

ISSN: 2582 - 2942



# LEX FORTI

---

LEGAL JOURNAL

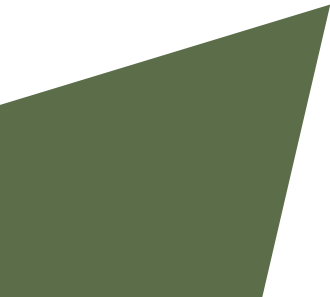
VOL- I ISSUE- VI

AUGUST 2020

## DISCLAIMER

---

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of LexForti Legal Journal. The Editorial Team of LexForti Legal Journal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of LexForti. Though all efforts are made to ensure the accuracy and correctness of the information published, LexForti shall not be responsible for any errors caused due to oversight otherwise.



ISSN: 2582 - 2942

# EDITORIAL BOARD

---

**EDITOR IN CHIEF**

ROHIT PRADHAN

ADVOCATE PRIME DISPUTE

PHONE - +91-8757182705

EMAIL - LEX.FORTII@GMAIL.COM

**EDITOR IN CHIEF**

MS.SRIDHRUTI CHITRAPU

MEMBER || CHARTED INSTITUTE  
OF ARBITRATORS

PHONE - +91-8500832102

**EDITOR**

NAGESHWAR RAO

PROFESSOR (BANKING LAW) EXP. 8+ YEARS; 11+ YEARS WORK EXP. AT ICFAI; 28+ YEARS WORK EXPERIENCE IN BANKING SECTOR; CONTENT WRITER FOR BUSINESS TIMES AND ECONOMIC TIMES; EDITED 50+ BOOKS ON MANAGEMENT, ECONOMICS AND BANKING;

**EDITOR**

DR. RAJANIKANTH M

ASSISTANT PROFESSOR (SYMBIOSIS INTERNATIONAL UNIVERSITY) - MARKETING MANAGEMENT

ISSN: 2582 - 2942

# EDITORIAL BOARD

---

EDITOR

NILIMA PANDA

B.SC LLB., LLM (NLSIU) (SPECIALIZATION BUSINESS LAW)

EDITOR

DR. PRIYANKA R. MOHOD

LLB., LLM (SPECIALIZATION CONSTITUTIONAL AND  
ADMINISTRATIVE LAW)., NET (TWICE) AND SET (MAH.)

EDITOR

MS.NANDITA REDDY

ADVOCATE PRIME DISPUTE

EDITOR

MS.SRISHTI SNEHA

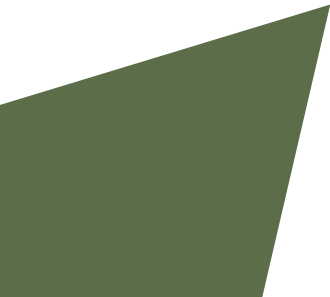
STUDENT EDITOR



## ABOUT US

---

LexForti is a free open access peer-reviewed journal, which gives insight upon broad and dynamic legal issues. The very objective of the LexForti is to provide open and free access to knowledge to everyone. LexForti is highly committed to helping law students to get their research articles published and an avenue to the aspiring students, teachers and scholars to make a contribution in the legal sphere. LexForti revolves around the firmament of legal issues; consisting of corporate law, family law, contract law, taxation, alternative dispute resolution, IP Laws, Criminal Laws and various other Civil issues.



**Gender Biased Criminal Laws In India – A Critical Appraisal**

- Mehek Dua & Kopal Mittal

## INTRODUCTION

---

India has now been fighting the war to protect its women for quite some time, and with the ever-mounting crime rate what is imperative is that we ensure that the rise in the statistics is only because of the rise in occurrence of crimes and not because of the abuse of laws.<sup>1</sup> It is not denied that women are in fact the prime victim in most cases however, that does not necessitate the ignorance towards the impact that is felt by men due to the injudicious use of the very laws that are in force to safeguard them. For long, the pro-women laws and legislations have been justified due to the status of women in society during the olden days.

It is however crucial to accept that the times have now changed and India has a constitution that identifies every human being as equal to one another. Indian judiciary places substantial weight on constitutional integrity which is considered to be amongst the fundamental moralities of constitutional democracy, such as India. Being the largest democracy in the world and having the world's longest written Constitution, people's adherence to the constitutional values in India, such as social justice, individual liberty, rule of law and fundamental equality certainly becomes of supreme importance.

Gender-neutral legislations redefine the concept of gender-specific laws, where the law is developed and interpreted in a way to include all individuals equally and to safeguard their rights without any distinction. With an ever-increasing crime rate and crimes of all different types and nature growing and everyone in the society being equally vulnerable, it is only just and reasonable to have an all-inclusive law that recognizes the crime and the victim irrespective of the gender. Strong oppositions have been raised against gender-neutral legislation coming into force by countless feminist groups and women activists on the belief that it will instantly shift the attention from the sincere female victims of the crime to the unprecedented false and frivolous complaints against them.<sup>2</sup> It is also argued that

---

<sup>1</sup> Carrel, P. M., & Masters, W.H. 'Sexual molestation of men by women', [2007] Archives of Sexual Behavior, Vol. 11(2), 117.

