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REVISITING EQUALITY: A CRITICAL ANALYSIS OF GENDER BIAS IN INDIAN LEGISLATIONS

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Abstract

The concept of equality is enshrined in the Constitution of India, with an aim of achieving a society which can live a dignified life. The substantive laws are mere piece of paper unless they result in the procedural equality in the society. Anyone who is not able to live a dignified life, because of lack of protection and provisions in law or is discriminated by the law owing to the gap in legislative structure would consequently result in violation of their fundamental right. The present paper aims at identifying such gap in context of laws which generate a bias in context of vulnerability of men and LGBTQ+ community to certain offences. The gap is a result of societal stigma attached to them. This bias has crept in the legislative structure also.

The directing force for this paper is various cases of rape, sexual harassment, domestic violence, alimony and maintenance that are experienced by males and LGBTQ+ community, and remain imperceptible due to lack of legislative provisions and stigma attached to it. This research analysis various statistical data to review the gender biasness and the societal stigma attached to it, it also finds the lacunae that is left unheard in the Indian legislations that make this biasness more institutional. This research also compares provisions or legislations of various other countries to draw a comparison between them and Indian legislations. This research by the way of comparative analysis also provides for the various reforms that can be brought in the Indian legislations and the other preventive measures that can be followed to curb and eradicate this biasness.

Key words- Equality, Gender Neutrality, Biasness, Indian legislatures, Rape, Sexual Harassment at Work Place, Domestic Violence, Maintenance, Provisions, Suggested changes

“The soul has no gender, then why should the law?”

INTRODUCTION

In an equality striving society like India, the persistence of gender specific laws reflects or paradox that hinders the realization of the true justice. The framers of Indian constitution

enshrined the principles of equality and non-discrimination in the constitution and made it inseparable element of Indian polity, the legal framework in both *civil and criminal* domains fail to transcend traditional gender binaries. Not only in debated topics of rape, adoption and domestic violence laws but also various other statutes and practices continue to keep one gender at a prioritized position that reflects systematic inequalities. Though historical discrimination for women and the kind of disparities they faced remained high in a patriarchal society like India but as it is said that unnatural lust respects no gender which means it is regardless of a person's gender, so if the crime is happening without the limit of gender, then why should our laws be limited to the specific gender limit. This research critically evaluates these overlooked dimensions, and explains how laws governing inheritance, alimony, workplace harassment, child custody and other critical areas feature incorporated biases. By revealing these disparities and biases, this paper seeks to challenge these incorporated norms and argue for a more inclusive and holistic legal system that encompasses the spirit of justice that is impartiality, fairness, and universality. In the words of justice DY Chandrachud, "True equality is not the mere absence of discrimination but requires the removal of systemic barriers", where the systemic barriers mean the invisible barriers created by legislations, this raises a question over the Proper representation of the people in the largest democracy of the world.

The crimes like rape, sexual harassment at work place, domestic violence, misuse of alimony and maintenance serve as organisational problem prevailing not only in India but all over the world. Despite increase in economy, social and cultural growth over the last decade, the crime rate against male also increased, it depicts that any crime is not moribund to gender. In fact, studies over last 30 years show that male victim voices have received less attention as compared to female victims. According to current statistics, more than 27% adult male and 32% of women have been sexually victimised at some point of time in their in their lives which strongly raises a question over the pre conceived notion of the society and the law makers regarding gender specific laws that neglected male and transgender. Though the percent of male victims is less but that does not mean they don't need statutory protection. Almost 5 in 72 males have faced sexual harassment involving physical contact in lifetime¹. These questions are not raised by society at the large as they consider male to have dominant and masculine figure. In India it is a stigma attached that "MALE CANNOT BE RAPED AND

¹ Thomas, John C., and Jonathan Kopel. 2023. "Male Victims of Sexual Assault: A Review of the Literature" Behavioral Sciences 13, no. 4: 304. <https://doi.org/10.3390/bs13040304>

HARASSED BY MEN OR WOMEN”.

Statement Of Problem:

The present research intended to focus upon the issues and problems relating to Gender biasedness of the Indian legislations. This research seeks to critically examine the underline gender biases embedded within Indian legislations, focussing on both procedural and substantive aspects that contribute to unequal treatment of individuals based on gender. This study will keep its focus on the historical stereotypes created for a specific gender and how these stereotypes influence law making, judicial decisions, law enforcement practices and legal interpretation.

