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# **Indian Penal Code Vis-à-vis Gender** **Specific Laws: An Analysis**

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## **ABSTRACT**

*“It’s the time we all perceive gender on spectrum not as two opposing set of ideas<sup>1</sup>”*

India is a country where our Constitutional framers provided Equality of Status, of opportunity to every citizen, however one of the most fundamental equality- Equality in the Criminal Justice System is ignored by legislators. The roots of Gender inequality were rooted a long time ago, but the preconceived notions of society have paved way to the evils of Gender Inequality. India is a patriarchal society which means that men hold the primary power in society and there is a domination of men over the women, but with the rise in feminists’ movement, women were able to get equal status in the eyes of Law and Society. The J.S Verma Committee way back in 2013 came up with view point to make certain criminal laws as gender-neutral but it was denied. Laws concerning issues such as sexual harassment, stalking, voyeurism, most importantly Rape are gender-specific in nature. It means that our Criminal Justice System rejects the notion of man being the victim of any of these crimes. If we consider women and man on same pedestal, then it needs to be questioned that why laws are women-centric. It is important to observe Whether we stand on the touchstone of Article 14?.To achieve gender-neutral criminal laws in India, we must try to bring a change by re- examine various laws. In this paper, author has analyzed our criminal justice system in light of Gender-Specific Laws.

**Keywords:** Gender- Neutral Laws, Women, Criminal Justice System, IPC

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<sup>1</sup> Emma Watson , <https://www.goodreads.com/quotes/tag/gender-equality>, Last visited on - ( 20 November 2021 , 06: 30 A.M)

## INTRODUCTION

*As Anna Scales said – Injustice does not flow directly from recognizing differences; injustice results when those differences are transformed into social and economic deprivation<sup>2</sup>*

The beauty of our preamble is that it recognizes Social Solidarity and thus begins with ‘WE THE PEOPLE’. Preamble is said to be the heart and soul of the World’s longest and Bulkier Constitution. We as a country shifted from the concept of laissez faire to ‘Welfare State’ to attain social development, along with equal opportunity for all. At the time of independence, the women were subjected to discrimination and were denied many opportunities unlike the men. Therefore, to achieve the same our Constitution forefathers added the fundamental concept of Equality and thus impliedly injected the concept of Rule of Law under Article 14 of the Constitution of India. With the advent of time, judiciary played a parental role for uplifting the rights of all sections of the society and pronounced landmark judgments in this light.

*As they say ‘Learn the past, Watch the present, and create the future.* In the past and till today, our Criminal Law portrays the idea to protect the women from various crimes but as it is preached and practiced that the *law is a means to social control* where even the protective discrimination is proportional to changing demands of society, respectively. Thereby questioning the needs of present time, where men are also prone and vulnerable to be attacked. What about their rights? This comes from the roots of pseudo patriarchy where it was almost indigestible to accept the possibility that a man too can be a victim of such crimes. Gone are those days where *Mard KO Dard NAHI Hota (Men do not feel pain)*’ was lauded and applauded in theatres. A person irrespective of their gender should be treated equally but due to certain persisting loopholes in the criminal justice system the very essence of our Constitution and Preamble seems to diminish. The framework of the system portrays the fact in a manner that the men are supposed to be the protector and a great example of masculinity. Therefore, laws for the protection of men are non-essential. They are considered to be custodian of the society and a protector does not require a shield of law for their defense.

The architect of the Criminal Justice system framed it in a way that Men are envisaged as the perpetrator of the crime, and not as the victim. Thus, it has resulted in a belief that even a slight visualization of the word victim, a layman thinks of a woman without an iota of doubt.

The Author’s analysis states that the majority of the sections which have been incorporated under Indian penal Code almost nullify the possibility of a man to be a victim thus making them gender specific .However, for the present and future, our Criminal law should focus not on laws which are precisely made on gender but on their neutrality to protect ‘WE THE PEOPLE’.

