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# Gender Neutral Laws: Need of Reforms to Extremist Legislations

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## ABSTRACT

*Law in its ideal form should not discriminate between a man and woman, but we can see the conduit when it comes to a lot of provisions. Crime can be committed regardless of gender and recently the statistics are in favour of such argument. Generally, sexual offences are gender biased in India due to the historical encounters. The idea of gender neutralism stems to avoid distinguishing gender traits and deliberate assignment of roles to cure gender inequality. Even after the soon to be enactment of the new Code: stalking, voyeurism and sexual harassment would remain gender specific even after continuous deliberations and interruptions by few policy-making institutions of our country. Therefore, it is generally assumed in the case of sexual offences that the perpetrator is a man and victim is a woman. Such violence can be inflicted for several reasons: for satisfaction of lust or desire, to show power and humiliation or dominance of superiority of one section of people over other. It makes the argument for the enactment of gender-neutral laws in order to address the underreported incidents of male harassment and violence through an analysis of cultural conditioning, legislative loopholes, media impact, and judicial viewpoints. The abstract ends by promoting a society devoid of gender stereotypes and discrimination, in which people are treated according to their qualities rather than their gender, so promoting an atmosphere of equality and respect for everyone.*

**Keywords:** Abuse, gender-neutral, male, rape, society.

## I. INTRODUCTION

The general traditional presumption of the society is restricted that males are the perpetrators. The circumstances of misandry or ill-feelings against men exist and this paper is not denying the concept of substantive feminism in any manner. The limited cases against men that were often unreported has led to such discussion vanishing to the point that the Legislature has never felt the need to bring enactment to protect mis happenings against men. Expressing views on the historical conditioning and notion structuring of the society, there observed a shift from equal rights amongst men and women during the ancient phase to limited rights given to women

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during the Medieval phase that has led to such uprisal in further unending inequality in each growing phase as we proceed in our lives<sup>3</sup>. Primary reasons being the conquest by foreign rulers. Unacceptable practices against women were felt by Legislature Department bringing in the required provisions which were women centric in India. Practices of Sati, demanding Dowry and coerced sexual acts upon women led to such great protection. Several legislations have been formulated stringently which offers great protection to women but on the counter side, no mechanism when such allegations imposed are false in nature. But it has been misused to the point that it is detrimental to the other party. The classic example is the case of Arnesh Kumar V. State of Bihar<sup>4</sup>, misuse of dowry provision which led to arrest of an innocent individual as well as suspension of his job, additional loss in terms of money and reputation. In this situation, the form of action taken by woman is a kind of marital cruelty but surprising part is that there is no penalization for ill-motive abusers and are often let free.

‘Rape’, a violent breach to the integrity of body and often communities of men, homosexuals and transgenders are neglected from the assumption of being inflicted by such crime<sup>5</sup>. There have been several instances of physical, sexual, emotional and psychological abuse by the former spouse irrespective of the gender which often go unreported due to the pre-notional biased opinion of the society which has been created and termed it as ‘be a man’ often associated with the belief that such crimes can occur only towards the weaker community which questions the whole setup of our present legal system. One of the most common abuses that men undergo is household abuse by partners which often go unreported. The very setup of societal norm moulds men in a way to suppress emotional and personal factors amidst harassment or violence inflicted upon them. The laws are to some extent discriminatory when it comes to issues which are considered to only occur to women. Gender-neutral legislation is lacking in India, even in spite of Article 14 of the Indian Constitution's guarantees of equal protection under the law. There is still no legal protection for male victims, especially when it comes to sexual assaults and domestic violence, despite the fact that laws have been passed to address crimes against women. The discourse encompasses the depiction of gender roles and representations in the media, wherein conventional clichés constantly portray women as susceptible and men as authoritative. In addition to perpetuating social standards, these representations shape public opinion around gender-based violence while frequently ignoring the experiences of men,

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<sup>3</sup> Sonal Chaujar and Madhuri Bakshi, Position of Males in Indian Laws: Gender Equality or Gender Biasness? Oct-Dec, *Bharti Law Review*, 192(2016)

<sup>4</sup> (2014) 8 SCC 273

<sup>5</sup> Tharak Sudharrshan, Need for Gender Neutral Rape Laws in India: A Legal Study, Vol. 9, The Law Brigade (Publishing) Group, 174(2023)

homosexual men, and transgender people. The research poses the issue of gender gap in the legislative enactments and attempts to highlight upon the importance of non-discrimination for sexual crimes.