The research will assess the adequacy of existing legal frameworks in addressing the complexities of gender-based violence and discrimination, with particular emphasis on implementation of laws such as those related to *sexual violence, domestic abuse, adoption, alimony and maintenance*.

In this research our specific aim will be to critically analyse the present laws, how these laws impact the society in a discriminatory way and how these Disparities impact the life of an individual male or transgender. We have also compared the laws of different countries on the same issues to have a comparative study over the mentioned problems. This comparative approach will help us to find the shortcomings in our legislations and also will work as a guiding path to fill the vacuums of Indian laws.

Objective:

1. To ***study the available legislations*** on Rape, sexual harassment at work place, adoption, transgender right, domestic violence, alimony and maintenance.
2. To ***analyse*** how these legislations are gender biased and are tilted towards a specific gender and neglects the wide scope of *equality*.
3. To ***present a comparative study*** of all mentioned problems and how developed thinkings(nations) have formulated legislations to deal with these specific problems
4. /issues.
5. To ***present a detailed solutions*** of these problems and create a guiding path way for future legislations.

Approach used:

1. Analysis of status quo of a problem.
2. Comparative examination of the problem with different countries.
3. Presenting a comprehensive disentanglement of the problem.

RAPE

Performing any sexual act without consent of women is said to be rape and the same is provided under 'section 63' of Bhartiya Nyaya Sanhita 2023(BNS) which clearly states that only a man can commit rape against women and not a woman against a man or transgender or a man against a man or transgender. If anyone of them commits crime of rape except against women no clear provision is stated under any legislation of India. Previously *Indian Penal Code 1860* under *section 377* provided an inclusive definition of male rape or the rape of transgender and safe guarded the rights of a male accused of rape, section 377 provides definition as unnatural offence as "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine." The problem with this legislation was it also made punishable the consensual sexual relationships between adults of same gender, which constituted a violation of right to dignity², privacy and sexual autonomy³ under *Article 21*, freedom of expression under *Article 19*, the right to equality under *Article 14*, and non-discrimination under *Article 15* of the constitution. Thus five-judged bench of Supreme Court in the case of *Navtej Singh Johar V. Union of India 2018* (overruling the judgement of *Umar Koushal & Anr V Naz Foundation & Ors*⁴) declared *section 377 unconstitutional*. This repeal affected male victims of sexual assault.

The formation of new Criminal Code (BNS 2023) in its present form resulted in loss of legal protection granted to male and LGBTQ+ victims of sexual assault. This is because the proposed BNS's definition of "rape" is gendered, implying that crime can only be committed by a male against a woman. In 2007, Ministry of Women and Child Welfare, supported by

² Francis Coralie Mullin v Union Territory of Delhi (1981) AIR 746 (SC), 753, where the Supreme Court of India interpreted Article 21 of the Constitution to include the right to live with dignity.

³ Justice K.S. Puttaswamy (Retd.) v Union of India (2017) 10 SCC 1, [298], where the Supreme Court of India recognized the right to sexual autonomy as an integral part of the right to privacy under Article 21 of the Constitution.

⁴ Suresh Kumar Koushal v Naz Foundation,(2014) 1 SCC 1 (SC)(India)

United Nations Children's Fund, save the children and Prayas⁵ conducted a study to understand the magnitude of child abuse in India, they found that 53.22% children faced one or more forms of sexual abuse; among them, the number of boys abused was 52.94%, there has not been any good and statistical source of accurate count of all male victims of sexual assault. The main reason behind this is, “social ridicule”.

In India’s societal belief possess male as a superior and strong gender with strength, acts like rape and molestation cannot happen to such a strong gender. The fear of disbelief and social reaction prevent male sexual assault victims from opening up to anybody, including family, friends and colleagues, about these thoughts and traumatic occurrence, encouraging offenders to continue pursuing their target. According to a 2023 pole done by Centre for Civil Society, about 18% of Indian adult men surveyed reported feeling compelled or forced to engage in marital affairs. 16% identified perpetrator whereas 2% named male perpetrator⁶. “All these statistics shows that though the percentage of male and LGBTQ+ victims of sexual assault is less as compared to women but there has been a sufficient percentage of these victims also which cannot be neglected at any cost”. This statement is further supported *Article 14* and *Article 15* of Indian constitution.