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<sup>2</sup> Ann C. Scales, the Emergence of Feminist Jurisprudence: An Essay, 95 YALE LJ. 1373 (1986)

## **Analysis of Gender Neutral laws in light of Jurisprudence**

Eugen Ehrlich in his theory has stated that it is neither the legislations nor juristic decisions but the “society” which is the fundamental for legal developments. These words of Eugen Ehrlich beautifully portray the idea that society is considered to be the main source of law. The Law does not find its existence in legislation, but in society. Considering today's scenario, society needs gender unbiased laws rather than gender explicit laws. Looking at the global perspective, the developed countries like U.S.A, U.K, Ireland or Australia have constructed the definition of rape without referring to any gender.

Bentham<sup>3</sup>, yet another great philosopher, propounded the theory of Utilitarianism which essentially means, ‘Greatest happiness for the greatest number’. In the welfare State, there is a commitment to all the citizens of the country to provide social development regardless of the nature of citizens. The first idea which strikes in the mind after reading the theory is that it ignores the minority and only focuses on the needs of the majority. Therefore, this principles of Utilitarianism by Bentham was rightly criticized by FriedMann on the following parameters-

*It fails to create balance between the individual interest and the interests of the Society, and thus, Bentham in his theory undervalued the individual choice and flexibility in the implementation of the law.*

## **GENDER-SPECIFIC LAWS VIS-A-VIS CRIMINAL JUSTICE SYSTEM: A CONSTITUTIONAL ANALYSIS**

Our preamble starts with “WE”, where *we* stand for unity, *we* stands for every citizen of our country irrespective of their gender. The importance of the preamble has been rightly highlighted by the apex court in the case of *Kesavananda Bharati*<sup>4</sup>, that Preamble is the integral part of the Constitution and the basic elements incorporated in it cannot be amended by Article 368 of the Constitution. The intent of our Constitution maker is to incorporate and to achieve justice of Social, Economic and Political nature and whereas Equality of Status and of opportunity.

The Indian Constitution was drafted in the mid-twentieth century with a view to incorporate the concept of social welfare and welfare State in general which is evident from Directive Principle of State Policy (DPSP) provided under part IV of our Constitution. Provisions under DPSP state the objective which needs to be achieved with the passage of time for the welfare of the society and to achieve the very essence of our Preamble. That's why we declare our Constitution to be a living document. The essential basis of the Indian constitution is that all

<sup>3</sup> SK SHARMA AND URMILA SHARMA , FROM BENETHAM TO PRESENT DAY, ATLANTIC PUBLISHERS AND DISTRIBUTORS, 2006

<sup>4</sup> Kesavananda Bharati vs. State of Kerala (1973) 4 SCC 225: AIR 1973 SC 1461

the citizens are equal in the eyes of law. Therefore, Social justice is considered to be a Fundamental Right<sup>56</sup> and it is an extensive approach to remove social disparities and social imbalance from the society. Therefore, in the present scenario it has been observed that the insufficiency of gender neutral laws creates a threat to social justice.

## **RIGHT TO EQUALITY- A SINE QUA NON TO A DIGNIFIED LIFE**

Fundamental Rights are considered to be indispensable for the survival of any democracy which are provided to every person in order to live a gracious and meaningful life and one such imperative Right is Article 14 i.e. Equality before Law meaning thereby every individual is equal in the eyes of law irrespective of their gender, caste or creed. If any person commits a crime he must be punished according to the procedure established by law irrespective of their sexual identity. That's why our Constitutional maker inserted the phrase 'any person' in this very Article.

In **E.P. Royappa v. State of Tamil Nadu**<sup>7</sup>, the Modern concept of Equality was pronounced. In this judgment the Supreme Court has floated from the Customary Idea which depended on reasonable classification and has set out the new notion of Equality. Justice Bhagwati articulated the new concept of equality in the following words- "*equality is a unique concept with many aspects and it cannot be cribbed, cabined and bound*" within conventional and doctrinaire limits.

Thus, it is the obligation of the State to ensure fairness and equality to treatment. It is evident to note that Rape is considered to be the fourth most common and hated crime against women in India and the reports and data by NCRB clearly shows the same. But there is no data which shows the cases of sexual assault on a man. In our existing criminal justice system a man cannot be a victim of sexual assault. Section 375, IPC starts with the phrase that '*A man is said to commit Rape if he*', however on the other hand the present legal system has no provision for men to seek legal recourse if they are sexually assaulted.

