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Bridging Gender Equality in India: The Need for Comprehensive Laws and Collaborative Efforts for Effective Implementation

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India's journey towards gender equality is long and yet unfinished. Even with constitutional guarantees and landmark legislation like the Domestic Violence Act of 2005¹ and the Sexual Harassment at Workplace Act 2013², the disparities continue. Systemic barriers include women being paid less than their male counterparts, having limited opportunities to assume leadership positions, and receiving fewer education and health opportunities. In contrast, men and other genders suffer from stigma in society and lack legal protection as victims of violence and discrimination. Major contributors to the situation include deep-seated stereotypes, patriarchal norms, and poor law implementation. It often portrays women as victims while hiding men and non-binary individuals from the radar in cases of sexual harassment, domestic violence, and more. India's rape laws, for example, exclude male victims, and stalking provisions do not refer to female perpetrators, revealing a prejudiced framework that fails to respond to the complexity of modern gender dynamics. The hour demands a paradigm shift toward gender-neutral laws that safeguard everyone equally. From redefining crimes like rape and harassment to universal parental leave policies, legal reforms have to break down gendered assumptions and provide equal protection. The LGBTQIA+ community also needs stronger legal and social safeguards to fight against discrimination and exclusion. This change can only occur through collective effort; legislation alone is not sufficient.

¹ Domestic Violence Act 2005

² Sexual Harassment at Workplace Act 2013

However, governments, civil society organizations, and individuals must also challenge stereotypes to create an awareness that effectively implements policies. So, the day India ends its gender gaps and places fairness and justice beyond considerations of gender is not that far away.

Keywords: *gender neutrality, perpetrators, victims, sexual harassment, domestic violence, gender gap.*

INTRODUCTION

Gender equality forms a cornerstone of modern democracies, ensuring that individuals are granted equal rights, responsibilities, and access to opportunities, irrespective of gender. It is not just a matter of ethical duty but also a condition to facilitate social integration, economic growth, and sustainable development. Ratifying the importance of the matter, India has integrally included the aspirational vision of gender parity in its constitutional blueprint as represented by Articles 14³, 15⁴, and 16⁵, which are to prevent discrimination based on gender, promote equal law, and guarantee equal access to opportunities. Judicial actions and incremental statutes (e.g., Protection of Women from Domestic Violence Act, 2005⁶ and Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013⁷) are indicative of and aim to prevent systemic discrimination.

Nevertheless, even with these actions, embedded gender disparities persist in multiple aspects of life. For example, women often constitute a smaller proportion of the labour force, receive lower wages for the same amount of work, and face limited access to education and healthcare compared to men. On the other hand, men and non-binary individuals, although less acknowledged, also face unique challenges, such as a lack of legal recognition as victims of sexual violence and societal pressure to conform to traditional gender roles. A combination of factors perpetuates these inequities:

³ Constitution of India 1950, art 14

⁴ Constitution of India 1950, art 15

⁵ Constitution of India 1950, art 16

⁶ Protection of Women from Domestic Violence Act 2005

⁷ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

Patriarchal Norms: Dormant cultural and social values impose an undue burden on women and are taboo to men and genders otherwise identified with 'normative' roles. Women are traditionally restricted to a caregiving life, and it is taboo for men to express their vulnerability and to take care of their kith and kin.

Economic Disparities: Women consistently face barriers to achieving economic independence. The gender pay gap in India is still very large, as women earn 18% less than men for the same work. In addition, women's representation in leadership positions in all fields is still significantly underrepresented.

Weak Policy Implementation: Although India has passed several progressive laws, there still exists a deep chasm between legislative enactment and its real-time implementation at the ground level. Abuse, lack of awareness, poor training of law enforcement, and bureaucratic inefficiencies are all obstacles to the achievement of these legal instruments.

Intersectionality of Discrimination: Marginalized groups such as transgender individuals, Dalit women, and rural populations face compounded discrimination, exacerbating their exclusion from mainstream society and access to justice.

Bridging these gaps requires more than sporadic legal interventions. It requires an integrated strategy that links legislative changes to strong policy mechanisms and social participation. This encompasses the need for legal systems to cater to the spectrum of needs faced by all genders, providing inclusive policies and generating cultural change through education and awareness. Action from across government, civil society, the private sector, and the individual will be critical in breaking stereotypes, tackling structural bias, and creating a fair society where all can flourish.