Provisions in United states-

United States treats sexual assault and rape as a gender-neutral crime, which allows prosecution of sexual offences regardless of victim’s gender. *United States Department of Justice 2012* says, “The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.”. Similarly, *California Penal Code 261* defines “rape” in gender neutral terms, criminalising nonconsensual act irrespective of victim’s sex. *Prison Rape Elimination Act (PREA)*: Enacted in 2003, this federal law addresses sexual violence in correctional facilities, where male victims are prevalent. It mandates measures to prevent and respond to sexual violence, including against male inmates. All these definitions of ‘rape’ under various legislations clearly states that how united state have taken care of Right to Equality of the people.

⁵ Ministry of Women and Child Development, Government of India. Study on Child Abuse: India 2007. New Delhi: Ministry of Women and Child Development, Government of India; 2007. Available from <<https://resourcecentre.savethechildren.net/document/study-child-abuse-india-2007/>>

⁶ Lalit Bhardwaj and Babu Shivnath Agrawal, 'Sexual Harassment of Men: A Crime That is a Reality' (2022) 2 IJIRL 7 <https://ijirl.com/wp-content/uploads/2022/06/SEXUAL-HARASSMENT-OF-MEN-A-CRIME-THAT-IS-A-REALITY.pdf>

Provisions in United Kingdom-

United Kingdom treats sexual assault and rape as gender neutral crimes and framed its legislations accordingly. *Criminal Justice and Public Order Act 1994* under *section 142* defines ‘rape’ of men and women both equally. The victims of any gender can file complaint under this act for any type of sexual assault. This act was further amended in 2013 to make it more liberal and gender neutral.

Provisions in Australia and Japan –

Australia provides gender neutral legislations for sexual offences which includes rape and sexual assault of any gender. In *Federal Law the Criminal Code Act 1995* which is applicable in common wealth jurisdiction uses gender neutral definition of sexual offences, which allows protection of male and other gender from any type of such offences. New South Wales (NSW) under the *Crime Act 1900* defines sexual assault under *section 61(I)* which consider sexual intercourse without consent using gender neutral definition as a crime.

Japan also codified its legislations for sexual assault and rape as gender neutral. In amendment of 2017 under *Penal Code of Japan Article 177* the definition of ‘rape’ includes both male and female victims explicitly.

Suggested changes-

In a country like India where equality is considered as the utmost right of every individual, leaving behind a section of society (male and LGBTQ+) will be a backstab upon the principle of equality which is fundamentally guaranteed under constitution of India. Despite having a massive population and being under top 10 countries of the world India do not have any specific rule on gender neutrality of the rape.

The following changes and steps could be followed for creating gender neutral society-

- Creation of gender-neutral legislation – there should be clear and explicit mention of gender-neutral terms in newly formed legislations (eg. Use “person instead of using men or women) which should also include gender neutral system of punishment. This will help in proper execution and creation of gender neutrality. By this step legislative will fulfil the need of vacuum in legislations that lead to gender inequality.
- Creating gender neutral and crime specific helpline -we have women centric helplines created by government as well as private institutions but we don’t have any such for

males or LGBTQ+. There should be a common or special helpline number that could help when any gender other than female face any issue related to sexual harassment or feeling of being unsafe due to presence of certain people or being in a certain place where they might be prey of unnatural lust.

- Special court bench must be created for these cases- As the cases of male are more sensitive and are considered as stigmatic, they must be treated with equal sensitivity, care and due respect. Creating a special bench might help to deliver justice swiftly and, in an environment, where victim doesn't feel ashamed to report and speak about their encounters and problem faced.
- Organising camps and awareness programs – There should be proper camps and awareness programs like Nukkad Natak that will ensure the eradication of stigma attached to this harassment and their reporting. This will also help in spreading and educating the gravity of the issue.
- Take personal responsibility to ensure safety- People should take responsibility and make sure that if one sees someone around them getting harassed in any way, mentally or physically then one must take the preventive steps and report the same.

[This is a hypothetical case inspired from the real incident male rape case in Ghatkopar, Mumbai, reported by NDTV]⁷.

Case: horrifying occurrence has been reported in Faridabad, Haryana, near the country's capital, Delhi on may25, 2023. Where four persons raped a 23-year-old young man after he had an intoxicating cold drink at a hotel where he was invited by his friend Rakesh. When the victim reached hotel, he was offered by a cold drink which was mixed by some illicit substance after drinking cold drink victim got intoxicated and then Rakesh with 4 more offenders raped him, and looted him. When he went to report the instance to police the police refused to report the instance by saying "MALE CAN NOT BE RAPED" when this case came to media police filed the FIR under the section 322 (grievous hurt) of the IPC as there were not appropriate provision for male rape.