As per the data collected by National Crime Victimization Survey (NCVS)<sup>8</sup> it shows-

A huge number of men in US have been survivors of assault .Starting from 1998; 2.78 million men in the U.S. had been casualties of endeavored or complete rape. Around 3% of American men—or 1 in 33—have encountered an endeavored or completed rape in the course of their life. 1 out of every 10 assault casualties is male. This data shows a man can

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<sup>5</sup> Ashok Kumar Gupta vs. State of U.P ,(1997) 5 SCC 201: 1997 SCC (L&S) 1299

<sup>6</sup> Durga Das Basu , Introduction to the Constitution of India , PG- 25, Lexis Nexis - 23<sup>rd</sup> Edition(2018)

<sup>7</sup> E.P Royappa vs. State of Tamil Nadu 1974 AIR 555, 1974 SCR (2) 348

<sup>8</sup> Victim of Sexual Violence: Statistics, RAINN,-<https://www.rainn.org/statistics/victims-sexual-violence-> (Last Visited - 6 NOV, 2021, 4:10 P.M)

also be a victim of rape but in India for this the Criminal Justice system does not have any laws for their protection which is a clear cut violation of Article 14 guaranteeing Right to Equality.

As pronounced in **E.P. Royappa v. State of Tamil Nadu**<sup>9</sup> that Equality is a dynamic concept which needs to cover every individual and also the duty of the state to provide laws for the men for their protection to establish Equality<sup>10</sup>.

## **AUTHOR'S ANALYSIS IN LIGHT OF GENDER-SPECIFIC LAWS**

- **Contradictory Approach for the word 'Victim'**

The Definition of victim as provided under Section 2 (wa) of CrPC is a classic example of the gender dispassionate law. As per the definition, a victim is only a "person" who suffered loss and injuries, meaning thereby, a victim can be a male, female or transgender. But the nature of certain sections of Indian Penal Code depicts the case otherwise. Various data and surveys show that a man can also be a victim of sexual harassment, rape, stalking, and a silent spectator of outraged Modesty.

For instance – If any women by her words or gesture insult the modesty of men, then the women will not be held liable under section 509 of IPC, but at the same time if any man by his word or gesture insults the modesty of a women, then he will be liable under section 509 of the IPC. The legislature of a developed country like U.S.A has drafted the definition of rape without pertaining to any specific sexual orientation of the victim. Hence, it is the need of the moment to adopt the gender neutral approach in India for criminal laws too, respectively.

**Some of the gender specific laws as provided under IPC, 1860 along with an analysis of various other laws have been discussed by the Researchers as follows-**

### **❖ SECTION- 354A**

***"Ladki chhed rahi hai toh chhid jao Na!*** (Assuming that a young lady is teasing you, how about you be happily teased)- Said by a Superintendent of Police when a man complaint

<sup>9</sup> E.P Royappa vs. State of Tamil Nadu 1974 AIR 555, 1974 SCR (2) 348

<sup>10</sup> V.N Shukla's , Constitution of India , Pg No- 80 ,Eastern Book Company , 13<sup>th</sup> Edition , 2017(with supplement 2021)

against the women for sexual harassment<sup>11</sup>. As the provision of Section 354A begins with ‘A MAN’, meaning thereby, any of the acts which is stated under Section 354A like unwanted and direct sexual suggestions, any demand or request of sexual favors, any sexually hued comments against man and showing pornography forcefully to an adult male, there is no room for man to seek justice against these acts. This pathetic mentality does not hold any water in their application.

According to the information distributed by Pew Research statistics in 2014, As per the data published by Pew research statistics in 2014, 25% of women and 13% of men between the ages of 18 to 24 have encountered inappropriate behavior while serving on the web<sup>12</sup>. This shows that men are also the victims of this horrific crime yet they are denied from giving ‘equal access to justice’ by law.

