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# Exigency of Gender Neutrality in Sexual Offences Legislation

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## ABSTRACT

*Gender neutrality is a bone of contention in contemporary India. Indian penal laws are biased, unfavorable, and silent on the nitty-gritty of rape against males and other genders. It is all moonshine to frames laws based on prejudice and the stereotype that a male is the sole perpetrator of sexual offences. Penal law framers should consider males and other genders also as a “part and parcel of society”. It is astonishing to know that a “lot of persistent and predominant lacunas still haunt the efficacy of the archaic punitive legislation of India”. Gender-neutral laws are predominantly an acknowledgment of the victimization of a person irrespective of his gender; thereby, it is not at all in any way mitigating or negating the victimization of women. The researcher intends to simply “recognize the victimization of another vital class of the society, i.e., male and other genders”. Moreover, gender-neutral laws seek to grant the existence of equal protection, sanction, and opportunities to all the gender without any kind of harmful gender discrimination. The spirit of Article 14 shall be implemented only if sexual offenses are made gender-neutral. Recognition of gender-neutral laws is not anti-female perception, nor is it snatching rights conferred upon women. It only intends to make it noticeable to the lawmakers how Indian penal laws are ignorant of other genders.*

*This paper contains both doctrinal and empirical data. The goal of this research paper is to enact a law to curb gender biases and promote gender neutrality in India.*

**Keywords** – Gender Neutrality, Male, Sexual offenses, discrimination, etc.

## I. INTRODUCTION

Indian sexual offences laws are discriminating and bigotry; it is only based on a myth that in every circumstance, an only woman will be a genuine victim, but in practicality male and the third gender can be genuine victims too. Gender neutrality is still not considered a felony within the land of Indian law. Gender neutrality in the ambit of rape displays cutting-edge understandings of the nature, consequences, and various dimensions of non-consensual penetrative intercourse and is a proven way to label the sexual offence appropriately.

The conjuncture of Gender-neutral is a prima facie-sensitive issue in cutting-edge, and it needs

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an hour to take timely initiatives for safeguarding the rights of all gender as a whole. Over the past few centuries, women have been seen as a degraded and oppressed class in society, resultantly leading to the enactment of special laws aimed at protecting them as a shield rather than a weapon against any sexual crimes, unfortunately, women are abusing the shield of special laws by filing false laws suits, Even the Supreme Court imitated this desire to protect men from women's false accusations calling them "*trivial and irresponsibly filed in the heat of the moment*".<sup>2</sup> Therefore the time has come to amend long-standing discriminating and biased legislation to cope with the contemporary prerequisite of modern Indian society.

It is undeniable that women are always the target of brutal sexual violence and cruelty, but it is not legally justified to ignore nearly the entire transgender population men are also victims of sex crimes and brutality, but such offence has stood and unreported because of social stigma and most of them stay in silence. Therefore, recognition of rights and protection of these another class of society is extremely "*fundamental and important*". This paper ruminates on various genders specific criminal laws in India, specifically comprises sexual crimes, cruelty as well as the imbalances highlighted in these gender-specific legislations. Gender-neutral laws in India are "non-existent" and "complex", and depend on a legal understanding of legislators because existing laws are somehow classifying and categorising every individual based on their gender, which is strictly "*barred below Article 15 of the Indian Constitution*".

### (A) Literature Review

1. **Brownmiller** (1975) claims that "only men can coerce women for sexual intercourse."
2. **Sreekumar** (1992), in his research paper, highlights the "homosexual gang rape was common in Indian prisons."
3. **Novotny** (2003), in her article in "The Seattle Journal of Social Justice, expresses concern that gender-neutral rape laws would lead to negative consequences for female victims of rape and calls it backlash against feminism."
4. **People union for civil liberties** (2003), in its, "study of Kothi and hijra sex workers in Bangalore, has concluded that human rights violations against the transgender community are widespread and laws protecting them are urgently required".
5. **Rumney** (2007) expresses "concern that effects of rape on male victims go unnoticed, and criticizes feminist critics of gender for ignoring male victimization".

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<sup>2</sup>Ms. Nidhi Kaushik v. Union Of India & Ors, AIR 2014(India).

6. **Storr** (2011), in his article, “The Guardian, has described his meeting with Ugandan survivors of sexual violence in times of war and has exposed the extent of male rape in war crimes.”

7. **Justice Verma Committee report** (2013) has “suggested a gender-inclusive law for the rape victim while retaining a gender-specific law for the perpetrator”.

8. **Krishnan**, in 2013, reported in the article of the Hindu, “wanted gender just rape laws ‘ says that gender neutrality of rape laws will discourage women from even filing complaints’.

### **(B) Research Methodology**

In this research paper, I am going to do doctrinal and empirical research. The aim of this research paper is in the qualitative field of research. The data is collected by both sources i.e., primary source and secondary source. The primary data is collected through an online survey via Google form. The secondary data is collected by the many websites, articles, journals, and research papers that are available on the internet.

### **(C) Statement of Problem**

The main objective of this study is to highlight the urgency of reforming the rape law from gender-specific to gender-neutral law. Some major concerns in this respect that needs to be addressed are

1. What is the meaning of gender-neutral laws?
2. Why is there a need for gender-neutral laws?
3. What are the effect and consequences of enactment and implementation of gender-neutral laws?

### **(D) Remarkable Law Reforms**

This head summarizes all the important law reforms initiatives by the Government of India, since 1980s to the recent 2022 amendments. It is important to understand the social context and the mind-set of the people in India before we jump to the gender neutrality aspect.

#### **A. The 172<sup>nd</sup> Law Commission Report of India**

For the very first time the concept of gender neutral laws came into existence through The 172<sup>nd</sup> Law Commission Report of India in March 2000 specifically good offices and initiated that the rape laws in India should be gender neutral for both the victim and the offender. The Committee was of the view that “*rape and sexual assault are not merely crimes*

of passion but an expression of power”.<sup>3</sup> Simultaneously a gender neutral bill 2019 was suggested.