WHAT IS GENDER?

When it comes to gender, most people confuse it with the term 'Sex'. Gender and sex may be wrongly considered synonyms, but this is not true. The terms are not synonymous with each other. Gender is the acquired combination of gender-congruent social roles and other behaviours, gender performances, gender demonstrations, and gender identification. For

example, girls, women, boys, men, and sexes of a gender-diverse sex. It exerts its influence over self-concept, relationships, and social organization, including the distribution of power and resources. Notably, however, gender identity is not binary (girl/woman, boy/man) or fixed; it is on a continuum, may be fluid, and can change over a period. There is a great deal of variation in the ways people and collectives conceptualize, experience, and articulate gender through their roles, tasks, and expectations, as well as in the way gender is structured in society. On the other hand, sex indicates the physical or biological nature of a person, i.e., chromosomes, hormones, and reproductive organs that contribute to whether a person is biologically male, female, or intersex. Sex is usually established at birth, with these physical characteristics.

Therefore, gender is not limited to men and women, gender also encompasses transgender people. Over the past few years, there have been favourable legal and policy changes across India in the context of the LGBTQIA+ community. The next big leap towards this side occurred with a decision by the court, NALSA (National Legal Service Authority), in 2014⁸, to affirm the right of individuals to self-determine their gender. At this turning point in history, the judicial system, not only legally but constitutionally, acknowledged hijras and kinnars (transgender persons) as a 'Third gender' and thereby their place in society.

Another major step came in 2018, when the Supreme Court of India ruled portions of Section 377 of the Indian Penal Code unconstitutional, decriminalizing private consensual sexual relations between men. This decision marked a pivotal moment in the fight for LGBTQIA+ rights in India. There was yet another milestone reached in the year 2021 when the Madras High Court delivered a landmark decision that ordered the state government to implement a universal welfare scheme for the LGBTQIA+ populace. These options illustrate an evolving legal awareness of the rights of gay, lesbian, bisexual, transgender, queer, intersex, asexual, LGBTQIA+ individuals.

However, despite all these developments, LGBTQIA+ groups in India are still struggling to achieve full rights and justice in their daily lives. There are outstanding critical issues. For example, partners' legal status as 'next of kin' in crises such as hospitalization, partners' legal

⁸ *National Legal Service Authority v Union of India and Ors* (2014) SC 1863

inclusion in life insurance, or the legal status of gay marriage. These limitations raise a call for additional change to ensure that equality and justice apply to all individuals, whether they are of a male or female sex, heterosexual or LGBTQ+ identity.

UNDERSTANDING GENDER NEUTRALITY

The definition of 'Gender Neutral' is provided by The Oxford Dictionary as something suitable to or about all genders. The concept of gender neutrality is to provide equal opportunities for all genders by adopting non-selective measures. This implies that legislation and policy should be equally enforced across and among all people, regardless of their sex. Gender-neutral laws mean that all genders are treated the same under the law. The legal notion of gender neutrality highlights the need to ensure the rights of everybody, regardless of sex. It's important to highlight that the fundamental rights outlined in Part III of the Constitution of India are expressed in gender-neutral language. It implies that civil rights are also protected for each of them- regardless of their gender, even if there are many gender-specific laws in our country. With the present conditions of Indian women, the need for gender-specific legislative provisions continues, even in the present times. However, it is equally important to acknowledge the challenges faced by all other genders. Hence, gender neutrality is the key to justice for all.

ELEMENTS OF GENDER NEUTRALITY

Arvind Narrain found three aspects of gender neutrality, i.e., in terms of victims, neutrality in terms of the perpetrator, and neutrality in terms of caste, communal, wars, custodial, communal, and conflict situations⁹. This Article addresses only the first two dimensions.