The question which needs to be put forth before the legislature and the society at large is who will protect the men from odious crimes? In India there is no law or statute for protection of adult males from the act of sexual harassment. **Our legislator need to shift their focus on male as the male suicides at workplace is 4 times more than female suicides due to the sexual harassment<sup>13</sup>.**

Judging from the findings of a recent Economic Times-Synovate survey, the men need to be incorporated in that bill as soon as possible. Of the 527 individual questioned across seven cities – Bangalore, Chennai, Delhi, Hyderabad, Kolkata, Mumbai and Pune – 19% said they have confronted some kind of sexual harassment at office. In Bangalore, 51% of the respondents had been sexually harassed, while in Delhi and Hyderabad, 31% and 28% of those overviewed said they had been physically harassed<sup>14</sup>

The functioning of Criminal Justice System and Society owes an apology to such men and their families, for non-denial in providing justice, remedy and relief for the pain and trauma they have suffered in their lifetime. The men are forced to live a life full of suffering. The society has failed to provide redressal for the injustice which makes an ideal equal society dream too far.

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<sup>11</sup> The Hindu , <https://www.thehindu.com/thread/reflections/men-too-may-be-sexually-harassed/article18351375.ece>  
( Last Visited- 11 Nov 2021 11:38 P.M)

<sup>12</sup> Legal Services India , <http://www.legalservicesindia.com/article/2039/Sexual-Harassment-of-Men.html> (Last visited- 07 Nov 2021 9:45 A.M)

<sup>13</sup> Legal Service India , <http://www.legalservicesindia.com/article/2039/Sexual-Harassment-of-Men.html> (Last Visited - 08 Nov 2021, 10:38 A.M)

<sup>14</sup> ] Times of India , - <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/men-too-are-victims-of-sexual-harassment/articleshow/16336627.cms> (Las Visited - 05 NOV 2021 8:20 A.M)

## ❖ SECTION-354B

In nutshell the explanation of Section 354B of the IPC 1860 is that it provides protection to 'every woman' from 'man' who assaults or forces her to disrobe or compel her to be naked in front of him.

Imagine a boy 20 year old who was forced to undress himself by a 48 year old woman causing that boy 'severe emotional distress' but his sorrow and his case cannot get justice as we don't have law to provide remedy to that boy. We are a country of 135 billion people and counting every few minutes. The substantial question is how successfully we have framed our laws so that it can render justice to billions of people in true spirit. How does our legal framework fail to notice the silent misery of all the men out there whose cases go unreported and unnoticed?

## ❖ SECTION 354-C

*"Indian law doesn't have shield to protect men being photographed secretly"*

With more and more people gaining access to cyberspace it is crucial that their privacy and other related rights are duly protected. But our Criminal Justice System fails to respect and safeguard the privacy of men, therefore needs to refurbish. In 2018, new dimensions were established in the context of privacy by the pronouncement of **K.S. Puttuswamy case**<sup>15</sup> where the judges have stressed the worth of the protection of privacy to ensure liberty and dignity. However, unfortunately section 354-C does not give weightage to the privacy of a male member of the society because it does not punish those persons who captures or watches the image of a man engaging in the private act. On the other hand if the same act happens to a woman then that man will be held liable both legally and socially, this section therefore, has time and again ignored the plight of a man who suffers.

*Ranjit, a 21 year old boy narrated his pain in a blog-*

Ranjit and his girlfriend went on a vacation in Ajmer. They share sexual intimacy and after coming back to home the things doesn't work well between them and they had a breakup. After few days, Ranjit received a text - ***'If you don't do what I tell you to do, I'll post those pics everywhere'***

Shocking! A man being blackmailed by a woman. He is traumatized but what is more devastating is that the largest democratic system fails to provide justice to him. The section 354C of IPC, 1860 deals with the one of the most outrageous crimes which is emerging due to the digital revolution which is – Voyeurism. A definitive objective of the law is to provide remedy to the aggrieved person however the provision of Voyeurism is inadequate.

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<sup>15</sup> K.S PUTTASWAMY (RETD) V. UNION OF INDIA 2017 10 SCC 1

## ❖ SECTION 354D

Sharing his experience of stalking, a boy named Arun aged 19 year old says that *'She knows where I live, she knows what I wear, she knows all my timing, and she stalks me everywhere. It felt like I was living in hell.* I told my parents and tried to take legal help but I was denied.

Harsh but reality! The reality is heartbreaking.

