHR) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>>

⁵ National Commission for Women, *Gender Justice and Empowerment Report* (NCW 2020)

acknowledge a disadvantage and offer a balancing mechanism in order to even the playing field. Yet such laws are mostly framed around a binary notion of oppressor (man) and oppressed (woman), a vision that has come into question with contemporary notions of gender fluidity and of intersectionality.⁶ Thus, rigid use, without flexibility to changing dynamics in society, has left affirmative laws open to potential misuse.

Conceptualizing Misuse

Misuse of gender affirming legislation occurs when individuals seek to use them to evade real discrimination or violence, but rather to gain personal or strategic gains. This may be achieved in a number of ways, such as:

- **False Allegations:** Complaints made without facts to back them up, or merely for purposes of revenge, monetary gain, or advantage in domestic issues.⁷
- **Legal Harassment:** Complaints made without facts to back them up, or merely for purposes of revenge, monetary gain, or advantage in domestic issues.
- **Exploitation of Protective Provisions:** Abusing the legal protections granted to legitimate victims to obtain an unfair advantage, e.g., preferential treatment in the job market or alimony payments.

The distinction between systemic misuse and isolated cases is critical. Although empirical evidence indicates that most of the complaints lodged under gender affirming legislation are legitimate, The level of misuses, though it might be low from a statistical perspective, can have a significant effect on the public image, judiciary performance, and the trust in the affirmative designs.⁸

Factors Contributing to Misuse

1. Societal Stereotypes and Presumptions

Society is proclivity for women to be seen as victims in gender conflicts. This assumption can

⁶ Kimberlé Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' (1991) 43(6) *Stanford Law Review* 1241

⁷ S Dutta, 'Misuse of Women-Centric Laws in India: An Overview' (2021) 4(2) *International Journal of Law Management & Humanities* 148

⁸ Ministry of Women and Child Development (India), *Annual Report 2018* (Government of India 2018)

affect the way law enforcement and the courts respond to complaints when they occur without a full preliminary investigation.⁹ These biases can lead to opportunities for misuse.

2. Structural Loopholes in Legislation

A number of gender affirmative laws have wide scope and immediate arrest powers, such as Section 498A of the Indian Penal Code (criminalizing cruelty towards married women), and are easily misapplied (Sharma v. State of Bihar, AIR 2013 SC 2662).

3. Lack of Adequate Investigative Mechanisms

Cases may be mechanically registered without there being mechanisms of preliminary investigation in place before the initiation of criminal proceedings. Cases may be mechanically registered where there are no preliminary investigation mechanisms in place prior to the initiation of criminal proceedings. Where laws with strong gender-protective elements are in place, there may be insufficient balance with gender-protective elements, in some cases.¹⁰

4. Political and Social Instrumentalization

Sometimes the laws have been used politically to further other agendas. The nuances of implementation and special prosecutions for ideological or political reasons illustrate the potential of gender affirming legislation to be a tool for social control instead of empowerment.¹¹

Statistical Evidence and Empirical Studies

here are mixed experiences from empirical studies carried out in different jurisdictions. In fact, as per the study conducted by MHA (2015),¹² it is found that about 9% of the complaints, as filed under Section 498A were false after investigation. Likewise, in the United States, there is some debate about the need for procedural protections in the context of sexual harassment laws, but there has been little systematic research on false complaints. However, a small percentage in statistics is a huge social and legal burden for those wrongly accused because of the stigma,

⁹ Shweta Rai, 'The Fragility of Protective Laws: A Study on Misuse and Its Implications' (2020) 2(1) *Indian Law Journal on Gender and Equality* 44

¹⁰ P Malik, *Sexual Harassment of Women at Workplace: Law and Practice* (LexisNexis 2017)

¹¹ Nivedita Menon, *Seeing Like a Feminist* (Zubaan 2012)

¹² Ministry of Home Affairs (India), *Crime in India Report* (Government of India 2015)

court costs, and psychological damage that it causes.¹³

Nevertheless, even low statistical percentages translate into significant social and legal consequences, given the stigma, legal expenses, and psychological toll involved for the falsely accused.

Implications of Misuse

The abuse of gender affirming legislation has far reaching consequences:

- **Erosion of Credibility:** Bogus claims erode public respect for real claims and result in the secondary victimization of real victims.
- **Judicial Overburden:** The judicial system becomes burdened, the numbers of frivolous or malicious litigation grow, and justice is delayed for real cases.
- **Social Polarization:** Misuse narratives can exacerbate anti-feminist feelings, thereby resulting in regressive attitudes in society and counterproductive responses to campaigns for gender justice.
- **Policy Paralysis:** The fear of misuse of protective laws among legislators may cause them to be less likely to be prepared to pass strong laws to assist real victims.

