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**GENDER NEUTRAL INDIA**Bellampalli Yashwanth<sup>1</sup>

*“Maybe not today, maybe not tomorrow, and maybe not the next month or year but one day India surely becomes an original gender-neutral India”*

"All human beings are potential rape victims. Spouses are raped. Male and female children are raped. Babies are raped. Physically handicapped persons are raped. Anesthetized patients are raped. Mothers, fathers, brothers, and sisters are raped. Adolescents rape one another as well as older persons and children. Male and female prisoners rape each other. During wars, soldiers have been known to rape entire communities. Males rape females and males. Many rapists are gender and age-blind. Females rape other females and males. No person is immune from the human potential to rape or be raped."

**- McMullen**

**Rape**

Is India a gender-neutral country is a question that is plotting throughout the nation from the era of the “MeToo” movement which started in late 2018, which is all about a campaign against sexual harassment and assault on women, where countless women came out of their confinement to speak upon the sexual abuse or assault or harassment they had faced in past. This is when everyone in the nation came to know that more than half of the women who had undergone the trauma haven’t even tried to file a complaint or speak about it to anyone because we are in a society where a victim of rape is always seen as a wrongdoer who somehow complied with the accused of rape in the act for satisfying her sexual desire.

Above I mentioned rape victims then I made it clear in the next statement that the victim is always a female but from the very MeToo movement, we also came to know that there are more male rape victims outnumbered at times but still, a male cannot be seen as a problem in our society as the magnitude of trauma which a male undergoes is always hidden by his masculinity as constructed by our society itself. Yet we have never seen a male as a rape victim forget about seeing a male as a victim of rape, we will even not see nor recognize that a male can be raped. According to Section 377 of the Indian Penal Code (IPC), a male can be only “Sodomized (have anal intercourse with someone)” but they cannot be raped. According to Indian laws, the consent of women is given so much importance that if the accused failed to prove the consent of women, he is declared guilty without any second thought. For any criminal act in India, we use the principle “Innocent until proven guilty” but when it comes to rape

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<sup>1</sup> The author is a student at Lloyd Law College, Noida.

charges the accused is “Guilty until proven innocent” upon just a statement provided by the female victim that the sexual intercourse is off without her consent and against her will, this is the gender neutrality which is being ensured by our Indian laws it is on its high time the time has come to change the law regarding rape any make Indian laws as gender-neutral as mentioned in Article 14 and 15 of India Constitution.

Males stop being a silent majority who get just injustice every moment more than anyone gender could ever imagine. Now let us see who is most marginalized according to law, not by people for female we have every provision and special treatment from birth to marriage we can see so many laws, schemes, committees, developmental goals what not they were encouraged and supported by law and government in every aspect of their life all the mentioned are being implemented without fail is the second question but for sure there is a separate recognition to women in law, in case of third gender people the law has given them a legal representation by the Transgender Persons(Protection of Rights) Act, 2019 which was signed into law by President Ram Nath Kovind on 5 December 2019 and even Hon’ble Supreme Court and Government of India is showing interest in developing the status and protection of the third gender. But what about males in India or the world can we see any law that is neither proposed nor implemented for the development or protection then who is being discriminated against in the eyes of law the answer would be males this kind of odd behaviour of Indian laws are raising a clear hunger for revolution as a male rape survivor is always left only to survive without justice for life so they are unreported.

Indian Penal Code (IPC) Section.375- Rape<sup>1</sup>;

Sec-375. Rape:

A man is said to commit “rape” if he:

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

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<sup>1</sup> Indian Penal Code Act, 1860, sec. 375, Act No. 45 of Parliament, 1860(India).

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

First: Against her will.

Secondly: Without her consent.

Thirdly: With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly: With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly: With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly: With or without her consent, when she is under eighteen years of age.

Sevently: When she is unable to communicate consent.

Explanation 1: For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2: Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act: Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1: A medical procedure or intervention shall not constitute rape.