1. Gender Neutrality Concerning Victim: In India, a clear division of victim-perpetrator is defined in terms of gender. Legislators have assumed that a victim can be a woman only. According to Section 63 And 64 BNS, only a male shall be liable to be punished for committing rape. Indian laws still reflect the idea that only a woman can become a rape or other sexual assault victim. Women's victimization in the past has led to a substantially higher demand for

⁹ Arvind Narrain, 'The Criminal Law (Amendment) Bill 2012: Sexual Assault as a Gender Neutral Offence' (2012) 47(35) Economic and Political Weekly <<https://www.epw.in/journal/2012/35/web-exclusives/criminal-law-amendment-bill-2012-sexual-assault-gender-neutral>> accessed 06 December 2024

the safety of women, so women-specific laws were enacted. Things have changed abruptly over the years and now men are also being raped. The pre-defined specification of the victim-perpetrator model is problematic in law. The definition should be broadened to include men and persons belonging to the third gender as well. The Justice Verma Committee report (2013) calls for a gender-inclusive law for rape victims where the effects of sexual assault on male victims are ignored. Male victimization is not even discussed.¹⁰ It is because the societal consensus is that only a woman can be raped. Indian laws turn a blind eye to male victimization. Arvind Narrain comments, "There are no known instances in India where women have committed sexual assault upon men, and the proposal to make sexual assault gender-neutral. The non-custodial situation does not rest on any empirical grounds". Indeed, most men narrate any incidence of rape committed upon them, but it is so because they have no remedy in law. A social taboo gets attached to a rape victim which prevents a rape victim from raising her voice against the offence committed to them. That is why not all rape victims choose legal a remedy and so their stories are unheard of. Society has identified rape as a women-specific offence so that men might not be able to report that they have been raped as what happened to them might appear. This amounts to a sexual offence, but from a legal point of view, it cannot be defined as rape. The lack of empirical evidence is due to these factors. Consequently, in the current situation, it will not be possible to ignore male responses to victims and transgender victims because they are not supported by empirical evidence. "My name is John Kelly, and I'm a survivor of rape and intimate partner violence. I was raped twice during my undergraduate studies, but one of my experiences does not align with the standard concept of rape." John Kelly, a Tufts University student, was assaulted by his former male friend. He testified to the United States Congress on the subject of same-gender sexual violence. Several transgenders are subjected to sexual offences. Laws must be such as to address the plight of all sections of the society. However, Indian legislators have turned a blind eye to the concerns surrounding transgenders. Thus, gender neutrality will ensure transgenders are not missed out anymore.

¹⁰ Philip N S Rumney, 'In Defence of Gender Neutrality Within Rape' (2007) 6(1) Seattle Journal for Social Justice <<https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1546&context=sjsj>> accessed 06 December 2024

2. Gender Neutrality Concerning Perpetrators: There are two arguments in favour of gender neutrality concerning perpetrators. To begin with, the popular dictum, ‘no criminal should not go unpunished,’ is ineffective when applied to gender-specific laws. Laws that automatically assign a gender to a perpetrator disregard all the other perpetrators who belong to other genders. It is a dodge for other sex offenders, that is, laws that enumerate the gender of the offender. Thus, gender-specific law for the perpetrator is not in line with the maxim that is part of the legal system of our country. Secondly, celebrated feminist thinkers, e.g., Laxmi Murthy, recognize that ‘men too can be sexually assaulted by men, as well as by women and that women too are capable of perpetrating sexual assault on men,’ which could be used for the sexual assault of men¹¹. The Justice Verma Committee suggested a gender-inclusive law for the rape victim while retaining a gender-specific law for the perpetrator. Feminists such as Nivedita Menon, Vrinda Grover, Farah Naqvi, and Ayesha Kidwai demanded gender neutrality concerning victims only and believe in ‘gender just and gender-sensitive believed, not gender-neutral rape laws’. However, The Authors disagree with their views to the extent that they support gender-specific laws for perpetrators. Though there may not be many incidents of a woman raping a man, it cannot be denied that women can also be perpetrators. Especially in an organized situation, women often use or threaten men for sexual favours. The likelihood of women turning into crime perpetrators is lower, but it is very likely and true that men have experienced sexual harassment in the workplace by male and female colleagues. Similarly, women can commit other offences as well. The Authors see no point in setting perpetrators free because of their gender. Gender-specific law for perpetrators is a violation of Article 14 of the Constitution of India, as it discriminates against people who were presumed the gender of a perpetrator.