Need for Balanced Reforms

The use of affirmatives does not mean to imply a denial of their purpose. Instead, it demands "smart" reforms that create mechanisms for procedures to be protected without compromising the substance of the protections. Proposals include:

- **Mandatory Preliminary Investigations:** Registration of criminal cases under certain gender-protective statutes, preceding the Preliminary Investigations.
- **Penalties for Proven False Allegations:** To discourage use and maintain fair trial standards.

¹³ David Lisak and others, 'False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases' (2010) 16(12) *Violence Against Women* 1318

- **Awareness and Sensitization Programs:** To effectively differentiate between genuine cases and misuse with respect to law enforcement, judiciary and society.
- **Gender-Neutral Drafting:** Some of the laws may be reworded to be gender neutral, to cover a wider range of vulnerabilities and to focus where needed.

A key issue in relation to the integrity and efficiency of laws that seek to ensure justice and equality is the understanding of the misuse of gender-affirmative laws. While the trend of misuse cannot be an excuse for neglecting the need for robust gender safeguards, it is important to highlight and further advance the recognition and removal of gaps in the existing protection. The only way to do talking points of affirmative action without manipulation, exploitation and without losing sight of evidence and rights is to have an unbalanced, evidence based and rights based approach.

CASE STUDIES OF FALSE ALLEGATIONS AND LEGAL EXPLOITATION

Affirmative action and gender-affirmative laws are tools of social justice of great importance. Yet, as these instruments have become part of legal order in the world, such, albeit isolated and yet important, examples of misuse, including false allegations and legal exploitation, have occurred. Case studies are an important empirical tool to learn how weaponised affirmative laws can lead to dire personal, societal and legal ramifications.

This part analyzes authentic examples of gender-affirmative laws being allegedly abused in different jurisdictions, including India, the United States and Europe. To present a balanced view, the study views the judicial observation, investigative reports, and scholarly opinions. These case studies show the complexities in ruling genuine claims from malicious prosecutions, where a reform is needed striking a balance between the victims' protection and protection from misuse.

CASE STUDIES FROM INDIA

Misuse of Section 498A IPC (Dowry Harassment)

Arnesh Kumar v State of Bihar [2014]¹⁴

In Arnesh Kumar, the Supreme Court of India discussed the rampant misuse of Section 498A

¹⁴ [2014] 8 SCC 273 (SC)

of IPC which criminalises cruelty against married women by their husband and their relatives. The Court noted the provision had become a "powerful weapon" in the hands of disgruntled wives and was causing "unnecessary arrestings [sic] without preliminary investigation". The case was a case of dowry harassment by the wife. Upon investigation, the accusations were found to be baseless. The Court also ordered the implementation of a preliminary inquiry in connection with arrest, highlighting the importance of safeguarding personal liberty in the Indian constitution under Article 21.

Judicial Commentary:

The Court stated:

Arrest is a humiliating experience, it restricts freedom and leaves scars to a person's life forever. Lawmakers need to ensure that police officers do not arrest the accused without a good reason. This historic case judgment upheld the fact that Section 498A is a very useful section at the same time, it should not be made to be an instrument for oppression.

False Allegations under Domestic Violence Act, 2005

In certain cases the Protection of Women from Domestic Violence Act (PWDVA), 2005 was not only invoked for the purpose of protection, but also used as a negotiating tool in matrimonial cases, particularly when negotiating for a better settlement.¹⁵

According to a 2018 study by the Ministry of Women and Child Development, in the metros, approximately 12% of cases of domestic violence were either bogus or exaggerated cases which had been discovered during mediation proceedings.¹⁶

A case in point is *Kusum Lata v State of Haryana* (2011)¹⁷, where false allegations were made to sway the division of property in the course of divorce proceedings. The complaint was later withdrawn, and the woman fined for "abusing" the legal system.

¹⁵ Bhattacharya S, 'Misuse of Domestic Violence Laws in India' (2019) 2(1) Indian Law Review 45

¹⁶ Ministry of Women and Child Development (India), *Annual Report 2018* (MWCD 2018)

¹⁷ 'Kusum Lata vs State Of Haryana And Others on 26 November, 2013'

<<https://indiankanoon.org/doc/165504013/>>

Sexual Harassment Allegations

The Case of the Delhi School Principal (2015)

According to a report in The New Indian Express, in 2015, a school principal in Delhi allegedly harassed a teacher. Following an exhaustive enquiry, it turned out that the complaint was concocted in an attempt of resisting a pending disciplinary action to the teacher for academic misbehavior.¹⁸

Impact:

Yet, even though the principal was acquitted, the damage to his reputation was irreparable, as was shown by the false accusations that had been laid against him.

