

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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GENDER NEUTRALITY WITH SPECIAL REFERNCE TO INDIAN LEGAL SYSTEM: A COMPARATIVE ANALYSIS

AUTHORED BY - JOY PARIMALA

ABSTRACT

Gender neutrality is a fundamental principle of equality that aims to eliminate discrimination based on gender. However, the Indian legal system has traditionally adopted a female-centric approach, overlooking the vulnerabilities faced by men and transgender individuals. This research paper conducts a comparative analysis of gender neutrality within the Indian legal framework, focusing on the Criminal Law. The study critically examines the biases embedded within the Indian Penal Code (IPC) and its amendments, which predominantly view women as victims while neglecting the possibility of men and transgender individuals being subjected to similar offenses. It highlights the prevalence of false cases against husbands, sexual mistreatment of men, and the discriminatory presumption regarding child legitimacy under the Evidence Act.

Through a comprehensive analysis, the research explores the implications of the one-sided approach adopted by the Indian legal system, including societal distress and an overall increase in crime rates. It emphasizes the need to acknowledge crimes against men and transgender individuals, aligning the legal framework with the constitutional guarantee of equality for all citizens. By examining international best practices and comparative legal systems, the study aims to provide recommendations for achieving gender neutrality within the Indian legal system, fostering a truly inclusive and just society that upholds the rights and protections of all genders.

Keywords: Gender Neutrality, Indian Legal System, Criminal Law, Gender Discrimination, Gender Equality.

Statement of Problem

There is an urgent need for gender-neutral criminal laws in India to address offenses committed against men. Currently, Indian criminal law lacks statutory provisions to protect men's rights, leaving them without effective remedies when they are victims of crimes. Crimes against men

often go unacknowledged, with a prevailing assumption that such offenses do not occur. In contrast, crimes against women receive due recognition and attention, while similar crimes against men are often dismissed as fictional scenarios. This disparity highlights the necessity for a more inclusive legal framework that ensures justice for all, regardless of gender.

GENDER – A BRIEF INTRODUCTION

The term gender and sex are sometimes used synonymously but both terms have different meanings. Gender is developed in the process of socialization. Gender means multi-faceted socially, psychologically and culturally constructed characteristics, roles, behaviours, expressions and identities related with being a male and female, as well as associations with one another. It has an effect in the way people see and perceive themselves. Gender identification is a continuum process that can change over time; it is neither static nor binary (girl/woman, boy/man).

Gender is so profoundly deep-rooted in our traditions, our activities, our opinions, and our aspirations that it seems natural to a person. Neither we are born with gender attributes nor we possess them because we belong to a particular sex. It is something we do or related to something we perform as the same is told by the society or the community where a person lives¹.

Society has created certain norms, behaviour and it expects people to behave and act in that manner. Gender is something which one expresses by the way of speaking, dressing, walking, behaving and while interacting with others. Every person has a dual binary version of themselves: an external societal and public gender identity and an interior personal sexual identity. Postnatal experiences shape one's gender distinctiveness and awareness of how that individual is perceived in front of public. It arises from observing society's norms and expectations in general, as well as comparing oneself to others. Gender may not at all times match with the biological sex of a person. There may not be reconciliation between the sexual identity and gender i.e. There may be genitals of one sex in the body (male) and brain and the essence of the other (female). Gender is very personal in nature and comes naturally to oneself.

The below lays down a few examples of fundamental gender characteristics which are embedded in a child from an early age, he or she is expected to behave in that manner and if he or she doesn't behave in that manner that person is termed as strange or queer.

¹ Eckert, Penelope, McConnell Ginet and Sally. Language and Gender. Cambridge and New York: Cambridge University Press, (last accessed on Jun 5, 2024).

- Men are recognised as fathers and women are recognised as mothers.
- Blue colour stands for Boys and Pink colour stands for girls.
- Men are supposed to be bread earners and decision makers while women do the house work and nurture the family.
- Men earn more whereas women earn less. There is a pay gap.
- Men work as technicians, mechanics, electricians, drivers whereas women work as nurses, air hostesses, weavers, knitters, school teachers.
- Boys play with automobiles and super heroes whereas girls play with dolls.

Gender features and qualities are different for both the sex, for example, the roles male and female undertake and the beliefs put on each individual, differ greatly amongst societal groups and transform with time. However, because gender traits are socially constructed, they can be changed in ways that improve a society's fairness and justification.