SEXUAL HARRASMENT AT WORK PLACE

Men's sexual harassment is a significant concern in India however, mostly it remains unreported and discussed. According to a study conducted by National Commission for

⁷ NDTV, 'Auto Driver Had Sex with Drunk Man After Argument Over Fare, Arrested' (NDTV, 7 January 2025) <https://www.ndtv.com/mumbai-news/auto-driver-had-sex-with-drunk-man-after-argument-over-fare-arrested-4102956> accessed 15 January 2025.

women in 2022, 1.4% of males in India had experienced sexual harassment, and 3,000 cases of sexual harassment reported in India in 2022. This marks a significant increase above the 2,500 cases documented in 2021. Despite having this serious situation Indian legislation keep silent on this issue, with no proper law and preventive measures for safe guarding the right to equality. Currently India does not have any legal framework which can prevent sexual harassment at workplace faced by men or LGBTQ+ community. Sexual harassment at workplace is defined under *The Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act ,2013 (POSH ACT) Section 2(a)* defines specifically about those “women” who are victim of any type of sexual harassment at workplace, this section terms those women as “aggrieved women”. This act also talks about the formation of Internal Complaints Committee (ICC) for those aggrieved women who faced any such sexual harassment at work place. No such legislative regulations or such complaint mechanism is there for male or LGBTQ+ community. The major criminal court of India i.e., *Bhartiya Nyaya Sanhita 2023* mentions about sexual harassment specifically for women only in *Chapter 5 Section 75*, it says, “if a man commits physical contact and advances involving unwelcomed and explicit sexual overtures; or he demand or request for sexual favours; or shows pornography against the will of women; or makes sexual coloured remarks.” If any of these acts done by a man against a woman at workplace then it is called sexual harassment at work place. India has only these two major legislations which clearly mentions about sexual harassment at work place, neither of these laws talks about sexual harassment of male and LGBTQ+ community.

According to the findings of a recent Economic Times-survey, men should be the part of the bill as soon as possible. Of the 527 respondents polled in seven cities-Bangalore, Chennai, Delhi, Mumbai, Pune and Hyderabad- 19% stated they were victims of sexual conduct at work. In Bangalore, 51% of respondents stated that they had been sexually harassed, whereas in Delhi and Hyderabad, 31% and 28% recorded being sexually harassed at work place, respectively around 38% of respondents in seven Indian cities felt that today’s work places, “men are as subject to sexual harassment as women.”⁸ Though most of these cases never get reported but these studies show that sexual harassment at work place became traumatising not only for women but also for males and LGBTQ+ community. The main reason these crimes

⁸ NDTV, 'Auto Driver Had Sex with Drunk Man After Argument Over Fare, Arrested' (NDTV, 7 January 2025) <https://www.ndtv.com/mumbai-news/auto-driver-had-sex-with-drunk-man-after-argument-over-fare-arrested-4102956> accessed 15 January 2025.

are never reported is “Social Ridicule” and it is believed that men possess strength and honour so they cannot be harassed. As a result, these cases remain unreported. If we talk about the location stats of sexual harassment taking place then it goes 19% at public place, 14% in schools, 13% at work place 13% in own residence and 13 % over the phone or text. 8.7% reported victims are found to be male as per ICASA⁹ organisation.

Provisions in United Kingdom (U.K)

United Kingdom incorporates gender neutral legislations on sexual harassment at work place. *Worker Protection (Amendment of Equality Act 2010) Act 2013 (chapter 51)* mentions provision in relation to duties of employer and protection of workers under this act. *Section 40A (2)* defines “Sexual Harassment” as unwanted conduct of a sexual nature against ‘any person’. The use of broad term ‘any person’ depicts the holistic and foresightedness approach of gender neutrality by the framers of this act. Sexual harassment victims can file a complaint with Equality and Human Right Commission. *Sex Discrimination Act 1975* was revised in 2008, requiring employers to safeguard their employees from any kind of sexual harassment at workplace this law is a gender-neutral law.