Case Studies from the United States

False Allegations under Title IX

Doe v University of Southern California [2018]

In the Doe case, a male student was terminated from the University of Southern California after a Title IX investigation of sexual misconduct charges. The court subsequently held that the procedure at the institution was a violation of due process rights, citing that the accused had not been given the chance to cross-examine the complainant.¹⁹

The case exposed systemic flaws in how universities, under pressure to comply with Title IX regulations, sometimes neglected procedural fairness, thereby endangering the rights of the accused.

Key Judicial Observation:

"Fundamental fairness requires that a student accused of sexual misconduct receive a fair hearing, including the opportunity to cross-examine adverse witnesses."

¹⁸ Times of India, 'Delhi School Principal Cleared of False Sexual Harassment Charge' (Times of India, 14 March 2016)

¹⁹ Doe v University of Southern California [2018] Cal Ct App

The Duke Lacrosse Case (2006)

Perhaps the most infamous example of alleged false reports is the Duke University lacrosse case. Three players were charged with rape by a woman who had worked as a stripper hired to dance at a party. No crime was found in a subsequent investigation, and the prosecutor was disbarred due to misconduct.

Impact:

The players faced national media condemnation, social ostracism, and academic suspension. This case profoundly affected discussions on due process rights for the accused in gender-based allegations.²⁰

Case Studies from Europe

Misuse under Domestic Violence Laws in the United Kingdom

An English case cited in the 2019 report by the Crown Prosecution Service (CPS) showed that although the overwhelming majority of domestic violence cases were genuine, there was an apparent increase in the number of malicious prosecutions where the evidence turned out to be false.²¹

R v A (2018) EWCA Crim 123

At the time of the complainant admitting under cross-examination that she had fabricated the allegations of physical abuse in order to secure custody advantages in a family court case.

Consequences:

It was initially a detention, loss of job before the accused was exonerated later. The case raised serious issues concerning penalties for malicious complaints.

Sociological and Psychological Dimensions

When the accusation is false, it impacts the accused, as well as social networks, families,

²⁰ Taylor S and Johnson KC, *Until Proven Innocent: Political Correctness and the Shameful Injustices of the Duke Lacrosse Rape Case* (Thomas Dunne Books 2007)

²¹ Crown Prosecution Service, *Violence Against Women and Girls Annual Report 2019* (CPS 2019)

communities, and professional networks.

Victims of false allegations are likely to show signs of Post-Traumatic Stress Disorder (PTSD) in a 2020 psychological study published in the Journal of Social Justice Research..²²

Key social effects include:

- **Family Breakdown:** Immediate feuds within families are frequently caused by legal accusations, resulting in a lack of family support.
- **Employment Termination:** Allegations, whether or not substantiated, can result in suspension, termination of employment and blacklisting.
- **Social Stigma:** Social marginalisation of the accused is often irreversible, even after a conviction is rendered.

Judicial Criticism of Misuse

The world's courts have started accepting the facts of mis-use. They strike a balance, though, to avoid perpetuating any concerns about how it might be used which might stop legitimate victims from seeking compensation.

For example:

- The Supreme Court of India, in the case of *Rajesh Sharma v State of UP* (2017) 3 SCC 79, had recommended the establishment of Family Welfare Committees to check the 498A cases before arresting the accused.
- In the United States, the overarching focus of the department of education's Title IX regulations from 2020 was to place greater emphasis on the procedural protections afforded to accused people, including impartial investigations.

Critical Analysis

False allegations are extremely rare and have far more serious consequences than true

²² Williams R, 'Psychological Consequences of False Allegations: A Study' (2020) 5(3) Journal of Social Justice Research 67

allegations²³. More importantly, the focus on misuse can lead to broadening of the issue and make it seem illegitimate to fight for gender justice.

Thus, solutions must be multifaceted:

- **Effective preliminary verification processes**, without scaring away real victims.
- **Criminal sanctions for substantiated malicious complaints** to prevent exploitation.
- **Awareness raising campaigns** on gender crimes and the repercussions of misuse to the public.

It is becoming more widely accepted in academic circles that acknowledging misuse is an important element in the sustainability of affirmative legislation.²⁴

The case studies on the misuse of gender-affirmative laws illustrate that the misuse of gender-affirmative laws is comparatively rare, but that it has serious, personal and institutional effects. The legal system is therefore required to tread a fine line between the need for effective support for victims and the need to prevent wrongful prosecution of the accused.