GENDER IDENTITY

An individual's unique type of gender is referred to as their “gender identity,” which may or may not resemble with the sex they were given at birth. It also means person’s sense of their own body, that may include actively choosing to have their bodily functions or appearance altered through surgery, medicine, or other means, as well as other gender-specific expressions like dress, speech, and mannerisms. A person's gender identification is masculine if he feels himself to be a male and prefers to refer to himself in masculine terms.

Nevertheless, he only has a male gender role if he acts, dresses, and/or acts in a manner that is generally male. Gender Identity is essential to one’s being as it is something natural in nature. Natural impulse is connected to the natural intrinsic nature of a person. There may be different gender identities, for example a gender, cisgender, androgyne, bigender, gender queer, non-binary, omnigender, transgender, gender fluid, butch, Gender expansive, Pangender etc

Equality, Equity and neutrality are very often used interchangeably. However, each one of them signify a different meaning and cannot be used synonymously.

GENDER NEUTRALITY

The term neutral means impartial or unbiased state of person or things, not being prejudiced, engaged or being aligned towards either or any of sides. The status of being neutral is not going

towards any of the extremes or in strait jackets which is marking or setting up labels, neither being in support or being against on any basis. Seeing things as is, without any preferences or favours.

Gender neutrality or Gender Neutralism signifies an idea or a concept that the policies, rules, regulations, language, social institutions must avoid differentiating roles and positions according to people's sex or gender. A policy, programme, situation or a conduct must not have differential positive or negative impact on gender. Objective of gender neutrality is to eliminate gender distinction or bias and gender inequalities prevalent in the society. It basically connotes with not being associated with either men or women. It happens to be undeniable that men and women are biologically unlike, the two anatomies exist that scientifically and medically term an individual as male and female. But the sex must not determine the gender roles, the mind-set and expectation from an individual. The absence and detachment of the gender spectrum is referred to as gender neutrality. Its objective is to deconstruct societal gender conceptions, as well as gender boundaries and roles.

Gender neutrality entails letting go of stereotypes and about a way of being than an identity. It plays a crucial role in eliminating gender bias. Gender neutrality appears to be a method in achieving parity and ending the ongoing fight between the sexes that obstructs development by allowing the rights of one sex to trump over the rights of another sex. The following analogy explains the difference between gender equality and gender neutrality

- Gender equality: An institution, workplace or an office appoints the same number of men and women.
- Gender neutrality: An institution, workplace or an office appoints the best person for the job irrespective of the gender.

Gender neutrality seeks to provide a distress free society, balance and stability amongst individuals. One must not get undue advantage just because one belongs to a particular gender or sex. Gender Neutrality aims to achieve the higher and universal goal of parity, rule of law. It ensures human rights as it doesn't lead to distinction or differentiation between people and creates a just and fair environment for all. It considers a person as a human rather than creating societal boxes.²

² *E. P. Royappa v. State of Tamil Nadu*, AIR 1974 SC 555.

GENDER NEUTRAL LANGUAGE

“Gender-neutral language” refers to the use of non-sexist, inclusive, or gender-balanced vocabulary. The aim of gender-neutral language is to eliminate the usage of terms that can be interpreted as prejudiced, discriminatory, or insulting because they imply that social gender is the norm. Gender-neutral language is inclusive and helps in the lessening of gender typecasting, advancement of social transformation, and aids in accomplishment of gender equality. Gender neutral language treats all genders equally. It ensures that no specific gender is preferred unduly over the other or at the cost of other. It eliminates the criteria of prejudices and biasness. No category will lead to no differentiation. Gender neutral language is in favour of all since it does not focus on any specific gender. There must be gender sensitivity in language while framing, writing, translating, or interpreting law.

The need and importance of gender neutral language is increasing with the passing time. Major reasons of incorporation of gender inclusive language is because the dogmatic approaches and orthodox shackles are breaking, as in this global era women are at par with men. The need escalates because of the gradual acceptance and acknowledgement to LGBTQ+ community by legislature, judiciary and the society. Gender-neutral terminology, i.e. words that are not gender-specific and refer to humans in general rather than women or men, can be used to avoid gender allusions.