## B. GENDER NEUTRAL LAWS BILL, 2019

Gender neutral laws for the very first time knock the doors of court in 2018 when non-governmental organisation (NGO) files Public Interest Litigation in Honourable Supreme Court seeking amendment in rape laws and the name of the case is *Criminal Justice Society of India v. Union of India*,<sup>4</sup> regrettably the honourable Supreme Court denied petition asking for the modification of rape laws by making them gender-neutral and stated that gender neutral law will cause “more harm than good”, consequently apex court given punch line that “the Parliament has to make a call in the subject.”<sup>5</sup>

In July 2019, “KTS Tulsi”, a senior Advocate and renowned politician, proposed a bill in the “Rajya Sabha to make section 375 and section 376 of IPC gender-neutral”. The bill intends to propose few major amendments in Indian penal laws concerning to sexual offences by “substituting the word “any man” and “any women” to “any person” but unfortunately it stand still and aborted”. The urgent need for gender neutral laws came into picture when “Delhi Commission of Women” surveyed and reported that “rights provided to women are misused exponentially between the years of 2013-2014 in which 53.2 per cent rape cases filed are false”<sup>6</sup>. The Government of India found that of total surveyed who reported, “experienced brutal sexual abuse included rape or sodomy were males 57.3% of the time”. “Insia dariwala (Co- Founder Sahiyo ) surveyed 1500 males out of which 71% of men reported were sexually abused and raped”.<sup>7</sup>

Sexual offences in India are mostly women centric, highly discussed in respect of women consequently in cutting-edge the facets of crime are diversified and ignoring the sexual crimes committed against men and third genders. Due to stereotypical thought and prejudice, males and third genders are also felt degraded while reporting cases because it is portrayed in society that men can't be raped this emphasis the lacuna on a part of law framers too because while

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<sup>3</sup> PRS LEGISLATIVE RESEARCH, JUSTICE VERMA COMMITTEE REPORT SUMMARY PERTAINING TO INDIAN PENAL CODE, 1860 (DECEMBER 23, 2012).

<sup>4</sup> *Criminal Justice Society of India v. Union of India*, AIR 2018(India).

<sup>5</sup> *SC Declines to Make Laws on Rape Gender-Neutral*, OUTLOOK (Feb 02, 2018), <https://www.outlookindia.com/website/story/sc-declines-to-make-laws-on-rape-gender-neutral/307734> (Last visited on April 03, 2022).

<sup>6</sup> *53.2 percent rape cases filed between April 2013-July 2014 false, says DCW*, INDIA TODAY (Dec 29, 2014), <https://www.indiatoday.in/india/north/story/false-rape-cases-in-delhi-delhi-commission-of-women-233222-2014-12-29> (Last visited on April 03, 2022).

<sup>7</sup> John Stokes, *India's Law Should Recognise That Men Can Be Raped Too*, QUARTZ INDIA (Sept 12, 2014), <https://qz.com/india/264512/indias-law-should-recognise-that-men-can-be-raped-too/> (Last visited on April 04, 2022).

framing laws on sexual offences they have tremendously ignored men and third gender

## II. GENDER NEUTRALITY

### (A) Meaning of Gender Neutrality

Gender neutrality is a concept which nullifies the discrimination on the basis of gender; it is annulling the stereotypic thoughts of masculinity and femininity and elucidate that all genders should be equally protected in the eyes of law irrespective of their gender. *De facto* every individual has an inherent right to sexual integrity and autonomy. Gender neutrality in sexual offences laws specifically sexual assault and rape laws are the crucial area of concern for which framers are somehow ignorant towards the male and the other genders.

### (B) Neutrality in Context of Victim

It is unfortunately a typical stereotype, prejudice and myth that in case of sexual offences only women will be a victim and men will be a sole perpetrator but in reality men and other gender can be a victims too.

#### A. Status of Male Rapes in India

With the development of society and law, we have to accept the facts that in our modern society, it is not only women but also men are subjected to sexual assault, harassment and even penetrative acts through coercion. Although male on male assaults are addressed by Section 377 of IPC to a certain extent, there is no such legal machinery for knocking at the doors of the justice for a male victim in India if the perpetrator is a female.

#### *People v. Yates*,<sup>8</sup>

In this case, the existence of the ‘Male Rape Trauma Syndrome’ was introduced. The Court said that, “*facts probanda* emphasized on the impact of sexual exploitation on men, reveals that male victims are both heterosexual and homosexual, enumerating clear definition of “*trauma syndrome*” equivalent to that found in female victims of rape. Even scientific community also accepted male victimization of sexual abuse.”

#### Male Rape by Male Perpetrator

In some circumstances it has been highlighted that males are the sufferer as well as the perpetrator too. A male rape by male is common in jails (custody). In a report<sup>9</sup> enumerated the

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<sup>8</sup> N.Y.S. 2d 625 (N.Y. Sup. Ct, 1995).

<sup>9</sup> Sreekumar, R. (1992). “*Access to Justice for under trial Prisoners: Problems and Solutions*” <http://www.humanrightsinitiative.org/artres/Access%20to%20Justice%20for%20Undertial%20Prisoners.pdf> (last visited on April 02, 2022).

molestation and harassment faced by under trial prisoners in India, *de facto* homosexual gang rapes were common in Indian prisons, noticeable in plethora of reports and highlighted that many communicable disease such as HIV AIDS and other infections are spreading. Although, bodily injuries can be healed in few days but emotional breakdown and mental trauma forced them to commit suicide. In limelight case of Delhi gang rape accused, Ram Singh who was found hanging in prison contended that other male prisoners brutally raped him.<sup>10</sup> As reported by the “*Bureau of Justice Statistics*”, nearly one in ten prisoners were raped or sexually assaulted in the US.<sup>11</sup> National Human Rights Commission Report 2007<sup>12</sup> reported “the reason for majority of suicides in jails is same sex rapes”. The Centre for Disease Control and Prevention found that 1.267 million men reported being “coerced to penetrate” on another person.<sup>13</sup>

In India, coercive man on man sexual intercourse is explicitly mentioned under Section 377 of the IPC, “as carnal intercourse against the order of nature”. It is indeed astonishing, that in India, male on male rape is not separate provision; it was merged with voluntary sexual intercourse between homosexuals. Sec 377 of the IPC is “*silent on nitty grittiness*” of differentiation between coercive and consensual sexual intercourse.

### **(C) Neutrality in Context of Perpetrator**

India has a heterogeneous society and sexual offences legislation is based on the notion of masculine stereotype. This means only women can be victims of rape, while men are solely the perpetrators as per definition of rape. Gender discrimination is openly highlighted under Sec 375 of Indian Penal Code which explicitly begins with the phrase “a man is said to commit rape” the provision itself effacing the existence of the possibilities that male or other gender can be raped too. The concept of gender neutrality is not at all snatching the rights of women but only intended to recognize the rights and integrity of male and other gender.

### **Women as a Perpetrator in Case of Male Rapes**

“Slow and steady development of a nation’s required quicker amendment of laws too.” In contemporary India, “nature and *facet* of crimes are changing although it is masculine stereotype that due to biological and physical strength it is impossible for women to commit

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<sup>10</sup> Kumar, G.P, *Ram Singh’s death: Rape and ugly sexual violence in Indian jails*, THE FIRSTPOST (2013), <http://www.firstpost.com/india/ram-singhs-death-rape-and-ugly-sexual-violence-in-indian-jail> last visited on April 02, 2022).

<sup>11</sup> Rahman, F, *Rape behind prison bars*, LIVE MINT AND THE WALL STREET JOURNAL (2013), <http://www.livemint.com/Opinion/BzOQYSLEsQ9YrXmcbipwrN/Rape-behind-prison-bars.html> (last visited on April 02, 2022).

<sup>12</sup> Government of India, *Suicide in Prison* (National Human Rights Commission, 2014).