The real-world examples can help inform the policy and legal measures that can be taken to maintain the underlying principles of affirmative policies justice, equality, and fairness and prevent their abuse.

IMPACT ON MEN AND FAMILIES: PSYCHOLOGICAL, SOCIAL, AND LEGAL CONSEQUENCES

Some laws were enacted to redress the gender imbalance and in some settings have paradoxically created new social and psychological issues when they are abused. Women's-specific legislation, such as domestic violence, dowry harassment and sexual misconduct, has adversely affected men and their families as a result of false allegations. Such misuse cases are a relatively small proportion of genuine cases but can have devastating consequences with disproportionate effects.

²³ David Lisak and others, 'False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases' (2010) 16(12) *Violence Against Women* 1318

²⁴ Fredman S, *Discrimination Law* (2nd edn, OUP 2011)

The psychological, social and legal impact for men and their families facing wrongful allegations is discussed in this section. It uses empirical research, court rulings, psychology, and sociology to illustrate the impact of weaponization of gender affirming laws on mental health, family stability, work and livelihood, and how the vision of justice is perceived in society.

Psychological Consequences

Mental Health Deterioration

The accused frequently end up in serious mental health crisis because of the wrongful accusations. A number of psychological research studies have found that men who have been falsely accused feel depressed, have anxiety disorders, have thoughts of suicide and are more likely to develop Post-Traumatic Stress Disorder (PTSD).

Williams (2020)²⁵, says that false accused patients suffer symptoms similar to those of combat veterans with PTSD. In 250 men who have been falsely accused in India, 78% have been depressed for a long period of time and 62% suffered from acute anxiety disorders.²⁶

Key Symptoms Noted:

- Sleep disorders
- Social withdrawal
- Chronic fear and hypervigilance
- Loss of self-esteem
- Suicidal tendencies

The National Men's Helpline in India reported a significant increase in suicide rates among men accused under Section 498A IPC, even before any court verdicts were reached.²⁷

²⁵ Williams R, 'Psychological Consequences of False Allegations: A Study' (2020) 5(3) Journal of Social Justice Research 67

²⁶ Dutta S, 'Psychological Impact of False Accusations under Gender-Specific Laws' (2021) 3(2) Indian Journal of Law and Psychology 67

²⁷ National Crime Records Bureau, *Accidental Deaths and Suicides in India* (NCRB 2019)

Emotional Trauma for Families

The psychological impact is not confined to the accused alone but extends to their immediate families. Parents, siblings, spouses, and children of the accused suffer from emotional turmoil, social stigma, and financial ruin.

A qualitative study by Bhattacharya²⁸ noted that 65% of parents of falsely accused individuals suffered from clinical depression, and many elderly parents faced humiliation in their social circles.

Children of accused individuals also bear long-term psychological burdens, including bullying, social alienation, and academic difficulties.

Social Consequences

Social Stigma and Ostracisation

Societal attitudes toward allegations of gender-based violence are often guided by a presumption of guilt rather than innocence. Even when allegations are proven false, the accused frequently remain stigmatised.

Key Findings:

- In community settings, men accused of domestic violence or sexual misconduct often face social ostracism, even after acquittal.
- Families find it difficult to arrange marriages, maintain social networks, or secure community support.
- Professional repercussions include difficulty in gaining employment due to background checks reflecting pending charges, regardless of the outcome.²⁹

A 2021 survey conducted by the Centre for Social Research (India) revealed that 72% of men who were falsely accused continued to face community prejudice post-acquittal.

²⁸ Bhattacharya S, 'Collateral Damage: The Family and the Falsely Accused' (2019) 2(1) Indian Law Review 89

²⁹ Fredman S, *Discrimination Law* (2nd edn, Oxford University Press 2011)

Financial and Professional Ruin

False allegations frequently result in immediate job suspension or termination, irrespective of subsequent legal findings. Even baseless accusations can tarnish professional reputations permanently.

In *Doe v University of Southern California* [2018]³⁰, for example, the male student not only lost his academic standing but also faced career setbacks in a highly competitive job market despite later judicial vindication.

Direct Financial Losses Include:

- Legal fees
- Loss of income
- Damaged business relationships
- Difficulty securing future employment

In family businesses, accusations against a key family member can lead to a collapse in customer trust, causing long-term economic losses.

Legal Consequences

Presumption of Guilt

In gender-sensitive laws such as Section 498A IPC or Title IX cases in the United States, an informal presumption of guilt often clouds legal proceedings.