- Man, Woman - Person, Individual, Adult
- He, She – They, Them
- Himself, Herself- Oneself, Them self
- Husband, Wife – Spouse, Partner, Significant Other
- Boys, Girls- Students
- Men, Women- People
- Gentleman, Ladies- Everyone, Folks
- Mankind- Humankind

Execution of gender-neutral terminology is seen to be accompanied by undesirable responses and harsh treatment for those who advocate for transformation. In Sweden third gender pronounhan was used. Hon was used for she. The Oxford English Dictionary added the word Mx. to be used instead of Mr, Mrs, or Ms. Mx can be prefixed to a person’s name and can be used by an individual with any or no gender specific identity. Gender neutral words help in removing the biasness as it cuts down the scope of gender stereotype. No differentiation amongst various genders and sex, it

will automatically lead to a turmoil free society.

The constant tiff amid man and woman will end by the usage of gender neutral language and will also lead to an easy inclusion of LGBTQ+ community in the society. Gender Fair Language will create no demarcations on the ground of gender as it will treat men and women symmetrically. “Neutralization can be attained, for instance, by substituting policeman with gender-unmarked forms police officer”. Words like accused, victim, appellant, respondent, criminal, perpetrator, offender, petitioner, defendant, judge, advocate, prosecutor, intern, assistant, editor, interpreter, official, receiver, professor, speaker, trainee, officer etc are gender neutral in nature.³

JUDICIAL STEREOTYPE FACED BY MEN

It signifies the practise of judges ascribing specific features, characteristics, or functions to a person only because of her or his association in a specific group of people. It shows habit, tendency or mind set of judges in having prejudicial preconceptions. Equality before the law is necessary for access to justice, for necessitates judicial impartiality and equanimity. In order to provide parity and fairness for victims and survivors, judicial stereotyping must be eliminated. Stereotypical thinking is observed in normal day to day life which affects a person’s intellect and conscious. India has patriarchal society, which endows men with burdensome notions. It is the social set up, which should be blamed or needs a change as it creates feeling of animosity between man and woman. If a man doesn’t fulfil the expectations set by the society, his masculinity is questioned. Stereotypes are a result of nurture than nature.⁴

GENDER NEUTRAL LAWS IN INDIA

Gender Neutral laws create a level playing field for men, women and trans genders. It does not lead to favours or inclination towards a specific gender. Gender neutral laws guarantee parity of rights for each individual, irrespective of gender, such as equal protection under the law and equal opportunities. Various gender-neutral laws are- “The University Grants Commission (Prevention, Prohibition, and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015, Protection of Children from Sexual Offences (POCSO) Act, 2012, Juvenile Justice (Care and Protection of Children) Act, 2015, Probation of Offenders Act, 1958, The Information Technology Act, 2000, Protection from Sexual Exploitation

³ Sabine Sczesny, Magda Formanowicz and Franziska Moser. (2016). Can Gender- Fair Language reduce gender stereotyping and discrimination?, *Frontiers in Psychology*, 02 February 2016, (last accessed on Jun 4, 2024).

⁴ OHCHR, Eliminating Judicial Stereotyping, equal access to justice for women in gender-based violence cases (2014).

and Abuse (PSEA) etc.”⁵

1. “University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015”

University Grant Commission has notified India’s foremost gender neutral regulation on sexual harassment. “On May 2, 2016 the Ministry of Human Resource Development (University Grant Commission) issued The University Grants Commission (Prevention, Prohibition, and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015.”⁶

It was drafted with the goal of prohibiting and preventing sexual harassment in educational institutions by both men and women. Sexual Harassment is defined under section 2(k) of the above mentioned regulation, while Regulation 3(d) of the same regulation lays down that Higher Educational Institutions must act speedily in the aftermath of any sexual harassment against staff and students of all sexes.

According to the Saksham Report 2013, gender sensitization was identified as the weakest aspect in the process of addressing issues on campus, despite being arguably the most important in terms of fostering a positive ethos on campus and enhanced understanding of gender equality and freedom, as well as harassment issues. This gender-neutral anti-sexual harassment legislation will pave the way for future legislation that will broaden the scope of understanding sexual harassment from the standpoint of all individuals, regardless of gender. It is revolutionary in many ways as it provides aid in the interpretation of hierarchical discrimination and abuse, such as between student and teacher, employee and employer. Furthermore, this gender-neutral anti-sexual harassment regulation would contribute to an improved understanding of sexual misconduct and its serious consequences for men and sexual minorities.