AN OVERVIEW OF GENDER-SPECIFIC LEGISLATION IN INDIA

1. The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal)

Act 2013: The Sexual Harassment of Women in the Workplace (Prevention, Prohibition and

¹¹ Laxmi Murthy, ‘Criminal Law Amendment, 2000 (CLA)’ (*Partners for Law in Development*) <<https://pldindia.org/law-reform/law-reform-advocacy/comments-by-laxmi-murthy-to-criminal-law-amendment-bill-2000/>> accessed 07 December 2024

Reparation) Act, 2013 (POSH Act)¹², is revolutionary legislation to protect against sexual harassment in the workplace. On the other hand, its gender-oriented approach restricts its application to the issue of women as victims, and men and other genders are left without legal protection from these same types of abuse. This is a reflection of a considerable gap in comprehension and acceptance of sexual harassment as a crime that could ensnare any individual, irrespective of gender. Societal expectations and cultural stereotypes lead to the downplaying of men as potential victims because the quintessential traits of masculinity are strength, power, and invulnerability. These stereotypes reinforce the sense that men cannot be the victims of sexual harassment, despite the evidence to the contrary. Although it is correct that men have historically been at the top of society and abused for their benefit, the fact today is far from simple. Women, too, are capable of committing acts of harassment, driven by the same motivations as men, such as power dynamics or personal gain. However, the legal system in India does not treat male victims of harassment, and thus, there is a balanced breakdown that violates the fundamental principle of equality enshrined in Article 14¹³ of the Indian Constitution. This underreporting not only disallows justice for male victims but also sustains a unidimensional concept of harassment, which shies away from the real complexity of the situation. Male victims of sexual harassment experience many obstacles in reporting. The stigma experienced by male victims is strongly driven by cultural perceptions relating to masculinity, in which revealing that one has been harassed is widely believed to signify a weakness. Men keep their experiences private because they are scared of being laughed at or being the target of jokes and innuendos by their peers. In addition, there is an actual fear that female aggressors may apply laws focused on women to falsely present male victims as aggressors and that it thus leaves men exposed to further violence. These (issues) lead to a situation in which the occurrence of harassment directed towards men is underreported and the belief that they do not happen is maintained. India's lack of gender-blind legislation makes this worse. Through denial of equal protection of laws, the existing framework is indirectly discriminatory toward male and non-binary victims, which in turn violates the constitutional guarantee of justice and equality for everyone. Gender-free sexual harassment laws are important to remedy this power imbalance

¹² Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013

¹³ Constitution of India 1950, art 14

and guarantee that all people, regardless of sex, can have recourse to and protection from legal action. These laws would not only protect fair and equal values but also reject negative stereotypes that confine men to the role of perpetrators and women to the role of victims. Patriarchal norms, although disadvantageous for women by default, also have a masculinizing effect on men, imposing a societal norm of strength and authority that is used to mute male victims. There are numerous instances where male employees are harassed by female colleagues or superiors in ways that meet the legal definitions of sexual harassment. Yet, these occurrences are usually concealed because of the social taboo of discussing men as victims. But for the men, the fear of ridicule or coercion prevents them from actually requesting help, and thus, a cycle of voicelessness and wrongdoings continues. Addressing this issue requires legislative intervention. In India, as a common law country, it is the legislature (who are answerable to the parliamentary franchise and the citizens) that creates the laws that drive justice and equality. Bringing gender-neutral sexual harassment legislation would be an important step in ensuring that the existing gap in the legislative framework is addressed. Those laws could guarantee equal protection and equal support to all victims of harassment, irrespective of gender. Without these reforms, men and other marginalized genders will continue to feel alienated from the justice system, further deepening their mistrust in its ability to uphold their rights.

2. Domestic Violence Act 2005: The Protection of Women from Domestic Violence Act, 2005 (PWDVA) was originally enacted to prevent women from domestic violence, based on the assumption that men are the most abusive and women are the most victimized. The definition of ‘respondent’ under Section 2(q) of the above-said Act is extracted below:

2(q). ‘Respondent’ means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship like a marriage may also file a complaint against a relative of the husband or the male partner.¹⁴

¹⁴ Protection of Women from Domestic Violence Act 2005, s 2(q)

From the above definition it would be apparent that although Section 2(q) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a relationship like a marriage. Therefore, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act, 2005.