Provisions in United States of America

United states of America assimilates very wide view of sexual harassment, the legislator of USA incorporated, *Title VII of Civil Rights Act 1964* which prohibits employment discrimination of any of these kind- race, caste, colour, religion, sex or national origin. Sexual harassment is considered a form of sex discrimination under this law. USA incorporates sexual harassment law in gender neutral terms and states that any type of unwelcomed sexual advances, request for sexual favour and other verbal or physical conduct of sexual nature ‘by any person against any person’. USA also has a provision of gender-neutral complaint committee for the victims of sexual harassment at work place i.e., *Equal Employment Opportunity Commission (EEOC)*.

Provisions in Australia and Japan-

Australia framed its gender-neutral legislations for sexual harassment at work place in 1984, by adopting the *Sex Discrimination Act 1984*, which prohibits any kind of sexual harassment with any gender at work place. Further Australia updated its legislation according

⁹ International Community of Anti-Authoritarians, Facts and Stats for Sexual Harassment (ICAS, 2018) <https://icasa.org/uploads/documents/Stats-and-Facts/Facts-and-Stats-for-Sexual-Harassment.pdf> accessed 3January 2025

to the current need of people and came with *Fare Work Act 2009*, in which *Section 351* clearly talks about Complaint Committee and also mentions about the damages that can be claimed for the violated right.

The legislations of Japan mentions that male and females should be treated equally and without any sexual discrimination at work place. For a assuring the same the government of Japan legislated Equal Employment Opportunity Law (EEOL) (revised in 1999), this law prohibits any type of sexual harassment in the work place and requires employers to prevent it through appropriate measures.

Suggested changes-

According to a report published by Forbes India is one of the 10 largest economies of the world with about 3.41 trillion-dollar economy. This report shows that India has a very large amount of population invested in working force, hence the probability of sexual harassment at work place increases. These sexual harassments are not gender specific. In Indian society, the idea of women sexually harassing a man is still unfathomable. In this research we are suggesting some preventive measures that can be taken to prevent these types of crimes:

- Changing the definition and scope of sexual harassment- there should be a gender-neutral definition for sexual harassment in legislations that will prevent the sexual harassments with both women, men and LGBTQ+. This will create a gender-neutral environment for different kind of institutions dealing with these types of offences. PROCEDURE to be followed by victim to file a complaint should be made easier and victim friendly so that the reporting of the crime can be made easier.
- Develop new sexual harassment policies – India needs to develop new policies on the issue of sexual harassment at work place which will be gender neutral per se. Hence India could guarantee its working professional a safe and secure working life, this will help India to take a step towards achieving its goal of equality. According to the sexual harassment prevention training by IDHR, employers must develop training programs that are equivalent to or exceed the standards set out by IDHR's *Section 2- 109 (B)*¹⁰.
- Every Complaint should be taken seriously-sexual harassment is very large problem of every country. The magnitude of this problem is high, so every complaint that comes

¹⁰ IHDR,750 ILCS 50/2 (2025)
<https://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=077500050HArt.+2&ActID=2266&ChapterID=64&SeqStart=600000&SeqEnd=1393750> accessed 3 January 2025.

for reporting should be taken seriously with zero tolerance and immediate action should be taken against the offender by the authorities.

- Establishment of internal committee-there should be an internal committee in each and every institution for dealing with issues of sexual harassment in the institution. The members of the committee should also be trained for dealing with such issues in unbiased manner so that they can easily deal with the complaints of any such matter. There should be no gender-based discrimination by the committee members while filing the report.
- Train employees to serve as Bystanders -Usually the higher authorities of institution are responsible for preventing sexual harassment, it is not always possible for them to monitor harassment every time. There should be a proper training of the employees to take initiatives and put them in charge of maintaining a safe work place.

“What hurts the victim the most is not the cruelty of the oppressor but the silence of the bystander”. – Elie Wiesel

DOMESTIC VIOLENCE

Domestic violence is always treated as a violence against women by a man in India due to the historical structure of the society in India. It may be believed that this system laid a foundation stone for abuse of women (domestic violence) but it cannot be neglected that some amount of male population is also dealing with this problem. Domestic violence can be considered as a crime that affects a person who lives in domestic relationship.