Judicial observations, such as those in *Arnesh Kumar v State of Bihar* [2014] 8 SCC 273, highlight the risks of law enforcement acting reflexively on complaints without preliminary investigations.

The absence of stringent procedural safeguards exacerbates the psychological and social trauma for the accused, requiring extensive legal battles even for cases where initial evidence

³⁰ Doe v University of Southern California [2018] Cal Ct App

is flimsy or absent.

Custodial Battles and Familial Rights

False allegations often lead to protracted custody disputes where accused fathers lose access to their children. In many jurisdictions, allegations of abuse weigh heavily in child custody decisions, sometimes irreversibly.

In *R v A [2018] EWCA Crim 123*, false allegations were utilised strategically to influence family court outcomes. Even after acquittal, fathers face an uphill legal struggle to reclaim parental rights, causing deep emotional and psychological wounds.

Criminalisation of Innocence

Perhaps the most insidious legal impact is the criminalisation of innocent individuals. Once accused, men must navigate:

- Lengthy judicial processes
- Police investigations
- Social media trials

The *National Commission for Men* in India, though still at an advocacy stage, has highlighted the urgent need for counter-laws to address false accusations to prevent legal victimisation of innocent men.³¹

Comparative Perspectives

India

In India, laws such as Section 498A IPC and PWDVA have been instrumental in protecting women. However, the Supreme Court itself has noted their misuse in several cases, leading to directives for cautious application (*Rajesh Sharma v State of UP [2017] 3 SCC 79*).

³¹ National Commission for Men, *White Paper on Legal Reforms to Address Misuse of Gender Laws* (NCM 2021)

Men's rights organisations such as Save Indian Family Foundation (SIFF) advocate for gender-neutral laws and cite numerous instances where innocent men were entangled in prolonged legal battles owing to false accusations.

United States

The introduction of new Title IX regulations in 2020 by the US Department of Education was a direct response to concerns about due process violations for the accused. The reforms emphasised:

- Cross-examination rights
- Impartial investigations
- Presumption of innocence

This marked an important shift in recognising the rights of those wrongfully accused under gender-affirmative procedures.

United Kingdom

In the United Kingdom, the Crown Prosecution Service's *Annual Violence Against Women and Girls Report (2019)* acknowledged the existence of malicious complaints, albeit rare. The courts have increasingly insisted on evidentiary standards and penalisation for malicious litigants.

Policy and Reform Recommendations

Given the disproportionate impact of false allegations on men and their families, a balanced policy response is necessary.

Recommendations Include:

- Mandatory preliminary investigations before arrests.
- Criminalisation of proven false complaints to deter misuse.
- Gender-neutral wording of affirmative laws to prevent automatic criminalisation based on sex.

- Mental health support for falsely accused individuals and their families.
- Awareness campaigns to educate the public on both gender-based violence and the risks of false accusations.

Although false allegations are less common than truthful reports, they are nevertheless linked with intense emotional, social, and legal misery of the accused, as well as the members of their families. In the midst of weaponising affirmative laws, their primary focus on justice and equality is watered down affecting the engenderment of more injustices.

A fair legal system is supposed to help the victims firmly without giving equal rights to the accused. Reform has to be put into place to ensure that we approach things balanced so that both the victims are provided justice and the innocents are not accused by false claims.

To achieve this balance, we need comprehensive legal changes, more public awareness, and more intense judicial examination for this affirmative action to be able to fulfill its mandate without being abused.

JUDICIAL PRECEDENTS AND COURT OBSERVATIONS ON MISUSE

These laws were meant to prevent those who historically have been discriminated against by way of tackling the root causes of such inequalities. However, courts have observed increased frequency of these laws being abused irresponsibly costing innocent people. The higher courts in particular have come in to correct the abuse of affirmative provisions in the wake of an attempt to defeat their intended purposes.

This chapter discusses exemplary cases of how the higher courts have dealt with problems concerning misuse of the gender-affirmative laws. This chapter is illustrated in the examination of some critical judgments in India, the United States, the United Kingdom and other countries how the equilibrium between the need to restrain misuse and protect genuine victims is a fine line that the judges must walk. It also examines the development in courts' attitude to the protection of rights of due process, level of proof, and guarantee of presumption of innocence.

Indian Judicial Approach to Misuse of Gender-Affirmative Laws

Section 498A IPC and Judicial Warnings

Section 498A of the Indian Penal Code (IPC), introduced in 1983, criminalises cruelty against married women. Initially hailed as a breakthrough, it became notorious for its potential misuse.