<sup>13</sup> Sakshi Raje, *Male Rape – An Important Issue*, LAW TIMES JOURNAL (2018).

rape on male but practically it is possible.” For eradication of discrimination on the basis of gender is an exigency to make sexual offences gender neutral .Sec 375 of Indian Penal Code itself highlight the discrimination on part of framers by making it women centric. According to current provision if a women forces a man to have sexual intercourse with her, “then it would not be a rape”. Rape is a heinous crime which evokes life time mental and emotional trauma. “A rape is a rape and crime has no specific gender hence justice should be served irrespective whether the victim is male or female or any other gender.”

Recently, in a survey conducted by the “*Centre for Civil Society*”, it was founded that “18% of adult men was being forced to have sex out Of those, 16% are female perpetrator and 2% claimed male perpetrator.”<sup>14</sup>

According to the survey conducted by USA named *The National Intimate Partner and Sexual Violence Survey*, 2010 reported data on “the male victimization of sexual offences which states that in 68.6% cases of male sexual abuse are by female perpetrators”. “The survey reported that in 79.2% cases where female forced man for non consensual sexual intercourse.”<sup>15</sup>

Most of the criminal offences against women elude men as a perpetrator but in the recent Rohtak incident which is similar to that of Nirbhaya case, perhaps here the “Women has inserted a sugarcane and chilli-powder inside the men’s genitals, leaving his intestines completely damaged” and due to the women centric law on rape i.e U/S 375 of IPC, she cannot be charged for her heinous act visa – versa only man can be charged for rape, it proves “*under any circumstance women cannot be charged u/S 375 of IPC*”.

#### **A. Gender Neutrality: Intoxication**

Section 375(1)(d) (5) provides that “consent for sexual intercourse has been obtained by reason of intoxication or the administration by him personally or through any another stupefying things or unwholesome substance and if she is unable to understand the nature and consequences of that to which she gives consent”. This Section is gender biased and unsubstantial because “any gender can be trapped for sexual intercourse because of intoxication”, this is evident from the survey “*The Nation Intimate Partner and Sexual Violence Survey*”, and “0.8% experienced sexual abuse due to completed alcohol/drug-facilitated to them for penetration by females Abusers<sup>16</sup>.”

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<sup>14</sup> *India’s Law Should Recognize Men can be Raped too*, CENTRE FOR CIVIL SOCIETY, <https://ccs.in/indias-law-should-recognise-men-can-be-raped-too> (last visited on April 02, 2022).

<sup>15</sup> National Intimate Partner and Sexual Violence Survey (NISVS), *Centers for Disease Control and Prevention* (Department of Health & Human Services Nov, 2022).

<sup>16</sup> *Supra*.



### **(D) Women as a Perpetrator in Case of Women Rapes**

Female on female rapes are like men rape on men, there are chances of female on female rapes as well. There are instances where a female sexually exploit and abuse another female just to derive pleasure. Unfortunately under current penal laws women cannot be held liable for rape u/S 375 OF IPC.

#### ***State Government v. Sheodayal***

Moreover, in the case of *State Government v. Sheodayal*<sup>17</sup>, honourable Madhya Pradesh High Court held that “a woman can also outrage the modesty of another woman under Section 354 of Indian Penal Code, 1860”. Whereas S.375 of IPC is explicitly states that “only men can commit rape.” On the contrary the Section 376(2)(g) of IPC uses the term “any person” rather than “any man” while dealing with the issue of gang rape, which clearly highlight the “exigency of gender neutrality to prevent injustice done to any genders.”

#### ***Priya Patel Vs. State Of MP 2006***<sup>18</sup>

In this case, Supreme Court held that “a woman cannot have an intention to rape, as it is conceptually inconceivable” and therefore, “she can neither be held for rape, nor gang-rape”. The rule led down by the court in this case is indeed a *legal fallacy* because the “act of penetration itself is not a requirement”, “the intention is enough even if it’s in the form of abetment because of the reason that after 2013 Amendment, the definition of rape has been broaden is no longer restricted to penile vaginal intercourse it also now includes insertion of objects, oral and anal penetration and even manipulation of body parts” is rape, Moreover this erroneous judgment along with the gender specific Section 375 of IPC, provide absolute protection and immunity to women from any liability of sexual assault.

#### ***Bodhisatta Gautam Shibra Chakraborty And Railway Board V. Chandrima Das***<sup>19</sup>

The honourable apex court held that the rape violates fundamental rights as well as human rights of victims and if rape is a violation of human rights then we cannot be particular and selective in the protection affording to the victims on the basis of their gender.

It elucidates that how the current laws are not sufficient in fact they discriminate against male victims as well as transgender, both whether men or female getting raped, rape is itself a heinous crime irrespective who is the victim or perpetrator.

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<sup>17</sup> 1956 CrLJ 83 M.P (India).

<sup>18</sup> AIR 2006 SC 2639 (India).

<sup>19</sup> 1996 AIR 922(India).

However, after thorough discussion and consistent debates, the status of gender neutrality is still an open discussion, “silent on this facet of sexual offences occurs with males and other genders.”

### III. UNFORTUNATE CONSEQUENCES OF WOMEN CENTRIC LAWS

#### (A) Rape

The definition of Rape u/s 375 of IPC makes it very clear that only male can commit rape and only women can be raped therefore, rape laws in India are gender specific.

These gender specific rape laws are based on three ambiguous assumptions:

**First**, “that rape is an act of sex alone to satisfy the lust thereby negating the important fact that rape can also be used as a tool to showcase cruelty, dominance and to defame a person or a family as a whole”.

**Second**, “A majority of population thinks there are only two gender in our society i.e male and female thereby ignoring or overlooking the plight of transgender victims, the transgender has been recently recognized as a 3<sup>rd</sup> gender of society *NALSA VS UOI*<sup>20</sup>, with this judgement, The Transgender Person Protection Of Right Act 2009 has been enacted now as per the act Sec 18 (d) states sexual abuse against transgender as per this law is punishable with minimum 6 month and maximum 2 yrs of imprisonment. Therefore we are downplaying the gravity of sexual offences against transgender and discriminating on the basis of gender in the eyes of law in punishment against perpetrator”.

**Third**, “Sec 375 (5) of IPC is frivolous and explicitly dealing with only one particular gender i.e female can be a only victim. This particular section itself encourages gender discrimination simultaneously annulling the spirit of Article 14 of Indian constitution. Section 375(5) of IPC state that if a man with female’s consent when such consent has been obtained by reason of unsoundness of mind or intoxication or any stupefying or wholesome substance which resultantly she was unable understand the nature and consequences of that to which she gives consent. But in practicality any person irrespective of gender can commit the rape of any gender (male, female, other gender) while the victim is intoxicated or insane or stupefied person”.

Male victims of sexual abuse against a male below age 18 yrs is dealt under POSCO ACT, sexual abuse of male above 18 yrs is dealt under sec 377 IPC and is called sodomy and sadly problem with Section 377 of IPC and protection of rights of transgender act is threefold:

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<sup>20</sup> (2014) 5 S.C.C. 438(India).