Exception 2: Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Penetration penis is thoroughly mentioned in the definition of rape in the Indian penal code, whereas the insertion should be into the vagina, mouth, urethra, or anus of a woman is also mentioned so the definition of itself asserts that the accused of rape is always a man and the victim is always a woman although a lot of amendments, alters, changes to the scope and definition are enhanced since time but no change had been seen given male rape as rape is only meant to protect women from men by punishing men but not for punishing women for their mischievous acts against both men and women collectively as women cannot be accused of rape by the definition the rape. Merely male rape is always a myth to the people as it never exists. Male rape is a myth to many because the numbers are very low in terms of reported

crimes but once we get into reality one out our every near neighbour or friend would be a victim of sexual abuse either attempted or completed but no one other than the victim knew about the act as he was brainwashed with his masculinity by his guardians in terms of women the sexual abuses were more from the strangers but in the case of males the very next intimate of the family or a family friend is mostly seen as accused still they are silent because no words can explain the amount of pain which is going on in their mind and their heart as being fearful for a tag of male rape victim although if he bears the tag by coming forward and reporting the act he knows that justice is not available to him as he is a male so better stay calm and the issue be unreported, root-level truth of a marginalized and discriminated male rape victim by law.

Almost the majority of the youngsters in the nation or all over the world had gone through a Fifty Shades film trilogy (i.e, fifty shades of grey, fifty shades darker, and fifty shades freed) which is well known for sexual fantasy abuse and so several social mass groups tried to boycott the film on grounds of it depicting sadomasochism which immoral to the society and their traditions but no one ever thought the cause of the lead male character(Christian Grey) becoming so masochistic which also shown in the film that is the sexual abuse he had been facing through his childhood from one of the close friends of his mother where she used him as a sex slave and also made him aggrieved of so many atrocities in his past Mr. Grey also mention that the personality which was seen on the screen is the outcome of his mother's friends deed and desires this is the sad truth which can also be a cause to raise a rapist from oneself. Rapists are not born rapists they are constructed by sociocultural attitudes that shape their identity and motivate their violence.

Let's now take an example of "Shaadi Mein Zaroor Aana" a Bollywood movie in which the female lead at the last moment of the marriage time fled away after coming to know that she had cleared a judiciary examination and the bridegroom (male lead) whom she is been getting married in a not so financially stable and equal to her now as she is a judicial officer now so she can get a better-versed husband which was even suggested by the heroine family to her now can he file a case although if he could a single statement by women that the marriage is happening without her consent is enough to make the marriage null and void. Now let's reverse the story roles where the male fled away at the same time of marriage for some crucial reason yet by knowing this also women filed a case against him let's say charges of Section- 375 Indian Penal Code, 1860 where it is stated that sexual intercourse under a promise of marriage constitutes to rape but in reality, there is no such kind of sexual intercourse ever happened between them who is being discriminated or marginalized here. She could charge him for

breach of marriage it is justifiable but what is the magnitude of rape of a person where he has never done such an act in the first place even if he was acquitted by the court by the shreds of evidence proving that the charges levied against him are fake allegations but the tag which he had on his back that is a rapist or raped accused will never fade away. Still for making fake allegations and wasting the time of the Hon'ble court the women get no punishment if she gets it is at most a fine of a hundred rupees or moreover near which is not even a part of the relaxation of the accused one-night jail then for whom the laws are made to punish the wrongdoers or to enshrine them all the time. Here it is not about all the 49 pro-women laws which are included in Indian laws for the protection of women it is about the need for at least one law to protect men or laws which are gender-neutral and are not based on a single-gender if any law exists such in Indian law is section 8 of Indian Penal Code which itself describes gender. If one speaks about all of this he/she is being named as an anti-women by modern feminists.