Similarly, with the apex court's decision in *Hiral P. Harsora And Ors v Kusum Narottamdas Harsora And Ors*,¹⁵ it was held *“that the words ‘adult male’ in Section 2(q) of the 2005 Act will stand deleted since these words do not square with Article 14 of the Constitution of India. Consequently, the proviso to Section 2(q), being rendered otiose, also stands deleted”* The scope of the Act has been expanded, and complaints against female relatives are permitted. Although this facilitates inclusion, it has evoked fears that the law's core focus on women's protection in an oppressive patriarchal society may become watered down. The notion that domestic violence is gender-based results from both social expectations and prejudices. Although women are the majority of victims, men who suffer domestic abuse may be unrecognized or mocked when reporting their experiences.

The recent case of Atul Subhash is an ideal example of these issues. The body of Atul Subhash, a Munnekollal resident, was found inside his apartment. His brother, Bikas Kumar, lodged a complaint against Subhash's wife, Nikita; her mother, Nisha; brother, Anurag; and uncle, Sushil Singhania. The accused had sought anticipatory bail in Allahabad High Court. Atul Subhash, 34, documented his ordeal in a note and video, alleging his wife and her family sought ₹3 crore to withdraw all the legal cases against him and ₹30 lakh for their right to visit him. At first, his wife demanded ₹1 crore under maintenance, which she hiked to ₹3 crore later. Subhash's death has sparked public protests and raised questions about the safeguards against the legal persecution of male victims of domestic violence and harassment.¹⁶

¹⁵ *Hiral P Harsora And Ors v Kusum Narottamdas Harsora and Ors* (2016) SC 4774

¹⁶ *Vishal Tiwari v Union of India and Ors* WP No 162/2023

According to section 85¹⁷ of BNS, only a man can be penalized for cruelty against their spouse and impunity against cases of men's victims. This legal and social bias not only shames men into staying silent but also reinforces the myth that men can't even be victims of domestic violence. Moreover, the alleged wrongful use of such legislation to press false charges against men has brought to the fore allegations of bias in enforcement. The female assumption of truthfulness creates a gendered disparity within the legal system and, consequently, a need to analyse a gender-independent perspective. An equitable framework would ensure justice for all domestic violence victims, regardless of sex, and deal with the subtleties of abuse justly and fairly.

Bharatiya Nyaya Sanhita 2023: The 2023 Bharatiya Nyaya Sanhita¹⁸ (BNS) provides a thoughtful challenge to gender bias in the Indian legal order, pointing out the insufficiency of safeguards for men subject to sexual crimes. The document underscores a glaring gap in the law where several laws designed to protect women do not offer the same protection to men. For example, rape legislation has historically construed only women's rights to be protected, ignoring men's vulnerability. This limited definition not only ignores the experience of male survivors but also excludes male survivors from any access to the law. The belief that men are not rape or sexual harassment victims fosters this problem, and, in turn, leads to a lack of legal acceptance and enforcement of male victim status. In addition, the BNS reveals the defects in sexual harassment legislation. Under Section 75¹⁹, sexual harassment by men is a crime against women, but in no way does it offer protection to men who are sexually harmed by women. This creates a significant gap in the law, leaving male victims without any legal protection. Similarly, when it comes to voyeurism, Section 77²⁰ of BNS criminalizes the act of watching or capturing a woman engaged in a private act in situations where she would typically expect not to be observed. Yet, if the same violation happens to a man, there is no protection guaranteed under this section. This is unfair and unethical in the sense that it suggests that men's privacy can be violated with impunity. According to the document, men have the right to privacy, too, which should be safe from these kinds of voyeuristic behaviour. Furthermore, Section 78 of BNS deals with stalking,