**First**, “these provision do not make use of the term rape therefore we are saying coercive sexual intercourse by a male on a male , by a women on a male and by any person with the transgender is not classified as rape in India even though technically it is rape” .

**Second**, “by not classifying these act as if we are denying the male victims and transgender victims benefit of Section 376 IPC which deals aggravated form of rape where the perpetrator is a person who is in a position and power , dominance over the victim”.

**Third**, “it cannot be ignored that there is an urgent need to provide protection to the men and transgender who have gone through rape or sexual harassment. However, The Justice Verma Committee had recommend amendment to Criminal Laws suggested that “a *perpetrator can be a man, but a victim can be man, women or transgender instead of only women*”.

### ***Anamika versus Union of India & Ors***<sup>21</sup>

In this case, Supreme Court held that “the transgender can file a suit of sexual harassment under Section 354 of the Indian Penal Code” but sadly “men’s don’t have any protection against sexual assault, abuse and harassment.”

### ***Sakshi vs. Union of India***<sup>22</sup>,

It is one of the landmark cases in which Supreme Court of India, framed issues regarding expanding the scope of term “Sexual intercourse” under s.375 which was dealt by Law Commission of India. Our Parliament have been imposed with a fundamental constitutional duty to safeguard every individual from forced sexual violence on any gender but Indian Penal Laws are silent on nitty gritty of male or transgender victims in case sexual abuse.

### **(B) POCSO - Gender Neutral Legislation**

The Protection of Children from Sexual Offences (POCSO) Act, 2012 is one of the laws enacted by legislator to maintain consistency of equality among all genders. This act was enforced and came into effect from November 14, 2012.” It Recognizes minor whether boys or girls can be a victim of sexual assault and sexual abuse , child as any person below the age of 18 years”. It defines “*child under Section 2(d) of the Act*” as “any person” below age of 18 yrs and thereby justified that “both boys and girls equal in the eyes of law”. This explicitly defines different forms of sexual offences including “penetrative and non-penetrative assault”, “sexual harassment” and “pornography”. When it comes to adult population, the India Penal Code only recognizes the sexual abuse of female and “*ignoring other adult genders as victim*”

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<sup>21</sup> **W.P (CRL) 2537/2018(India).**

<sup>22</sup> **AIR 2004 SC 3566(India).**

of sexual abuse”.

### ***Independent Thought vs Union Of India on 11 October, 2017***<sup>23</sup>

This case is a landmark judgment on “Sec 375 exception 2 of Indian Penal Code<sup>24</sup> and POSCO Act”. In this case honourable Supreme Court read over sexual intercourse with his own wife under 15 yrs amended to 18 yrs of age. Although Supreme Court hasn’t declared the “exception void but alter the age”. Supreme Court also observed that under Indian Penal Code and POCSO that essentials of rape and sexual assault are “same but different nomenclature is given under different legislations”, so even Exception 2 of Section 375 declaring sexual intercourse with his own wife under 18 yrs age is not rape but it is a sexual assault under POCSO act hence it is punishable. Thus, “*it must be punishable under both legislations to bring uniform effect.*”

### **(C) Sexual Harrasment: IT ACT VS IPC**

Other Sexual Offences in Indian Penal Code are provided under Section 354-A , Section 354-C and D which deals with sexual harassment ,voyeurism and stalking respectively, “is unsubstantial and gives women a monopolistic and biased weapon as a protection to defend their integrity and dignity”, the sexual harassment and punishment for sexual harassment, voyeurism and stalking respectively cab be only or solely committed by man but in contemporary India this section is vague and unreasonable vice versa “women can also harass women , man , other gender”. “A women can also physically contact and make advances involving unwelcome and explicit sexual overture from any gender, can demand or request for sexual favours or can show pornography against his will or she can makes sexually lewd remarks on man but it is not subject to punishment if women is a perpetrator.”

Need for gender neutrality in sexual offences catch limelight when “Vijay Nair, a music entrepreneur, was serially cyber stalked by a woman but there is not any laws which tends provide protection to man against abuse they have been through because of female perpetrators”<sup>25</sup>. It is sad that these gender biased penal laws are jockeying the essence and spirit of Article 14, Article 15 and Article 21 of The Constitution Of India by discriminating and violating its credential but fortunately, “Section 66 E<sup>26</sup> ,67<sup>27</sup>,67 A<sup>28</sup> of The Information Technology Act, 2000, demonstrates gender neutrality and states that whoever captures,

<sup>23</sup> (2017) 10 S.C.C. 800(INDIA).

<sup>24</sup> [S]exual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

<sup>25</sup> INDRANI BASU, *HOW A ENTREPRENEUR UNMASKED HIS VICIOUS CYBERSTALKER AND LIVED TO TELL THE TALE*, HUFFPOST (MAY 11, 2017), [HTTPS://WWW.HUFFPOST.COM/ARCHIVE/IN/ENTRY/WHEN-VIJAY-NAIR-UNMASKED-HIS-VICIOUS-CYBERSTALKER-THE-STORY-TUR\\_A\\_22080817](https://www.huffpost.com/archive/in/entry/when-vijay-nair-unmasked-his-vicious-cyberstalker-the-story-tur_a_22080817) (LAST VISITED ON APRIL 02, 2022).

<sup>26</sup> Punishment for violation of privacy.

<sup>27</sup> Punishment for publishing or transmitting obscene material in electronic form

<sup>28</sup> Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.

publish or transmit the captures, publishes or transmits of private image of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both.”<sup>29</sup> Whereas under section 354 A, 354 C, 354 D of IPC it is only punishable for males hence these Section are derogatory, erroneous, arbitrary as these provisions are effacing the very essence of criminal justice system.

### **Cruelty**

Prima facie Section 498-A IPC is “evading the principle of natural justice”, which state “accused is innocent until proven guilty” but under this Section if women file complaint of cruelty against husband and his relatives then without any investigation accused is send behind the bars. The crime committed under this provision is “cognisable”, “non- bailable” and “non-compoundable”.<sup>30</sup> Thus,” it established the guilt of the accused even before the trails starts”. The misuse of the section has enhanced to the level of demanding of bribes by police from the husband or his relatives. The word ‘cruelty’ under this section includes physical, mental as well as emotional cruelty which can be committed by females also to tarnish the image of Males. Point to be noted that any gender can be trapped in the web of victimization of cruelty hence seeking in vain to catch the world attention for gender neutral laws. Cruelty on man by any person (women, man, and other gender) not only tarnishes reputation of man but also snatching the inherent fundament right to live a dignified life provided under Article 21.<sup>31</sup>

## **IV. CONSTITUTIONAL VALIDITY**

Preamble is the preface of the Indian constitution which entices social, economical, political justice which amplifies equality of status and opportunities. This has been further guaranteed under Article 14 and 15. Article 14 of Part III endeavours that it is the mandatory and foremost duty of the state to ensure State shall not deny rights of any person equality before law and equal protection of laws although concept of reasonable classification is the hidden facet of equality. Article 15 of the Constitution bestows to prohibit discrimination on various grounds, including sex. Article 15(3) acts as an exception to Article 14 and 15(1) and (2) under which state have right to enact any special provision for the sustainable development and protection of women and children. Inherit spirit of Article 15 (3) is to maintain consistency for equality by reducing the misbalance and inequality between men and women but while doing so legislators cannot abrogate its constitutional duty to protect every individual from human right

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<sup>29</sup> *Supra*.