### **Legalized Extortion Racket**

Domestic violence against women is seen as the biggest evil in the Indian marriage culture. To curb it from its roots, we have a lot of Indian laws that are also of a single-dimensional way that only and mostly ensure the rights of women, so even here men are getting marginalized by law. A Cross-sectional Study of Gender-Based Violence against Men in the Rural Area of Haryana, India. In the present study, 52.4% of men experienced gender-based violence. Out of 1000, males 51.5% experienced violence at the hands of their wives/intimate partner at least once in their lifetime and 10.5% in the last 12 months. The most common spousal violence was emotional (51.6%) followed by physical violence (6%).<sup>2</sup> Aren't these numbers a little high which demand justice for themselves, yes they will but they can't as no law guarantees any equality of men against women discrimination on grounds of sex which is falsely promised by article 14 and article 15 of the Indian constitution this can be proved more exemplarily by having a glimpse of the major laws and acts which directly deals with domestic violence they are: The Protection of Women from Domestic Violence Act, 2005, The Dowry Prohibition Act, 1961, And Section 498A of the Indian Penal Code. These three major laws in India directly deal with domestic violence only against men to safeguard women.

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<sup>2</sup> Jagbir Singh Malik & Anuradha Nadda, A Cross-sectional Study of Gender-Based Violence against Men in the Rural Area of Haryana, India, *Indian J Community Med.* 2019 Jan-Mar; 44(1): 35–38, 4 (2022), <https://pubmed.ncbi.nlm.nih.gov/30983711/>.

Marriage is considered a divine occasion where two people and two families unite together it's the best of all the social institutions in India for ages and it continues to be the same. But the rate of divorce in marriage rising between 20% to 30% but the matter we are going to look at is not divorcing it is all about who is being solemnly accused and suffering from divorce again it is the men who are always at every step is being suffered a lot in a large number of divorce cases, not all of them but most probably not only men but also his entire family may also get into jail at a time yes I am talking about Section- 498A of Indian Penal Code, 1860 the cruellest law against any person on the law existing irrespective of their magnitude of involvement and most misused section against husband and his family. The scope of this section is not just limited to the husband or his nearest relatives like his parents, brothers, and sisters but it extends to anyone whose name has been stated in the FIR lodged by the wife irrespective of their age or relation to the husband just mere relation between husband the person is enough to put him behind the bars.

Indian Penal Code (IPC) Section.498A-Domestic Violence;

Sec- 498A. Husband or relative of husband of a woman subjecting her to cruelty:

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation. ; For the purposes of this section, "cruelty" means;

(a) anywilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.<sup>3</sup>

Section 498A of the penal act defines cruelty by a husband and his relatives as any wilful conduct so severe that it drives a woman to commit suicide or cause grave danger to her life, limb, or health (either mental or physical or both) it also criminalizes harassment of women on the account of any unlawful demand or dowry. This aforesaid section is bought into Indian law statutes with more stringent provisions so that it could be moreover under criminal

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<sup>3</sup> Indian Penal Code Act, 1860, sec. 498A, Act No. 45 of Parliament, 1860(India).

jurisprudence rather than a civil one. The offense is a cognizable offense, which means the police are bound to register FIR can investigate that case and arrest the accused without a warrant. The offense is a Non- Bailable and Non- Compoundable which means there would be no normal bail granted and once registered case cannot be compromised or withdrawn.

Madhu Purnima Kishwar, National Professor, ICSSR & Founder Editor of MANUSHI, held that one of the biggest problems with sec. 498A Indian penal code,1860 is with the vagueness of its definition where marital abuse is not only limited to physical but also includes verbal tones, facial expressions which puts down someone or assaults one dignity difficulties with these are not easy to prove explicitly but can be charged for doing such offenses implicitly.<sup>4</sup>

Statutes and sections like Domestic Violence Act, 2005 and Sec. 498A respectively are framed in a way that whatever a woman is saying is treated as evidence and completely admissible in the court of law. Sec 498A provides the power of arrest to police on the demand of women without any investigation or evidence produced or collected the man and his family, friends, and relatives can be arrested.