<sup>2</sup> The Wilson Center, 'Opening Statement by Additional Solicitor General Indira Jaising to the Verma Committee' *The Wilson Center* (15 October 2013)  
<<https://www.wilsoncenter.org/sites/default/files/1Event%20Summary%20and%20Statement%20by%20Indira%20Jaising%20to%20Verma%20Committee.pdf>> accessed 10 April 2020.

gender-neutral laws will only cause more harm than good and shall not be able to serve the objective of protecting both the genders equally.<sup>3</sup>

However, this theory is debated by the argument that such advocates do accept that there is in fact a stigma attached to such offences and that by making it gender equal it shall not eliminate it altogether but will only further help to normalize the reality that even men suffer through the same hardships, just like women and therefore everyone should be in an equal position to seek protection under the justice system.<sup>4</sup> The taboos and the patriarchal attitudes must be abolished so that male victimization is considered equal to female victimization and this starts by enacting laws that predominantly gender inclusive.<sup>5</sup> Men shall be able to come forward with their complaints and grievances only after we have effectively normalized all such offences that are believed to be committed solely against females, by men.

In the year 2013, The Justice Verma Committee report originated as a ray of re-establishing faith in the society that was submerged deep within the shackles of ferocity and dominance. The report of the commission, while submitting its conclusions and recommendations also stated that *"Since the possibility of sexual assault on men, as well as homosexual, transgender and transsexual rape, is a reality, the provisions have to be cognizant of the same"*.<sup>6</sup> Yet, this hope for reforming the criminal laws did not last for very long, that is until the organizations who raised arguments against the committee reports and recommendations came forward with unsubstantiated objections so as to not introduce such a law in the country and therefore, consequently The Criminal Law (Amendment) Act 2013 was delivered without taking into consideration the recommendations that were presented.

Sexual assault and abuse against men are inadequately researched and studied and therefore, it does not receive the importance it deserves. There is a shared disbelief that a real man cannot be abused or sexually assaulted and this is primarily the reason why such cases are rarely reported.<sup>7</sup> There is a lack of awareness for crimes that can very well be committed

---

<sup>3</sup> Vrinda Narain, 'Women's Rights and the Accommodation of "Difference"', [1999] 8 S. CAL. REV. L. & WOMEN'S STUD. 43, 62.

<sup>4</sup> Madhavi Sunder, 'Piercing the Veil' [2003] 112 YALE L.J. 1399, 1466.

<sup>5</sup> Rebecca Rajan, 'Gender Equality And Gender Neutral Laws: The Future Of Social Justice In India' International Journal of law and legal jurisprudence studies, (ISSN 2348-8212) Vol. 4, 91-93.

<sup>6</sup> Justice J.S.Verma, Justice Leila Seth and Gopal Subramaniam, *Report Of The Committee On Amendments To Criminal Law* (2013), 416.

<sup>7</sup> Barbara Krahe, Renate Scheinberger and Steffen Bieneck, 'Men's Reports of Non-Consensual Sexual Interactions with Women: Prevalence and Impact' [2013] Archives Of Sexual Behaviour, Vol. 32, 165.



by females as well and this is essential because of the disproportion between crimes perpetrated by males against women and female perpetrated crimes against men.

Crimes that are perpetrated against men cannot be shelved in order to accomplish the object of safeguarding the rights of women in society. Legislations that are currently in force only penalizes one gender i.e the males, for offences such as sexual assault, stalking, adultery, voyeurism, rape, domestic violence, dowry death, harassment at the workplace, etc. The enactment of such pro-women legislation is evidently not on the basis of any scientific results so as to justify why they speak for a single-gender. These laws initially came into effect because of the socio-legal atmosphere and the disparity amongst the people who lived in the country during those times.

What we need to determine here is that who is actually facing troubles because of these gaps in the legal system. Consequently, in this paper, we shall analyze the following legal provisions while discussing the relevant judicial precedents and future steps to ensure better implementation and to avoid instances of misuse of power;

1. Rape - Section 375, Indian Penal Code, 1860.
2. Provisions relating to Sexual Harassment as under the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.
3. Domestic Violence and Cruelty as under the criminal legal system.
4. Section 125 – Maintenance, Code of Criminal Procedure, 1973.

## **A CRITICAL ANALYSIS OF THE EXISTING LEGAL PROVISIONS**

Gender equality and women empowerments are both fundamentally basic values and cross-cutting issues that have been widely recognized in recent years. There is no ambiguity as to the fact that sexual abuse in any manner or form needs to be strictly condemned. To tolerate such conduct would mean to disrespect the freedom and dignity to which every individual has a birthright to.

Rape, sexual assault, harassment, and cruelty are acts of grave concern - not only due to the physical, psychological and emotional trauma which they may cause to the victim, but more importantly because these are practices which are gradually being tolerated by a society which is presumably wedded to the rule of law.

The basic right to live with human dignity, the right to equality, and the right to the choice of work or profession or trade fundamentally incorporate protection from any form of assault or harassment as well.<sup>8</sup> Undoubtedly, the position is that the Indian Constitution guarantees fundamental freedoms to all its citizens regardless of their gender.

More importantly, the Preamble to the Indian Constitution ensures social, political and economic justice which would primarily include gender justice, freedom of thought, expression, faith, religion and reverence; equality of status and equal opportunity which would again strengthen the notion of equality; while fraternity commands citizens to treat one another with mutual respect and dignity, regardless of their gender.<sup>9</sup>

### **I. Rape - Section 375 of the Indian Penal Code, 1860**

Though the widespread belief is that the victim of rape is ordinarily a woman, the World Health Organization estimates that 12% to 16% of men around the globe have been reported to have a past history of some form of sexual abuse during childhood. It is also acknowledged that the reports that reflect such data is mostly from developed nations. Men or boys may experience or suffer through sexual assaults in three different circumstances: Prison rape; Sexual assault during circumstances of conflict and Sexual assault of juvenile males during childhood.<sup>10</sup> In India, there are no statistics or any other data officially available for the first two forms of assault. The third category, i.e assault on children that includes both boys and girls, has been categorized as sexual assault on children in accordance with the POCSO Act, 2012.<sup>11</sup> What should bother us, even more, is that the absence of data not only reflects the lack of initiative to protect the rights of

---

<sup>8</sup> Salvia Forbes, 'Human Rights must be equal to all' *Forbes Daily* [2017] Vol 3 41-43).