RECOGNITION OF SAME SEX SEXUAL HARASSMENT

In “Malabika Bhattacharjee v. Internal Complaints Committee, Vivekananda College and Ors”. the question before Calcutta High Court was whether “the Sexual Harassment of Women at

⁵ Priya Nandan. (2022). Gender Neutral Laws in India, *International Journal of Law Management & Humanities*, Volume 5 (Issue 1).

⁶ Available at: https://www.iimb.ac.in/sites/default/files/inline-files/UGC-Regulation-Prevention-and-Prohibition_1.pdf, (last accessed on Jun 4, 2024).

Workplace (Prevention, Prohibition, and Redressal) Act, 2013⁷ applies where the aggrieved and respondent are of the same gender.⁷

Petitioners, laid down that the complaint was invalid and claimed that, in light of Vishaka & Ors. vs. State of Rajasthan & Ors., the question of 'gender equality' takes precedence in determining whether a complaint falls within the 2013 Act's peripheral. The topic of gender equality does not emerge in this instance because the victim and respondent are of the alike gender.⁸

Respondents, laid down that “the University Grants Commission (Prevention, Prohibition, and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015”, claiming that it covers a comprehensive range, allowing for action against persons of the same gender in cases of sexual harassment. “They further stated that this, when combined with the meaning of “respondent” in Section 2 (m) of the 2013 Act, which refers to “a person” as a respondent, shows that same-gender accusations are considered under the 2013 Act.”

The High Court laid down meaning of “sexual harassment” set forth in Section 2(n) of the POSH Act cannot be viewed in isolation; it must be interpreted in the context of the social context. Sexual harassment is an offence that affects a person's dignity and is related to his or her gender and sexuality; nevertheless, it doesn't imply that person of the same gender is not capable of offending the modesty or self-esteem as defined by the POSH Act. Regardless of the sex or gender of the offender, an individual of any gender may feel vulnerable if one's modesty, respect as a member of that gender is harmed by any of the acts or conducts listed in Section 2(n) of POSH Act, 2013. Circumstances stated in Section 3(2) of POSH Act, 2013 can be committed by people of either gender, even inter se. Thus High Court recognised that a woman as respondent in a case of sexual harassment against other woman. According to this approach, if sexual harassment or violence is committed upon a man by a man or a woman, justice must be provided to the male victim.

2. Protection of Children from Sexual Offences (POCSO) Act, 2012

Various reasons leading to unreported cases of Male Child Sexual Abuse are:

- Orogenital exploitation is widespread; as a result, there happens to be no forensic evidence

⁷ 2021(1) SCT 431 (Calcutta)

⁸ 1997(7) JT 384

because salivary specimens of sperm aren't accessible at the time of recording. As noncontact abuse is uncommon in boys, the exploitation is more severe.⁹

- Girl child sexual abuse are exposed inadvertently because of pregnancy, and family abuse is terminated by marriage, while the revelation degree amongst boys appears to be lesser and accidental revelation appears to be rarer, causing abuse for years.¹⁰
- Unlike females, who are frequently violated in a heterosexual environment, males are more frequently assaulted by men, causing confusion about the victims' sexual orientation, numerous doubt whether or not they are homosexuals.
- Patriarchy stigmatises homosexuals as less than men, further postponing revelation. Homophobia can lead to over sexualized conduct in male survivors, and boys are more likely than girls to blame themselves for failing to halt the abuse.

Kathua and Unnao Rape incident created an uproar in the society. “Criminal Law Amendment Act, 2018” made several changes in the law. Several amendments were made in “Indian Penal Code, 1860, Code of Criminal Procedure, 1973, Indian Evidence Act, 1872 and Protection of Children from Sexual Offences (POCSO) Act, 2012.” Different provisions and punishments have been introduced in Indian Penal Code according to the age of female victim. Inserted sections are gender specific in nature. However, no such differentiation on the basis of age has been done for the young male victim in POCSO. In an instance of rape of girl child under 12 years, a provision of Death Penalty was introduced, whereas there is no such provision in POCSO. Such biasness in the law violates Article 14 of Constitution of India and lays an impression that rape or abuse of a male child is less heinous or serious in nature.