The Indian Penal Code is considered to be a colonial law made in 1860's where provision like stalking was not the part of the IPC. With the passage of events, along with the inputs from JS Verma Committee, Criminal Law Amendment Act of 2013 came into being. As a result, certain provision got imprinted in Indian penal code, 1860 and one of such provision was Section 354D which has rightly made stalking a punishable offence. However capable this provision is but it has neglected the possibility of men being the victim of the same. When people are conditioned to believe that a man cannot be a victim of stalking, they fail to provide justice to all those men who experienced this abusive behavior and it goes unreported.

If we look at data collected by the International Telecommunications Union, official telecom reports, India ranked second place after China and the United States ranked third in that. Internet users in 2021 of India are 560,000,000 and the Internet Growth from 2000-2021 is 11,200%<sup>16</sup>. This shows the development of India in the technology sector. It also depicts that a country with a larger internet user corresponds to a larger crime rate in respect to cybercrime including stalking. India being on the second rank indicates that there will be a huge number of cases of online stalking with any person irrespective of any gender.

As per the information gathered by National Violence against Women (NVAW), a review of 8000 US Women and 8,000 US man took place on the question as to whether they have experienced violence including stalking<sup>17</sup>. The Analysis of study represents that 8 % of women and 2 % of men in the United States have been followed sooner or later in their life and that it is assessed that 1,006,970 women and 370,990 men are followed yearly. It is also noteworthy that the Laws of Stalking in the United States is punishable irrespective of gender.

This reminds us of the incident which happened few months back, where a girl used to stalk boys by creating a fake account and link on Snapchat<sup>18</sup> and she used this social networking platform to make sexually colored remarks and after some time she put all the blame on a boy

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<sup>16</sup> Internet World Stats, <https://www.internetworldstats.com/top20.html> ,(Last Visited - 9 Nov 2021 9:45 A.M )

<sup>17</sup> U.S Department of Justice ,National Institute of Justice Centers for Disease Control and Prevention , Last Visited on - (10 Nov 2021 8:57 P.M )

<sup>18</sup> Aadarsh Kumar Shrivastva , Stalking Laws and its Implementation in India, <https://blog.ipleaders.in/stalking/> (8 NOV 2021, 6:50 P.M)

who wasn't even aware of this. This provision not only lacks gender equality but also infringes the privacy of the men.

It is unfortunate that as the second most populated country of the world, we failed to recognize the suffering and agony of the men who can be a potential victim of this crime too. It is important to acknowledge stalking as a gender-neutral crime to obtain righteousness.

### ❖ SECTION 375

Despite going through such an ordeal, he kept quiet. *"I got so used to it, I would enter his house and lie down on the bed, just wanting it to get over as soon as possible,"* he said.

Harrish Iyer, a 7 year old boy narrated his story in an interview<sup>19</sup>-

He was sexually assaulted by his own uncle at the tender age of 7. This was not the end of the assault rather it was the beginning. From then, his uncle used to assault him every time till the age of 18 year. When he told his mother- her reaction was exactly the same as society's outlook towards men. She said she didn't know that this can also happen to a man.

Here, Not She, but he is the victim. 'Man' is the forgettable gender and it's actually surprising how simply we as a society became so ignorant towards the basic rights of a man. In Indian Penal Code 1860, Section 375 talks about one of the most heinous crime against humanity – Rape. There are various judgments of the Courts which reflects the pain and grief of the Victims of this dreadful crime.

In **Bodhisattwa Gautam v. Subhra Chakraborty**<sup>20</sup>, the SC portrayed rape as most detested offence and held that "rape is an offence against essential human rights and a infringement of the victim's" most treasured of fundamental rights, namely, the right to life revered in Article 21 of the Constitution and When a man and women is raped, they both faces the same mental and physical pain. But the only thing which differs is that women have a cure to her problem while a man suffers silently all his life.