### **Some of the law misusing cases:**

#### **Maakdoom Case:**

Maakdoom is a family man who lived in Canada for over 11 years and dreamt of marrying an Indian girl. Maakdoom was married to an Indian woman Muskaan, who was married 4 times in the last 7 years. They were married in December 2004, in February 2008 a case with allegations of dowry and other charges was filed, and were separated in the same month. His pleas for seeing his child were rejected. Maakdoom hanged himself after recording a video on April 5, 2009, about the cruelty and fake allegations by Muskaan against him.

Maakdoom would be alive today if either sec. 498A, Indian Penal Code, 1860 is discharged or he could be allowed to see his child.

#### **Manoj Kumar Case:**

Manoj Kumar filed for divorce on grounds of cruelty in 2013, his family was dragged to the police station and threatened with sec 498A immediately thereafter Manoj Kumar hanged himself on April 8, 2013, the same night when his wife dragged his family to the police station.

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<sup>4</sup> Madhu Purnima Kishwar, A Review of the New Domestic Violence Act, Manushi Blog (Jul.25, 2009, 6:08 PM), <https://www.manushi.in/law-liberty--livelihood/a-review-of-the-new-domestic-violence-act>.

**Chandan Mukherji Case:**

Chandan Mukherji made a DNA test for his own child but in the aftermath of the results everything changed in his life, report states Chandan Mukherji is not the father of the child, to whom his own wife has given birth. Two days later his wife filed a sec 498A making allegation of cruelty by her husband.

What would be justice for Chandan Mukherji Indian laws, where there is no law for paternity fraud in India and also a married woman cannot be tried for adultery as per Section. 497 Indian Penal Code, 1860. There are no laws to protect a man from marital abuse and domestic violence in India.

**Hussain and Chetan Case:**

Hussain and Chetan are two separate individuals with an almost similar problem, where their respective wives demanded them of leaving their old age parents and live their life separately. But both of them refused the aforesaid action of leaving their old age parents alone, as result, their respective wives used power provided by Indian laws and filed charges under sec. 498A. Although Hussain and Chetan decided to fight and prove innocence instead of leaving their parents in such a way. But they are guilty of nothing but still trying to prove their innocence for years.

Innocent or guilty Sec. 498A put numerous people behind the bars, according to National Crime Records Bureau (NCRB) from 2000 to 2015 nearly 2.5 million people have been arrested under Sec. 498A alone which is higher than any other major section of the Indian Penal Code, 1860.<sup>5</sup> Without a clear definition of relative under sec. 498A even children get arrested, Two-month-old Zoya Khan is perhaps the youngest person to get bail. Her entire family was accused by her stepmother of harassment.<sup>6</sup> From the NCRB report of 2014, 19.6 lakh men, 5.6 lakh women, and 7594 minors were charged and arrested between 1998 and 2014.<sup>7</sup> HelpAge India reports say that elders across cities were asked about the abusers within their families. The Daughter-in-law (61%) emerged as the top most perpetrators, so daughters-in-law are the primary perpetrators of elderly abuse in India.<sup>8</sup>

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<sup>5</sup> NCRB, <https://ncrb.gov.in/en/crime-in-india-table-contents?page=2> (last visited Jul 25, 2022).

<sup>6</sup> NDTV, <https://www.ndtv.com/india-news/two-month-old-baby-gets-bail-396564> (last visited Jul. 25, 2022).

<sup>7</sup> NCRB, <https://ncrb.gov.in/en/crime-india-year-2014> (last visited Jul. 25, 2022).

<sup>8</sup> HelpAge India, STATE OF ELDERLY IN INDIA 2014, HelpAge Research Reports (2015), <https://www.helpageindia.org/wp-content/themes/helpageindia/pdf/state-elderly-india-2014.pdf>.