<sup>30</sup> Pen. Code, §.498-A.

<sup>31</sup> INDIA CONST.

violations. The Article 14 and 15 also attempt to culminate and justify the constitutionality of Sec 354 and 375 of Indian Penal Code but unfortunately the phrase used in both sections “any man” as “perpetrator oust the essence and positive pillars of Article 14 as these sections itself encouraging discrimination by effacing the existence of male and other gender as a victim.”

### ***State of Himachal Pradesh vs. Shree Kant Shekar***<sup>32</sup>

In this case Supreme Court of India held that, Rape is not only a crime against the person of women it's a crime against the entire society.<sup>33</sup> In this particular case Honourable Supreme Court made emphasis on spirit of Article 21 of the Indian Constitution. “Article 21 ensures that men, women and other genders are equal in the eyes of law”. It was also emphasized that “forced sexual cohabitation is a contravention of Article 21”, hence laws on sexual offences need a quick revision and amendment thus; it should be made gender neutral.

### ***Suresh Thakur V. Al Thakur***<sup>34</sup>

In this case, Justice Jaspal Singh of Delhi High Court pointed out that “rape should be made gender neutral and rape should be termed as sexual assault and not a special crime against women but against all the genders”.

### ***Criminal Justice Society of India Vs UOI***<sup>35</sup>

In this case, a Non-Governmental Organization, “*Criminal Justice Society of India*” filed A Public Interest Litigation in 2018, intended to stand for the rights of male victims. Petitioner argued that Section 375 of IPC is unsubstantial and discriminatory which emphasize rape of a women by man thereby violated the right to equality enshrined under Article 14 and 15 of the Indian Constitution ,which prohibits discrimination on the basis of religion, race, caste and sex.” They believed a man or a transgender can equally likely be a victim of rape and man too requires protection under law so does the woman have. However, PIL was *dismissed* by Supreme Court by stating that it is “subject of parliament”.

## **V. INTERNATIONAL SCENARIO**

“*The Universal Declaration of Human Rights, 1948*”, “*The International Covenant on Civil and Political Rights, 1966*” and “*The International Covenant on Economic, Social and Cultural Rights, 1966*”, all these organization point out the rigid right of every person to

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<sup>32</sup> (2004) 8 S.C.C 153(India).

<sup>33</sup> State of Himachal Pradesh vs. Shree Kant Shekar, LIVELAW [https://www.livelaw.in/pdf\\_upload/173-state-of-himachal-pradesh-v-karuna-shanker-puri-9-feb-2022-409934.pdf](https://www.livelaw.in/pdf_upload/173-state-of-himachal-pradesh-v-karuna-shanker-puri-9-feb-2022-409934.pdf) (last visited on April 02, 2022).

<sup>34</sup> 1995 CriLJ 2533(India).

<sup>35</sup> (2018) 5 S.C.C 1(India).

*equality and human dignity*. The very essence of “Article 2 of UDHR” prohibits any kind of discrimination on the basis of gender simultaneously the same intensions was elucidated under Article 15 of the Indian constitution, consequently “Sec 375 of the IPC is directly violating the spirit of Article 15 of the Indian Constitution. There are many countries like “South Africa”, “USA”, “UK”, “Canada”, “Bhutan” etc which had enacted and implemented gender neutral laws. India should take note from these courtiers and put efforts towards making sexual offences gender neutral.

***Countries which enacted gender neutral law are:***

**A. South Africa**

A population-based research using a sample of adult men in South Africa revealed that “9.6% of men reported male-on-male sexual violence victimization”. It was also found that “homosexual men were over nine times more likely to have been raped and is four times more likely to report the crime as opposed to heterosexual males”.<sup>36</sup>Therefore, implementation of gender neutral laws on sexual offences is exigency.

**B. Bosnia and Herzegovina**

“Article 1 and Article 2 of the Constitution of Bosnia And Herzegovina”, respectively mandates regulation of law, promotes gender equality and guarantees equal opportunities to all, in public as well as private life and eliminates “direct and indirect gender based discrimination”. “*Sexes shall be equal.*”<sup>37</sup> Complete gender equality shall be guaranteed in society. “*Discrimination based on sex and sexual orientation is hereby prohibited*”.<sup>38</sup>

## VI. CONTEMPORARY DIVERSITY IN SEXUAL OFFENCES

### (A) Sarabjeet Singh Bedi Case<sup>39</sup>

In 2015 Jasleen Kaur has posted on twitter that, “ she was harassed and molested by Sarabjeet Singh”, adding to this Delhi police arrested him. She has not attended even a single hearing and constantly giving excuse that she moved to Canada after that incident, “Singh life was terribly ruined overnight”, he was being called as “*delhi ka darinda*”, he has gone through

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<sup>36</sup> KL Dunkle, R Jewkes, *Consensual male-male sexual activity and male-male sexual violence: prevalence and associations with HIV infection from a population-based household survey in South Africa*, PLOS MED , (2013),<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3708702/> (Last visited on April 02,2022).

<sup>37</sup> Law On Gender Equality In Bosnia And Herzegovina, <https://www.ilo.org/dyn/natlex/docs/SERIAL/64146/69205/F195754431/BIH64146.pdf> (Last visited on April 02, 2022).

<sup>38</sup> *Ibid.*

<sup>39</sup> Stela Dey, Delhi Biker, *Accused Of Molestation In 2015 At Signal, Gets Clean Chit*, NDTV (Oct 30, 2019),<https://www.ndtv.com/delhi-news/sarvjeet-singh-bedi-accused-of-molestation-in-2015-by-jasleen-kaur-at-traffic-signal-acquitted-2124784> (Last visited on April 02, 2022).

mental and financial trauma which was unbearable, he could not find a stable job because of the criminal record, recently in “October 2019 Delhi High Court passed judgement in favour of Sarabjeet Singh Bedi and acquitted him from all false allegations.” This shows that now time has come to amend our laws on sexual offences because justice is inherent right of each and every individual irrespective of any gender.

#### **(B) Lucknow Cab Driver Case<sup>40</sup>**

Saadat Ali is the cab driver “who was being slapped 22 times by girl named Priyadarshni in middle of hasty street of Lucknow” , “A girl was seen beating/slapping cab driver repeatedly” , she alleged that cab driver hit with his car however from CCTV footage from the spot it can be seen that “she instigated the incidence” , CCTV footage shows the girl was crossing the busy road dangerously, she came to complete halt in front of the approaching cab as soon as cab stops the girl proceeded to break / damage cab mirrors and started verbal altercation at which the driver got out of the vehicles , the girls then started to slap the driver violently , alleging he hit her with his cab, she continued to attack the driver despite so many people being present , cab driver can be heard asking people for help and saying that she broke his phone , eventually bystanders intervened and the girl assaulted one of them as well.