It should be considered that when the victim has no gender, when the suffering and trauma is genderless, then why the remedy or relief is gender-specific. Why this discrimination is still prevalent in our Criminal Laws? In the era of the 21st Century, where our aim is to find life on Mars, we still believe in the old conception which rejects female criminality. Such an unnatural definition of rape stems from the preconceived characterization of a victim's – perpetrator framework based on a firm approach on the gender, male or female pattern. Therefore, from the traditional view of rape, researchers refer only to the special

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<sup>19</sup>Team Social, Times of India, <https://timesofindia.indiatimes.com/blogs/everything-social/this-story-of-a-male-rape-victim-will-shock-you/>, Last Visited 09 Nov 2021 – 8:45 A.M

<sup>20</sup> Bodhisattwa Gautam v. Subhra Chakraborty 1996 AIR 922, 1996 SCC (1) 490

understanding of rape as a sexual act committed by a man on any part of a woman's body using her penis or any other object.

In the case of **Priya Patel vs. State of Maharashtra**<sup>21</sup>, it was said by Court that a women cannot be charged for committing rape because of their inability to do so. This judgment is a black judgment which not only discriminates but is a bad precedent. If we analyses the definition of Rape given in Section 375 of IPC, we can observe that our country's rape laws only touches the tip of an Iceberg and it fails to acknowledge the inside issues which needs to be addressed .

## **GLOBAL PERSPECTIVE**

The definition of rape in U.S.A reads as follows -

**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**<sup>22</sup>.

Meaning thereby the words which are incorporated in the definition of rape are '**ANOTHER PERSON**' and '**VICTIM**'. From this approach it is evident that a perpetrator does not have any sexual identity and a victim can be any person, irrespective of the sexual role .They have broken the prejudiced notion of traditional approach where men are always considered to be a perpetrator and women being the victim. Therefore, it is high time for India to adopt the same approach and make gender – specific laws to gender – neutral laws.

### **❖ SECTION-493**

*Women and Children can afford to be careless, but not men.*

These lines from the Movie Godfather perhaps show the real Picture of the Society. It debars the recognition of men being the victim of any crimes.

With social evils decreasing and awareness increasing, our society is progressing towards gender –equality. But, the journey's too long and law plays a vital role in shaping the views against the men. Regrettably, our laws are not liberal. One such example is of Section 493 of IPC which not only reflects the patriarchal Mindset, it also shows the narrow thinking that '*men does not require such laws to protect themselves*'

<sup>21</sup> Priya Patel v. State of Maharashtra (Arising Out of S.L.P Criminal (No. 68 of 2006)

<sup>22</sup>The United States Department of Justice, <https://www.justice.gov/archives/opa/blog/updated-definition-rape#:~:text=The%20new%20definition%20is%3A,the%20consent%20of%20the%20victim.%E2%80%9D> ,Last Visited on 12/NOV/2021 at 10:30 P.M)

This section protects the women from a man who depicts the women as a consequence that she believes she is lawfully married to him although she is not and therefore, she cohabits with him.

We say law is nothing, but the collective will of the Society. It means when a collective will of the individuals taken together, that demands for a change in society. This particular section rejects the notion that a man can be in such a position that he was portrayed by a lady as in outcome that a man is persuaded to think that he is legitimately hitched to her and in this manner she causes him to live together with her .It's hard to imagine for us, but it's not an impossible situation. Because it happens with them, however it goes unreported and unfortunately we don't have any data, Statistics and reports to prove the numbers because we still don't have any mechanism to calculate these types of cases. How can a man say that a girl has done fraud with me? How will he prove it and where will he report the issue?

The Judiciary has widened its ambit to provide remedy in those areas where there is no written law by the parliament. But ultimately there is a mandate of separation of powers, and we always require a law for the protection. **Surely the time has come to remove all the privileges and biases from the law that is based on gender.**

### ❖ **SECTION-498-A**

#### **Unfortunately, No Domestic Violence Act for husband to proceed against wife: Madras High Court<sup>23</sup>**

India is a country of traditions, customs and norms followed by citizens. Here, Marriage is the sacred union of two people, who come together as equal partners for the journey of life. It was difficult to speak against marriage, but to protect the women from cruelty; this section came as a shield for women. To attract this section, there must be any cruelty done to the 'wife' from her husband and that brutality caused to her can also be done by husband's relative which can be physical, mental or financial. The very Ingredients of these section discriminate between the rights of husband and wife. It reflects the biased opinion and narrative against the men. It only concentrates to 'SHE' and clearly refuses to identify 'HE' as a victim of cruelty. But today, the husbands are also the victim of ill-treatment and torture done by their wives.