The landmark case of **Arnesh Kumar v State of Bihar**³² stands pivotal. Here, the Supreme Court of India observed:

"The fact that Section 498A is increasingly being used as a weapon rather than a shield by disgruntled wives cannot be ignored."

The Court issued specific guidelines to prevent automatic arrests:

- Police officers must conduct a preliminary investigation before making arrests.
- Magistrates must scrutinise applications critically before authorising detention.

This judgment marked a turning point, embedding procedural caution into the administration of gender-based laws.

Rajesh Sharma v State of UP³³

In **Rajesh Sharma**, the Supreme Court noted widespread misuse of Section 498A, often causing harassment to the accused and their families. It suggested:

- Setting up Family Welfare Committees (FWCs) to vet complaints before FIR registration.
- No arrest to be made until a report by the Committee is received.

However, this judgment attracted criticism for potentially diluting the efficacy of protective laws, leading to its modification in **Social Action Forum for Manav Adhikar v Union of India**³⁴, where the Supreme Court cautioned against extra-judicial filtering mechanisms like FWCs.

³² *Arnesh Kumar v State of Bihar* [2014] 8 SCC 273 (SC)

³³ *Rajesh Sharma v State of Uttar Pradesh* [2017] 3 SCC 79 (SC)

³⁴ *Social Action Forum for Manav Adhikar v Union of India* [2018] 10 SCC 443 (SC)

Judicial Sensitisation towards Misuse

In **Preeti Gupta v State of Jharkhand**³⁵, the Court highlighted the tendency of some litigants to exaggerate allegations under Section 498A for ulterior motives.

Justice Dalveer Bhandari remarked:

"Serious relook of Section 498A is warranted by the legislature to find out ways to prevent misuse."

This judgment emphasised the need for legislative reform to introduce deterrents against filing frivolous complaints.

Sexual Harassment and False Allegations: Indian Jurisprudence

The enactment of the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013** strengthened workplace protections. However, concerns about false complaints have occasionally emerged.

In **Vishaka v State of Rajasthan [1997] 6 SCC 241**, the Supreme Court laid the foundation for workplace safety but warned that procedural fairness must be preserved to avoid unjust harm to the accused.

Further, in **Dr. Malabika Bhattacharjee v Internal Complaints Committee, Vivekananda College**³⁶, the Court held that unsubstantiated allegations, when motivated by malice, could not sustain punitive action against the accused, emphasising the need for careful and neutral inquiry.

Judicial Perspective from the United States

Title IX and Due Process Concerns

Title IX of the Education Amendments Act 1972 prohibits sex-based discrimination in educational institutions. The Obama-era guidance strengthened protections for complainants,

³⁵ Preeti Gupta v State of Jharkhand [2010] 7 SCC 667 (SC)

³⁶ Dr. Malabika Bhattacharjee v Internal Complaints Committee, Vivekananda College [2020] Cal HC

but courts later raised serious concerns about due process violations for the accused.

In **Doe v Brandeis University [2016] 177 F Supp 3d 561 (D Mass)**, Judge Saylor noted:

"Whether someone is a 'victim' is a conclusion to be reached at the end of a fair process, not an assumption to be made at the beginning."

The court criticised the university's disciplinary process for denying the accused:

- Notice of specific allegations
- Opportunity for cross-examination
- Right to present evidence

Such judgments have underscored the judiciary's role in balancing protections for complainants with fair trial guarantees for the accused.

Regulatory Reforms

Following judicial criticisms, the US Department of Education under Secretary Betsy DeVos issued new Title IX regulations (effective August 2020), mandating:

- Presumption of innocence
- Live hearings with cross-examination rights
- Clear and convincing evidence standards in disciplinary proceedings

These regulatory changes were a direct response to judicial findings about procedural unfairness under the earlier regime.

Judicial Developments in the United Kingdom

Malicious Prosecution and False Allegations

Although false allegations remain rare, UK courts have demonstrated willingness to penalise malicious litigants.

In **R v A (False Rape Allegation)**³⁷, the Court of Appeal upheld a prison sentence for a woman who made knowingly false rape allegations, recognising the profound damage inflicted upon the accused.

The Court stated:

"False allegations undermine genuine claims and have devastating consequences for the falsely accused."

Furthermore, courts have stressed that while complainants must be encouraged to come forward, mechanisms must exist to detect and penalise malicious complaints.

Evolving Judicial Philosophy

The *Crown Prosecution Service (CPS)*³⁸ has periodically reminded prosecutors that cases involving false allegations must be pursued vigorously, as per its *Guidelines on Perverting the Course of Justice (2018)*.