<sup>9</sup> Granville Austin, *The Indian Constitution — Cornerstone of a Nation* (1999).

<sup>10</sup> Will S., 'Rape of men: the darkest secret of war' *The Guardian*

<<https://www.theguardian.com/society/2011/jul/17/the-rape-of-men>> accessed on 7 March 2020.

<sup>11</sup> Gupta, T. S., 'Child Abuse', <<http://www.sossexisme.org/english/IndiaChildAbuse.htm>> accessed 12 May 2020.

men in India but also exhibits the ignorance of the society and the state towards the prevalence of such crimes in general.

Section 375 of The Indian Penal Code, 1860 categorically regards rape as an offence perpetrated by a man against a woman. It identifies the man as the only possible perpetrator and women as the only possible victims.<sup>12</sup> It is a victim as well as perpetrator specific as it does not take into consideration the possibility of the following scenarios;

- A man being raped by a man
- A man being raped by a woman
- Rape of a third gender

The rape of men is still a taboo, and has a negative implication amongst the homosexual and heterosexual men.<sup>13</sup> Male victims may find it difficult to report any form of sexual abuse they experience, especially in a society with robust male customs. They may fear that people will raise questions concerning their sexual orientation or label them as homosexuals, or that they may be considered as un-masculine because they have been 'Raped'.

In most cases, male victims often tend to deny and hide their victimization, which is also quite similar to the nature of female victims, unless they suffer severe physical injuries. The male victims can also be extremely imprecise and vague in describing the events even while they are seeking medical help or any other mental health assistance.<sup>14</sup> Stories narrated by male victims often mirror situations arising from female rape in terms of humiliation, self-blame, and embarrassment, but men are far more likely to not report any instance of an assault. To add to this, due to the absence of a strong criminal legal system to defend and

---

<sup>12</sup> Menon, P. (2013). 'Lacking support, male rape victims stay silent' *The Times of India*, <[http://articles.timesofindia.indiatimes.com/2013-02-16/chennai/37132653\\_1\\_gay-man-drunk-men-straight-men](http://articles.timesofindia.indiatimes.com/2013-02-16/chennai/37132653_1_gay-man-drunk-men-straight-men)> accessed 12 June 2020.

<sup>13</sup> Constantino RE, Crane PA, Young SE *Forensic Nursing: Evidence-Based Principles and Practice* (F. A. Davis Company 2013)

\*\* Declared partially unconstitutional by the Supreme Court in 2018 wherein it stated that consensual sexual acts between adults cannot be a crime, deeming the prior law "irrational, arbitrary and incomprehensible."

<sup>14</sup> B. Orsho, 'How often do women rape men' *The Atlantic*, <<https://www.theatlantic.com/science/archive/2016/11/the-understudied-female-sexual-predator/503492/>> accessed 3 June 2020.

offer aid and assistance to men on the occurrence of any mishap, the cry for relief is lost within the patriarchal system itself.

Any form of coercive male on male sexual assault or intercourse is penalized under Section 377 of the Indian Penal Code, 1860.\*\* It is recognized as carnal intercourse and is labeled as going against the order of nature, yet still not called rape. It is undeniably appalling, that in India, a man on man rape was treated at par with sexual intercourse that takes place amongst homosexuals voluntarily. Section 377 failed to appreciate the vast distinction between forced male on male rape and consensual sex between homosexuals.

Further, men who witness sexual abuse by women are also often exposed to social, legal, and emotional double standards. Men may also feel helpless or fearful of fighting back due to the risk of being accused of assault and/or violence because of the societal double standards that prevail regarding the use of strength or force during self-defense between genders, especially in cases where the perpetrators are females.<sup>15</sup> It is also a common belief that a male must be feeling aroused if he is getting an erection or is able to have an orgasm so that automatically conveys that they are in consent and are in fact enjoying the sexual activity. It is also scientifically noted that minor genital stimulation or anxiety can lead to erections even though no obvious sexual stimulation might be present.<sup>16</sup> An erection does not by itself mean consent.<sup>17</sup> Erections can be a result of traumatic or agonizing sexual stimulations and the same should not be misunderstood as consent.

In India, many studies have repeatedly documented various forms of violence against transgenders.<sup>18</sup> There is a sufficient amount of mythological evidence and history available to safely say that the transgender community has always been a part of India. The origin of Hijras in India can be traced back to the mythologies in Ramayana and Mahabharata.<sup>19</sup>

---

<sup>15</sup> Perera, A. (2013). 'Why a gender neutral anti- -women', *The Firstpost*. <[http://www.firstpost.com/living/why-a-gender-neutral-anti-rape-law-isnt-anti-women-657065.html?utm\\_source=ref\\_article](http://www.firstpost.com/living/why-a-gender-neutral-anti-rape-law-isnt-anti-women-657065.html?utm_source=ref_article)> accessed 9 June 2020.

<sup>16</sup> Roy J. Levin and Willy Van Berlo, 'How men react to non-consensual sexual activity' [2014] *Journal of Clinical Forensic Medicine* 17.