A provision like Cruelty provides enormous powers to the women. The object behind adding this section was to punish husband and his relatives who torture or harass the wife to meet any unlawful demand. But in this contemporary society the abuse and exploitation of this provision is disturbing the foundation of marriage. Supreme Court in **Sushil Kumar Sharma**

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<sup>23</sup> India Today, <https://www.indiatoday.in/law/story/madras-high-court-domestic-violence-act-husband-wife-1809900-2021-06-02>, Last Visited on 12 Nov 2021 – 07:49 A.M

**v. Union of India**<sup>24</sup> pronounced that — “**by abuse of the law, a new type of terror can be released in the society.** The intention behind this section is to be used as a shield and not as a weapon. And making this provision gender specific is more disastrous than anything else.

The information of NCRB shows that every year 1, 00,000 cases are filed under this section and the conviction rate is only 14% in 2015<sup>25</sup>. There is a gap in conviction rate that demonstrates there are an enormous number of cases which are bogus in nature.

### ❖ SECTION-509

**Before moving further, it is important to know what modesty actually stands for. Is it behavior? Or is it respect?**

**According to Judicial Dictionary**<sup>26</sup> – **modesty is defined as a freedom of coarseness, indelicacy or indecency.** This definition is devoid of any gender.

The modesty of women is considered to be pious and holy. Therefore when it is outraged by a man, he gets punished for the same. But in our society we don't recognize a man's modesty on the same pedestal. They are also subjected to such incidents in their life where a word, actions or gesture of women makes them uncomfortable but we don't have any laws to preserve their modesty and so thus they don't speak about their incidents of suffering.

And this reminds us of a recent incident of Indian Olympic Gold Medalist Neeraj Chopra –

In an interview with Navika Kumar (Anchor of Times Now)<sup>27</sup> -

She asked- *'Do you have a girlfriend'*

Neeraj Chopra replied- **NO**, I don't have any girlfriend and I want to focus only on my game.

Then the editor says *you can still focus on games after having a girlfriend.*

In yet another interview, taken by RJ Malishka, where she crossed the limit and acted unprofessionally during the interview with Neeraj Chopra. While winding up the session, RJ Malishka leaned on the screen of laptop to take **'Jaadu ki jhapi'** (Hug with love) *and* Neeraj

<sup>24</sup> Sushil Kumar Sharma v. Union of India AIR 2005 SC 3100

<sup>25</sup> Hindustan Times- Manoj R Nair - <https://www.hindustantimes.com/mumbai-news/is-the-dowry-law-being-misused-statistics-can-beinterpreted-to-say-yes-or-no/story-sG1nIm58Wik6LpY4KqIoiN.h> , Last Visited on 17 Nov 2021 01:39 A.M)

<sup>26</sup> KJ AIYAR –JUDICIAL DICTIONARY 17TH EDITION – VOLUME 2 (L TO Z) PAGE-1144

<sup>27</sup> Scroll.in - <https://scroll.in/video/1002489/do-you-have-a-girlfriend-tv-anchor-navika-kumar-interviewsOlympic-gold-winner-Neeraj-copra> , Last Visited on - (09 NOV 2021 2:48 P.M)

Chopra politely said *‘Door se hi namaste (Hello from afar)<sup>28</sup>’* by the end they asked her *“Zyaada to nahi cheda na aapko humne (we haven’t teased you much)”*?

Again a new level of disrespect and insensitivity was showed by an Art Historian Rajeev Sethi in an interview<sup>29</sup> where he conveniently asked- *‘How do you balance your sex life with your training?’*, thus leaving the audience numb and speechless. Will this incident if ever happened to take place with a non-celebrity come in purview of Section 509?

**No, because the victim is a ‘man’ and the perpetrator a ‘woman’.** This leaves us to consider the idea of Justice that we follow. These incidents force us to stop, look and introspect on these issues. Imagine if this can happen with a star Athlete on a national platform and he can’t even access any legal action against any of them – We cannot even conceptualize the situation of an ordinary man.

