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GENDER-NEUTRAL LAWS: NOT AN OPTION BUT A NECESSITY

INTRODUCTION

Although everyone is equal before the law according to the Rule of Law philosophy, this is not always the case in real life. Many communities have been marginalized for millennia because civilization is so discriminatory. It was necessary to enact laws in their favor to level the playing field, safeguard them from additional injury, and grant them equality with other communities. This is evident in the case of women, for whom laws particular to their gender are passed in nearly every country on the planet.¹

Every person is granted equality before the law and the right to live with human dignity under the 1950 Indian Constitution. Furthermore, every national citizen is entitled to the freedom from discrimination on the grounds of race, religion, caste, sex, or place of birth. However, men and the transgender community in society are consistently denied their rights when it comes to crimes like sexual harassment, voyeurism, stalking, sexual assault, and rape cases. It is a common misconception that women always play the victim role and men play the perpetrator one, however males can also become victims of false allegations and sexual offenses.

Origin behind gender-biased laws

The social customs of the ancient civilizations are where law first emerged. These customs quickly developed into stringent guidelines governing community members, and eventually they became national laws with penalties for noncompliance. Prior to being recognized and adhered to as legal rules, many personal laws pertaining to marriage were only conventions and traditions that were followed by particular groups for years. In the meantime, laws opposing the caste and sati systems' customs were created in response to the demands of the community and its members. It is accurate to argue, in essence, that laws have a significant social and historical context. This is also a major contributing factor to the gender bias in many laws, particularly in India.

¹ Debapriya Biswas, Gender Neutral Laws in India, IBLOG PLEADERS, (Feb.29,2024, 7:41 PM), <https://blog.iplayers.in/what-are-the-laws-on-gender-neutrality-in-india/>

But as times change, so do society's demands; what was once protective is gradually turning restrictive as more and more examples raise questions about the legitimacy of these kinds of regulations that target specific genders. In order to overcome these limitations, legislation should be written so that it is gender-neutral and flexible enough to be applied to any given situation without inadvertently favoring one party over another based solely on their gender.²

Laws that are not gender neutral

1. Outraging _____ modesty

A woman's sexual dignity, which she has had since birth, is what is meant by modesty. Since a woman's sexual boundary is so particular to her, no one can establish a standard by which to measure a woman's boundaries for sexual honor. To put it this way, a rural woman could find it inappropriate to have a light touch on her shoulder. There is no hard and fast rule for evaluating a woman's modesty because for metropolitan women it may be a nonchalant gesture. The word "outrage" suggests that a woman's modesty is being violated physically.

This section just looks at women as victims. What about men? Don't they have modesty?

2. Voyeurism

These days, it is not unusual for CCTV cameras to be covertly placed in hotel rooms, honeymoon suites, or changing areas, violating the privacy of both men and women. However, only crimes against women are classified as such under Indian penal law. Every year, there is an increase in voyeurism instances in India.

Any man who views or takes a picture of a woman doing a private act in which she would typically expect to be alone and unobserved by the accused or anybody else will be charged with voyeurism under Section 354C IPC. Only men are considered perpetrators in this area as well, but what happens if a man is watched or caught in the act of performing a private act? Will he not be allowed to file F.I.R?

3. Cruelty/Domestic Violence

The subject of whether the term "respondent" should be gender-neutral or limited to men was discussed during the drafting of the Protection of Women from Domestic Violence Act, 2005. It was determined that the purpose of drafting Section 2(q) was to maintain consistency with Section 498A and was not intended to be gender-neutral. Under this clause, women may accuse their husbands; the offense is cognizable and not subject to bail.

² Navin Kumar Jaggi, Why There Is A Need Of Gender Neutral Laws In India, LEGAL SERVICES INDIA, (Feb.29,2024, 8:15 PM), <https://www.legalserviceindia.com/legal/article-7370-why-there-is-a-need-of-gender-neutral-laws-in-india-.html>

Once more, only women are taken into an account as victims and males as offenders in this part. But as time has gone on, we have all seen a great deal of fictitious reports of cruelty made by Indian women, and males have also struggled with the same. What then is the Indian treatment for men?

4. Dowry Death

According to Section 304B of the Indian Penal Code, the dowry was included in the country's criminal code to prevent harassment, violence, and fatalities associated to it. However, about 10% of dowry cases are fraudulent each year. In one instance, the defendants contended that a conviction under Section 304-B of the IPC could not stand on its own without any charges under Section 498A of the IPC (cruelty). However, the three-judge panel consisting of Aniruddha Bose, JJ, Surya Kant, and CJI NV Ramana dismissed this contention.

Moreover, this part solely views males as the offenders and women as the victims. As we previously noted, every year there are also fictitious instances of dowry death filed, which forces the husband and his family to deal with and ultimately leads to their torture. Isn't it necessary to punish women who make false claims under this section?

5. Rape

Then, in gender-biased rape cases, it was made somewhat gender neutral, though legal experts dispute this; the reason it was perceived as having paved the way towards gender neutrality was because, following the 2013 amendment, the scope of penetration was expanded beyond penile-vaginal penetration.

Unlike the POCSO Act, which is a gender-neutral statute, this clause primarily addresses women and does not directly address rape of a male victim.

6. The Sexual Harassment of women at the Workplace Act, 2013

When someone uses the word "sexual harassment," most people immediately believe that a guy is the harasser and a woman is the victim. The workplace is one of the main locations where sexual abuse takes happen. The Sexual Harassment Act for Workplace, also known as The Vishakha Guidelines, was enacted with the express purpose of preventing sexual violence against women in the workplace. However, if males experience sexual harassment at work, there is now no recourse open to them.

What about guys, though? It's a well-known reality that males can experience sexual harassment at work. Laws have been put in place to shield women from sexual harassment, yet males continue to be disregarded.

CONCLUSION

The notion of a woman subduing a guy appears ludicrous because men are generally regarded as being stronger than women. However, we believe that it is incorrect to attribute a person's criminal status based on their gender. We have questioned why the requirements can't be rendered gender-neutral at the conclusion of each of the aforementioned offenses. Because of this, there are

currently no laws that specifically address offenses against men; instead, harassment laws normally apply, which is insufficient. India needs to enact laws that are gender-neutral since the majority of men—34.3%—were victims of economic violence, followed by physical violence (28.6%), emotional violence (27.5%), and sexual violence (20.4%).³

³ Kakoli Nath, Gender biased laws in India: Why are only women considered victims? FINOLOGY BLOG, (Feb.29,2024, 9:01 AM), <https://blog.finology.in/Legal-news/gender-biased-laws>