## **II. MEDIA'S INFLUENCE ON GENDER REPRESENTATION**

Media is undoubtedly a powerful form of influential platform to spread perception. Such perceptions of people can be affected via showcase of "supposed or socially accepted characteristics" of male and female. The constant insinuation of thoughts and image depiction has led to limited and rigid set of images created in the subconscious mind of everyone where women are often shown as soft, gentle and vulnerable while the traditional or stereotypical role of men are often portrayed as harsh, dominant, aggressive and inconsiderate of their surroundings<sup>6</sup>. Media further takes an additional step in portraying the ideal relationships between men and women, where one is dependent on another, emotionally and financially rather than showcasing a realistic version of codependent relationship. Women are underrepresented in every manner possible that has conditioned the society into believing that such suppression is caused by the male counterparts. The adult and obscene films created showcase the violence inflicted on women as a means to gain visual stimulation which has somewhat being accommodated as a part of relationships.

### **(A) Social Justice and Article 14**

India is a multifaceted nation with rich regional and cultural variety, as is well known. The Indian viewpoint is predicated on equal protection under the law and equality before the law, which is further elaborated in Article 14 of our Indian Constitution. Article 14 which states that both men and women are equal before the law and have the same and equal rights also includes gender-neutral legislation. However, because of certain gaps in our Indian constitution, it merely addresses the rights of women as a whole and it sets aside even the basic rights of the subsequent gender. Back then in India, the men's rights movement was not a novel idea. It was ingrained to promote gender-neutral laws. It was founded in Kolkata in the late 1990s under the Moniker Piritto Purush, which translates to "the persecuted men." It focuses on problems such as family law, gender bias in the legal system, and societal ideas of masculinity. It originated as a response to perceived injustices that men faced in a range of situations, including as child custody disputes, marriage and divorce, domestic violence, and false accusations levelled against them. It is no doubt that since time immemorial women have been suppressed and has

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<sup>6</sup> Julia T Wood, *Gendered Media: The Influence of Media on Views of Gender*, Vol. 9, *Gendered Lives: Communication, Gender, and Culture*, 31, 31-38(1994)

been a subject to oppression which led to enactment of gender-specific laws. But such prevailing laws have somewhat created an adverse effect on the society raising concerns about absence of any legal protection of male victims either due to false claims or against cruelties by women. And therefore, gender neutral laws are need of the hour for harmonious development. Men and transgenders are often unshielded to violent crimes and sexual offenses which are depicted as gender specific under our legal system.

### **(B) Ongoing Growth of Male Harassment**

Sexual offences primarily rape cases, reported or unreported have been increasing where even the male victims are subject to the same. According to the definition propounded by the Centers of Disease Control and Prevention, a global health organisation, it states as “A sexual act that is conducted or attempted against a person who is unable to consent or refuse by another without the victim’s free consent is known as sexual victimization.” Though reports suggest low number of cases for male victims but none of the official reports rejects the victimization of male victim at all<sup>7</sup>. The Law Commission’s 172th report has suggested amendments under Indian Penal Code for introducing gender-neutral rape law. The report explicitly states about amending section 375 and expanding it to include circumstance where a mature woman inflicts sexual intercourse on a young boy particularly less than 16 years of age<sup>8</sup> keeping in mind the consideration of provision related to sexual abuse of minors. The rejected apprehension clears the fact that there is a deep-rooted stigma that only patriarchal violence exists in the society which needs to be cured<sup>9</sup>. The Ministry of Home Affairs issued a notification with subject, “Misuse of Section 498A of IPC” stating the countereffect consequences caused by implementation of dowry crime provision where unreasonable arrests are made merely and blatantly based on the victim’s complaint without prior investigation due to stringent application. Furthermore, the authority explained the fact that such provision is difficult to be amended on account of great opposition by the women organisations<sup>10</sup>. Furthermore, in the new Bharatiya Nyaya Sanhita Code which is a replacement of Indian Penal Code has completely removed section 377, provision for unnatural offences which was a mean to file for sexual harassment occurred on male counterpart. Therefore, the new Act altogether does not protect unnatural sexual offences against men.

