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# **GENDER NEUTRAL LAWS: NEED FOR REFORM IN SEXUAL HARASSMENT LEGISLATION**

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## **ABSTRACT:**

The phenomenon of sexual harassment at the workplace can be referred to as one of the emerging issues in terms of violation of human rights because it constitutes an infringement on the dignity, equality, and freedom of citizens. Under the laws of India, the Prevention of Sexual Harassment of Women at the Workplace Act of 2013 has been formulated to address such instances. While the law in question is a result of an important judgment of Vishaka v State of Rajasthan and is a progressive step towards the protection of women from such abuse in the workplace environment, it lacks in addressing the problems faced by many other individuals regarding this issue. The aim of the current dissertation is to analyze whether it is necessary for the laws related to sexual harassment to be gender-neutral in order to ensure equality. Over time, along with the development of social norms and increased levels of awareness among the population, some cases emerged which involved harassment of men as well as members of the LGBTQ community in their workplaces. The topic of this paper is related to the necessity of Specifically, the need for equal treatment of all people without regard for gender will be discussed. Gender-specific regulations on sexual harassment have always been characteristic of the vast majority of jurisdictions, where women have traditionally been victims of sexual offenses and men – perpetrators. These legal frameworks were necessary because of the long-term prevalence of gender-based violence, however, nowadays such laws leave unprotected some groups of victims. Legal provisions regarding sexual harassment that are relevant to the

chosen topic are examined and evaluated in order to find gaps and inconsistencies in current legislation. In addition, reasons why some people fail to report their experience of harassment can be found and analyzed. This issue will be explored using comparative research methods. the development of gender-neutral amendments in the field of sexual harassment laws.

**Key words:** Sexual stereotypes, Gender roles, Traditional approach to law, Patriarchal mindset, Bias in legislation, Gender discrimination, Social conditioning

## I INTRODUCTION:

Sexual harassment continues to be a gross infringement of dignity and equality of people in different workplaces, schools, and the general public sphere. The law in several countries around the world has sought to address this issue by creating legislation to prevent and correct it. In most cases, however, the laws are specifically tailored to address sexual harassment committed against women by men. Although this was appropriate at one point, there is an urgent need to take a new and more comprehensive view of the laws concerning sexual harassment. It therefore implies that laws against sexual harassment have to consider all genders in order to achieve equality. This study will aim at critically examining the merits and demerits of gender-neutral laws against sexual harassment. It can be considered a gross violation of people's dignity, equality, and liberty. Sexual harassment is a problem facing people from various socio-economic levels, and the issue of creating safe environments is highly relevant in relation to this problem within workplaces, universities, and the society in general. In other words, sexual harassment laws are based on the old pattern under which women were considered victims of sexual abuse while men were harassers. Given that in terms of history, women were those who faced discrimination and sexual harassment within patriarchal societies, the idea behind the laws was to provide them with the protection from violence. It should be noted that the development of sexual harassment laws began in India following the Vishaka v. State of Rajasthan case (1997) as it stated that sexual harassment in the workplace violated the rights protected under Articles 14, 15, 19, and 21 of the Constitution<sup>1</sup>.

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<sup>1</sup> Art 14, 15,16, 19,21 – Indian Constitution, 1950

## II Knowledge about Gender Neutrality

A gender-neutral law is one in which neither male nor female is favored but rather all are equally protected. The law recognizes that there are various gender identities such as the transgendered and non-binary genders, and thus does not exclude them from protection. Neutrality is where the laws, policies, and the institution have an equal standing irrespective of whether someone is male or female. For example, a gender neutral law does not presuppose any individual gender as being the victim or even as being perpetrating a wrong against another person; rather, the law will be inclusive enough to use words like 'person,' 'individual' or 'anyone.' Simply put, Gender Neutrality is about equal treatment of all genders Gender through the application of law.

## III Knowledge Regarding Gender Identity Matters

Initially, laws were developed on the basis that only two genders existed. However, in the contemporary world, the truth of the matter is that this is not always the case. These groups are listed below:

1. Male
2. Female
3. Transgender
4. Non-binary Gender fluid

It should be noted that all of these groups are acknowledged within the Indian legal system due to the recognition of the Transgender group as the third gender after the landmark judgment of NALSA v. Union of India.