Domestic relationship is defined under *Section 2(f) of The Protection of Women from Domestic Violence Act 2005*, “Relationship between two persons who lives together, who lived together, for a specific time and in the same house hold.” Under Section 3 of the same act, it is defined that offender/respondent can only be a male. Though there is no data available of any Indian Governmental institution but many NGOs working for right of men such as Save Family Foundation presented detailed study of issue of domestic violence which shows that out of 1,650 husbands, 416(25.21%) have faced physical violence, 294 (17.82%) faced Sexual abuse, 541(32.79%) faced economic violence, 366(22.18%) faced verbal and emotional violence in their household¹¹. This data clearly indicates that domestic violence remains not only a

¹¹ Save Family Foundation, Domestic Violence Against Men (Save Family Foundation, February 2022) <https://www.menwelfare.in/wp-content/uploads/2022/02/domestic-violence-against-men.pdf>

problem for women but also for men. This issue is not appropriately taken into consideration by Indian legislations and neglected the issue of domestic violence against men which creates a legal vacuum for a large proportion of population. Due to no proper legislations in India these cases are never get reported and the men going through this problem always remain in that hampering situation. However, there are few more reasons why male tolerate and stay in abusive and violent relationship are the belief and hope that what the what society will think of their image and how institutions will react on the issue without any specific law.

When a man avoids all these issues and files the complaint, society puts the remark on him like of being a coward, impotent, etc. We have also seen recent cases where men faced sexual violence by the partner in the household. In the suicide case of *Atul Subhash*¹², a Bangalore based engineer, Atul in his suicide note mentioned that his wife forced him to do different type of sexual experiment which is usually not considered as a normal sexual behaviour. Despite having such serious conditions, India do not have any proper regulation to deal with such conditions. This clearly reflects or hinders the realisation of true justice and the concept of equality seems to be neglected by the world's largest democracy.

Provisions in United States of America-

United States of America (USA) has a gender-neutral domestic law to deal with any type of domestic violence. United state also has a proper regulatory mechanism to deal with domestic violence case against any gender. USA also reports these sexual violences under different governmental and non-governmental surveys e.g., National Intimate Partner and Sexual Violence Survey which states that approximately 1 in 10 men USA has experienced some form of physical violence by an intimate partner, such as being choked, burnt, or threaten with a weapon. Though conditions in USA are also not perfect but at least their legislations have some kind of preventive measures for these kind of acts for example Violence Against Women Act 1994 ensures the measures for the legal protection of any kind of domestic violence regardless of the gender.

Provisions in United Kingdom-

United Kingdom explicitly recognises domestic abuse as a gender-neutral crime under

¹² Stranger to Child: Supreme Court Denies Atul Subhash's Mother Custody of His Minor Son' The Hindu (8 January 2025) <https://www.thehindu.com/news/national/karnataka/stranger-to-child-supreme-court-denies-atul-subhashs-mother-custody-of-his-minor-son/article69075164.ece>.

different laws which means U.K treats these types of crimes very thoughtfully; hence U. Ks legislation protects individual regardless of gender or sexual orientation. In a recent amendment of Domestic Abuse Act, 2021 it is clearly mentioned that domestic abuse is not gender specific and anyone can be the victim of these offences. It also becomes important to have gender neutral in a such a critical domain of domestic violence when a country has recognised same sex marriage. In 2013, Parliament passed the Marriage (Same Sex Couples) Act which introduced civil marriage for same-sex couples in England and Wales.

Provisions in Australia-

Australian legislation on domestic violence varies by state, but they generally allow for intervention orders or protect the orders to be issued by court and it is stated as a criminal offence to engage in violent or abusive behaviour in a domestic setting with the partner. *Family Law Act1, 1975* protects any kind of domestic violence which happens within the four walls of house hold. It can be offence of any such type e.g., physical, verbal, sexual, emotional and economical. These provision shows the foresightedness of Australian legislators while framing the laws.

Provisions in Canada-

Canada treats Domestic Violence under serious category of violences and also prevent any such act by specifying the punishments regardless of gender. Domestic violence is addressed in Criminal Code of Canada under sections dealing with assault, criminal harassment, and other violent offences.

Provisions in South Africa-

South Africa even being one of the least developed countries protect the victims of domestic violence, including physical, emotional, financial, sexual, emotional and verbal abuse under *Domestic Violence Act,1998*. South Africa states the concept of Protection Orders that can be issued to prevent abuser from conducting any such violence regardless of any gender.