#### **(C) Rohtak Sister Case<sup>41</sup>**

Many cases of crime against women are being settled out of the court or in police station, these settlements are mostly monetary. For instance, Rohtak boys incident, FIR filled against accused “Kuldeep”, “Deepak” and “Mohit”, have spent 24 hr in jail and were incarcerated for many days without any investigation in mainstream media although, “ Rohtak District Court” *declared all of them innocent* yet Some of the terms used by Indian media are “Sexual Predators”, “Sexual Offenders”, “Molesters”, “Eve Teasers”, “Harassers” for Rohtak boys without investigating the case. “A FIR or even 24 hr stay in jail can jeopardize someone’s job education or career and life”. Boys lost their confidence of facing public and “*faced societal humiliation*”. Justice should be served; wrongdoer must be punished whether – male or female. “*False cases of crime against women are an injustice to not only men but also women who are genuinely abused.*”

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<sup>40</sup> Pathikrit Chakraborty, *All you want to know about Lucknow girl viral video*, TIMES OF INDIA ( Aug 03, 2021), <https://timesofindia.indiatimes.com/city/lucknow/all-you-want-to-know-about-lucknow-girl-viral-video/articleshow/85000544.cms> (Last visited on April 02, 2022).

<sup>41</sup> Deepika Narayan Bhardwaj, *Declared Innocent By Court Once Again, Rohtak Boys Ask Media To Declare Them Innocent*, SWARAJYA (Oct 03, 2021), <https://swarajyamag.com/ideas/busting-the-myth-around-rohtak-bravehearts> (Last visited on April 02, 2022).



## VII. UPROAR ON SOCIAL MEDIA PLATFORMS

### (A) Men Too Movement

Law must reflect modern society. Although *Men Too Movement* is not much familiar movement as it does not catch that much limelight as compared to *Me Too Movement*, in *Men Too Movement*, men came forward and shared their trauma of sexual abuse. There is a growing recognition across various jurisdiction of the world and male victimization has been accepted by various countries but seems ignored in India. It has been reported that 51% of the suicides cases of men reported are due to their sexual exploitation but unfortunately there is not even a single law which are meant to protect men from, sexual abuse. The NGO named “Purush Ayog”<sup>42</sup> in one of their protest demanded gender neutrality in sexual offences laws and asked for eradication of unsubstantial and biased women centric laws.

### (B) Media Trial

“*Media impart their own thoughts and try to sensualise the case before even the trail starts.*” Many victims who want to come out and tell the world of the trauma they have been through they cannot come out because of media trails though “*it is hard for women’s but it make impossible for men to tell what they have been gone through.*” In the cases of heinous sexual offences media play a vital role in the pronouncement of judgment and sometimes delaying justice as well they themselves start their own investigation and declared accused as culprits. Some of the famous median trails cases are “Sarabjeet Singh Bedi Case”, “Rohtak Sisters incident” and many more. Media passed their decisions and openly called them “Sexual Predators”, “Sexual Offenders”, “Molesters”, “Eve Teasers”, “Harassers” just because they are men and the social stigma highlights, “stronger or dominant are the culprits” even without investigating the case. “Burkha Terhran” who is the founder of NGO “Purush Ayog”, “gathered on Rajpath and “demanded amendment of the rape laws under Indian Penal Code by making them gender neutral.”

### (C) Data Analysis of Questionnaire

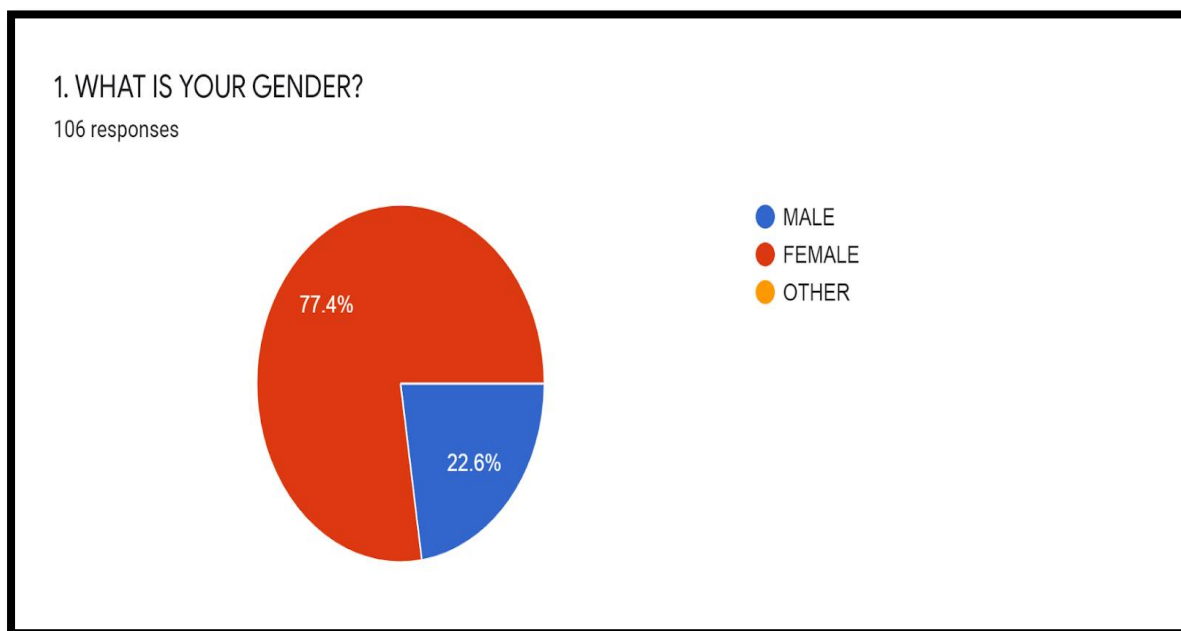
This survey was conducted on educated population of India by Researcher. From the data collected in a survey it can be concluded that 77.4% respondents are females and 22.6% are males (Fig.11). 94.3% are aware of Gender neutrality (Fig 1.2), 57.5% believes that rape, sexual harassment, voyeurism, stalking may be made gender neutral (Fig.1.3). 50.9% of the