## IV Features of Gender-Neutral Laws

The major characteristics of a gender-neutral legislation include:

1. Equality The equality characteristic of gender-neutrality is where no discrimination is done to anyone regardless of gender. In simple terms, this law ensures that the rights of the victim to access justice are equal to either gender.
2. Gender-Neutral Language These legislations do not discriminate through use of words such as he and she but use neutral terms such as complainant and person.
3. Identification of Victims Compared to some laws, which take into account the victim's sex as being female, gender neutrality acknowledges male victims as well.
4. Equality of Responsibility Since there is equality of liability, a criminal as well as a

victim may be of either gender.

### **1. Equality Before the Law:**

It goes without saying that one of the key aspects of justice within the legal framework could be equality between citizens regarding the law. This aspect is described in Article 14 of the Indian Constitution<sup>2</sup> according to which equality of law is present among the citizens because the latter are regarded as equal beings and have equal rights according to the law with no discrimination at all. Consequently, equality before the law entails treating everyone equally according to the law. However, no gender discrimination may occur. To begin with, there are numerous laws resulting from certain stereotypical opinions regarding both males and females. Thus, the criminal laws indicate that only men commit crimes, while women are always the victims of such illegal activities. While the protection laws for women and children may prove effective for certain people, at the same time, those laws lead to increased discrimination against transgender persons and males. The transformation of current laws will reduce discrimination against women.

### **2. Adjustment to Changing Social Realities:**

As a rule, society remains a dynamic structure with numerous changes emerging in the cultural, social, and intellectual spheres of the community. One of the main changes of our times concerns gender, namely the fact that it cannot be perceived through the narrow scope of the male-female dichotomy any longer. Modern society includes various gender groups, including transgender people, nonbinary individuals, and gender fluid persons, for instance. As a result, stereotypes related to traditional male and female behaviour seem outdated nowadays. In addition, almost all existing laws emerged before the emergence of new types of gender identities, such as those of transgender or nonbinary individuals, so they may be considered quite rigid. This means that they lack sufficient flexibility to cover the entire range of interactions between citizens and the government within the ever-changing conditions of life. Therefore, law fails to be relevant if it does not meet new social demands. Therefore, gender-neutral legal reforms may be considered appropriate.

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<sup>2</sup> Art 14 – Indian Constitution, 1950

### 3. Protection for all Victims:

The primary function of an ideal legal system is to ensure that there is justice for all victims of crimes irrespective of their genders. Unfortunately, most of the traditional laws have failed to provide such protections, particularly in cases relating to criminal offences. Many laws tend to consider only one side of the story and therefore make it difficult for the affected persons to take actions. This is mostly the case in situations whereby laws are designed in a manner that makes women the victims while at the same time making men the offenders. While some of the laws have been introduced to protect the vulnerable groups of people including women, they end up being unfair for other categories of individuals who fall outside the scope of the legislation<sup>3</sup>. For example, men are not considered the victims as much as they may be in some instances. Other than that, those individuals who fall within LGBTQ+ community are also exposed to forms of sexual assault and violence, which are overlooked due to gendered laws. This calls for gender-neutral reform because the process will enable Fourthly, but by no means lastly, the reason why there should be gender-neutral legislation is the matter relating to the LGBT community. Being subjected to violence, bullying, and discrimination by others around, some of these instances have actually found themselves in the courts of India previously where their rights were recognized. The instance would be Navtej Singh Johar v. Union of India<sup>4</sup>. In the said case, it was contended that the criminalization of homosexuality had actually infringed upon their fundamental rights. It was also held in the same case that the matters of equality and dignity must be considered when safeguarding fundamental rights. Justice will be very hard for the LGBT community to be served without gender neutrality. The POCSO Act, 2012, can serve as an example in this regard.

### 4. Sexual Stereotypes:

Discrimination Based on These Stereotypes In the first place, one of the negative features of the traditional approach to law is the presence of certain social stereotypes which are characteristic of the male and female status under the traditional approach. Speaking about the social stereotypes regarding sexual roles, they may be described as follows: the stereotype presupposes that men should be strong and aggressive whereas women have to be passive and virtuous. But these stereotypes appeared in a certain period of time and do not fit modern life

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<sup>3</sup> Convention on elimination of all forms of Discrimination against Women

<sup>4</sup>Constitution of India – Equality before law and equal protection of laws; prohibits arbitrariness and discrimination.