<sup>17</sup> Sarah LeTrent, 'Against his will: Female-on-male rape' *CNN* (2013) <<https://www.cnn.com/2013/10/09/living/female-on-male-rape/index.html>> accessed 3 May 2020.

<sup>18</sup> "Human right violations on the Transgender community: A study of Kothi and Hijra sex workers in Bangalore, India" (2013) By People's Union of Civil Liberties, Karnataka.

<sup>19</sup> Narrain, S. (2013). 'Being a Eunuch.' *The Frontline*, <<http://www.countercurrents.org/gen-narrain141003.htm>> accessed 4 June 2020.

Therefore, it is extremely surprising that so far the law in India barely recognized the rights of Transgenders and continues to deny any protection to them under the criminal law.

## **II. Sexual Harassment Law**

India currently lacks a legal framework under which a woman can be tried as an accused of committing any sort of sexual abuse against the man. The harassment law in India extends protection only to women by the virtue of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

India has no official statistics to provide an exact figure concerning the number of men who face sexual harassment at work, and how many of those men actually come forward to file complaints about such harassment.<sup>20</sup> It is of great significance to understand that Sexual Harassment is not about the sex or the gender of the victim. It is merely about authority, control, and power. And so consequently, in today's time and age, when the number of women successfully reaching powerful and higher positions at the workplace is constantly increasing, there is no justified reason as to why a woman who is in control and power cannot be as abusive as her male counterparts. It is therefore of utmost importance to examine and review the issue of growing incidents of assault and harassment against men in the public forums.

Sexual harassment of males necessitates more attention and seriousness than any other issue or crime since suicides committed by males at the workplace are four times more common than the suicide rate of females at workplaces.<sup>21</sup> Gender-equal legislations have been accepted in more than 75 countries around the world including, the United States, Australia, United Kingdom, and Denmark. Yet, the Parliament in India has repeatedly refused to enact laws combatting harassment as gender-neutral. This problem of harassment within males also continues to take place even more frequently in prisons.

## **III. The Protection of Women From Domestic Violence Act, 2005 & Section 498a of Indian Penal Code, 1860.**

---

<sup>20</sup> M. Aarti, '*Sexual harassment and men*' <<http://legalservices.co.in/articles/2018/sexualharassmentandmen/hdbxjv34&==2?>> accessed 28 May 2020.

<sup>21</sup> Ibid.

Domestic violence denotes violence or other kinds of abuse by one person against the other in a domestic or household setting, such as in cohabitation or marriages.<sup>22</sup> The rate of Domestic Violence in India is high to an extent that one out of every five women is reportedly a victim of some form of domestic violence. The Protection of Women from Domestic Violence Act was passed in 2005 which guarantees protection to women against violence of all forms taking place within the matrimonial house or the family and for any other matter connected or incidental to it. By a bare perusal, the law emerges as a “shield” or guard for women in India who are victims of obnoxious and violent relationships. However, the other side of the enactment is that many times, women are themselves the cause and bearer of such violence and they often play a significant role in perpetrating acts of violence against other members of the family.

The act of violence within a marriage or other relationships often leaves the victim with much more pain and damage than what is visible as scares and injuries. The Supreme Court, with its progressive decision and a wide interpretation of the word ‘respondent’ and by subsequently by ordering to delete the words ‘adult-male’ from the definition of the respondent under Section 2(q), paved the way for the inclusion of women and non-adults as perpetrators for causing harassment or violence to any women in the family. The Act, therefore, is now gender-inclusive, when it comes to the perpetrator, however, it remains gender-specific in regard to who the ‘aggrieved person’ can be *i.e* it only identifies women as victims of domestic violence.<sup>23</sup>

*“Out of 90,000 to one lakh cases investigated every year, nearly 10,000 complaints of dowry harassment turn out to be false. A total of 63,343 married men committed suicide in 2012, with a fair amount of them having faced domestic problems”* reported by Amit Gupta from Hridaya, a local men's rights organization. He also added that according to a survey that was carried out by his organization, it was observed that girls face beatings from their own mothers nine times more than any violence from mothers-in-law, yet no one has come forward to discuss that.<sup>24</sup>

---

<sup>22</sup> Sukhmani Kapur, ‘Domestic violence and men: no laughing matter’ <<https://www.psychologytoday.com/us/blog/talking-about-men/201911/domestic-violence-against-men-no-laughing-matter>> accessed 20 June 2020.

<sup>23</sup> Hiral P. Harsora v. Kusum Narottamdas Harsora, 2016 SCC OnLine SC 1118.

<sup>24</sup> Anwar, T. (2015). ‘Flipside of dowry law: Men recall how section 498(A) is unfairly used against them’ *First Post* <<http://www.firstpost.com/india/flipside-of-dowry-law-men-recall-how-section-498a-is-unfairly-used-against-them-2172943.html>> accessed 1 July 2020.

There are essentially two major fundamental problems within this legislation. First, it is framed in an overwhelmingly gender-biased fashion i.e it only favors and protects women. And secondly, it embodies the immense potential for the misuse of its provisions. Even when it has been comprehensively established that women are equally capable of inflicting violence and indulging in abusive behaviors while being in an intimate relationship, the law still withholds protection from male victims. The Act also offers numerous rights to women without demanding them to be accountable for their own actions.

To remedy this and ensure that the law is not used as a dirty weapon, at the very minimum, the legislature should make it gender-neutral to include both men and women as victims and thereby offering a uniform guard to both. Moreover, there is a need to incorporate provisions for strict penalties to prevent any misuse of the law. Additionally, the law requires more practicality as it needs to differentiate between the different degrees of violence and conflicts and by defining what amounts to domestic violence unambiguously.