While concluding this issue – The Present Scenario reminds us of a Latin Maxim- *Modica circumstantra facti jus mutal<sup>30</sup>* - Which simply means that small circumstances (attending an act) may change the law therefore the abovementioned situations are not trivial rather a recognition of same may render justice to half of the population.

## ANALYSIS OF TERM ‘VICTIM’ IN LIGHT OF POCSO, 2012

“By the time I was 18, no laws applied to my case- so there was no justice”- said by Harish Iyer, a victim of Rape and Sexual Assault by his own uncle<sup>31</sup>.

The POCSO, 2012 ensure protection to youngster below the age of 18 years<sup>32</sup>. According to the scrutiny of the definition ‘Sexual Assault’ – If the accused touches the Victim (or Victim’s body part) with the intent of any sexual nature then the act of the sexual assault is complete. Meaning thereby if the child is below the age of 18, he has a remedy for the protection of sexual offences .But, if the same child happens to be a man who turned the age of 18 above, then no law is applied in his case and so there will be no justice.

<sup>28</sup> ANI, <https://www.aninews.in/news/entertainment/out-of-box/rj-malishka-faces-backlash-for-greetingneeraj-chopra-with-a-dance-during-virtual-interview20210820190911/> ,Last Visited on ( 12NOV 2021 5:27 P.M)

<sup>29</sup> Times Now, <https://www.timesnownews.com/sports/cricket/article/art-historian-rajeev-sethi-slammed-forasking-Neeraj-copra-about-his-sex-life-during-interview/807> ,Last visited on ( 12 NOV 2021 6:38 P.M)

<sup>30</sup> 2 KJ AIYAR –JUDICIAL DICTIONARY PAGE-1144 17TH EDITION (L TO Z)

<sup>31</sup> Times of India , <https://timesofindia.indiatimes.com/blogs/everything-social/this-story-of-a-malerape-victim-will-shock-you/> Last visited on (11 NOV 7:42 A.M)

<sup>32</sup> POCSO, 2012, Section 2d , No-10 , Acts of Parliament , 2012, India

## CONCLUSION

India is a holy land of cultural and ethnical diversities with over a 140 million of people and is better known as World's Largest Democracy with a vibrant living constitution to its credit. The sacred Constitution has provided wide arena of fundamental rights to citizens such as right to equality, right to freedom, equal opportunities of life etc. to name a few. Judiciary – the guardian of Constitution has time and again played a vigilant role to safeguard the rights, liberties of an individual. On such right as upheld by the apex court in various pronouncements and also existing under the preamble of the Indian Constitution is Right to a Dignified Life. However, such rights can only persist when equality will prevail which is to be borne in mind and spirit not only by Legislature, Executive and Judicial organ of the State but by society and civilization at large. From developing women –centric laws to conceptualizing feminism around us, the agony of man is overshadowed. We still live in the patriarchal mindset which rejects the notion of man being the victim of any sexual offences. The plight of men is considered to be less in comparison to female victims. We failed to provide justice to the majority population in our Country. Men are the parallel sufferers of the sexual offences. Yet, we discriminate against them on the basis of gender. Being a developing country it is the high time and need of the hour to amend the old archaic laws to provide redressal to every man. And make sexual offences provision to be gender neutral then gender specific as developed countries like U.S, U.K, Australia.

For the aforesaid purpose, the need of the hour is to bring gender-neutral laws keeping in view the Constitutional and Societal Development of Nation. Therefore, mere judicial pronouncement in this regard cannot suffice the need to bring forth equality in its true sense, but simultaneously the Legislature has to come up with suitable variations, repeal and change whenever needed.

Then only a dream of equal society and a notion of gender-justice will shape into reality. A welfare state can only be called so when every person, irrespective of gender will be safeguarded from injustice and wrong.

As it is said that,

***“Injustice anywhere, it is a threat to justice everywhere<sup>33</sup>”***

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<sup>33</sup> Martin Luther King, <https://www.goodreads.com/quotes/631479-injustice-anywhere-is-a-threat-to-justice-everywhere-we-are>, Last visited on 18 Nov 2021 05:27 P.M