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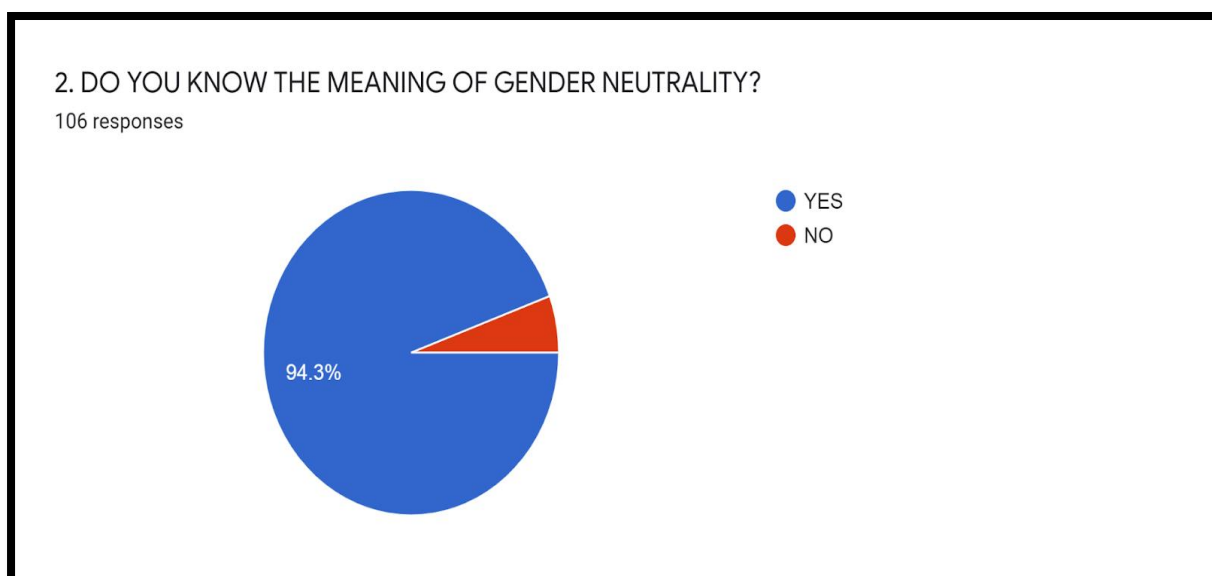
<sup>42</sup> *MenToo: Protect men against false allegations, say Delhi protesters*, TIMES OF INDIA (May 14, 2019), <https://timesofindia.indiatimes.com/city/delhi/protect-men-against-false-allegations-say-protesters/articleshow/69315200.cms> (Last visited on April 02,2022).

respondents believe that Indian laws on sexual offences are favouring women more therefore being biased (Fig.1.4). 43.4% said women can rape male and 23.6% believes women cannot rape male, 33% of population was ambiguous on women raping male (Fig.1.5). “Majority of the respondents (i.e 77.4%) are in favour of enacting gender neutral laws are conjuncture (Fig.1.6).

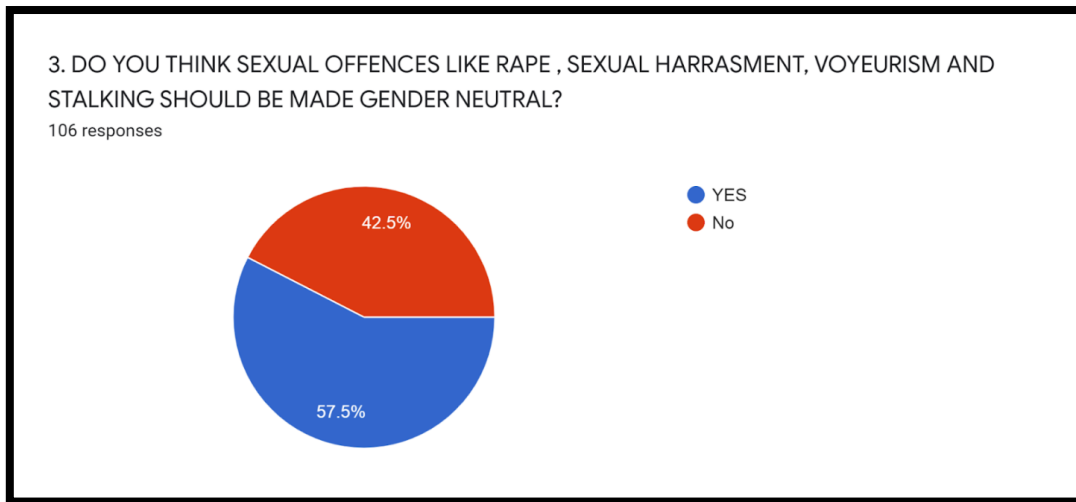
(Fig. 1.1)



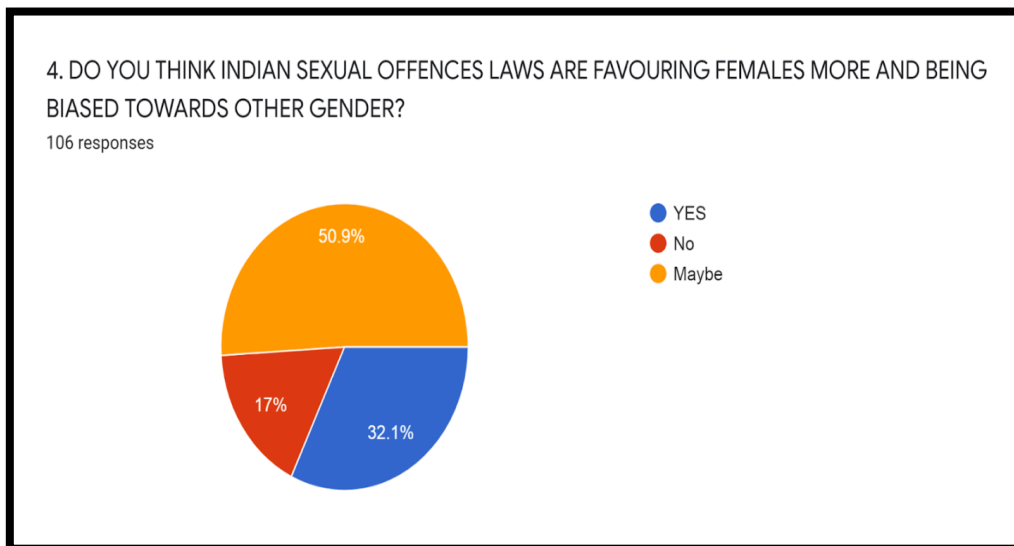
(Fig.1.2)