3. Protection from Sexual Exploitation and Abuse (PSEA)

“United Nations Children's Fund (UNICEF) is a United Nations (UN) distinctive programme devoted to supporting national initiatives to improve children's well-being, nourishment, education, and over-all welfare”. UNICEF started working in India in 1949. Its Protection from Sexual Exploitation and Abuse (PSEA) policy lays down that Sexual exploitation and abuse (SEA) and sexual harassment (SH) are both violations of basic intrinsic rights. It is gender neutral policy which protects both men and women from sexual violence. The strategy, policy and values

⁹ Gartner RB. (1999). Sexual victimization of boys by men: Meanings and consequences. *Journal of Gay Lesbian Psychotherapy*, Doi:10.1080/19359705.1999.9962210, (last accessed on Jun 7, 2024).

¹⁰ Dressler J. (1955). When heterosexual men kill homosexual men: Reflections on provocation law, sexual advances and the reasonable man standard. *Journal of Criminal Law Psychology*, Volume 85 (Issue 3), pg 726–63, (last accessed on Jun 3, 2024).

postulate that children, women, men, and communities must be treated with care, sensitivity, self-esteem and respect, as well as receive aid without fear of exploitation or abuse.¹¹

Accountability, Prevention, and Gender Equality are all used to create a zero-tolerance culture. World Health Organisation is United Nation's specialised agency, which is committed in eliminating sexual exploitation and abuse in workplaces and operations. Sexual exploitation and abuse are against internationally recognised legal norms and standards. Such behaviours are considered significant misconduct by the WHO, and may be grounds for disciplinary action, including summary dismissal and criminal prosecution.

World Health Organization defined Sexual Violence as "any sexual conduct, attempt to obtain a sexual act, unwelcoming sexual remarks/ advances and acts to traffic, or otherwise directed against a person's sexuality, by any person irrespective of connection to the victim in any setting, including but not limited to home and work, using coercion, threats of harm, or corporeal force, by any person irrespective of relationship to the victim in any situation, including but not restricted to home and work." The definition uses gender neutral term ie person thereby laying down that sexual offences can be committed by any person against any person.¹²

UNITED STATES OF AMERICA

The United States of America, a federal constitutional republic, is a mosaic of 50 sovereign states, a federal district, five major territories, and various minor islands. Its governance is guided by a codified constitution, a federated system of administration, and adherence to the common law legal tradition.

Each of the 50 states upholds its unique legal framework. The U.S. Constitution, the bedrock of the nation, comprises seven articles and numerous amendments. While the explicit terminology of "equality" and "non-discrimination" is absent from the text, their spirit permeates through the Fourteenth Amendment, ratified in the year 1868. Equality, a foundational tenet of any legal order, embodies the notions of even handedness, impartiality, fairness, and justice. The Fourteenth Amendment revised a segment of Article 1, Section 2, and enshrined three pivotal principles:

¹¹ UNICEF Strategy to Prevent and Respond to Sexual Exploitation and Abuse and Sexual Harassment, January 2019, available at: <https://www.unicef.org/sites/default/files/2019-05/UNICEF-StrategyPrevent-Respond-Sexual-Exploitation-Abuse-Sexual-Harassment-January-2019.pdf>, (last accessed on Jun 2, 2024).

¹² Ministry of Health and Family Affairs, Government of India, Guidelines and Protocols on Medico-Legal Care for survivors/victims of sexual violence, 2014, available at: <https://main.mohfw.gov.in/sites/default/files/953522324.pdf>, (last accessed on Jun 2, 2024).

1. The Citizenship Clause bestowed citizenship upon all individuals born or naturalized within the territorial bounds of the United States of America.
2. The Due Process Clause mandated that no state shall deprive any person of "life, liberty or property, without due process of law."
3. The Equal Protection Clause decreed that no state shall deny any person within its jurisdiction the equal protection of the laws.

The Fourteenth Amendment embodies the tenet that "No state shall deprive any person within its jurisdiction of the equal protection of laws." By explicitly delineating the states' role, the amendment seeks to broaden the safeguarding of civil liberties by ensuring parity for all, devoid of discrimination. Every individual must be treated equitably, akin to others in analogous conditions and circumstances, bereft of prejudice or partiality. Not only does the Fourteenth Amendment strive to eradicate discriminatory practices, but the Fifth Amendment also endeavors to eliminate disparate treatment. Collectively, these amendments serve as a bulwark against inequity, fostering a society where each person is accorded equal rights and opportunities, irrespective of their origins or personal circumstances.