¹⁷ Bharatiya Nyaya Sanhita 2023, s 85

¹⁸ Bharatiya Nyaya Sanhita 2023

¹⁹ Bharatiya Nyaya Sanhita 2023, s 75

²⁰ Bharatiya Nyaya Sanhita 2023, s 77

but only for men. It defines 'a pursuer man' and does not expand that definition to include women stalkers of men. If a female walks behind a male, it is not an infraction under this provision. This reinforces the villainous stereotype of stalking being only a women's issue. The provision does not recognize the reality that women can also be stalking perpetrators, which is unfair and discriminatory. These provisions collectively presuppose that the perpetrator is always male in cases of sexual harassment, voyeurism, and stalking, which is a reflection of the broader gender bias in Indian criminal laws. Although there is no problem with establishing a law for the protection of women, the BNS points out the urgent gap and the absence of specific provisions or legal instruments for the protection of men in similar situations. The Article suggests that the Indian legal apparatus should be reformed so that equal rights are vested in men, women, and transgender people with the view of ensuring that all people, irrespective of their gender, are protected from all forms of sexual offenses. This would involve redefining rape, expanding the scope of sexual harassment and voyeurism laws to include men, and ensuring that stalking provisions are gender-neutral. These are not just a legal requirement but a social mandate because they would break the stigma and shame of male victims and establish a more equitable and fair legal system allowing all victims to come into the system seeking justice and safety.

NO GENDER NEUTRALITY IN RAPE LAWS IN INDIA

Bharatiya Nyaya Sanhita (BNS) addresses the headline issue of gender bias in legislation, where Indian rape laws and the provision of protection for male victims are concerned. It highlights the absence of gender-neutral provisions, that is, which do not guarantee the same legal recourse for all people in cases of sexual offenses. In comparison to other countries such as the United Kingdom and Scotland, where legislative changes have protected male rape victims, the scope and limitations of the laws of India are narrow. In the UK, as per the Criminal Justice and Public Order Act 1994²¹, male rape victims were brought under the purview of protection for the first time and the Sexual Offences Act, 2003 further widened the definition of rape to include

²¹ Criminal Justice and Public Order Act 1994

penetration of the genital region using the mouth non-consensually²². Scotland's Sexual Offences (Scotland) Act 2009²³ redefined rape to include any gender by describing rape in terms of penetration of the penis into the vagina, anus, or mouth of another person against the will of that person²⁴. All these shifts represent a changing awareness of sexual violence and should provide men, in the same way as women, with access to justice in the event of rape. On the other hand, in the Indian legal system, male victims are not discussed. The law definition of rape in India continues to be very narrow, and it criminalizes rape as a crime only against a woman. As the Dariwala investigator indicated, 71% of men reported victimization, but 84.9% of them refrained from revealing victimization due to embarrassment, bewilderment, fear of victimization, and guilty feelings²⁵. This gap is also caused by the cultural and social stigma, which associates vulnerability only with women, which in turn leads to neglect of male victims who are ignored by the law, and perpetuates the damaging myth that males are not affected by sexual harassment or sexual assault. Article 15(3)²⁶ of the Indian Constitution permits the government to enact special measures for women and children, not prohibiting it from enacting laws to safeguard the interests of other genders. With this legislative oversight being in place, the goal of equal protection for all genders is not achieved. The only existing legislation that protects men in cases of rape and sexual harassment is the Protection of Children from Sexual Offences Act 2012²⁷, which covers only male children below the age of eighteen. Men over this age are not covered by this act, perhaps revealing the most significant gap in legal coverage. The release of the new criminal laws bill came with the hope that it would provide a solution to the issue of gender-neutralisation of offenses of a sexual nature. Nevertheless, the provisions continued to be the same as in the Indian Penal Code²⁸ (IPC) and followed the discriminatory framework it. This lack of enforcement of gender-neutral provisions only strengthens it as it

²² Michelle Lowe and Paul Rogers, 'The scope of male rape: A selective review of research, policy and practice' (2017) 35 *Aggression and Violent Behavior*

<<https://www.sciencedirect.com/science/article/abs/pii/S1359178917301908>> accessed 09 December 2024

²³ Sexual Offences (Scotland) Act 2009

²⁴ Lowe (n 22)

²⁵ 'The mindset is that boys are not raped': India ends silence on male sex abuse' (*Digital Platform*, 29 May 2018)

<<https://share-netinternational.org/resources/the-mindset-is-that-boys-are-not-raped-india-ends-silence-on-male-sex-abuse/#>> accessed 09 December 2024

²⁶ Constitution of India 1950, art 15(3)

²⁷ Protection of Children from Sexual Offences Act 2012

²⁸ Indian Penal Code 1860

deepens the current legal prejudice and normalizes the idea that women are the only ones who suffer in crimes of this nature. According to the BNS, this is the most decisive time when the Indian government has failed to ensure proportionate rights for both genders. It demands the timely passing of legislative changes that offer gender-neutral provisions concerning Indian laws of rape, which acknowledge the things to fear facing all genders and provide all genders with equal protection and access to justice. Such reforms are necessary to break down social stigma, see male victims out of the dark, and create a fair and equitable legal system, seeing that all victims of sexual assault, irrespective of sex, are given a voice in the justice system.