#### Section 498a, Indian Penal Code, 1860.

Before the Prevention of Women from Domestic Violence Act, 2005 was enacted, Section 498A in the Indian Penal Code, 1860 was the only provision under the law to protect women from any kind of violence that they may encounter within the household by the husband or the relatives of the husband. Section 498A is a provision put in place to protect women from any kind of cruelty that they may face during their lifetime. In *Saritha v R. Ramachandran*<sup>25</sup> this reverse trend was observed by the court and consequently, the Law Commission and The Parliament was asked to deliberate upon this issue and make the offence bailable and non-cognizable. However, another trend from the past followed and several women's rights organizations and groups went against this idea of development, arguing that this may benefit the actual accused and give them a chance to escape conviction.

However, a more practical and positive approach would be to perceive and interpret this recommendation as a way to give all men a fair chance to rightly defend themselves and no fall prey to the unfair and deceitful complaints filed by women. Justice in its true sense

---

<sup>25</sup> 2002 (4) ALT 592.

means protecting the weaker and ensuring that the person who is wronged is given a fair chance to must protect the weaker and ensure that the wronged is given a chance to assert and establish his/her innocence.

#### **IV. Section 125, The Code of Criminal Procedure, 1973.**

The provision for 'maintenance' is provided under Section 125 of the Code of Criminal Procedure ('CrPC'), 1973 as well as under the various personal laws in India. This concept evolves from Article 15(3) of the Indian Constitution, which is further reinforced by Article 39.<sup>26</sup> 'Maintenance' as per the law in India means the overall well-being and therefore includes monetary allowance, food, clothing, and shelter. Under Section 125 the wife, children, and parents are entitled to maintenance. This section is a reflection of the natural and moral duty of a man to provide for his family when they are unable to do so themselves. The objective behind the enforcement of this provision is to ensure social justice and prevent immorality and hardships and also to ameliorate the condition of the wife and children.

The proceedings initiated under the personal laws are however civil in nature whereas the proceedings instituted under Section 125 of CrPC are criminal proceedings and follow a summary procedure. Section 125 applies to all citizens irrespective of their caste, creed, or religion. The main object of maintenance proceedings, however, is not to reprimand or punish a person for his past negligence but to compel him to fulfill his obligations in the future. Section 125 was enacted to check and prevent vagrancy by ordering maintenance for those who are incapable of maintaining themselves. The right of maintenance is available to the wife, children, and parents at the interim as well as after the final stage of proceedings.

In extremely rare cases under the personal laws, the courts in India have embraced a liberal view and conferred the husband the right to claim maintenance for the wife.<sup>27</sup> Such right, however, is restricted and conditional and is typically granted to the husband, only if he is unable to maintain himself due to some incapacity caused by an accident or a disorder or

---

<sup>26</sup> Directive Principles of State Policy, Part IV, The Constitution of India, 1950.

<sup>27</sup> Rosy Sequiera 'Man granted maintenance by order of court' *The Hindu*, <<http://www.thehindu//mangrantedmaintenance/ct3gsndllthe/w-25ebd.&App=1>> accessed 8 July 2020.



disease and has, therefore, made him incapable of earning a livelihood. Section 125 of the CrPC makes it obligatory for the man to provide for maintenance to the wife as well as his children and parents. This includes minor children (both legitimate and illegitimate) and children who have attained majority but are incapable to maintain themselves due to some mental or physical disability. It also includes parents who are incapable or unable to maintain and provide for themselves. Both the parents i.e the father as well as the mother (natural or adoptive), may raise a claim for maintenance when such circumstances may arise. Section 125 also intends to include step-mothers, when she does not have any children of her own and has also been divorced subsequently.<sup>28</sup>

It is crucial here to mention that the right for maintenance originates from Article 21, which guarantees the right to life and the right to live with dignity thereby having a huge impact on the provisions essential for the socio-economic welfare of the citizens.<sup>29</sup> Moreover, when Article 21 is construed harmoniously with Part IV of the Constitution, it casts a duty upon the state to maintain each and every individual of the society and consequently also makes the right of maintenance an indispensable fundamental right. Section 125 is therefore enacted an enforced in furtherance of the duty of the state to ensure that every individual is taken care of and therefore, in case of non-observance the same is also made actionable. In order to fulfill this objective, the state demands every able individual in society to pay due to maintenance to those who are morally obligated to receive the same by them.

With time, Section 125 has made several creditable moves for implementation of maintenance orders, nevertheless, the provision is largely sustaining itself on a moral obligation which a person with adequate and sufficient resources owes to his/her dependents. It is understood that Section 125 is a gender-neutral provision when it comes to providing maintenance to the parents but is gender-biased when it concerns itself with the maintenance of spouses. The significant impact of this gender-biases is essentially faced by those men who are compelled to maintain their wives while being insufficient themselves and therefore suffer indiscreetly because of the unjustified nature of law. The effect of these biases is also visible when such laws are misused by persons entitled to

---

<sup>28</sup> Ibid.

<sup>29</sup> Salema A. 'Article 14 and 21, the mini Constitution; Rights within Article 21' <http://www.legalforum/htfmsngd//m=21mdgsjln&jjhv1.vmnApp=2> accessed 27 June 2020.

maintenance, in order to harass the respondent for petty issues, which in turn ends up putting the husband/father/son under grave financial burdens.

Section 125 discriminates amongst gender explicitly in case of maintenance of spouses. It also discriminates implicitly on the basis of gender in cases of ensuring maintenance to the children and the parents as a man is presumed as being able to earn money if he is physically and mentally well and healthy, while the similar presumption is not relevant or applicable in case of women.