Sexual Harassment

The term "sexual violence" encompasses a range of sexual misconduct, including sexual harassment, assault, or rape. In the United States, sexual assault is considered a felony offense. It encompasses various forms of victimization distinct from rape, attempted rape, or threatened rape. Acts such as unwanted sexual contact, groping, or touching between the victim and offender, with or without the use of force, constitute sexual assault. Underreported and underestimated, sexual violence against men poses a significant risk to their mental and physical well-being. The definition, terminology, and punishment for sexual assault vary across different jurisdictions within the United States.

According to the Centers for Disease Control and Prevention, sexual assault is defined as "a sexual act conducted or attempted by another person without the victim's freely provided consent or against someone who is unable to consent or refuse." The National Institute of Justice, the research, development, and evaluation agency of the United States Department of Justice, characterizes sexual assault as "a wide range of unwelcome behavior that is attempted or carried out against the victim's will, where the victim is unable to agree due to age, disability, or the effects of alcohol or drugs, up to but not including penetration."

Acts such as voyeurism, exhibitionism, unintentional exposure to pornography, or the public display of images captured in private settings without the victim's knowledge, also constitute forms of sexual violence.¹³

The definitions of sexual assault across various jurisdictions, such as New York, Washington, Arizona, Ohio, Texas, California, and Oregon, are formulated in a gender-neutral manner. The language employed in these definitions eschews gender-specific terminology, opting instead for inclusive terms like "victim," "recipient," "former," "latter," "person," "individual," "another," and "party." This deliberate choice of wording underscores the recognition that sexual assault can impact individuals of any gender identity, reflecting an inclusive and impartial approach to addressing this grave issue.

GERMANY

Germany is a federal, parliamentary, representative democratic republic. The legislative authority resides with the Bundestag (Federal Diet) and Bundesrat (Federal Council), which collectively form the legislative body empowered to enact federal laws. The sixteen constituent states of Germany are generally referred to as Bundesländer. Each state possesses a written and codified constitution, and while federal law takes precedence over state law, the states enjoy a significant degree of internal autonomy. The German civil law system is rooted in Roman law principles and incorporates elements of Germanic legal traditions.

Constitutional matters fall under the jurisdiction of the German Supreme Court, which is accountable to the Bundesverfassungsgericht (Federal Constitutional Court), the latter possessing the power of judicial review. The German Constitution enshrines the independence of the judiciary and the separation of powers. In contrast to common law systems, the German legal framework is founded upon an comprehensive compilation of statutes. In the realms of criminal and administrative law, Germany adheres to an inquisitorial system, where judges actively participate in the investigation of case facts, as opposed to an adversarial system in which judges act as impartial arbiters between the plaintiff or prosecutor and the accused.

¹³ National Institute of Justice. (October 25, 2010). Overview of Rape and Sexual Violence. Available at: <https://nij.ojp.gov/topics/articles/overview-rape-and-sexual-violence> (last visited on: Jun 10, 2024).

UNITED KINGDOM

The United Kingdom embraces a constitutional monarchy system, wherein the sovereign, ascending to the throne by birthright rather than election, serves as the ceremonial head of state. The nation comprises four distinct entities – England & Wales, Scotland, and Northern Ireland – each with its own judicial framework and legal profession, while exhibiting notable similarities across their respective legal systems and jurisdictions. Despite the absence of a formal codified constitution or bill of rights, the UK operates as a parliamentary democracy.

Northern Irish law adheres to a common law tradition, falling under the jurisdiction of Northern Ireland's legal system, with ultimate civil and criminal appeals escalating to the Supreme Court of the United Kingdom. This system bears resemblance to the English legal framework, as the Kingdom of Ireland had adopted common law principles. Conversely, Scotland maintains its distinct court structure, partially independent and operating within its own jurisdiction. Scottish law, while not entirely rooted in common law, is a mixed and pluralistic system, exhibiting affinities with Roman-Dutch legal traditions.

One of the oldest and most revered principles underpinning the common law in the United Kingdom is the rule of law doctrine. Evolving to harmonize with the ethos of "equality before the law" and the precepts of constitutional monarchy, which uphold parliamentary sovereignty, this tenet advocates for the equal application of the law. The eminent legal scholar, Professor A.V. Dicey, formulated the concept of the Rule of Law, which has since become a cornerstone of the UK's legal architecture.