Suggested Changes-

Domestic Violence is not only offence against a person but also against the society as a whole. It impacts the life of husband, wife, children, parents etc. It becomes important to prevent this type of violences for creation of peaceful and healthy society. Domestic Violence is also a human right issue and it becomes serious deterrent to development. *Vienna Convention 1994*,

Beijing Declaration 1995 mentions this issue as the top priority. It becomes important to protect these kinds of issues regardless of any gender so that the idea of equal society can be made clearer and more exclusive.

- Legislations should be made gender neutral-There should be gender neutral provisions in the legislations to deal with prevention of domestic violence and helping survivors of domestic violence. The laws should be made gender neutral so that victim of any gender can avail remedies.
- Organising Domestic Violence Preventive Program- Local and national organisations should work for prevention of domestic violence and also help victims by providing psychological, mental and legal aid. They should organise awareness programs in the form of Nakkad Nataks, plays, webinars etc. This will help to educate and empathise people to think that ‘domestic violence can affect any gender.’
- Counselling Support- A country like India should make legislations that depict domestic violence as a gender-neutral crime where everyone has right to live a life with dignity which is free of any kind of violence. Providing free counselling mechanism and 24 x 7 support system that is a gender-neutral hotline for reporting of such crimes.

ALIMONY AND MAINTENANCE

The concept of alimony and maintenance is not new for the Indian Society. *The Manu Smriti*, published around 5th century portrayed women as dependents who needed protection and guidance throughout their lives by husband. This is how the concept of alimony and maintenance has evolved from ancient time. These circumstances have changed by 21st century, women are considered as a free and individual entity in herself. In today's 21st century India aims to be a gender-neutral society in every sphere where men and women are brought together at the same level.

The framework for alimony and maintenance in India is a multifaceted system influenced by diverse personal laws, secular legislation, and evolving judicial interpretations. Hindu Personal Law, encompassing the *Hindu Marriage Act, of 1955* and the *Hindu Adoption and Maintenance Act, of 1956*, allows both spouses to claim maintenance. These laws, applicable to Hindus, Buddhists, Jains, and Sikhs, consider factors such as income, property, and conduct when determining maintenance, which can be awarded as a lump sum or periodic payments.

Muslim Personal Law is governed by the *Muslim Women (Protection of Rights on Divorce) Act, 1986*, and personal law principles. It includes provisions for 'Iddat' maintenance and allows for claims under *Section 125 of the Criminal Procedure Code*. The concept of 'Mehr' also plays a role in financial settlements.

Christian and Parsi laws, including the *Indian Divorce Act, of 1869* and the *Parsi Marriage and Divorce Act, of 1936*, contain similar provisions to Hindu law for determining maintenance, including temporary and permanent alimony.

The *Special Marriage Act, of 1954*, a secular law applicable to all citizens, allows either spouse to claim maintenance, with courts having wide discretion in determining amounts and duration.

Section 125 of the Criminal Procedure Code is a secular provision aimed at preventing vagrancy and destitution. It provides for maintenance to wives, minor children, and parents, with a relatively quick procedure and a cap on the maximum amount.

The *Protection of Women from Domestic Violence Act, of 2005*, while primarily focused on protection from violence, includes provisions for maintenance and extends protection to women in live-in relationships.

Judicial interpretations have significantly shaped maintenance laws, emphasizing the right to a dignified life, recognizing homemakers' contributions, and setting guidelines for determining maintenance amounts.

The existing gender biased law which are enacted for the purpose of extending justice to underprivileged women are now being misused by some privileged manipulating women to exploit men for securing more money. In the case of *Anil Jain V. Smt. Sunita*¹³, the wife stayed in her marital home for only 12 days. During this time, there were no claims of harassing the wife by her in-laws, and she did not disclose any mistreatment and later she left the marital home. Afterward, the wife filed a maintenance application, alleging that her

¹³ Anil Jain vs Smt. Sunita on 29 November AIR 2015 SUPREME COURT 554

husband and mother-in law harassed her during the stay compelling her to leave the home. These types of cases show the misuse of maintenance by the women.

Provisions in United States of America –

In the US, maintenance laws are known as alimony or spousal support and the meaning of which depends on the state the spouse lives in. The maintenance is often provided after divorce or separation. The alimony payments are made after considering the following factors such as spouses' earnings and expenses, their marriage length, Spouses' age, health, and their economic and non-economic contributions during marriage. These provisions show the foresightedness of the legislators, how USA adopted gender neutral maintenance laws.