## **A STUDY OF THE RELEVANT JUDICIAL PRONOUNCEMENTS**

---

The judiciary has felt the need to modify the existing protective criminal laws on several occasions. Consequently, the law commission is often called out to analyze and examine the prevailing situation and give their recommendations so as to enable the legislature to come up with a possible amendment in regard to the existing laws. It is particularly acknowledged by the State Legislature and a section of the Public that *“changing the law of rape and sexual assault gender-neutral to an extent that it included males as a victim, but at the same time leave out females as the perpetrator.”*<sup>30</sup> Despite the excess amount of reports and alterations, the issue is yet to gather the purposive amount of attention and deliberation it warrants and deserves. The very fact that a large amount of debate and discussion on this issue is mostly confined between the four walls of academic institutions and various other policy research organizations and bodies, as opposed to the Indian Parliament, is upsetting. **Perse, it is both rational and appropriate to deal with the subject of gender neutrality in Indian Criminal Laws afresh, at best from a theoretical viewpoint.**

A Division Bench comprising of then Acting Chief Justice Gita Mittal and Justice C. Hari Shankar, of the Hon’ble High Court of Delhi, commented after Senior Advocate Sonia Mathur expressed her view that India may not be ready as of yet to make the laws of rape and its punishment as “gender-neutral”. “Will there ever be a right time?” the Bench remarked, as it inquired about the laws pertaining to the offence of rape in other parts of

---

<sup>30</sup> Parliamentary Standing Committee, 167th Report on the Criminal Law (Amendment) Bill, 2012 at 43.

the world.<sup>31</sup> Though, Ms. Sonia Mathur did specify that the more accepted view of the world on this subject was that it should in fact be “gender-neutral”. *“It becomes very difficult to accept that there is a single reality in rape; that is, men rape women and men can never be victimised, or if they are, this act has a meaning so different for men that it cannot be labeled as rape,”* the petition said adding, *“recognition of male victimisation does not undermine the notion of patriarchy; it merely acknowledges that sexual coercion can also, in a minority of cases, exist in other contexts.”*<sup>32</sup>

The Supreme Court has also observed that *“the courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.”*<sup>33</sup>

The following observations were also made by the Supreme Court in ***Rajoo & Ors. Vs. State of Madhya Pradesh***<sup>34</sup> *“... It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication.... there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.”*

The accused are often left to the mercy of the Courts and the public, even before the trial is concluded, the society gives its verdict. Over the years, the tolerance of the public towards such offences has largely been reduced. The same has proved to be helpful in making the state address the concern of the citizens more effectively and to ensure speedy trial of rapists, however, at the same time it has also lead to the shaming of those wrongly accused. A person once accused of an offence of such grave nature carries its burden throughout life. This not only affects his social, psychological, and mental state but also harms the one around him. Persons accused face humiliation and disgrace throughout their lives. They are mortified for life, and it is also quintessential for people to treat them in a

---

<sup>31</sup> Soibam R. Singh ‘Will rape law be ever made gender-neutral, asks Delhi HC’ *The Hindu* <<https://www.thehindu.com/news/cities/Delhi/will-rape-law-be-ever-made-gender-neutral-asks-hc/article24393847.ece>> accessed 31 May 2020.

<sup>32</sup> Ibid.

<sup>33</sup> Radhu v. State of Madhya Pradesh, (2008) 2 SCC (CrI) 207.

<sup>34</sup> AIR 2009 SC 858.

way different from others. This largely represents the stigma that prevails in the society and the urgent need to prevent such instances from happening.

Further in the case of *Mumtaz Vs. State (Govt. of NCT of Delhi)*<sup>35</sup> G.P. Mittal, J. again pointed out the constant misuse of such provisions. She observed that the “...courts are conscious of misuse of the provisions of rape and the effect it can have on the accused, in the context of evaluating the testimony of the rape victim”

The Court remarked that the appeal is a blatant example as to how a mountain can be made out of a molehill by the victim and her family, and observed further as to;

*“How poverty leads to unending misery for an accused and how the concept of providing legal aid to those persons, who are not able to defend themselves by getting legal assistance at their own expenses, has failed to achieve the desired purpose, can be best answered by the Appellant who had been sentenced to undergo rigorous imprisonment for ten years with fine for rape which he did not commit.”*

In 2017, a PIL praying for Gender Neutral laws stated, “Gender neutrality is a simple recognition of reality — men sometimes fall victim to the same or at least very similar acts to those suffered by women...Male rape is far too prevalent to be termed as an anomaly or a freak incident. By not having gender-neutral rape laws, we are denying a lot more men justice than is commonly thought.”<sup>36</sup>

The PILs demanding gender-neutral rape laws have been causing various debates and discussions since 2017. This came along the very first wave of the #MeToo movement in India when men felt the need to be identified as possible victims of sexual abuse and harassment but were in fact left out. This response consequently led to the emergence of a positive #MenToo activism in many parts of India, which is also, along with many other demands, is aiming for the amendment in rape laws.

We must understand the magnitude and consequence of such laws that are in force in the country today. We have a law in place that deliberately allows all persons in the society to believe that a specific crime or set of grave offences can only happen with a particular

---

<sup>35</sup> 2013 SCC OnLine Del 2094.