The evolution of the rule of law concept was elucidated in the seminal work "Introduction to the Study of the Law of the Constitution," published in 1885. According to the renowned scholar Albert Venn Dicey, no individual shall be subjected to punishment or deprived of their liberty or property unless for a clearly defined breach of law, established through due process before the ordinary courts of the land. The primary tenet affirms the inviolability of the rule of law and prohibits any form of arbitrary conduct. Wherever discretion exists, Dicey argued, the potential for arbitrary behavior lurks, irrespective of an individual's status or circumstances.

Dicey propounded that all citizens are bound by the common law of the realm and are subject to the jurisdiction of the common tribunals. One of the three core principles of the rule of law espoused by Dicey is the equality before the law, transcending rank or position. All classes of

individuals are equally subject to the law without discrimination. Regardless of any grounds, every citizen bears the duty to uphold the same legal framework and falls under the purview of the same judicial authority.

In the United Kingdom, the Parliament enacted the Equality Act in 2010 with the prime objective of harmonizing discriminatory laws and reinforcing the legal framework to ensure progress towards equality. The Act consolidated and superseded various previous legislations, including the Equal Pay Act of 1970, the Sex Discrimination Act of 1975, the Race Relations Act of 1976, the Disability Discrimination Act of 1995, the Employment Equality Regulations concerning religion, belief, sexual orientation, and age, as well as a substantial portion of the Equality Act of 2006 and other ancillary legislations. The Equality Act safeguards individuals from discrimination on various grounds, promoting equality in the application and administration of the law.¹⁴

CONCLUSION

A country cannot function without a smooth society. Legislation is a reaction to a social and collective outcry. Men and women form foundation of a concrete family and thus a society. Equality, appears to have lost its significance to our lawmakers, society, activists and judiciary. Unquestionably, the legislature or the judiciary does not propose to discriminate against a victim of sexual offence because he is male, but unfortunately, there is no acknowledgement of men and trans gender as a victim of domestic violence, rape, sexual harassment, stalking etc. Both crime and our laws should be gender-neutral. The same motivations drive criminal behaviour in both men and women. Anyone who violates the law must be made liable to the consequences outlined in the Code, and the law should not make any distinctions between different types of offenders on basis of gender.” All citizens possess self-esteem, respect and to provide a dignified environment have the should be a “egislative necessity”.¹⁵

When the law recognises persons of all genders, it must likewise lay down for the deterrence and safeguard from sexual assault, for everyone who falls within that spectrum. The Bench failed to see that by refusing to remark on making Indian Penal Code gender neutral in nature, it was defying values given in the NALSA decision. Making law for sexually violent offences (particularly rape, sexual harassment, and sexual assault) leads to addressing of transgender

¹⁴ Fulbright Rose Norton. (May 19, 2010). The Equality Act 2010- one statute to cover all discrimination laws. <https://www.lexology.com/library/detail.aspx?g=7d353d53-b503-4e4ab86c-c13940875143>

¹⁵ Available at: <https://www.firstpost.com/india/sc-dismisses-plea-to-make-sexual-assault-gender-neutralmove-reflects-courts-reluctance-to-view-rape-cases-as-victim-centric-4337983.html>, (last accessed on Jun 5, 2024).

community's requirements. To make the world a safer place for everyone, we must equally protect our sons and daughters. The patriarchy's predominance may be to blame for the low rates of reporting and seeking aid in India. The reality is that guys who are expected to be superior due to their nature overlook oppression of victims, regardless of gender and there lies uncalled beliefs on them to ignore negative aspects of violence and to disregard such instances. It's time for society and our lawmakers to recognise that sexual crimes and abuse know no boundaries and are genderless. The severity of female sexual abuse and assault is not diminished in any way by this. It's merely raising attention to the fact that there shouldn't be any bias when delivering justice to those who seek the same.

Gender neutrality will eliminate inadvertent gender discrimination and to provide equal protection to all genders. The family arrangement and society are transforming, and the same is true of gender violence norms and ideals. Men often suffer physical and mental annoyance because of their partners, in-laws and spouses.

Gender disparity has a profound impact on society throughout history, marketing, upbringing, education, and parenting approaches. To promote gender neutrality, Socio-cultural and socio-legal approaches must place a strong focus on the use of terminology that is inclusive of all genders and on equality advocacy.

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