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<sup>7</sup> Thomas, J. C., & Kopel, J., Male Victims of Sexual Assault: A Review of the Literature, 13(4), Behavioral Sciences (Basel, Switzerland), 1, 3(2023)

<sup>8</sup> LAW COMMISSION OF INDIA, REPORT NO. 45, INDIAN PENAL CODE, 279 (1971)

<sup>9</sup> Rukmini Sen, Law Commission Reports on Rape, Vol. 45, Economic and Political Weekly, 81, 86(2010)

<sup>10</sup> Ministry of Home Affairs, Misuse of Section 498A of IPC, No. 3/5/2008-Judl. Cell (Oct. 20, 2009)

### III. DECODING LOOPHOLES OF CURRENT GENDER-SPECIFIC PROVISIONS

The Law Commission of India has reiterated numerous times about the review of rape-related provisions amidst the changing dynamics of the society and has recognised rights of different groups prevailing in the society backed by the infamous judgment of Sakshi V. Union of India<sup>11</sup> which filed for expansion of the scope and definition of ‘rape’ for interpretation under Code from earlier mere meaning of peno-vaginal penetration. The case also highlights the circumstances of sexual abuse on young boys and child abuse. The Law Commission in its 172<sup>nd</sup> Law Commission report of 2000, post-filing of the case of Sakshi, proposed the usage of the term sexual assault instead of rape to acknowledge the fact that other groups, i.e., especially premature boys suffer from coerced sexual assault. The proposal via recommendations was framed onlooking the considerations provided by the Court was to create an inclusive definition including all forms so that the perpetrators don’t get away easily with minor charges<sup>12</sup>. The Commission referring to the Sexual Assaults Bill in its 172<sup>nd</sup> Law Commission Report stated about penalisation of all forms of sexual violence. Further, the same issue was reinstated in the Criminal Law (Amendment) Bill, 2010 but to no avail since the new Bharatiya Nyaya Sanhita has removed provisions containing measures for male victims.

#### (A) Inadequate Gender Considerations in Bhartiya Nyaya Sanhita

The Bhartiya Nyaya Sanhita, BNS omits sec. 377 completely removing rape of men and bestiality as offences and therefore further narrowing down the scope of charges that can be imposed for sexual crime against men. The Standing Committee Report on Home Affairs deliberates in its 246<sup>th</sup> report<sup>13</sup> that the newly enacted states about the gender-neutrality of the law, but its interpretation has to be made in a manner that the gender inclusivity is in terms of accused persons and not on the side of victims which means no discrimination for perpetrators based on the gender. Clause 75 about disrobing a woman and clause 76 about voyeurism a woman will deal with accused from all the genders. The committee put forth its observations about the removal of section 377 and the futuristic repercussions which can be dealt as a result. Such removal shall offer no remedy for non-consensual sexual offence against male, female, transgender and for bestiality. The Committee highlights the area of deviation of BNS Statement of objective and recommends the reinsertion of section 377 again after certain rectifications. It adds on an important observation that the Supreme Court had struck down the provision only upto the extent that it criminalized consensual sex. If it had been present then it could be invoked

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<sup>11</sup> 1999 (6) SCC 591

<sup>12</sup>Tharak Sudharrshan, *infra* note 3

<sup>13</sup> Standing Committee Report, The Bhartiya Nyaya Sanhita, 2023 18-21 & 168(2023)

for non-consensual sexual act of a man by another man.

### **(B) Sexual Harrassment At Workplace**

There are very limited number of Acts and provisions, i.e., Section 377 (now repealed), the Protection of Children from Sexual Offences Act, 2012, and University Grants Commission (Prevention, Prohibition and Redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, 2015 but none of them adequately provides for remedy of an assaulted adult male. Whenever there is deliberation upon this issue it is often argued about the less reported cases. But when it is deeply delved into, the issue lies in the social stigma of humiliation and a stereotype which is built in the back of each one's mind about the masculinity that a male individual should possess. That he is supposed to protect himself and ones close to him. The terms "man up" and "men don't cry" creates the very initial problem itself. Patriarchy works on the notion that a man should uplift his toxicity upto the point where he struggles with himself<sup>14</sup> which in turn created a wall of pseudo dominance. Post globalization and women movement in India phase when women and men were put onto equal pedestals observed a drastic change in the scenario where men were subject to sexual assault, cruelty, frivolous complaints reflected the idea that the legal system did not believe in the notion to protect men against infliction of harm. Furthermore, the legislature is moulded in such a way over a period of time that laws created are extremist in nature.