Provisions in France-

The French civil code of 1804 deals with maintenance provisions in France. Article 208 of the said code states that maintenance can be provided in proportion to the needs of the claimant and the earnings of the defendant. With the object of balancing the financial needs and incomes available to both spouses. The court while granting maintenance to the claimant will take into account various factors such as the income of both spouses, their compulsory expenses, and standard of living. Further *Article 271 of the civil code* states the following factors which a judge shall take into account, these are the duration of the marriage, professional qualifications and occupations, age and health of each spouse, assets of the spouses, etc. Thus, from the above case studies of maintenance laws in different countries, it can be seen that the maintenance laws in these countries are more reformed in granting maintenance to the spouses. The most unique feature is that these laws recognize the concept of gender neutrality and safeguard both husband and wife's rights to claim "spousal maintenance" rather than only protecting the "rights of the wives to claim maintenance".

Suggested changes-

The situation of women has changed in the post-modernization era. In this era women are not restricted anymore in the household instead they are attaining equality with men in terms of education, employment, and social status due to the women-centric laws. Now with rapidly changing societies women are also becoming independent in every field. However, the existing maintenance laws are still conservative in one perspective that it is still considered women a weaker section of society while it also neglects to recognize the husband's rights to claim maintenance.

Few suggestive measures to prevent this kind of biasedness are:

- By reforming the legislations- By making updates in legislations we can take a step towards claiming the right to equality. Update the definitions in the legislations where maintenance is concerned. Include the more gender neutrals terms such as “spouse or partner” accept of using husband or wife. Also include the provisions for same sex couples who are living in living in live in relationship.
- Adopting *Uniform civil code*- Uniform Civil Code comes under *Article 44* of constitution of India which works as directive principal of state policy for India. Adoption of a gender-neutral Uniform Civil Code will ensure equitable maintenance right for all genders of all religions.
- Awareness campaigns-Different type of awareness campaign can be run by the private and public institutions for educating and creating awareness, helping reduce stigma attached to men or nontraditional claimant seeking maintenance.

Conclusion

"True equality in law transcends gender, ensuring justice is rooted not in the identity of the individual but in the fairness of the principle, reflecting the essence of impartiality and universality."

This research has explored the tenacity of gender biases in Indian laws, specifically in the areas of Rape, Sexual Harassment at work place, Domestic Violence, Alimony and Maintenance.

This research has also comparatively analysed the respective laws of other countries and also suggested the measures that can be used as guiding force for framing new legislations and improvisation in the form of amendments in the existing legislations. This research paper also aims for the enrichment of the *idea of equality* (Article14&15), *freedom* (Article19) and the right to life with *dignity* (Article21) ensured in constitution of India. Despite of being the largest democracy of the world the steps of Indian legislators towards gender neutral laws remained stunted, this research has tried to focus on the issues that remained uncovered by major Indian legislations. This research does not disregard or overlooks the problems of women that are faced by women in the society, this also doesn't cast down the legislative actions that are taken for explicit benefit of women because any how from time immemorial

women remained most neglected gender of the society. But the fact that in present society of 21st century there can be some conditions where the paradox of the situation may also happen. The aim of this paper is to focus on each and every issue of the society and to draw a picture of a dream society, where everyone remains equal in the eyes of law i.e. no one is discriminated by the law. So that the ideal justice without any biasness should be prevailed to each and every section of the society.

Due to lacunae of legislative provisions and cavity in laws, this research lacks appropriate governmental data as there is no study or any data available on this issue. This shows that how Indian legislation have always overlooked the seriousness of these issues, while comparing these issues with other prominent countries we found that such countries have adopted a very farsighted and holistic approach to address the problem of gender-based prejudice. This lacuna not only hampers the right of individual but also undermines human dignity and basic humanitarian rights. There are various other inherent shortcomings like sociological and psychological prejudices of the society on these issues but not having any clear outlines of gender-neutral legislation remains the paramount dilemma.

This Research also provide the aggregate to all the problems that are faced by current Indian society while dealing with such kind of issues. A reformed legal framework that ensures gender neutrality and fairness would not only advance constitutional principles of equality but also foster societal harmony and justice.

This Research calls for collective efforts from all pillars of democracy i.e. legislative, executive, judiciary and media towards the journey of creating a gender-neutral society by eliminating all forms of gender biases from Indian laws and stepping towards a true equitable society.