<sup>36</sup> Pallavi Pundir ‘Indian Rape Laws Cannot Be Gender-Neutral, Says Central Government’ *The Vice* <[https://www.vice.com/en\\_in/article/mb8dey/rape-laws-in-india-cannot-be-gender-neutral-says-ministry-of-home-affairs](https://www.vice.com/en_in/article/mb8dey/rape-laws-in-india-cannot-be-gender-neutral-says-ministry-of-home-affairs)> accessed 18 June 2020.

gender and at the same time also reflects that these offences are committed by a particular gender only. The Division Bench of the Madras High Court <sup>37</sup>, while addressing the issue of Sexual Harassment held that “*Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is intended to have an equal standing for women in the work place and to have a cordial workplace in which their dignity and self respect are protected, it cannot be allowed to be misused by women to harass someone with an exaggerated or non-existent allegations.*”

As stated earlier, sexual harassment is more about power and the ability to dominate. It is also true that power imbalances can discourage or prevent women from actually coming forward to report cases. But the reality that this power can also be abused by women cannot be ignored. The exploitation of laws in the hands of women cannot go unchecked in order to ensure protection.

Further, in the landmark case of ***Preeti Gupta Vs. State of Jharkhand***,<sup>38</sup> The Supreme Court observed that it is time to re-visit Section 498A of the India Penal Code. It also remarked that all the recommendations by the Law Commission are in consonance with it and have repeatedly pointed out the rigidity in this provision. The only practice that is revealed here is that the rigidity and the stringent nature of procedural laws frustrate the fundamental purpose of the substantive laws. The simplicity and flexibility within the procedural laws will carve the way for amicable settlement of disputes within the families since the cardinal rule under the family law is to make and not break the family. If no chance of settlement is given to the parties then the complete institution of the family will possibly come to an end. The main aim of this law was to reduce the cases of family disputes in the society, however, the substantial abuse of the law is triggering even more matrimonial tensions and disputes.

Commenting upon the situation in our country, Hon’ble Apex Court in ***Shushil Kumar Sharma Vs. Union of India***<sup>39</sup> has observed that “*by misuse of the provision a New Legal Terrorism may be unleashed. The question is – does a provision of law have become synonymous to an extremely negative thought such as terrorism?*” The objective of Law must always be to safeguard its subjects and to guarantee justice, which is the ultimate end. However, if a situation

---

<sup>37</sup> The Court quashed the orders passed by CAT and Local Complaint Committee. [Union of India v. Reema Srinivasan Iyengar, WP Nos. 10689, 24290 and 4339 of 2019, decided on 17-02-2020]

<sup>38</sup> AIR 2010 SC 3363

<sup>39</sup> AIR 2005 SC 3100

arises where a 'piece of legislation' becomes equivalent to a 'mark of terror' for the subjects, then it is certainly the time to have a re-look at its roots and reassess the principal objects for its application.

The observation made by the Hon'ble Apex Court that "*Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society*"<sup>40</sup> evidently exhibits that these provisions are disturbing the balance in the society and at the same time causing intense fear, therefore, is used as synonymous to New-Legal Terrorism, which perhaps has now been released. Also, just like terrorism, it is the countrywide, widespread in all religions and in every social stratum.

Justice Katju has briefly expressed his views in ***Som Mittal Vs. Govt. of Karnataka***.<sup>41</sup> Concerning the growing misuse of the laws. He observed that "*the experiences have shown that the absence of the provision for anticipatory bail has been causing great injustice and hardship to the citizens of U.P., for instance, often false FIRs are filed e.g. under section 498-A of Indian Penal Code. There are some reported incidents. Many cases remain unreported. But it is unfortunate that no authentic data is available of its misuse.*" Various courts from all over the country are continuously dealing with several cases involving misuse of such laws. The fabrication of matrimonial offences has touched a new level, which is a cause for grave concern for the judiciary as well as the lawmakers.

The Delhi High Court, in ***Savitri Devi Vs. Ramesh Chand***<sup>42</sup> observed as: "*these provisions were though made with good intentions but the implementation has left a very bad taste and the move has been counterproductive. There is growing tendency amongst the women which is further perpetuated by their parents and relatives to rope in each and every relative including minors and in some cases every person of the family of the husband whether living away or in other town or abroad ...*"

In 2019, the Delhi High Court also called out on a woman for exploiting the laws meant to benefit the fairer sex and observed that a woman could not be entitled to maintenance twice from her husband by pleading under the multiple provisions of law.<sup>43</sup> Women often

---

<sup>40</sup> Preeti Gupta Vs. State of Jharkand, AIR 2010 SC 3363

<sup>41</sup> AIR 2008 SC 1126

<sup>42</sup> 2003 Cri. LJ 2759; 104 (2003) DLT 824.

<sup>43</sup> S. Mishra, 'Can't misuse law to claim maintenance twice: Delhi high court'. <<https://www.dnaindia.com/india/report-can-t-misuse-law-to-claim-maintenance-twice-delhi-high-court-1431835>> accessed 22 May 2020.

seek the assistance of multiple forums in order to blind the courts and extract huge amounts of monies in the name of alimony and maintenance from their husbands. Men lack this basic right of subsistence and are additionally obligated to provide for the entire family. While the country may not be ready to change this as of yet, it would be unfair if we also overlook the relentless abuse of these powers by women.

We could clearly see a transformation in the mindset of the courts as well, as they have also come to realize the genuineness and gravity of the problem of abuse of legal provisions and therefore, in its several decisions it has repeatedly highlighted the responsibility of the judiciary and the prosecution to ensure that no innocent person is deliberately wounded under the disguise of justice. With the various judicial pronouncements in place, we can observe that the courts are careful about such misuse of law and therefore what we need today is for the legislature to step up and amend the law to make it gender inclusive and therefore provide protection to both men and women, equally.