conditions. If legislation is crafted within the scope of such inflexible stereotypes, it will inevitably become inherently biased. For example, if the assumption of the law is that only women can be the victims of certain crimes, then it automatically eliminates the possibility of males and people belonging to any other gender identity experiencing the same form of criminal abuse. Simultaneously, the law fails to take into account the potentiality of women being able to commit certain crimes as well. Gender-neutral reforms attempt to address these issues by promoting the idea that the law should be centered around the crime itself, instead of taking into account the gender of the parties involved. Significantly, ending gender stereotypes will have implications for society at large. The recognition that: Victims of violence can be male, will aid in countering dangerous ideas about manliness that inhibit men from coming forward with reports of assault or seeking assistance. Victims of assault can be female and will emphasize the equality that entails not just rights but also responsibility. Offenders in domestic violence can be members of the LGBTQ+ community, will provide for their recognition within the criminal justice process. All this will lead to a more comprehensive interpretation of human behavior and eliminate stigma from being victimized irrespective of gender. Further, the ending of gender bias will make it easier to uphold the constitutional ideal of equality provided in article 14 of the Indian Constitution. Article 14 makes it imperative that there should be no arbitrariness and discrimination in the application of laws.

##### **5. Inclusivity and Human Rights:**

The basis of the modern legal system consists in the respect for the dignity, equality, and freedom of people. The international human rights law focuses heavily on the idea that everyone regardless of their gender should be considered an equal citizen of their state. For instance, the Universal Declaration of Human Rights explicitly states that all people are born equally in their dignity and rights and should not be discriminated against in any way including gender. Nevertheless, the problem may arise when the domestic legislation includes gender-specific criteria in its provisions or uses restrictive definitions of the gender issue. It results in the fact that particular groups of people, namely, those who belong to the transgender community and consider themselves to be non-binary, may lack the same number of rights as other citizens have. Gender-neutral reforms serve as an effective means to bridge this gap. Gender-neutral reforms allow a level playing field for all by implementing the same rules without consideration of gender identity. These reforms are based on the principles of human rights since the rights do not depend on who the person is but only on whether they are a human

being. Legal inclusivity goes beyond merely implementing equality into laws; it implies the development of an inclusive and fair legal framework wherein all feel recognized and protected under the laws. Gender-neutral reforms accomplish this task through the following measures:

- Elimination of discriminatory provisions
- Protection of marginalized groups
- Equal accessibility to law<sup>5</sup>

for all individuals in the context of India, constitutional provisions, namely Article 14 of the Indian Constitution and Article 21 of the Indian Constitution, are in line with these human rights values. Through gender-neutral reforms, these principles gain further strength and become meaningful for the whole population. Apart from making the domestic legal system inclusive, such alignment will contribute towards enhancing the international human rights standards and will ensure a progressive attitude within the legal framework.

## **6. Gender Diversity Recognized by Judiciary**

In India, the judiciary too has recognized the importance of gender inclusiveness. For example, in the landmark case of *NALSA v. Union of India*, the Supreme Court recognized transgenders as the “third gender” with fundamental human rights. This judicial recognition, in turn, mandated the need for gender-neutral laws. It is clear that the judicial system of India has made a significant contribution towards resolving such issues related to gender diversity where there was no legislation in place. Nonetheless, the Indian judiciary has taken a progressive approach in dealing with rights of the people belonging to different genders and treating them equally. In this connection, one of the most remarkable judgments delivered by the Supreme Court of India in the case of *NALSA v. Union of India* deserves a special mention. In its verdict, the Supreme Court recognized the right of the transgender community as being the third gender along with ensuring access to all their fundamental rights as guaranteed by the Indian Constitution. Moreover, it recognized the importance of the identity of gender as being a part and parcel of human life and thus any violation would amount to violation of their basic human rights. Further, the Court observed that the Articles 14 (right to equality), 15 (no discrimination) and 21 (right to life and dignity) of the Indian Constitution are equally applicable to transgender community. Discrimination on account of one's sex includes discrimination against a

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<sup>5</sup> Constitution of India – Prohibits discrimination on grounds of sex, religion, race, caste, or place of birth.

transgender individual.<sup>6</sup> Further, it is recommended that the government take measures to ensure: Self-determination of gender identity Reservation for education and employment Access to health care and social welfare benefits The concept of binary gender has been challenged with this recognition. This decision made by the judicial branch of the country will have far reaching consequences especially in the realm of legal reforms in India. With the recognition of gender diversity, the verdict highlights the shortcomings of the current laws on gender that focus exclusively on men and women only. There was an urgent need for legislation covering all genders. Precedents set by NALSA judgment have influenced other courts and legislatures.