## POCSO ACT

Assault and harassment on both males and females, dowry deaths, cruelty against women by her husband or husband relatives, fake rape, sexual harassment, assault, dowry allegation, etc, on men are on a rise in number day by day according to statistical data but in terms of sexual offenses against children, it is at another level pace when it comes to reality even statistical data also view us the level of protection we have to children in our society and the way we are protecting our future generation. If we take any national newspaper for three days on average you will find at least one child's sexual offense-related case before 2012. Everyone says rape is not happening because of women's dress, colour, age, behaviour, or any other materialistic element if anyone says these elements are also factors of a man committing rape then other people are ready to show a finger against it but if one says even gender is not a barrier of rape then it is a myth why we are opposing patriarchal society and again on the same hand moving towards the patriarchal society in which men cannot be harmed or no action against men can be taken. The type of shift now we are taking from patriarchal society is like a toothless tiger shift because it is of no use but still, we want but for time being, nobody knew what they want nor how to get it.

India for ages has been having men in so prestigious positions or authorities, at times only men used to have complete authority from that scenario to today's scenario where men are unable to come out and speak about what happened to them society implanted a type of stigma "which is men don't cry" forget about men let's look into the issue of children, under the POCSO Act, 2012, a child has been defined as "any person below the age of eighteen years," without specifying any gender and using the word 'any' denotes equality to all genders. Here it is meant to be a gender-neutral law on paper to protect children below eighteen years of age and provide justice equally for both boys and girls without any irregularities while doing so, but when it comes to delivering justice by the Hon'ble courts in practicalities then girl child is directly having a benefit as she can charge the accused with POCSO Act, 2012 and also with Indian Penal Code (IPC), 1860. So here it can be clearly said that in Indian courts boy child abuse is less severely punished than girl child abuse. It is direct or indirect discrimination towards a boy child where he was secured by a child sex abuse protection act, POCSO Act, 2012 which is also a gender-neutral law on paper. If we have a glance at Article 14 of the Indian Constitution<sup>9</sup>, which states equality before the law, and Article 15 of the Indian Constitution<sup>10</sup>, which states

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<sup>9</sup> INDIA CONST, art. 14.

<sup>10</sup> INDIA CONST, art. 15.

about Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth, so these type of biased substantive laws and procedural laws are a clear violation of article 14 and article 15 of the Indian constitution and other human rights. Forget about the scenario about men in the Indian society, but what about the children, Indian laws are even showing partiality among them so it can make a worse situation n coming years as there would be the development of thought process that if the wrongdoer does the same act with a boy child then the offense is less barbaric then compared with another offense happened in the same manner with a girl child, for instance, if any person wants to perform oral sex with a child he had two options either a boy or girl so the offender obviously chooses a boy child to abuse due to the loopholes of Indian law in terms of a boy child. The moral and mental stigma of oral sex is the same for both boy child and girl child but due to overwhelming protection for females by Indian laws, it is indirectly promoting child abusers to choose a boy child.

## **Conclusion**

To deny people their human rights is to challenge their very humanity. Besides women, men are also the victims of gender-based violence. This demands future investigation and necessary intervention on gender-based violence against men in India. As held by the Indian judiciary in ample amount of judgments sexual abuse is moreover a mental stigma rather than a physical stigma that is the only reason all women-centric approach laws pressurize consent of the female to make any action into an offense with a single statement of the women, so there would be no difference in rape victimization of either male or female both most of the times suffer the same abuse, but fortunate Indian laws favour the women, unfortunately, male are not only victimized by the offender but also face ill-treatment by Indian laws, judiciary, family, society, etc, because a male neither in childhood nor as a teenage nor as an adult nor as an old person never ever can be seen as a rape victim as Indian laws or statutes never explicitly stated that. We are still following the Victorian era rules and regulations if so, we cannot run a country in the 21<sup>st</sup> century. There is no need of moving away from the women-centric approach laws, gender-neutrality can work in favour of the feminist cause and women's rights also only if approached correctly. While males can get a minimum amount of recognition in Indian laws as rape victims. Whatever changes are made to Indian laws special reference to the Indian Penal Code, 1860 is exhibited only after happening of crimes, for example, digital rape which has been recently been recognized as rape, rape in the Indian penal code is one of the most developed sections compared to any other section the act as the same development is also needed to take under its definition and make rape a gender-neutral offense in India.