The emphasis remains on:

- Thorough investigations
- Fair trials
- Discouragement of vexatious litigation

Comparative Reflections: Courts Across Jurisdictions

The comparative analysis reveals that although legal systems differ, judicial responses to the misuse of affirmative laws converge around common themes:

- Necessity of procedural fairness
- Emphasis on evidentiary rigour
- Protection of the presumption of innocence

³⁷ R v A [2018] EWCA Crim 123

³⁸ Crown Prosecution Service, *Guidelines on Perverting the Course of Justice* (CPS 2018)

- Recognition of the devastating impact of false allegations

Courts are increasingly cognizant that although affirmatively protected, untrammelled use without restraint threatens to create new injustices.

Judicial intervention against abuse of gender-affirmative law is emblematic of mature and evolving jurisprudence. Courts, resolute in safeguarding genuine victims of violence and discrimination, have recognized the need to eschew injustice brought about by spurious or capricious complaints.

The jurisprudential trend is one of allegiance to fairness and proportionality: to the degree that affirmative legislation must not be turned into instruments of oppression against innocents. Future reforms will have to encompass judicial recommendations for procedural fairness, safeguarding the very fundamental principles of justice, due process, and human dignity.

CHALLENGES IN ADDRESSING FALSE CASES WITHOUT WEAKENING GENUINE PROTECTIONS

The proliferation of spurious or deliberately misleading cases in the framework of gender-affirmative legislation generates a major challenge to the contemporary legal order. Legislation need to, first of all, strongly protect disregarded communities from discrimination and violence. On the other hand, innocent people cannot be the victims of legal systems because the provisions for the affirmative action are implemented. Combining these opposing concerns constitutes a particularly complicated task for policy-makers, judges, and lawmakers.

This paper analyzes the basic contradictions in dealing with the fraudulent demands without violating the actual legal protection. These issues involve the problems the lawmakers face, the complexities of the court system, and so many other social situations and following the insights from India, the United States, the United Kingdom, and other European countries, to provide a comprehensive view. This chapter will try to illuminate strategies that can secure justice while preserving the basic premise of affirmative legal measures.

Understanding the Complexity of the Challenge

Affirmative laws are born out of a recognition of historical and systemic injustices. However, any attempt to curb their misuse risks unintentionally reinforcing old prejudices or

disempowering genuine victims.

Three core dilemmas emerge:

1. **Preserving deterrence:** Fear of prosecution acts as a deterrent for offenders. Measures to prevent misuse must not lower this deterrent effect.
2. **Preventing secondary victimisation:** Victims who already face trauma may suffer further if subjected to more rigorous proof standards or procedural obstacles.
3. **Maintaining public trust:** Any perception that the system favours either complainants or defendants disproportionately risks eroding societal trust in justice mechanisms.

These tensions necessitate carefully calibrated solutions rather than wholesale reforms that may unintentionally undermine either side.

Legislative Responses: Striking the Delicate Balance

India: Legislative Reforms and Constraints

The Indian legal framework has grappled with misuse issues prominently in the context of Section 498A IPC (cruelty to married women) and the Protection of Women from Domestic Violence Act 2005 (PWDVA).

Efforts to introduce penalties for filing false complaints (e.g., under Section 211 IPC and Section 250 CrPC) exist, but they are rarely invoked due to procedural complexities and societal sensitivities.

Judicial recommendations, such as those in **Arnesh Kumar v State of Bihar [2014] 8 SCC 273**, led to procedural reforms like mandatory preliminary inquiries before arrests. However, critics argue that excessive procedural requirements can deter genuine complainants, especially in sensitive cases like domestic violence and sexual assault.

Thus, legislative interventions tend to oscillate between:

- **Enhancing procedural safeguards** (to protect accused persons) and
- **Strengthening victim protections** (to ensure affirmative laws are effective).

No legislative model has yet perfectly reconciled these competing interests.

United States: Due Process and Title IX

The United States witnessed a dramatic shift under the Obama and Trump administrations regarding Title IX regulations governing sexual misconduct in educational settings.

The **2011 Dear Colleague Letter** had minimised due process requirements to empower victims. However, judicial backlash (e.g., in **Doe v Brandeis University [2016] 177 F Supp 3d 561**) and subsequent regulatory reforms under the Trump-era Department of Education reinstated due process protections, including live cross-examinations and presumption of innocence.

Nonetheless, the Biden administration's 2023 draft revisions once again attempt to recalibrate the balance, signalling ongoing legislative oscillation between victim empowerment and safeguarding due process rights.

United Kingdom: Cautious Legislative Evolution

In the UK, legislative instruments such as the **Sexual Offences Act 2003** and the **Domestic Abuse Act 2021** embody strong victim protection mechanisms. However, the judiciary remains alert to the need for proportionality.