### **V RECOMMENDATION:**

An integrated strategy needs to be implemented in order to ensure that the changes brought about in the name of gender neutrality are holistic in nature and lead to the establishment of parity amongst all genders under the ambit of the law. Gender-specific laws can be amended to make use of terms like 'person' and 'individual' rather than using gender-specific terminology in order to introduce the notion of equality as guaranteed under Article 14 of the Indian Constitution. While existing laws need to be amended in light of a move towards gender neutrality, new laws can also be enacted to address the concerns of multiple genders and prevent discrimination against them in every form of law. It becomes necessary for the people in the LGBTQ+ community to be handled with utmost care owing to the fragile nature of their position, which can be seen from the case of NALSA vs. Union of India. Every possible measure should be taken to make sure that the rights concerning education, health, and economic opportunities of all genders are provided to them without fail. Awareness campaigns could be helpful in this regard. In addition, it becomes necessary to train judges, police personnel, and others concerned about law against gender discrimination. For a gender-neutral policy, changes need to be made to the present laws to avoid discrimination and ensure that everyone receives equal treatment under Article 14 of the Indian Constitution. The changes will include recognition of the variety of genders and taking into consideration suggestions made in the case of NALSA v. Union of India. Education and sensitization will help to remove any pre-conceived notions prevailing in society. For a gender-neutral policy, changes need to

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<sup>6</sup> Navtej Singh Johar v. Union of India – Recognized LGBTQ+ rights and emphasized inclusivity beyond traditional gender roles. Law Commission of India, *172nd Report on Review of Rape Laws (2000)* – Recommended gender-neutral rape laws.

be made to the present laws to avoid discrimination and ensure that everyone receives equal treatment under Article 14 of the Indian Constitution. The changes will include recognition of the variety of genders and taking into consideration suggestions made in the case of *NALSA v. Union of India*. Education and sensitization will help to remove any pre-conceived notions prevailing in society.

## VI CONCLUSION:

In conclusion, the necessity for gender neutrality becomes an important obligation not only in terms of law but also socially. While well-intentioned and made in good faith, gender-specific laws simply do not have the capacity to include various gender identities and expressions, and they are therefore likely to lead to discrimination, injustice, and exclusion. Only through the adoption of a gender-neutral perspective that the legal system will be able to guarantee equality for all people irrespective of their genders. By adopting such a model, it will be possible not only to reaffirm the fundamental values outlined in Article 14 of the Indian Constitution but also comply with international human rights standards, including those set out in the Universal Declaration of Human Rights. Despite the fact that judicial decisions made in *NALSA v. Union of India* case have provided a promising ground for making important changes towards gender inclusivity, more work needs to be done in this regard. The importance of gender-neutral reforms in today's context has emerged more strongly owing to the emergence of an ever-changing and multi-faceted society. The conventional approach of making gender-specific laws was effective when there was a binary approach towards gender identities; however, in today's era, these laws have proved to be discriminatory towards certain gender identities as they fail to take into account the needs of men, transgender and non-binary persons. Hence, it becomes imperative to adopt gender-neutral reforms in order to provide justice to everyone irrespective of their gender identity. From a constitutional perspective, the constitutional guarantee of equality of all persons under Article 14 of the Indian Constitution mandates equality before the law for every person. Gender-neutral laws, thus, become very important in order to ensure non-discrimination and grant equal rights to all persons. The fundamental right to life under Article 21 of the Indian Constitution further makes it important to ensure that every person is given equal respect and dignity. Gender neutrality must also be implemented as a concept into legislation, which would be another step in the reforms. Such instruments like the Universal Declaration of Human Rights emphasize the fact that all people have certain rights including the right to non-discrimination, equality, and dignity. These values can be protected through

gender neutrality. As well as changes in laws, the implementation of gender neutrality requires actions to guarantee proper enforcement of laws. Public awareness, sensitization, and education on a national level are necessary to prevent any kind of discrimination based on one's gender. Police officers and the judicial branches should receive training to ensure there will be no bias toward men in case of victimization. Consequently, everyone wins from legal guarantees. Gender neutrality would make it possible for the legal system.