## **IV. JUDICIARY'S PRESENT DAY STANCE**

The infamous judgment of marital rape, *RIT Foundation V. Union of India*, where Justice Shakhder opined that the rape laws should be gender neutral which has to be looked into by the legislature and executive wing in function<sup>15</sup> to take cognizance to review and rather eliminate the exception 2 to section 375<sup>16</sup> of IPC which is the marital rape exception stating coerced sexual acts performed by man on his own underaged wife. Men Welfare Trust, a non-government organisation established in Delhi also a contributor to the case advocated for gender neutral laws by replacing man/woman to person and husband/wife to spouse in legal enunciations of legislation since long. Both of the judges in the case agreed on the existing inequity and injustice due to wording of provisions and there is a need to introduce gender-neutrality in the sphere of sexual violence. Justice Swarna Kant Sharma stressed that the

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<sup>14</sup> Anushka, GENDER NEUTRALITY FOR LGBTQ IN RAPE LAWS: THE NEED OF THE HOUR, Indian Journal of Law and Legal Research, Vol II Issue I, 3(2021)

<sup>15</sup> RIT Foundation V. Union of India, 2022 SCC Online Del 1404

<sup>16</sup> *Exception 2*. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape

interpretation of gender-specific provisions must be interpreted without presuming bias. Neutral and impartial stance should be presumed in such matters unless explicitly mentioned in the enactment. She further iterated that POCSO Act. Therefore, for administration of justice, the provisions should be construed in a way that is not misleading or misused.

### **(A) Child Custody Prejudice**

Personal laws that deal with child custodial matters in India are primarily the Hindu Minority and Guardianship Act, 1956, the Indian Divorce Act, 1869 and the Guardians and Wards Act, 1890. The principle presumed while handing over the physical custody of the child is on the principle of the best interests and welfare of the child which is in harmony with section 26 of Hindu Marriage Act – provides for consideration according to the wishes of the child to be made in consistency with the order of custody. The Law Commission seeks to implement proper joint custody and shared parenting systems but ongoing records suggests majority of the custodial rights given to the female partner with male partner receiving visiting rights of the child. Joint custody would also enable the parents to exercise the standards of “best interests of the child” especially when there is situations of domestic violence<sup>17</sup>. It further added the reasons based on need of each parent in different situations, purpose of bonding, legal authority, breaking gender-based stereotypes and to prevent women from misusing gender-specific provisions.

## **V. CONCLUSION**

The concept of gender neutrality is the removal of gender norms from society and the treatment of all people equally. It entails establishing a society in which people are assessed on the basis of their accomplishments, aptitudes, and talents rather than their gender. The goals of gender neutrality are to abolish gender-based discrimination, advance gender equality, and provide a welcoming atmosphere for all. Recent years have seen a rise in the popularity of gender neutrality, with many people calling for a more accepting society. The realization of the unfair treatment people receives depending on their gender is one of the main drivers behind the movement towards gender neutrality. Gender stereotypes are highly ingrained, and discrimination based on gender is pervasive in many communities. Gender neutrality also contributes to the eradication of harassment and violence against women. It fosters an atmosphere in which people are not evaluated based on their gender or sexual orientation and are instead treated with decency and respect. This lessens the likelihood of sexual assault, harassment, and discrimination by fostering a culture of consent and respect. The idea of gender neutrality has grown in importance and recognition in the last several years. It alludes to the

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<sup>17</sup> Law Commission of India, Report No.257: Reforms in Guardianship and Custody Laws in India, (13-14) 2015

notion that people should be treated as individuals first and foremost rather than assigning them a certain gender. Eliminating bias or discrimination based on a person's gender—whether it be male, female, or non-binary—is the goal of gender neutrality.<sup>18</sup>

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<sup>18</sup> Dr. Sushma Singh, Deepanjali, Gender Neutrality: Its Role and Impact in Society, Journal of The Asiatic Society of Mumbai, Vol. XCVI, No.16, 2023(62 to 64)