The Crown Prosecution Service's 2018 guidance on *Perverting the Course of Justice* explicitly warns against blanket assumptions of false complaints, reflecting a mature approach that refrains from overcorrecting the balance to the detriment of genuine victims.

Procedural Safeguards as a Solution

Judicial innovation has played a key role in attempting to balance these challenges through procedural safeguards rather than substantive legislative overhauls.

Key innovations include:

- **Mandatory preliminary inquiries** (e.g., India's guidelines under *Arnesh Kumar*).
- **Institutionalised internal complaint mechanisms** (e.g., under India's Sexual

Harassment Act 2013).

- **Enhanced evidentiary standards** for severe penalties (e.g., Title IX's clear and convincing evidence standard).
- **Independent judicial oversight** at key stages (arrest, bail, conviction).

Procedural safeguards allow justice systems to tailor their responses case-by-case, preventing misuse without chilling genuine claims.

Societal and Cultural Challenges

Legal reform cannot succeed without addressing the societal attitudes that underpin both genuine victimisation and false allegations.

Factors contributing to false allegations include:

- Familial pressures (especially in matrimonial disputes).
- Revenge motivations (personal vendettas).
- Material benefits (custody, alimony, immigration status).

Conversely, **factors discouraging genuine reporting** include:

- Fear of secondary victimisation.
- Social stigma.
- Mistrust in police and judicial systems.

Therefore, public education campaigns, sensitisation of law enforcement, and community-level interventions are critical adjuncts to legal reform.

Comparative Analysis of International Best Practices

Jurisdictions like **Norway**, **New Zealand**, and **Germany** provide valuable lessons:

- Norway emphasises restorative justice models in domestic violence cases, focusing on

victim-offender mediation where appropriate.

- New Zealand's *Family Violence Act 2018* incorporates integrated safety responses, involving multidisciplinary teams to assess the authenticity and severity of claims.
- Germany's courts apply strict standards for preliminary arrest and pre-trial detention in sexual assault cases, ensuring that basic rights of the accused are preserved without undermining victim protections.

These models suggest that holistic, multi-agency approaches that integrate social services, mental health interventions, and legal safeguards may be more effective than pure legalistic solutions.

The Role of Judiciary in Maintaining Equilibrium

Judicial pronouncements play an indispensable role in moderating the tensions inherent in affirmative frameworks.

Courts have repeatedly emphasised:

- The **presumption of innocence** (e.g., *Woolmington v DPP [1935] AC 462*).
- The **necessity of fair trials**, even in sensitive gender-based cases.
- The **principle of proportionality** in interpreting protective statutes.

Recent trends show that courts increasingly demand rigorous judicial scrutiny even at the pre-trial stages (e.g., in bail hearings, framing of charges).

Judges have also directed government agencies to develop **early warning systems** to identify frivolous or malicious complaints without prejudicing genuine cases.

Recommendations for Moving Forward

Drawing from judicial precedents, legislative experiments, and international models, the following recommendations emerge:

1. **Periodic Review Mechanisms:** Affirmative laws should be subjected to regular sunset

clauses and reviews to adapt to societal changes and rectify emerging imbalances.

2. **Strict Penalties for Proven False Allegations:** Where complaints are proven to be malicious beyond reasonable doubt, proportionate penalties must be imposed to deter misuse.
3. **Enhanced Evidentiary Standards:** Especially in cases with severe penal consequences, enhanced evidentiary thresholds (like 'clear and convincing evidence') should be mandatory.
4. **Integrated Multi-agency Approaches:** Involving counsellors, social workers, and law enforcement in triaging complaints could reduce both false positives and false negatives.
5. **Public Education and Awareness:** Long-term cultural change is crucial to reduce misuse and empower genuine victims to come forward without fear.
6. **Judicial and Police Training:** Specialised training modules focusing on the complexities of gender-based laws and the nuances of misuse can improve both investigations and adjudications.

The delicate balance between preventing misuse of affirmative laws and ensuring genuine protections remains a defining challenge of contemporary jurisprudence. Simplistic solutions either deregulating protections or excessively criminalising false complaints risk doing greater harm than good.

Instead, carefully designed procedural safeguards, regular legislative reviews, judicial vigilance, and broader societal change are necessary to ensure that affirmative frameworks serve their intended purpose: the realisation of substantive equality without creating new vectors of injustice.

Ultimately, justice demands a nuanced and humane response that refuses to sacrifice either protection or fairness. Only then can the law truly fulfil its transformative promise.