Maternity Benefit Act 1961: The Maternity Benefit Act 1961²⁹ provides maternity benefits for pregnant women. The act is aimed at providing benefits to working mothers during pregnancy and after delivery. They are most likely to select a candidate who fits best with their employment. So, they pick upon the least liabilities. Having said that, women are not considered suitable for work, as they may require leave for pregnancy, and they are also faced with household chores and other family-related responsibilities. These factors together don't make female married candidates just as well suited on a job basis as male candidates. The same idea can be observed in the landmark case of *Air India v Nargesh Mirza*³⁰. In this case, the court determined air hostesses' employment regulations to be discriminatory and arbitrary, hence violating Article 14 of the Constitution. As a result, female applicants are spurned, or if fit for the job, they are forced to leave the job during pregnancy. The Maternity Benefit Act rightly addressed all these issues. Every employer is required to comply with provisions under the Act. It provides maternity benefits like complimentary paid maternity leave for pregnant mothers up to 26 weeks, and from home when the maternity leave breaks (only if feasible), breaches at the workplace, etc. The Act addresses the concerns of working women during pregnancy. Yet, it is equally important to examine the impact on men.

Paternity leave is paid parental leave given to fathers before and after birth to facilitate bonding with the infant and to share caregiving responsibilities with their partner. But since there is no specific law for paternity leave in India, consequently, private companies and industrial sectors

²⁹ Maternity Benefit Act 1961

³⁰ *Air India v Nergesh Meerza and Ors* (1981) SC 1829

are free to choose whether to offer paternity leave or not. The number of days off is different according to each company., according to the Central Civil Services (Leave) Rules 551(A) of 1972³¹, male central government employees are entitled to a 15-day paternity leave at their convenience pre-birth or within six months of birth as long as the preceding child relates to two surviving children. As for state government employees, their leave policies are different from state to state. For instance, in Kerala, the entitlement for paternity leave is 10 days either before the delivery or for a period of up to 3 months from the date of delivery, whereas in Tamil Nadu, the entitlement for paternity leave is 15 days, similar to central government employees. Due to the absence of specific legislation covering the whole country, there is uncertainty about paternity leave. Greater awareness of paternity leave is required for all male workers. Paternity leave should be legally mandated in India to advance gender equality. Because mothers and fathers are subsidized through maternity and paternity leave policies, finding a balance between work and family life is easier.

CONCLUSION

In summary, the Authors have tried to examine the need for gender-neutral laws in India. Gender parity is a must-have element for building a harmonious, fair, and progressive society. India has achieved impressive results both in enshrining the principles of equality and non-discrimination in the Constitution of India and in the enforcement of progressive legislation. Despite those attempts, deeply embedded patriarchal cultural realities of society, stigma, and systemic limitations are still threatening progress. Women continue to be disproportionately affected by problems, including wage disparity, limited opportunities for leadership positions, and poor access to health care and further education. Concurrently, the difficulties of men and non-binary adults, for example, are not legally recognized as victims, or societal acceptance to follow traditional gender norms are often ignored. The big picture imperative of holistically addressing those problems is essential to building an equitable society.

Gender inequality persists due to a complex set of factors. Patriarchal assumptions constrict women to caregiving roles and shame men for being emotionally vulnerable. Economic

³¹ Central Civil Services (Leave) Rules 1972, r 551(A)

inequality and the lack of female representation in power serve to compound these challenges, whilst poor monitoring and enforcement of current legislation does not lead to any transformational change in the field. In addition, stigmatized populations, including transsexuals and rural populations, experience additional and synergistic modes of discrimination and, thereby, are excluded even more. The way of overcoming these gaps is by taking up an inclusive, integrated approach that goes beyond isolated legal actions and includes social involvement, training, awareness, and effective implementation.