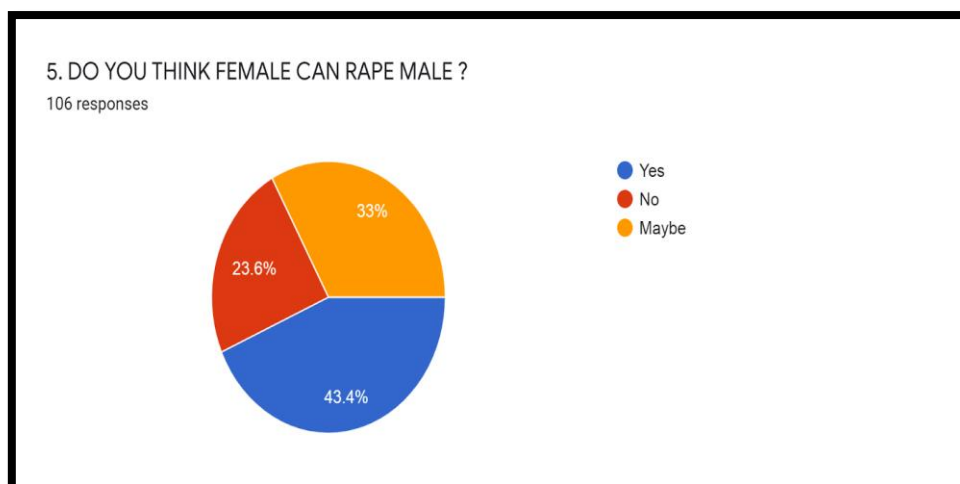
(Fig. 1.3)



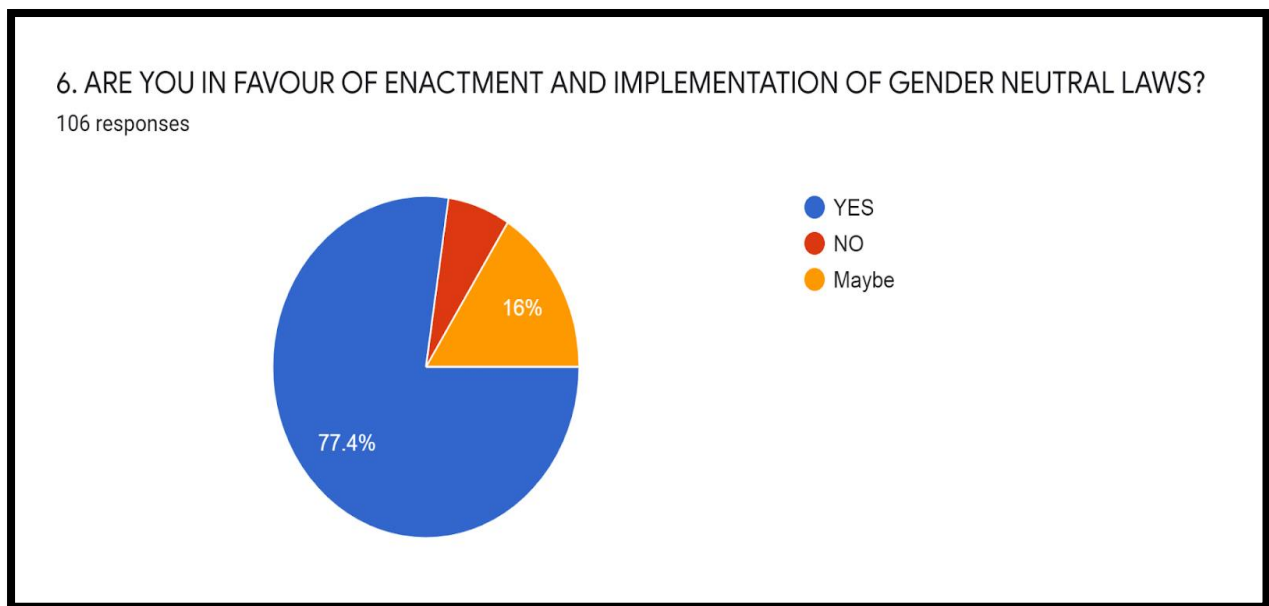
(Fig. 1.4)



(Fig. 1.5)



(Fig. 1.6)



## VIII. CRITICISM AND SUGGESTION

### Criticism

1. Prima facie it cannot be denied, India has a “male dominated society” which is based on the “notion of masculinity”, results in a “disparity of power between men and women.” It is a fact that “women and men are not at all biologically equal”. If sexual offences laws are made gender neutral then it will become *“terribly difficult for female to prove her innocence and perpetrators will be easily saved from the hand of law.”*

2. There are various pitfalls in India's rape and sexual harassment legislation, “one of the fundamental drawback is whether the women has given *consent to sexual intercourse* or not particularly in cases of rape, marital rape, domestic violence where a husband assaulted his wife and takes defence that sexual intercourse was consensual”.

3. India is a country where justice most of the time is delayed for *years and years to come* which forthright the phrase *“justice delayed is justice denied”*. For instance, it took 9 yrs to deliver justice in The Nirbhaya Gang Rape Case. Therefore, “if rape and sexual harassment laws are made gender-neutral then it will *not worth its salt* as women are already a suppressed and downtrodden population of India and it will lead to tremendous agony and humiliation to women victims”.

4. If gender-neutral laws are enacted, “women will be afraid to file a lawsuit against perpetrator because the perpetrator (male) will threaten her with a counterclaim which ultimately deteriorates the authenticity of “just”, “fair” and “reasonable” decisions”.

5. Gender neutral laws can create “imbalance in penal provision of sexual abuse and may grant easy and free pass to offenders, they will shift burden of proof by blaming females and without any true justification unfortunately male dominated society will agree to it”.

### **Suggestion**

1. Rather than making laws gender centric, purpose needed to be achieve gender neutrality with regard to sexual offences.
2. The word "any man" seems within side the bulk of sexual offences in the Indian Penal Code, which need to be substituted to "any person."
3. Just like there is a “separate courtroom docket” for women "*mahila adalat* ", a separate courtroom docket needs to be made for men too.
4. Awareness needs to be spread as the act of penile penetration, or any foreign object of women or girl. Sec 375 definition infers that
  - a. A rape culprit is always a man (absolutely biased)
  - b. A victim of rape is always a woman (absolutely biased)

### **Conclusion**

“Crime is a crime”, “it has no gender”, “neither a specific gender is a sole perpetrator nor a sole victim hence laws should not be biased and discriminating.” Gender biased laws are “*malum in se*” therefore gender neutral laws are conjuncture to encapsulates “*ex debeto justitiae*.” The gender neutrality of sexual offences highlights “the subtle shades of understanding the various nature and consequences of sexual offences under criminal law and recognising that women, men, transgender community can be both victims and perpetrators of the crime.” The sexual abuse on males has always been seen with the perspective “notion of myth”. Resultantly, most of the male and other gender victims are “afraid to file case against the sexual assault they experienced”, that’s why Gender neutral laws should be implemented to eradicate gender biased laws. Rape in general is conceptualizes as sexual victimization of women by male perpetrators but in most of the cases, it has been found that there are male victims as well who suffered same trauma as women go through. Male and female perpetrators of sexual violence should be punished equally without any discrimination. “The laws on sexual offences should be strength because existent laws are categorizing people on the basis of gender which is explicitly bar by “Article 14”, “Article 15” and “Article 21” of the Indian Constitution and also “UDHR”, “ICCPR”, all international convents saves the same thing. Therefore, “existing laws on sexual offences in India are insufficient and vague in the *cutting -edge* for

the protection they provide therefore it is now the high time to expand and strengthen the horizon of sexual offences by amending its definitions as well as making it gender neutral.”

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