### **IS INDIA READY FOR A SHIFT?**

---

Gender-neutral law is not entirely a new wave that the Indian society was unaware or ignorant to. Several statistical analyses and data collection over the span of the last fifteen years have shown that how the rights of men are being violated simply because there is no protective legislation or law in force to protect them from the filing of superfluous and redundant complaints against them. Gender neutrality is essentially an idea more than another just movement for justice and rights which supports and encourages the principle of avoiding negative discrimination amongst people on the basis of gender with respect to formulating policies, law, and other vital social functions. It is fundamentally expected to bring uniformity and balance in the society by eliminating the belief system of the preeminence of any one gender upon the other i.e. equal and alike treatment of all men and women in several spheres.

To ensure equality and to safeguard the rights of all persons including that of the third gender and homosexuals neutrality in-laws is essential and urgent. In India, the need to give a new meaning to the definition of sexual assault was first felt in 1993. It was seen as the only way to deliver justice even to the most vulnerable sections of society. The National

Commission for Women addressed this newly felt need by the way of a fresh bill titled, 'Sexual Violence Against Women and Children Bill'. The bill encouraged the removal of Sections 354 (violation of modesty of a woman), Section 375 (Rape), and Section 376 (Punishment for the offence of rape) and further advocated to bring them under on comprehensive banner of 'sexual assault.' The jurisprudence behind any law ordinarily consists of scientific and systematic analysis of the social trend of law and justice in that society. Law is in fact a social phenomenon itself and it is correlated to justice.

Taking into deliberation the nuances of amending the law, various ministries and institutions must also consider the possibility of harassment by women at the grass-root level. With the present level of employment prospects and equal opportunities, the offence of sexual harassment at the workplace must reflect equality. Only when there are operational means to redress the concerns of men, will more instances of harassment can be testified and only then justice will actually be served ultimately leading to more efficiency and productivity contributing to the overall economic growth of the country.

Further, domestic violence in India, as stated, is only reviewed in the context of women as victims. Males are always seen in the position of the wrongdoer. However, considering the socioeconomic changes in the society that has largely affected the family arrangement, domestic violence is no longer limited only to female victims. Men also face abuse physically, sexually, verbally, mentally, and psychologically. The biggest problem with such abuse is that men are more likely to never report such behaviors and therefore end up as the silent victims of violence. Since major laws in our society support only women as sufferers of violence, several unfortunate men are unable to procure justice for their wretched conditions. ***The proposal, therefore, is to consider Domestic violence as spousal violence and make both, the DV Act and 498A gender inclusive.***

On the other hand, the provision for maintenance as under the CrPC is relatively Gender Neutral to the degree that it imposes an equal and shared responsibility to provide for both the parents and the children upon the males and females equally. As stated earlier, the object for enactment of Section 125 is the collective welfare of each individual in the society. Therefore, so far as the validation behind the responsibility of a man to maintain his wife is concerned, the principle following this advances from the conventional believe system that the men in the family are the exclusive earning member and therefore it is their



ordinary duty to provide for the entire family, while the females are assigned the task to satisfy and support other domestic needs of the family, both physically and emotionally. This system of thought is however gradually varying with time and both genders have stepped forward to take up the charge of supporting the financial needs of the family. However, it is important to point here that while this view stands factually accurate for most urban societies today, the same cannot be held true for a major part of the country.

At the same time, it is not denied that a lot of women today have been misusing the provisions under law to extract money from their husbands over petty issues. However, what needs to change today is the mindset of the people and not the law. Society as well as the judiciary needs to become more sensitive towards the position of men and at the same time, they must evaluate the situation with more open-mindedness.

## **CONCLUSION**

---

As a way forward, to bridge the gender disparity in Indian society, the state may consider introducing separate evidentiary standards for cases where the perpetrator is a man. Similarly, in order to quell the impending threat of a counter-complaint from a man accused of committing rape on a woman, the state can introduce certain criminal consequences if the man has filed a false or baseless complaint. Every such measure, supported by appropriate judicial and police training, shall aid in constituting steps in the accurate direction, without having to resort to much deliberation when included in the framework of the criminal law. After all, the goal of gender neutrality is not to disregard the construct of gender from the criminal law jurisprudence altogether, but only to limit its impact in ascertaining the victims and perpetrators of the offence.

There is an evolving need for a resilient legislation that protects all individuals by uniformly focusing on the description of the crime, as well as incorporating laws to deal with mala fide complaints and abuse of the law that causes unquantifiable suffering to the innocent victims. Introducing gender neutral laws would open the way for making the society think ahead and make it capable for accepting the miseries of men without actually questioning their masculinity. It is crucial for everyone to realize and understand that, just like women, even men are exposed to such cases of abuse, and it is in fact the perpetrator and the crimes that need to be punished regardless of gender. If gender-equal laws/legislations

come into existence, they ought to be cautiously formulated and implemented to ascertain that they are not prejudicial to the interest of either gender. The time is now, it has become imperative to reform the age-old archaic law and to introduce changes in the law so as to enable the society to change its mindset and to push them towards normalizing male victimization. For this to transpire, it is necessary to introduce words like “any person” or “any spouse” in the place of “man” or “wife” or “woman”. This shall also ensure fair and equal accessibility to justice for all individuals regardless of the gender or crime. The model of equality as envisioned under the Constitution of India must pertain equally to all offences and advance itself by penalizing all persons uniformly. If the law itself disappoints its citizens, where else will his remedy lie? The time has arrived for the banner of justice to be waved with the thread of equality and not gender targeting.